

43/2017 Coll.

ACT

of 1 February 2017,

amending and supplementing Act No. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration, as amended

The National Council of the Slovak Republic has adopted the following Act:

Section I

Act No. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration, as amended by Act No. 359/2015 Coll. and Act No. 300/2016 Coll. shall be amended and supplemented as follows:

1. Article 1, including its heading, shall read as follows:

“Article 1

Subject Matter

This Act lays down

- a) the procedure and the conditions under which the competent authority of the Slovak Republic shall provide, request or receive international assistance and cooperation in tax administration to ensure correct assessment and payment of taxes;¹⁾
- b) the obligations of taxable entities to provide the competent authority of the Slovak Republic with information used to secure international assistance and cooperation in tax administration.”

2. In Article 4(2), the words “through 22” shall be replaced by the words “through 22g”.

3. After Article 22, there shall be inserted Articles 22a through 22g which, including the heading above Article 22a and the headings of Articles 22a through 22g, shall read as follows:

“International Assistance and Cooperation in Tax Administration in the Field of Automatic Exchange of Country-By-Country Reports

Article 22a

Definitions

For the purposes of automatic exchange of country-by-country reports

- a) country-by-country report means information on an MNE group per jurisdictions of tax residence of constituent entities;
- b) international agreement means the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, any bilateral or multilateral international agreement to which the Slovak Republic is a party and that provides legal authority for the exchange of tax information between jurisdictions, including automatic exchange of such information;
- c) agreement means an agreement of competent authorities that requires the automatic exchange of country-by-country reports and that the Slovak Republic concluded with jurisdictions that are not Member States and that are parties to the international agreement;
- d) state party to the agreement means a party to the international agreement by which the Slovak Republic is bound, where the competent authority of the Slovak Republic performs automatic exchange of country-by-country reports with the state party to the agreement in compliance with the conditions regulated by the agreement;
- e) enterprise means any form of conducting business by an entity according to Article 2(1);
- f) group means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements under legal regulations in the area of accounting or would be so required if equity interests in any of the enterprises were traded on a public securities exchange;
- g) MNE group means any group that includes at least two enterprises the tax residence for which is in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction, and is not an excluded MNE group;
- h) excluded MNE group means such an MNE group having total consolidated group revenue of less than EUR 750,000,000 during the fiscal year immediately preceding the reporting fiscal year as reflected in its consolidated financial statements;
- i) constituent entity means
 1. any separate legal entity of an MNE group that is included in the consolidated financial statements of the MNE group, or would be so included if equity interests in such legal entity were traded on a public securities exchange;
 2. any separate legal entity of an MNE group that is excluded from the consolidated financial statements of the MNE group on size or materiality grounds;or
 3. any permanent establishment or organisational unit of any separate legal entity of an MNE group included in (1) or (2), provided that the founder prepares separate financial statements or a separate financial statement for such a permanent establishment or organisational unit for accounting or tax reporting, or regulatory or internal management control purposes;
- j) ultimate parent entity means a constituent entity that meets the following criteria:
 1. it owns directly or indirectly such an interest in at least one constituent entity that it is required to prepare consolidated financial statements under accounting principles generally applied in its jurisdiction of tax residence, or would be so required if its equity interests were traded on a public securities exchange in its jurisdiction of tax residence;
 2. there is no other constituent entity that owns directly or indirectly an interest in the constituent entity which meets the conditions referred to in the first item;

- k) surrogate parent entity means the constituent entity that has been appointed by the MNE group, as a sole substitute for the ultimate parent entity, to file the country-by-country report in its jurisdiction of tax residence, on behalf of the MNE group, when at least one of the conditions referred to in Article 22c(1)(b) applies;
- l) reporting entity means the constituent entity that is required to file a country-by-country report on behalf of the MNE group and that is resident for tax purposes in the Slovak Republic; the reporting entity may be the ultimate parent entity, the surrogate parent entity or the constituent entity according to Article 22c(1);
- m) fiscal year means an annual accounting period with respect to which the ultimate parent entity prepares the financial statements;
- n) reporting fiscal year means the fiscal year for which the country-by-country report is filed;
- o) consolidated financial statements mean the financial statements of an MNE group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single economic entity;
- p) systemic failure means if a state party to the agreement
 1. suspends automatic exchange of country-by-country reports for reasons other than those stipulated in the agreement; or
 2. persistently fails to automatically provide to the Slovak Republic country-by-country reports relating to MNE groups that have constituent entities of which at least one is resident for tax purposes in the Slovak Republic and has such country-by-country reports in its possession.

Article 22b

Scope and Conditions of Automatic Exchange of Country-By-Country Reports

(1) The ultimate parent entity that is resident for tax purposes in the Slovak Republic, the constituent entity following the fulfilment of the conditions referred to in Article 22c or the surrogate parent entity following the fulfilment of the conditions referred to in Article 22d shall file with the competent authority of the Slovak Republic a country-by-country report. The country-by-country report shall be filed according to the template provided in Annex No. 1 within 12 months of the last day of the reporting fiscal year of the MNE group.

(2)

The competent authority of the Slovak Republic shall

a) by means of automatic exchange of information, communicate country-by-country reports received according to Article 22b(1) to the competent authority of the Member State or to the competent authority of the state party to the agreement, in which the constituent entity is either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment, namely within the deadline of 15 months of the last day of the relevant fiscal year of the MNE group to which the country-by-country report relates;

b) receive country-by-country reports from the competent authority of a Member State or the competent authority of a state party to the agreement.

(3) The country-by-country report shall contain the following information with respect to the MNE group:

a) aggregate information relating to the amount of revenue, profit (loss) before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings and accumulated losses, number of employees, and tangible assets other than cash or cash equivalents with regard to each jurisdiction of tax residence in which the MNE group operates, specifying also the currency of the amounts referred to in that report;

b) a list of single constituent entities by jurisdictions in which they are resident for tax purposes, jurisdiction of tax residence of that constituent entity and, where different from that jurisdiction of tax residence, the jurisdiction where that constituent entity has its registered office, and the nature of the main business activity of that constituent entity.

Article 22c

The Obligation of Constituent Entity to File a Country-By-Country Report

(1) The constituent entity that is not the ultimate parent entity shall file a country-by-country report for the reporting fiscal year of the MNE group of which it is a constituent entity if

a) it is resident for tax purposes in the Slovak Republic; and

b) at least one of the following conditions applies:

1. the ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;

2. the jurisdiction in which the ultimate parent entity is resident for tax purposes has a current International Agreement with the Slovak Republic, but does not have an agreement in effect by the deadline specified in Article 22b(1) for filing the country-by-country report for the reporting fiscal year; or

3. there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the competent authority of the Slovak Republic to the constituent entity.

(2) The constituent entity referred to in Article 22c(1) shall request its ultimate parent entity to provide it with all information required to enable it to meet its obligation to file a country-by-country report. If the constituent entity has not obtained from the ultimate parent entity all the required information to file the country-by-country report for the MNE group, the constituent entity shall file a country-by-country report containing all information in its possession and notify the competent authority of the Slovak Republic that the ultimate parent entity has refused to make the necessary information available; the competent authority of the Slovak Republic shall inform the competent authorities of Member States and the competent authorities of state parties to the agreement of this refusal.

(3) Where there are more constituent entities of the same MNE group of which at least one is resident for tax purposes in a Member State and at least one of the conditions set out in Article 22c(1)(b) applies, the MNE group may designate such constituent entity to file the country-by-country report within the deadline referred to in Article 22b(1) and to notify the competent authority of the Slovak Republic that the filing of the country-by-country report is intended to satisfy the requirement to file a country-by-country report for constituent entities that are resident for tax purposes in Member States or in state parties to the agreement; the competent authority of the Slovak Republic shall communicate the country-by-country report to the competent authorities of the Member States or competent authorities of state parties to the agreement from which it is clear, on the basis of information in the country-by-country report, that the constituent entity is either resident for tax purposes in those jurisdictions or is subject to tax with respect to the business carried out through a permanent establishment.

(4) Where a constituent entity does not obtain all the information required to file a country-by-country report, then such constituent entity shall not be deemed as the reporting entity; that shall be without prejudice to the obligation of the constituent entity to notify the competent authority of the Slovak Republic that the ultimate parent entity has not provided the necessary information according to Article 22c(2).

Article 22d

The Obligation of Surrogate Parent Entity to File a Country-By-Country Report

- (1) The constituent entity shall not be required to file a country-by-country report according to Article 22c if the MNE group of which it is a constituent entity files the country-by-country report with respect to the relevant fiscal year within the deadline set out in Article 22b(1) through a surrogate parent entity and when at least one of the conditions set out in Article 22c(1)(b) applies.
- (2) A surrogate parent entity shall file a country-by-country report with the competent authority of its jurisdiction of tax residence in the case that the surrogate parent entity is resident for tax purposes in a jurisdiction other than Member State and satisfies the following conditions
- a) the jurisdiction of tax residence of the surrogate parent entity
 - 1. requires filing of a country-by-country report;
 - 2. has an agreement in effect to which the Slovak Republic is a party and which enables to meet the deadline for filing the country-by-country report for the relevant reporting fiscal year specified in Article 22b(1); and
 - 3. has not notified the competent authority of the Slovak Republic of a systemic failure;
 - b) the constituent entity has notified its jurisdiction of tax residence no later than the last day of the deadline for filing tax return for the reporting fiscal year that it is the surrogate parent entity; and
 - c) the notification according to Article 22e(2) has been provided to the competent authority of the Slovak Republic.

Article 22e

Other Obligations of Constituent Entity

- (1) Any constituent entity that is resident for tax purposes in the Slovak Republic shall notify the competent authority of the Slovak Republic whether it is the ultimate parent entity or the surrogate parent entity or the constituent entity according to Article 22c, no later than the last day of the deadline for filing its income tax return for the reporting fiscal year.
- (2) Where the constituent entity is not the ultimate parent entity nor the surrogate parent entity or the constituent entity according to Article 22c, it shall notify the competent authority of the Slovak Republic of the business name, registered office, identification number of the reporting entity, including the jurisdiction of tax residence of the reporting entity, no later than the last day of the deadline for filing income tax return for the reporting fiscal year.
- (3) The notification referred to in Article 22e(1) or (2) shall not be made if no change of the facts decisive for the origin of the obligation to make such notification have occurred.

Article 22f

Provisions for Effective Application of Automatic Exchange of Country-By-Country Reports

- (1) The reporting entity is required to deliver the country-by-country report to the competent authority of the Slovak Republic by electronic means within the deadline set out in Article 22b(1) and in the format published on the website of the Financial Directorate of the Slovak Republic; that shall also apply to the constituent entity referred to in Article 22c(2) if it files a country-by-country report in the scope according to the second sentence in Article 22c(2).
- (2) The competent authority of the Slovak Republic shall annually communicate to the European Commission a yearly assessment of the effectiveness and the results achieved of the automatic exchange of information according to Article 22f(1) and Articles 22a through 22e.
- (3) Tax administrator may not make any modifications of the tax base according to a special regulation²³⁾ solely on the basis of information from country-by-country reports.
- (4) The control over the compliance with the obligations stipulated by this Act shall be performed by the Financial Directorate of the Slovak Republic or a tax authority, acting according to a special regulation.¹⁾

Article 22g

Administrative Offences

- (1) An administrative offence shall be deemed to have been committed by
 - a) the ultimate parent entity, the surrogate parent entity or the constituent entity if it fails to file the country-by-country report according to Articles 22b through 22d and Article 22f;
 - b) the constituent entity referred to in Article 22c(1) if it fails to make the notification according to Article 22c(2) and (3);
 - c) the constituent entity if it fails to make the notification referred to in Article 22e.
- (2) The tax authority shall impose for the administrative offence referred to in Article 22g(1)
 - a) (a) a penalty of up to EUR 10,000, also repeatedly;
 - b) (b) and (c) a penalty of up to EUR 3,000, also repeatedly.
- (3) A special regulation¹⁾ shall apply to the imposition of penalties.”

Footnote to reference 23 shall read as follows:

„²³⁾ Article 17(5) of Act No. 595/2003 Coll., as amended.”.

4. After Article 24a, there shall be inserted Article 24b which, including its heading, shall read as follows:

“Article 24b

Transitional Provisions to Amendments Effective from 1 March 2017

- (1) The ultimate parent entity according to Article 22b(1) and the surrogate parent entity according to Article 22d(1) are required to file the first country-by-country report with the competent authority of the Slovak Republic after 28 February 2017 for the fiscal year of the MNE group commencing during the calendar year 2016.
- (2) The constituent entity according to Article 22c(1) is required to file the first country-by-country report after 28 February 2017 for the fiscal year of the MNE group commencing during the calendar year 2017.
- (3) The competent authority of the Slovak Republic shall communicate the first country-by-country report after 28 February 2017 for the fiscal year commencing during the calendar year 2016 within 18 months of the last day of the relevant fiscal year of the MNE group.”.
5. The following words: “No. 2” shall be added at the end of Article 25.
6. Annex No. 1, which shall read as follows, shall be inserted before the existing Annex to the Act:

General explanatory notes for filling in the country-by-country report

1. The reporting entity shall report the data according to Article 22b(3) in the structure and form provided in the template country-by-country report.
2. Organisational unit and permanent establishment
The data concerning the organisational unit and permanent establishment shall be reported by reference to the tax jurisdiction in which it is situated and not by reference to the tax jurisdiction of residence of the founder of the organisational unit or permanent establishment. Data related to the organisational unit or permanent establishment shall not be included in the data related to the founder of the organisational unit or permanent establishment.
3. Period
The data shall be reported for the fiscal year of the MNE group. In the case of constituent entities included in the country-by-country report, the reporting entity shall report the following for the constituent entities
 - a) information for the fiscal year of constituent entities ending on the same date as the fiscal year of the MNE group, or for the fiscal year ending within 12 month period preceding such date; or
 - b) information for all the relevant constituent entities reported for the fiscal year of the MNE group.
4. Source of data
The reporting entity shall consistently use the same sources of data from year to year in completing the template. The reporting entity may use data from its consolidated financial statements, separate financial statements, regulatory financial statements, or internal management accounts. It is not necessary to reconcile the revenue, profit and tax reporting to the consolidated financial statements. If separate financial statements are used as the basis for reporting, all amounts shall be translated to the functional currency of the MNE group at the average exchange rate for the reporting fiscal year, stating the exchange rate in the “Additional information” section. Adjustments need not be made for differences in accounting principles applied from tax jurisdiction to tax jurisdiction.

The reporting entity shall provide a brief description of the source of data used in the “Additional information” section. If a change is made in the source of data used, the reporting entity shall explain the reasons for the change and its consequences on the reported data in the “Additional information” section.

Specific explanatory notes for filling in the country-by-country report

Specific explanatory notes to Table 1

1. Tax jurisdiction

In the column “Tax jurisdiction”, the reporting entity shall list all of the tax jurisdictions in which constituent entities are resident for tax purposes. States and other non-state jurisdictions which have fiscal autonomy shall be reported. A separate line shall be included for constituent entities that are not resident in any tax jurisdiction. Where a constituent entity is resident in more than one tax jurisdiction, the applicable tax treaty tie breaker shall be applied to determine the tax jurisdiction of residence. Where no applicable tax treaty exists, the jurisdiction of the constituent entity’s place of effective management shall be reported. The place of effective management shall be determined with internationally agreed standards.

1.2.Revenues

In the three columns under the heading “Revenues”, the reporting entity shall report the following information:

- a) the sum of revenues of all the constituent entities in the relevant tax jurisdiction generated from transactions with related parties;
- b) the sum of revenues of all the constituent entities in the relevant tax jurisdiction generated from transactions with unrelated parties;
- c) the total of the sums referred to in points (a) and (b).

Revenues shall include revenues from sales of property and inventory, services, royalties, interest, premium, and any other revenues. Revenues shall exclude payments received from other constituent entities that are treated as dividends in the payer’s tax jurisdiction.

1.3.Profit (loss) before income tax

In the fifth column, the reporting entity shall report the sum of the profit (loss) before income tax for all the constituent entities resident for tax purposes in the relevant tax jurisdiction. The profit (loss) before income tax shall include all extraordinary income and expense items.

1.4.Income tax paid (on cash basis)

In the sixth column, the reporting entity shall report the total amount of income tax actually paid during the relevant fiscal year by all the constituent entities resident for tax purposes in the relevant tax jurisdiction. The income tax paid shall include cash taxes paid by the constituent entity to the residence tax jurisdiction and to all other tax jurisdictions. The income tax paid shall include withholding taxes paid by other entities with respect to payments to the constituent entity. Thus, if company A resident in tax jurisdiction A earns interest in tax jurisdiction B, the tax withheld in tax jurisdiction B shall be reported by company A.

1.5.Income tax accrued

In the seventh column, the reporting entity shall report the sum of the accrued tax expense recorded on taxable profits or losses for all the constituent entities resident for tax purposes in the relevant tax jurisdiction. Only current tax accrued shall be reported; deferred taxes or provisions for uncertain tax liabilities shall not be included.

1.6.Stated capital

In the eighth column, the reporting entity shall report the sum of the stated capital of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishments, the stated capital of the founder shall be reported, unless there is a defined capital requirement in the permanent establishment's tax jurisdiction for regulatory purposes.

1.7. Accumulated earnings and accumulated losses

In the ninth column, the reporting entity shall report the sum of the total accumulated earnings and accumulated losses for current period of all the constituent entities resident for tax purposes in the relevant tax jurisdiction as of the end of the relevant year. With regard to permanent establishments, the information shall be reported by the founder of the permanent establishment.

1.8. Number of employees

In the tenth column, the reporting entity shall report the total number of employees on a full-time equivalent (FTE) basis of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. The number of employees may be reported as of the year-end, on the basis of average employment levels for the year, or on any other basis. For this purpose, employees performing activity on the basis of other than employment contract may be reported as employees, providing that they participate in the ordinary operating activities of the constituent entity. Reasonable rounding or approximation of the number of employees is permissible, providing that such rounding or approximation does not materially distort the relative distribution of employees across the various tax jurisdictions. Consistent approaches shall be applied from year to year and across constituent entities.

1.9. Tangible assets other than cash and cash equivalents

In the eleventh column, the reporting entity shall report the sum of the net book values (net values) of tangible assets of all the constituent entities resident for tax purposes in the relevant tax jurisdiction. Assets of permanent establishments shall be reported in the tax jurisdiction in which the permanent establishment is situated. Tangible assets for these purposes do not include cash or cash equivalents, intangibles, or financial assets.

2. Specific explanatory notes to Table 2

2.1. Constituent entities resident in the tax jurisdiction

The reporting entity shall list, on a tax jurisdiction-by-tax jurisdiction basis and by legal entity name, all the constituent entities which are resident for tax purposes in the relevant tax jurisdiction. With regard to permanent establishment, the tax jurisdiction in which it is situated shall be reported. Also the founder of the permanent establishment shall be noted.

2.2. Tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence.

The reporting entity shall report the name of the tax jurisdiction under whose laws the constituent entity is organised or incorporated if it is different from the tax jurisdiction of residence.

2.3. Main business activity(ies)

The reporting entity shall determine the nature of the main business activity(ies) carried out by the constituent entity in the relevant tax jurisdiction, by ticking one or more of the appropriate boxes.”.

The existing annex shall be marked as Annex No. 2.”.

7. In Annex No. 2, there shall be supplemented paragraph six which shall read as follows:

“6.

Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ EU L 146, 3. 6. 2016).”.

This Act shall enter into force on 1 March 2017.

Section II

Table 3: Additional information

Name of the MNE group: Fiscal year concerned:
<i>Please specify the nature of activity(ies) of the constituent entity if "Other" is stated in Table 2 as the main business activity(ies).</i>
<i>Please include any further brief information explaining the mandatory information provided in the country-by-country report.</i>

