

11/2019 Coll.

ACT

of 5 December 2018

on the tax dispute resolution rules

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

PART ONE

GENERAL PROVISIONS

Section 1

Scope of the Act

This Act governs the rules for the resolution of disputes between the Slovak Republic, and

- a) other Member State of the European Union (the "Member State") where such disputes arise out of interpretation and application of an agreement on the elimination of double taxation (the "double taxation elimination proceeding");
- b) a country that entered into an agreement on the elimination of double taxation with the Slovak Republic (the "Contracting State") where such disputes arise out of interpretation and application of the agreement on the elimination of double taxation (the "double taxation elimination proceeding based on an agreement");
- c) Contracting State where such disputes arise out of interpretation and application of an international convention for the elimination of double taxation in connection with the adjustment of profits of associated enterprises ratified and promulgated in accordance with the law¹⁾ (the "double taxation elimination proceeding based on a convention").

Article 2

Fundamental Provisions

For the purposes of this Act

- a) double taxation means the tax assessment by the Slovak Republic and a Member State or a Contracting State of tax covered by an agreement on the elimination of double taxation in relation to the same taxable income or property, where such taxation gives rise to an additional tax charge, an increase in tax liability, or to cancellation or reduction of losses which could be used to offset taxable profit;
- b) agreement on the elimination of double taxation²⁾ means an international agreement ratified and promulgated in a manner established under the law;
- c) affected taxable entity means the taxable entity the taxation of which is directly influenced by a question in dispute;
- d) question in dispute means
 1. in accordance with Part Two hereof, a matter giving rise to double taxation;
 2. in accordance with Part Three hereof, a matter giving rise to taxation which is contrary to the provisions of the agreement on the elimination of double taxation;
 3. in accordance with Part Four hereof, a matter which is contrary to the principles laid down by an international convention for the elimination of double taxation in connection with adjustment of profit of associated enterprises ratified and promulgated in a manner established by the law¹⁾ (the "convention");
- e) competent authority of the Slovak Republic means the Ministry of Finance of the Slovak Republic (the "Ministry of Finance");
- f) competent authority of a Member State means the authority of a Member State designated by the Member State;
- g) competent authority of a Contracting State means the authority of a Contracting State designated by the Contracting State;
- h) Dispute Resolution Commission means an Advisory Commission and an Alternative Dispute Resolution Commission

PART TWO

DOUBLE TAXATION ELIMINATION PROCEEDING

Article 3

Initiation of the Double Taxation Elimination Proceeding

(1) The double taxation elimination proceeding may be initiated based on an application by the affected taxable entity filed with the Ministry of Finance. The application for double taxation elimination must be filed no later than in three years from delivery of the first notification of an act which gives rise to a question in dispute, including where the affected taxable entity exercises legal remedies. The affected taxable entity is obliged to also deliver the application for double taxation elimination to the competent authority of the Member State that the question in dispute relates to.

(2) Within two months from delivery of the application for double taxation elimination, the Ministry of Finance shall acknowledge the receipt thereof and give written notification thereof to the competent authority of the Member State that the question in dispute relates to. In the notification pursuant to the first sentence, the Ministry of Finance shall specify the language to be used in their mutual communication.

(3) The application for double taxation elimination must contain

a) where the application for double taxation elimination is filed by a natural person, the name and surname of the affected taxable entity, address of his or her permanent residence or the place of business, if different from the place of permanent residence, the identification number of organisation if assigned, the taxpayer registration number if assigned;

b) where the application for double taxation elimination is filed by a legal person, the business name or name of the affected taxable entity, its registered office, the identification number of organisation, the taxpayer registration number;

c) the identification details of any other possible affected taxable entity, in particular

1. the name and surname of the natural person, address of his or her permanent residence or the place of business, if other than the permanent residence, the identification number of organisation if assigned, the taxpayer registration number if assigned, or other data necessary for identification of such natural person; or
2. business name or name of a legal person, its registered office, the identification number of organisation, the taxpayer registration number, or other data necessary for identification of such legal person;

d) the tax periods concerned;

e) details of the relevant facts and circumstances of the question in dispute, in particular

1. details of structure of the transaction and of the relationship between the affected taxable entity and the other parties to the relevant transaction;
2. facts determined in good faith in a mutual binding agreement between the affected taxable entity and the tax administration, where applicable;
3. the nature and the date of the actions giving rise to the question in dispute;
4. where applicable, details of the same income earned in the Member State that the question in dispute relates to, and details of the tax charged or that will be charged in relation to such income in the Member State that the question in dispute relates to, the related amounts in the currency of the Member State that the question in dispute relates to, and copies of any supporting documents;

f) title of the relevant special regulations,³⁾ title of the legal regulation of a Member State that the question in dispute relates to, and title of the relevant agreement on the elimination of double taxation;

g) designation of the Member State that the question in dispute relates to;

h) reasons that make the affected taxable entity believe that there is the question in dispute;

i) the details of legal remedies initiated by the affected taxable entity, or information about ongoing litigation and of court decisions concerning the question in dispute;

j) declaration of the affected taxable entity containing his or her commitment to respond as completely and quickly as possible to all requests made by the Ministry of Finance and to provide any required documents;

k) a copy of valid decision issued in a tax assessment proceedings, a copy of the tax audit report, and a copy of any other documents issued with regard to the question in dispute;

l) information on any application submitted by the affected taxable entity to initiate a double taxation elimination proceeding based on an agreement or a double taxation elimination proceeding based on a convention and a representation by the affected taxable entity of his or her being aware of the closing of such proceeding in accordance with Article 29;

m) copies of documents supporting assertions by the affected taxable entity;

n) documentation to the extent as set forth in special regulation,⁴⁾ where the application for double taxation elimination is filed due to adjustment of prices between associated persons pursuant to special regulation.⁵⁾

(4) No later than in three months from delivery of an application for double taxation elimination, the Ministry of Finance

may request the affected taxable entity to provide additional information necessary to assess the question in dispute. The affected taxable entity shall provide the additional information to the Ministry of Finance and to the competent authority of the Member State that the question in dispute relates to no later than in three months from receipt of the communication pursuant to the first sentence.

(5) The Ministry of Finance shall accept or reject the application for double taxation elimination within six months from its receipt or, where the Ministry of Finance requested the affected taxable entity to provide additional information as referred to in section 4, such acceptance or rejection shall be decided within six months from delivery of such additional information. The Ministry of Finance shall forthwith deliver the decision to the affected taxable entity and the competent authority of the Member State that the question in dispute relates to.

(6) Where the Ministry of Finance fails to decide the application for double taxation elimination in the time limit referred to in section 5, the application shall be deemed accepted.

(7) In six months from delivery of the application for double taxation elimination or from delivery of additional information as referred to in section 4, the Ministry of Finance may inform the affected taxable entity and the competent authority of the Member State that the question in dispute relates to the decision to resolve the question in dispute on a unilateral basis, without involving the competent authority of the Member State that the question in dispute relates to. The double taxation elimination proceeding shall be deemed closed upon delivery of such notification.

(8) The Ministry of Finance shall decide to reject the application for double taxation elimination where

a) the affected taxable entity failed to provide additional information in the time limit and to the extent as referred to in section 4;

b) there is no question in dispute; or

c) the application for double taxation elimination has not been filed in the time limit referred to in section 1.

(9) Appeal may be filed by the affected taxable entity against the decision to reject the application for double taxation elimination where the application for double taxation elimination was rejected by the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to.

(10) The affected taxable entity may withdraw his or her application for double taxation elimination; withdrawal shall also be delivered by the affected taxable entity to the competent authority of the Member State that the question in dispute relates to. The double taxation elimination proceeding shall be deemed terminated on the date of delivery of the withdrawal of the application for double taxation elimination to the Ministry of Finance. The Ministry of Finance shall forthwith send the affected taxable entity and the competent authority of the Member State that the question in dispute relates to a notice of termination of a double taxation elimination proceeding.

(11) If, for any reason, a question in dispute ceases to exist, the double taxation elimination proceeding shall be considered to be terminated, and the Ministry of Finance shall inform the affected taxable entity of termination of the double taxation elimination proceeding and of the reasons of such termination.

Article 4

Double Taxation Elimination by Mutual Agreement

(1) If the Ministry of Finance as well as the competent authority of the Member State that the question in dispute relates to decides to accept the application for double taxation elimination referred to in Article 3(5), the mutual agreement procedure to resolve the question in dispute shall be initiated. The Ministry of Finance and the competent authority of the Member State that the question in dispute relates to may agree on resolving the question in dispute by mutual agreement.

(2) The time period to resolve the question in dispute by mutual agreement is two years from delivery of the decision accepting the application for double taxation elimination by the competent authority of the Member State that the question in dispute relates to, and which delivered such decision to the affected taxable entity as the last in order. The time limit referred to in the first sentence may be extended by up to 1 year at the request of the Ministry of Finance or a competent authority of a Member State that the question in dispute relates to; the affected taxable entity shall be informed of such extension by the Ministry of Finance.

(3) During solution of the question in dispute by mutual agreement, the Ministry of Finance may call request the affected taxable entity to provide additional information necessary to assess the question in dispute. The affected taxable entity shall provide the additional information to the Ministry of Finance and to the competent authority of the Member State that the question in dispute relates to no later than in three months from receipt of the communication pursuant to the first sentence.

(4) If the Ministry of Finance and a competent authority of a Member State that the question in dispute relates to reach agreement on the resolution of the question in dispute referred to in section 1, the Ministry of Finance shall forthwith issue a decision and deliver the same to the affected taxable entity. If the affected taxable entity waives the right to legal remedies, such decision shall be valid in law and enforceable on the date of waiver of such right or, where the proceeding concerning legal remedy has already been initiated and the affected taxable entity presents evidence within 60 days from delivery of the decision of having taken measures leading to the suspension thereof, on the date of delivery of such evidence; otherwise such decision shall be repealed in full extent and the affected taxable entity and the competent authority of the Member State that the question in dispute relates to shall be informed thereof by the Ministry of Finance.

(5) If the decision referred to in section 4 has not been enforced, the affected taxable entity may initiate the procedure in accordance with the Administrative Court Proceedings.

(6) If the Ministry of Finance and a competent authority of a Member State that the question in dispute relates to fail to reach agreement on the resolution of the question in dispute referred to in section 2, the Ministry of Finance shall send the affected taxable entity a notice stating the reasons for the failure to reach agreement.

(7) If the affected taxable entity filed an administrative action in accordance with the Administrative Court Proceedings against the decision on tax assessment and the judgement by an administrative court on the matter became valid before the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to have reached mutual agreement as referred in section 4, the Ministry of Finance shall deliver the judgement by the administrative court to the competent authority of the Member State that the question in dispute relates to. The mutual agreement procedure for resolution of a question in dispute shall be terminated on the day of delivery of the judgement by an administrative court to the competent authority of the Member State that the question in dispute relates to, and the affected taxable entity shall be informed thereof by the Ministry of Finance.

Article 5

Double Taxation Elimination by the Advisory Commission

(1) The Ministry of Finance and a competent authority of the Member State that the question in dispute relates to shall set up an Advisory Commission, if the affected taxable entity files an application for setting up an Advisory Commission with the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to, and if

a) the application for double taxation elimination by the affected taxable entity was rejected under Article 3(5); the Advisory Commission shall not be set up if the application for double taxation elimination is rejected both by the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to; or

b) the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to fail to reach an agreement on how to resolve the question in dispute by mutual agreement in accordance with Article 4.

(2) The affected taxable entity may not file an application for setting up an Advisory Commission as referred to in section 1 if

a) the appellate procedure against the decision rejecting the application for double taxation elimination referred to in Article 3(8) has not been closed yet;

b) the time limit to appeal against the decision rejecting the application for double taxation elimination referred to in Article 3(8) has not expired yet;

c) a court repealed the decision rejecting the application for double taxation elimination referred to in Article 3(8) and returned the matter for further proceeding and decision;

d) a tax crime which has been lawfully adjudicated was committed in connection with adjusted income or property; or

e) the question in dispute does not give rise to double taxation, of which the Ministry of Finance shall forthwith inform the affected taxable entity and a competent authority of the Member State that the question in dispute relates to.

(3) The affected taxable entity shall file an application for setting up an Advisory Commission with the Ministry of Finance in written form within 50 days from delivery of the decision referred to in Article 3(5) or from delivery of the notice referred to in Article 4(6). The time limit for setting up an Advisory Commission is 120 days from delivery of the application for setting up an Advisory Commission; its chair shall inform the affected taxable entity thereof without delay.

(4) The Advisory Commission set up in accordance with section 1(a) shall reach a conclusion on the acceptability of the application for double taxation elimination within six months from the date of its setting up. The Advisory Commission shall inform the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to of the conclusion reached within 30 days from reaching such conclusion.

(5) If the Advisory Commission reached a conclusion that the conditions under Article 3 have been met, the Ministry of Finance may apply for initiation of the mutual agreement procedure for resolution of the question in dispute as referred to in Article 4. The Ministry of Finance shall deliver the application to initiate mutual agreement procedure for the resolution of the question in dispute to the Advisory Commission, the competent authority of the Member State that the question in dispute relates to, and to the affected taxable entity. The time limit referred to in Article 4(2) shall start running on the day the Ministry of Finance is notified of the conclusion reached by the Advisory Commission on acceptability of the application for double taxation elimination.

(6) If the mutual agreement procedure for the resolution of the question in dispute referred to in Article 1 is not initiated in 60 days from notification of the Advisory Commission's conclusion referred to in section 5, the Advisory Commission shall issue an opinion referred to in Article 12 on how to resolve the question in dispute. For the purposes of Article 12, the Advisory Commission shall be considered to be set up on the day of expiry of the time period referred to in the first sentence.

(7) If the conclusion reached by the Advisory Commission is that the conditions under Article 3 have not been met, the application for double taxation elimination shall be deemed rejected legitimately.

(8) The opinion referred to in Article 12 shall be issued by the Advisory Commission set up as provided for in Section 1(b).

(9) If the affected taxable entity filed an administrative action in accordance with the Administrative Court Proceedings against the decision on tax assessment and the judgement by the administrative court on the matter became valid before the

affected taxable entity filed an application for setting up an Advisory Commission, the provisions of this Article shall not be applied. The Ministry of Finance shall inform the competent authority of the Member State that the question in dispute relates to of the effects of the judgement by an administrative court, and the affected taxable entity that the provisions of this Article shall not be applied.

(10) If the affected taxable entity filed an administrative action in accordance with the Administrative Court Proceedings against the decision on tax assessment and the judgement by an administrative court on the matter became valid after the application for setting up an Advisory Commission is filed but before issuing an opinion referred to in Article 12, the procedure for resolution of a question in dispute by way of an Advisory Commission set up as referred in Section 1 or by way of an Alternative Dispute Resolution Commission shall be terminated. The Ministry of Finance shall inform the competent authority of the Member State that the question in dispute relates to and the Dispute Resolution Commission of the effects of the judgement by an administrative court, and shall inform the affected taxable entity that the procedure for resolution of a question in dispute by way of a Dispute Resolution Commission has been terminated.

Article 6

List of Independent Persons

(1) The Ministry of Finance shall notify the European Commission that keeps a list of independent persons of the names and surnames of three persons who may become members of an Advisory Commission and who are competent, independent, respectable, impartial, and of standing. The Ministry of Finance shall provide the European Commission with complete and up-to-date information regarding those persons' professional and academic background, their competence, their expertise and any conflicts of interests. The Ministry of Finance may specify in the notification which of those persons may be appointed as a chair of the Advisory Commission.

(2) The Ministry of Finance shall inform the European Commission of any changes to the independent persons nominated to the list of independent persons without delay.

(3) If the Ministry of Finance finds out that the independent person nominated by the Ministry of Finance no longer meets the conditions under section 1, the Ministry of Finance shall ask the European Commission without delay to strike out such person from the list of independent persons and shall, at the same time, nominate another independent person who meets the conditions under section 1.

(4) If the Ministry of Finance has any doubts that an independent person nominated by a competent authority of a Member State does not meet the conditions under section 1, the Ministry of Finance shall inform the European Commission accordingly and provide evidence therefor.

(5) Within six months from a notification by the European Commission that a competent authority of a Member State objects to an independent person nominated by the Ministry of Finance, the Ministry of Finance shall check whether such person meets the conditions under section 1. If the Ministry of Finance finds out that such person no longer meets the conditions under section 1, the Ministry of Finance shall inform the European Commission and ask to strike out such person from the list of independent persons and shall, at the same time, nominate another independent person who meets the conditions under section 1. If the Ministry of Finance finds out that such person meets the conditions referred to in section 1, the Ministry of Finance shall inform the European Commission of keeping such person in the list of independent persons.

Article 7

Composition of the Advisory Commission

(1) The Advisory Commission referred to in Article 5 shall have the following composition:

- a) a chair;
- b) a representative of the Ministry of Finance and a representative of a competent authority of the Member State that the question in dispute relates to; the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to may agree to have two representatives to represent each of them in the Advisory Commission;
- c) an independent person selected from the list of independent persons by the Ministry of Finance and an independent person selected by a competent authority of the Member State that the question in dispute relates to; the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to may agree that each of them may select two independent persons from the list of independent persons.

(2) The Ministry of Finance and the competent authority of the Member State that the question in dispute relates to shall agree on the rules for the appointment of independent persons. Following the appointment of the independent persons, a substitute shall be appointed for each of them according to the agreed rules for the appointment of independent persons in cases where the independent persons are prevented from carrying out their duties.

(3) Where the Ministry of Finance and a competent authority of the Member State that the question in dispute relates to fail to reach agreement on the rules for the appointment of independent persons referred to in section 2, the independent persons shall be appointed by drawing lots from the list of independent persons.

(4) The Ministry of Finance may object to the appointment of an independent person other than the independent person appointed as referred to in Article 8 due to a reason agreed in advance by the Ministry of Finance and a competent authority of the Member State that the question in dispute relates to, or if

- a) the independent person works, or worked at any time during three years before his or her appointment, for tax administration

authority of the Member State that the question in dispute relates to;

b) the independent person works, or worked at any time during five years before his or her appointment, for the affected taxable entity or has, or had at any time during five years before his or her appointment, a material holding in the affected taxable entity, where material holding means, for the purposes hereof, a direct or indirect interest amounting to no less than 5% in the registered capital of a legal person or voting rights in a legal person, or is able of exercising influence over management of a legal person that is comparable to the influence corresponding to that interest, and indirect share means, for the purposes hereof, a share held indirectly by way of a legal person in which the holder of the indirect share has a material holding;

c) there are doubts with regard to the independence, impartiality or unbiasedness of the independent person; or

d) the independent person provides, or provided, tax advice or works, or worked, for a person who provides tax advice, or was in such a situation at any time during a period of at least three years prior to the date of his or her appointment.

(5) The Ministry of Finance may request that an independent person appointed as referred in section 2 or section 3, or his or her substitute, shall disclose any interest, relationship or any other matter that is likely to affect that person's independence, impartiality or unbiasedness. Any failure by the independent person, or his or her substitute, to comply with the request by the Ministry of Finance in the extent as requested and in the time period specified shall be deemed to constitute a doubt as referred to in section 4(c).

(6) The representatives of the Ministry of Finance, the representatives of a competent authority of the Member State that the question in dispute relates to, and the independent persons as referred to in section 1 shall elect a chair of the Advisory Commission from the list of independent persons who shall be a judge, unless they agree otherwise. If the procedure under Article 8 is applied during appointment of the members of the Advisory Commission, the chair shall be appointed by drawing lots from the list of independent persons.

(7) The function of the independent person shall be considered to be an action of general interest.

Article 8

Appointment of the Members of Advisory Commission by a Court

(1) If the Ministry of Finance fails to appoint an independent person and a substitute as referred in Article 7(2), they shall be appointed by a court at the proposal of the affected taxable entity.

(2) Such proposal must be filed in 30 days from expiry of the time period referred to in the second sentence of section 3 of Article 5, or it will be rejected by the court.

(3) If the proposal is not rejected by the court as referred to in section 2, the proposal shall be delivered to the Ministry of Finance. If, in a time period of 30 days from delivery of the proposal, the Ministry of Finance fails to prove to have appointed an independent person and a substitute, the court shall appoint such independent person and substitute by drawing lots from the list of independent persons published by the European Commission. A court may not appoint an independent person nominated for the list of independent persons by a competent authority of the Member State that the question in dispute relates to.

(4) A resolution appointing an independent person and a substitute shall be delivered by the court to the affected taxable entity and to the Ministry of Finance without delay.

(5) The Ministry of Finance shall inform the competent authority of the Member State that the question in dispute relates to of appointment of the independent person and the substitute by court without any undue delay after delivery of court's resolution.

Article 9

Double Taxation Elimination by Alternative Dispute Resolution Commission

(1) The Ministry of Finance and the competent authority of the Member State that the question in dispute relates to may agree to set up an Alternative Dispute Resolution Commission to issue the opinion referred to in Article 12 in lieu of the Advisory Commission. The Alternative Dispute Resolution Commission may also be set up in the form of a permanent commission, where so agreed by the Ministry of Finance and the competent authority of the Member State.

(2) Setting up an Alternative Dispute Resolution Commission is equally subject to the rules relating to the independence of its members as referred to in Article 7(4) and (5).

(3) The provisions of Articles 11 and 17 shall apply, *mutatis mutandis*, to the Alternative Dispute Resolution Commission; this shall not apply if the Rules of Functioning of the Dispute Resolution Commission under Article 10 provide otherwise. The Alternative Dispute Resolution Commission may apply any dispute resolution procedures aiming at binding resolution of the question in dispute.

Article 10

Rules of Functioning of the Dispute Resolution Commission

(1) The Ministry of Finance and the competent authority of the Member State that the question in dispute relates to shall agree on the Rules of Functioning for the Dispute Resolution Commission.

(2) In the time period referred to in the second sentence of section 3 of Article 5, the Ministry of Finance shall:

- a) deliver to the affected taxable entity the Rules of Functioning for the Dispute Resolution Commission;
- b) inform the affected taxable entity of the date by which the opinion on the resolution of the question in dispute shall be adopted;
- f) inform the affected taxable entity of the title of the affected special regulations,³⁾ and of the legal regulation of a Member State that the question in dispute relates to, and title of the affected agreement on the elimination of double taxation.

(3) The Rules of Functioning for the Dispute Resolution Commission shall be signed by the authorised employee of the Ministry of Finance and the authorised employee of the competent authority of the Member State that the question in dispute relates to.

(4) The Rules of Functioning shall provide in particular

- a) the description and the characteristics of the question in dispute;
- b) rules of interpretation as regards the legal and factual questions to be resolved;
- c) the form of the Dispute Resolution Commission and the type of process for any alternative dispute resolution, if the process differs from the process leading to adoption of an independent opinion;
- d) the time frame for the resolution of the question in dispute;
- e) the composition of the Dispute Resolution Commission including the number, names and surnames of the members, details of their competence, qualifications, and conflicts of interests;
- f) the rules governing the participation of the affected tax entities and third parties, exchanges of memoranda, information and evidence, the costs, the type of dispute resolution process to be used, and any other relevant procedural or organisational processes;
- g) the logistical processes connected with the adoption of an opinion by the Dispute Resolution Commission and delivery thereof.

(5) If the application for setting up an Advisory Commission was filed due to a reason under Article 5(1)(a), only the particulars under Article 10(4)(a), (d), (e), and (f) shall be specified in the Rules of Functioning for the Dispute Resolution Commission.

(6) If the Rules of Functioning for the Dispute Resolution Commission have been delivered to the affected taxable entity in the time period referred to in the second sentence of section 3 of Article 5, but was not complete, or if it was not delivered to the affected taxable entity in the time period referred to in the second sentence of section 3 of Article 5, the Dispute Resolution Commission shall use the standard Rules of Functioning issued by the European Commission.

(7) If the affected taxable entity is not delivered the Rules of Functioning for the Dispute Resolution Commission which would comply with sections 2 through 5, the independent persons and the chair of the Dispute Resolution Commission shall complete the Rules of Functioning for the Dispute Resolution Commission based on the standard Rules of Functioning issued by the European Commission, and shall send the same to the affected taxable entity in two weeks from its set up.

(8) If the independent persons and the chair of the Dispute Resolution Commission fail to reach agreement on completion of the Rules of Functioning for the Dispute Resolution Commission, or if they fail to deliver the same to the affected taxable entity in the time period referred to in section 7, the affected taxable entity may apply the procedure under the Administrative Court Proceedings.

Article 11

Taking of Evidence and Deliberations of the Dispute Resolution Commission

(1) If the Ministry of Finance so agrees, the affected taxable entity shall provide to the Dispute Resolution Commission information, evidence, or documents which may prove to be important for decision-making (the "requested information").

(2) The affected taxable entity and the Ministry of Finance are obliged to provide the requested information to the Dispute Resolution Commission at request.

(3) The Ministry of Finance may refuse to provide the required information to the Dispute Resolution Commission if

- a) it is not possible to obtain such information or the obtaining of such information would be contrary to the generally binding legal regulations; or
- b) this would result in the breach of trade secret, professional secret, industrial property rights or intellectual property rights, or in the disclosure of a business process or of information the disclosure of which would be contrary to the public policy, or in disclosure of classified information.

(4) The affected taxable entity and the representative thereof is obliged to appear at the deliberations of the Dispute Resolution Commission at request. The affected taxable entity or the representative may attend the deliberations of the Dispute Resolution Commission at a request and with the consent of the Ministry of Finance and the competent authority of the Member

State that the question in dispute relates to.

(5) Members of the Dispute Resolution Commission are obliged to keep confidential the information they obtained on grounds of their membership in the Dispute Resolution Commission. The affected taxable entity and the representatives thereof are obliged to keep confidential the information they obtained during double taxation elimination proceeding. The affected taxable entity and the representative thereof are obliged to present a representation of their compliance with confidentiality obligation at the request by the Ministry of Finance.

Article 12

Opinion of the Dispute Resolution Commission

(1) The Dispute Resolution Commission shall deliver its written opinion to the Ministry of Finance and to a competent authority of the Member State that the question in dispute relates to no later than in six months from the date on which it was set up. The time limit pursuant to the previous sentence may be extended by three months in justified cases. The Dispute Resolution Commission shall inform the Ministry of Finance, the competent authority of the Member State that the question in dispute relates to, and the affected taxable entity of the extension of such time period.

(2) The opinion of the Dispute Resolution Commission is based on the provisions of the relevant agreement on the elimination of double taxation, the relevant special regulations³⁾ and the laws of the Member State that the question in dispute relates to.

(3) Adoption of an opinion by the commission requires absolute majority of all members. If any of the members of the Dispute Resolution Commission fails to attend the voting procedure regarding the opinion, the remaining members may take a decision on his or her behalf. In the event of equality of votes, the chair of the Dispute Resolution Commission shall have the casting vote. The chair of the Dispute Resolution Commission shall inform the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to of the opinion of the Dispute Resolution Commission.

Article 13

Decision on Elimination of Double Taxation

(1) The Ministry of Finance and the competent authority of the Member State that the question in dispute relates to shall agree on how to resolve the question in dispute in six months from the notification of the opinion of the Dispute Resolution Commission.

(2) The Ministry of Finance and the competent authority of the Member State that the question in dispute relates to may also agree to resolve the question in dispute in a manner deviating from the opinion of the Dispute Resolution Commission. If they fail to reach agreement on how to resolve the question in dispute in the time period referred to in section 1, they shall be bound by the opinion of the Dispute Resolution Commission.

(3) Once the question in dispute is resolved as referred to in section 1 or in section 2, the Ministry of Finance shall issue a decision on the elimination of double taxation without delay and deliver the decision to the affected taxable entity in 30 days from its issue date. If the affected taxable entity which is a taxpayer with unlimited tax liability⁶⁾ (the "resident") is not delivered the decision in the time period referred to in the first sentence, such entity may apply the procedure under Administrative Court Proceedings.

(4) The decision on the elimination of double taxation shall become valid and enforceable after the lapse of 60 days from its delivery, unless a court establishes lack of independence with regard to the independent person as referred to in Article 14 and if the affected taxable entity waives, in the above period, the right to legal remedies; otherwise this decision shall be repealed in full extent and the Ministry of Finance shall inform the affected taxable entity and the competent authority of the Member State that the question in dispute relates to accordingly. The time period pursuant to the first sentence shall be suspended if the proceeding referred to in Article 14 has been initiated.

(5) If the decision on elimination of double taxation has not been enforced and the court has not established lack of independence with regard to the independent person as referred to in Article 14(4), the affected taxable entity may apply the procedure in accordance with the Administrative Court Proceedings.

Article 14

Proceeding to Establish Lack of Independence of the Independent Person at the Competent Court

(1) If reasons occur that allow to object appointment of an independent person pursuant to Article 7(4) with regard to any independent person who was a member of the Advisory Commission during 12 months following the notification of an opinion of the Advisory Commission referred to in Article 12, the Ministry of Finance may file a motion with a court for establishment of the lack of independence with regard to such person.

(2) The motion to establish lack of independence with regard to the independent person must be filed in 30 days from the day on which the Ministry of Finance became aware of the reasons to object the appointment of the independent person as referred to in Article 7(4), but no later than in 12 months following after the notification of the opinion of the Advisory Commission in accordance with Article 12, or it will be rejected by the court.

(3) The court shall decide the motion to establish lack of independence with regard to the independent person without instructing judicial proceeding.

(4) If the Ministry of Finance proves that reasons have occurred with regard to the independent person to object such

person's appointment as referred to in Article 7(4), the court shall establish lack of independence, otherwise the motion to establish lack of independence of the independent person shall be rejected by the court.

(5) The Ministry of Finance shall inform the competent authority of the Member State that the question in dispute relates to of the court's judgement without any undue delay.

Article 15

Publication of the Decision on the Elimination of Double Taxation or its Abstract

(1) The Ministry of Finance and the competent authority of the Member State that the question in dispute relates to may agree to publish the decision on the elimination of double taxation referred to in Article 13 in its entirety, subject to consent of the affected taxable entity.

(2) Where the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to, or the affected taxable entity does not consent to publishing the decision on the elimination of double taxation in its entirety, the abstract thereof shall be published. That abstract shall contain a description of the question in dispute, the issue date of the decision on double taxation elimination, the tax periods involved, the legal basis, the industry sector in which the affected taxable entity operates, a short description of the final outcome, and the type of resolution process applied to resolve the question in dispute.

(3) The Ministry of Finance shall send the abstract referred to in section 2 to the affected taxable entity before its publication. No later than 60 days from the receipt of the abstract referred to in section 2, the affected taxable entity may request the Ministry of Finance not to publish information that would give rise to breach of trade secret, professional secret, industrial property rights or other intellectual property right, or to publication of a trade process or information that would be contrary to public policy. Thereafter, the Ministry of Finance shall deliver the abstract referred to in section 2 to the European Commission without delay.

Article 16

Special Provisions Relating to Natural Persons and Smaller Undertakings

(1) The affected taxable entity which is a resident and a natural or legal person, where such legal person is a part of a group of accounting entities that does not meet the criteria for size,⁷⁾ and is, at the same time a micro accounting entity⁸⁾ or a small accounting entity,⁹⁾ may file an application for double taxation elimination, response to the application for additional information referred to in Article 3(4) and Article 4(3), withdrawal of the application for double taxation elimination referred to in Article 3(10), and the application for setting up an Advisory Commission only with the Ministry of Finance.

(2) The Ministry of Finance shall send a notification acknowledging delivery of applications referred to in section 1 to the competent authority of the Member State that the question in dispute relates to within two months from the receipt of the same. The applications referred to in section 1 shall be deemed filed with the competent authority of the Member State that the question in dispute relates to as of the date of delivery of such notification.

Article 17

Costs of the Double Taxation Elimination Proceeding

(1) Unless the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to agree otherwise and unless section 4 provides otherwise, the costs of the double taxation elimination proceeding incurred shall be shared equally.

(2) The costs of the proceeding referred to in section 1 include

a) the expenses provided in connection with the function of an independent person or with the performance of other obligations associated with that function, in the extent and amount determined by special regulations,¹⁰⁾

b) lump-sum reimbursement for the independent person for carrying out the function amounting to EUR 500 for one day of Dispute Resolution Commission's deliberation.

(3) The expenses incurred by the affected taxable entity shall be borne by that affected taxable entity.

(4) If the affected taxable entity withdraws the application for double taxation elimination as referred to in Article 3(10) or if the the application for double taxation elimination is rejected on legitimate grounds, the Ministry of Finance and the competent authority of the Member State that the question in dispute relates to may agree that all costs of proceedings referred to in section 2 shall be borne by the affected taxable entity; the Ministry of Finance shall issue a decision concerning the costs of double taxation elimination proceeding without delay and deliver the same to the affected taxable entity.

(5) The provisions of the Tax Procedure Code shall be applied, *mutatis mutandis*, to the recovery of the costs of double taxation elimination proceeding; the costs shall be recovered by the tax office having territorial jurisdiction over the affected taxable entity.

PART THREE

DOUBLE TAXATION ELIMINATION PROCEEDING BASED ON AN AGREEMENT

Article 18

Initiation of the Double Taxation Elimination Proceeding Based on an Agreement

(1) The double taxation elimination proceeding based on an agreement is initiated based on an application by the affected taxable entity which is a resident filed with the Ministry of Finance. The application for double taxation elimination based on an agreement must be filed no later than in three years from delivery of the first communication of an act which gives rise to a question in dispute even where the affected taxable entity exercises legal remedies, unless the applicable agreement on the elimination of double taxation provides otherwise.

(2) Where the affected taxable entity is not a resident and such entity files an application for double taxation elimination based on an agreement with the Ministry of Finance, the Ministry of Finance shall refuse to accept such application and shall inform the affected taxable entity of the obligation to file such application with the competent authority of the Contracting State that the question in dispute relates to and to which the affected taxable entity is a resident. The Ministry of Finance shall also inform of the rejection of such application the competent authority of the Contracting State that the question in dispute relates to and to which the affected taxable entity is a resident.

Article 19

Process of the Double Taxation Elimination Proceeding Based on an Agreement

Article 3(2) through (8) and (10) shall apply, *mutatis mutandis*, to the proceeding referred to in this part.

Article 20

Double Taxation Elimination by Mutual Agreement

(1) Where the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to decide to accept the application for double taxation elimination based on an agreement, the question in dispute shall start to be resolved by the mutual agreement procedure.

(2) The Article 4(3) shall be applied, *mutatis mutandis*, to the mutual agreement procedure for resolution of question in dispute.

(3) Where the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to reach an agreement, the Ministry of Finance shall inform the affected taxable entity of the result of that agreement without delay.

(4) Where the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to did not reach an agreement, the Ministry of Finance shall inform the affected taxable entity thereof without delay. The affected taxable entity shall not have a legal entitlement to the double taxation elimination by mutual agreement.

(5) Where the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to fail to reach mutual agreement and the agreement on the elimination of double taxation contains provisions of arbitration proceeding, the affected taxable entity may file an application for resolution of the question in dispute within arbitration proceeding under the terms and conditions governed by the relevant agreement on the elimination of double taxation.

Article 21

Mutual Agreement on Interpretation or Application of the Agreement on the Elimination of Double Taxation and Consulting

(1) Where the Ministry of Finance has doubts with regard to uniform interpretation of the terms contained in the agreement on the elimination of double taxation or about the application of the agreement on the elimination of double taxation, the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to may agree on how to interpret the terms or apply the agreement on the elimination of double taxation, including where the agreement on the elimination of double taxation fails to contain provisions treating such arrangement. The arrangement referred to in the first sentence shall be published by the Ministry of Finance in the publishing body and shall be binding upon the authorities responsible for tax administration.

(2) To eliminate double taxation, the Ministry of Finance may consult the competent authority of the Contracting State, including in situations not covered by the agreement on the elimination of double taxation or where the agreement on the elimination of double taxation fails to contain provision about such consulting.

Article 22

Costs Connected with Double Taxation Elimination Proceeding Based on an Agreement

Unless the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to agree otherwise, the Ministry of Finance, the competent authority of the Contracting State that the question in dispute

relates to, and the affected taxable entity that filed an application for the elimination of double taxation based on an agreement shall bear the costs connected with their own participation in such proceeding, including any provable travel expenses and the expenses connected with the preparation and presentation of their opinions.

PART FOUR

DOUBLE TAXATION ELIMINATION PROCEEDING BASED ON A CONVENTION

Article 23

Initiation of the Double Taxation Elimination Proceeding Based on a Convention

The double taxation elimination proceeding based on a convention is initiated based on an application by the affected taxable entity filed with the Ministry of Finance. The application for double taxation elimination based on a convention may be within three years from delivery of the first communication of an act which gives rise to a question in dispute even where the affected taxable entity exercises legal remedies. Where the question in dispute also relates to the other Contracting State, the affected taxable entity shall also deliver the application referred to in the first sentence to the competent authority of the Contracting State that the question in dispute relates to.

Article 24

Process of Double Taxation Elimination Proceeding Based on a Convention

Article 3(2) through (8) and (10) shall apply, *mutatis mutandis*, to the proceeding referred to in this part.

Article 25

Double Taxation Elimination Based on a Convention

(1) Where the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to decide to accept the application for double taxation elimination based on a convention, the question in dispute shall start to be resolved by the mutual agreement procedure.

(2) The Article 4(3) shall be applied, *mutatis mutandis*, to the mutual agreement procedure for resolution of question in dispute.

(3) Where the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to reached an agreement, the Ministry of Finance shall inform the affected taxable entity of the result of that agreement without delay.

(4) Where the Ministry of Finance and the competent authority of the Contracting State that the question in dispute relates to fail to reach mutual agreement, the affected taxable entity may take steps in accordance with the convention.

PART FIVE

COMMON, TRANSITIONAL AND FINAL PROVISIONS

Common Provisions

Article 26

The Tax Procedure Code shall apply, *mutatis mutandis*, to the procedure under this Act.

Article 27

(1) A lawful decision on the tax assessment that gave rise to a question in dispute shall not constitute an obstacle to the initiation of the proceeding in accordance with this Act.

(2) Where the affected taxable entity files an appeal against the decision issued in the assessment proceedings with regard to the question in dispute, the time periods under Article 3(5) and Article 4(2) shall start running on the date on which the decision on the tax assessment became valid in law.

Article 28

During the proceeding under this Act, the Ministry of Finance may request explanations, additional information, or verification of facts relating to the question in dispute from the Financial Directorate of the Slovak Republic (the "Financial Directorate") or the tax administrator. The Financial Directorate or the tax administrator shall provide the Ministry of Finance with explanations, additional information or verified facts relating to the question in dispute without any undue delay from delivery of the Ministry of Finance's request.

Article 29

The proceeding referred to in the Part Three or Part Four of such Act shall be discontinued upon delivery of the application for double taxation elimination referred to in Part Two of this Act concerning the same question in dispute.

Article 30

(1) The District Court of Bratislava II shall be competent to adjudicate the proceeding referred to in Articles 8 and 14.

(2) The proceeding referred to in Articles 8 and 14 shall be heard and adjudicated by a senior judicial assistant including the decision on suspending the proceeding. The proceeding is heard and adjudicated by a judge where complaints have been filed against decisions by the senior judicial assistant; no legal remedies shall be acceptable against judgement by a judge.

(3) Civil Proceedings Code shall apply, *mutatis mutandis* to the proceeding referred to in Articles 8 and 14.

Article 31

(1) The proceeding under this Act shall not constitute an obstacle for the initiation of any other proceeding¹¹⁾ on the question in dispute.

(2) Where litigation has been initiated with regard to the question in dispute and such proceeding is conducted in parallel to the proceeding under this Act, the Ministry of Finance may interrupt the proceeding under this Act from the date of acceptance of an application filed under this Act until lawful judgement by an administrative court on the matter at hand. The Ministry of Finance shall inform the competent authority of the Member State or the competent authority of the Contracting State that the question in dispute relates to, and the affected taxable entity of such interruption without delay.

(3) Where a criminal proceeding was initiated in connection with the adjusted income or property, in which the affected taxable entity could be convict of a tax crime, where such proceeding is heard in parallel to the proceeding under this Act, the Ministry of Finance shall interrupt this proceeding from the date of acceptance of the application filed under this Act until lawful judgement issued in the criminal proceeding. The Ministry of Finance shall inform the competent authority of the Member State or the competent authority of the Contracting State that the question in dispute relates to, and the affected taxable entity of such interruption without delay.

(4) Where the affected taxable entity has been lawfully convict of a tax crime in connection with the adjusted income or property, the Ministry of Finance shall deliver the judgement to the competent authority of the Member State or the competent authority of the Contracting State that the question in dispute relates to. The proceeding under this Act shall be stopped on the day of delivery of the judgement to the competent authority of the Member State or of the Contracting State that the question in dispute relates to, whereof Ministry of Finance shall inform the affected taxable entity.

Article 32

(1) A lawful and enforceable decision referred to in Article 4(4), the decision on the elimination of double taxation referred to in Article 13, and the approved agreement referred to in Part Three or Part Four of this Act shall be delivered by the Ministry of Finance to the Financial Directorate and the competent tax administrator.

(2) A lawful and enforceable decision referred to in Article 4(4), the decision on the elimination of double taxation referred to in Article 13, and the approved agreement referred to in Part Three or Part Four of this Act shall be binding upon the affected taxable entity, the Ministry of Finance, the Financial Directorate and the competent tax administrator. Provisions of Tax Procedure Code¹²⁾ laying down the period for the cessation of the right to assess tax and the period for the cessation of the right to recover tax arrears shall not be applied.

(3) Where the tax liability of the affected taxable entity in the Slovak Republic is changed based on the approved agreement referred to in Part Three or Part Four of this Act, the affected taxable entity may file a supplementary tax return no later than in one year from informing the affected taxable entity of the outcome of the agreement referred to in Part Three or Part Four of this Act. Provisions of Tax Procedure Code¹²⁾ laying down the period for the cessation of the right to assess tax and the period for the cessation of the right to recover tax arrears shall not be applied, unless the applicable agreement on the elimination of double taxation provides otherwise.

Article 33

No other proceeding may be initiated under this Act on the same question in dispute after closure of a proceeding under this Act.

Article 34

Where the competent authority of the Member State initiates a double taxation elimination proceeding or the competent authority of a Contracting State initiates a double taxation elimination proceeding based on an agreement or a double taxation elimination proceeding based on a convention, having informed the Ministry of Finance thereof, the Ministry of Finance shall act in such proceedings applying, *mutatis mutandis*, the provisions of this Act.

Article 35

Transitional Provision

(1) This Act shall be applied to a proceeding initiated based on an application for double taxation elimination filed after

30 June 2019 for the tax period started after 31 December 2017, unless the Ministry of Finance and the competent authority of a Member State that the question in dispute relates to agree otherwise.

(2) This Act shall be applied to a proceeding initiated on the basis of an application for double taxation elimination based on an agreement and of an application for double taxation elimination based on a convention filed after 30 June 2019.

Final Provisions

Article 36

This Act transposes legal acts of the European Union listed in the Annex.

Article 37

This Act shall come into effect on 1 July 2019.

Andrej Kiska, signed by his own hand

Andrej Danko, signed by his own hand

Peter Pellegrini, signed by his own hand

ANNEX LIST OF TRANSPOSED LEGISLATION OF THE EUROPEAN UNION

Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (OJEU L 265, 14.10.2017).

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- 1) Convention on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (Notification No. [562/2006 Coll.](#)).
 - 2) For example the Convention between the Government of the United States of America and the Government of the Slovak Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital (Notification No. [74/1994 Coll.](#)), Convention on the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (Notification No. [562/2006 Coll.](#)).
 - 3) For example Act No. [595/2003 Coll.](#) on income tax as amended.
 - 4) [Article 18\(1\) of Act No. 595/2003 Coll.](#) as amended.
 - 5) [Article 17\(5\) of Act No. 595/2003 Coll.](#) as amended.
 - 6) [Article 2\(d\) of Act No. 595/2003 Coll.](#) as amended.
 - 7) [Article 22\(10\)\(b\) of Act No. 431/2002 Coll.](#) on accounting as amended.
 - 8) [Article 2\(6\) of Act No. 431/2002 Coll.](#) as amended.
 - 9) [Article 2\(7\) of Act No. 431/2002 Coll.](#) as amended.
 - 10) For example Act No. [283/2002 Coll.](#) on travel allowances as amended.
 - 11) For example the [Penal Code](#), [Administrative Court Proceedings](#), Act No. [563/2009 Coll.](#) on tax administration (Tax Procedure Code) and amending and supplementing certain acts as amended.
 - 12) [Article 69](#) and [85 of Act No. 563/2009 Coll.](#) as amended.