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Read in this issue:

→ Law

- Conversion of companies and cooperatives and new procedures for cross-border mobility of companies
-

→ Business

- Conversions of companies and cooperatives and new procedures for cross-border mobility of companies – tax implications
- Minimum standards for proving the final beneficiary

→ Law

Conversion of companies and cooperatives and new procedures for cross-border mobility of companies

A new Act on Conversions of Commercial Companies and Cooperatives will be effective in Slovakia from 1 March 2024 regulating the conversion of companies and cooperatives and new procedures for cross-border mobility of companies.



In the application practice we have often encountered requests from companies demanding procedures and forms for cross-border mobility and transformation of companies which have been standard abroad but not regulated by our legal system, so the new act comes with the awaited changes.

We are very positive about this initiative, as it concerns both domestic and cross-border company conversions.

We are equally positive about the effort to create a single and clear legal framework for company conversion, replacing the fragmented and heavily structured legal framework for both domestic and cross-border conversions.

The act includes new conversion institutions which were not known in the current legislation and in practice the objectives and purposes of these new institutions have had to be addressed by a combination of several forms of transfers and institutions.

The new cross-border company mobility procedures also aim to provide adequate protection for the shareholders, creditors and employees of the companies involved.

The act defines new concepts/forms relating to the transformation of companies, in particular conversion, cross-border conversion, merger, spin-off, cross-border demerger, cross-border change of legal form.

One of the significant novelties is the new regulation of the demerger of companies. Demerger means a split or a spin-off. It is the proposal for a spin-off that we consider to be sensible and beneficial for the business environment.

A split corresponds to the procedure of demerger under the previous legislation of the Commercial Code, in which the company being demerged ceases to exist and its capital is transferred to other existing companies or newly established companies or in a combined manner to an existing company and a newly established company.

A spin-off is a procedure, in which the company being split up is not dissolved – the part of its capital specified in the conversion project is transferred to another company or several companies, whether existing or newly established, or a combination thereof. Although a spin-off at first sight evokes similarities with the frequently used institution of sale of a part of a company, it is necessary to distinguish these institutions, as their assumptions, procedure, consequences and related implications (e.g. tax, liability, legal succession) are not identical.

One of the other significant innovations is the new regulation of cross-border demerger (already known in other countries, e.g. in the Czech Republic), which represents another form of cross-border transaction providing the procedures for cross-border mobility of companies that are missing in the Slovak Republic. A cross-border demerger is a demerger where at least one of the participating companies or successor companies is a Slovak company and at least one of the participating companies or successor companies is not a Slovak company, where the successor company can only be a newly formed company.

Another significant innovation is the institution of cross-border change of legal form, which is also intended to promote cross-border

mobility of companies in the EU. A cross-border change of legal form is a procedure, in which a company, without dissolution or liquidation, changes its legal form as registered in the register of the departure state to the legal form under the law of the destination state, and at the same time relocates at least its registered office to the destination state.

The specific regulation of the statutory body's liability for damages is essential from the point of view of the liability of statutory bodies.

The objectives of companies with regard to this issue are varied and always unique in nature, and there may be a number of paths leading to their achievement. For example, the objective may be to increase market share, to expand and penetrate new markets, to solve the company's financial problems, to achieve synergies, to acquire licences, know-how or exceptional persons, to eliminate competition, to obtain tax advantages, to simplify the group's organisational structure, to save costs, etc.

Also, the expectations and demands of companies are diverse and therefore we approach each individual mandate and project separately, emphasizing not only their legal feasibility but also other essential aspects such as transaction simplicity (procedural, documentation, time, cost), and the search for a suitable alternative in terms

of tax and financial implications (e.g. tax impact analysis, cashflow requirements, fair value issues and exemptions, etc.).

In this respect, the new act expands the possibilities for the realisation of internal or external business and financial objectives of companies, since the process of conversion and cross-border mobility of companies is inextricably linked to economic considerations, which are one of the strongest motivations.

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→ Business

Conversions of companies and cooperatives and new procedures for cross-border mobility of companies – tax implications

The new law on conversions of commercial companies will also affect the tax and accounting area with effect from 1 March 2024.

New institutes such as spin-off (corresponding to a partial division, where the company being divided does not cease to exist, but a part of it is split off into another (new or existing) company), cross-border division and cross-border change of legal form are introduced.



In this context, new procedures are also introduced where a conversion project will be drawn up and certified by an auditor. Notice that a conversion proposal has been prepared shall be given to the relevant tax administrator at least 60 days before the date of the general meeting to decide on the approval of the conversion proposal.

The Income Tax Act itself implements and clarifies new facts and concepts. In view of the introduction of a new type of division – spin-off, detailed provisions are added to the Income Tax Act to regulate the tax base, the valuation of assets and liabilities as well as provisions relating to depreciation in this case.

Different tax implications arise in a situation where the spin-off of companies is valued at real or historical cost. In principle, however, it can be stated that in the context of new business combinations, new forms of domestic conversions will also be taxed at fair value and thus the treatment will be broadly the same as that which has been followed to date. The use of historic cost will continue to be possible only in selected cross-border cases.

From the perspective of the Income Tax Act, the amendment to the Act on conversion of commercial companies brings about an extension of the forms of employee benefits for the acquisition of employee shares and business shares, which will be treated as exempt income once the statutory prerequisites have been met. From the perspective of the Value Added Tax Act, for the purpose of completeness terminology has been added to the tax legislation that the transfer of tangible assets and intangible assets to a successor company – a VAT payer in Slovakia under the split-off by demerger institute – is not considered as a supply of goods or services.

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Minimum standards for proving the final beneficiary

Please note that the tax administration has published the minimum standards for proving the actual beneficiary of income as well as the taxpayer's procedure in the event that it cannot prove the final beneficiary of the non-resident taxpayer's income.

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