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New cash payment rules

For the past several weeks, the European banking sector has been facing a relatively specific situation where the owners of accounts in certain banks in Cyprus had to forfeit their deposits in a manner usually seen when a bank goes bankrupt. On the other hand, one of the effective tools used by EU member states in combating tax fraud and evasion is a restriction on cash payments. This means that parties are forced to settle their monetary obligations by means of bank transfer. Slovakia also adopted a law late last year expressly prohibiting cash payments exceeding a specified amount – Act No 394/2012 on restrictions on cash payments, which came into force on January 1 2013.

The Act considers cash payments to be the handing over of notes or coins, in cash, in the euro or other currency, and the acceptance of that cash by the recipient. The limit on cash payments made between natural persons who are not entrepreneurs is €15,000 ($19,600). If the parties are legal persons or natural person entrepreneurs, however, the limit on cash payments between such parties is €5,000. If a cash payment is split into several instalments, where all the instalments are associated with one and the same legal arrangement, the instalments will be taken as a whole for the determination of the value of the cash payment.

A specificity of the Act is that the prohibition of payments exceeding the designated amounts also applies to receiving cash abroad if it is associated with performance made within the Slovak Republic. Another determining factor is the residence status of the parties (payee or payer) in the Slovak Republic – whether one of the parties has permanent residence, temporary residence, tolerated residence, registered office, establishment or a place of business in Slovakia. The prohibition on cash payments made abroad will not apply, for instance, in cases where the laws of the state where the cash payment is given or received prohibit payment by means other than cash, or to other exemptions in respect of cash payments abroad expressly laid down in the Act.

Under the Act, in the investigation of any violations of the prohibition where payment was made in a currency other than the euro, the amount in question will first be converted to euros. The exchange rate will be the reference exchange rate announced by the European Central Bank or National Bank Slovakia for the day before the cash payment was made.

Despite the prohibition of cash payments exceeding a specific amount, the Act names some exemptions from that prohibition. This includes, for example, cash withdrawals and deposits in banks in the course of the payment services provided by banks or in the course of providing postal services and postal payments. The prohibition further does not apply in the event of a crisis situation, war, hostilities, states of emergency, and so on.

It is important to note that a violation of the ban on cash payments exceeding a specific amount will not invalidate the legal acts on the basis of which the payment was made. Thus, legal acts remain valid even though the prohibition of cash payments exceeding a specific amount was violated. If a natural person non-entrepreneur violates the prohibition, however, it is considered an offence subject to a fine of up to €10,000. A legal person or entrepreneur in violation of the prohibition of cash payments exceeding €5,000 will face a fine of up to €150,000.

The Act permits cash payments

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exceeding the statutory limit to be made until March 31 2013, but only where the payments were agreed by December 31 2012. Consequently, a payment agreed on or before December 31 2012, which was to have been made after March 31 2013, can no longer take place according to the Act (assuming, of course, that such payment is not subject to one of the exemptions laid down in the Act).

The practical impact of the Act on payments made between parties will become clear in the coming months. It will also become clear whether the Act can achieve its goal of preventing tax fraud and evasion.

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