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TAX & AUDIT SERVICES

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**MANDAT** news

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**The "Substance Over Form" Rule**

## THE "SUBSTANCE OVER FORM" RULE

The Parliament of the Slovak Republic approved Act No. 563/2009 Coll., on Tax Administration and on Amendments to Certain Laws, as amended, which amends and supplements certain laws within the meaning of the Action Plan to Combat Tax Fraud. One of the main changes is the amendment to the "substance over form" rule. The amendment is the transposition of Art. 6 (General anti-abuse rule) of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

New General Rule against Abuse:

(1) For the purposes of calculating the tax liability of legal persons, a Member State does not take account of an arrangement or a set of arrangements which, having regard to all the relevant facts and circumstances, are not genuine, since the main purpose or one of the main purposes of their utilization is to achieve a tax advantage which is contrary to the subject matter or purpose of applicable tax law. Such an arrangement may consist of more than one step or part.

(2) For the purposes of paragraph 1, an arrangement or a set of arrangements is considered to be an arrangement or a set of arrangements that are not genuine, unless they are established for legitimate business purposes reflecting economic reality.

(3) When, in accordance with paragraph 1, such arrangements or sets of arrangements are not taken into account, the tax shall be calculated in accordance with national law.

Obviously, the law judges the facts much more strictly. In the past, at least one other reason than the reduction of the tax base would be sufficient.

The current wording of the Act says that the reduction of the tax base must not belong among the main reasons at all.



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## RATING OF COMPANIES

The amendment further proposes that the Financial Administration should create an objective, independent and legally applicable system of rating of tax entities, which will be primarily of motivating and preventive nature, while allowing for the provision of specific tax regimes for reliable taxpayers. Thus, the Tax Reliability Index could contribute directly or indirectly to improving tax collection and to improving the business environment in

## RATING OF COMPANIES

general. Entities with the highest reliability could benefit from legitimate benefits compared with less reliable entities, which would motivate entities to behave responsibly towards the Financial Administration, as the proper performance of obligations will have a positive impact on the determination of the tax reliability index.

In practice, this could mean that entities fulfilling all their obligations timely will have less tax inspections.

Special tax regimes will be publicly known. Details on the criteria for determining the eligibility of a tax entity for special tax regimes and the list of special tax regimes will be published by the Financial Directorate of the Slovak Republic on its website.



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## NOT TO BE MISSED

### Important dates

Overview of important dates in the December 2017 can be found on our website: <http://www.mandat.sk>

## ABOUT US

The companies **MANDAT CONSULTING, k.s.** and **MANDAT AUDIT, s.r.o.** were founded in 2004 as tax advisory and auditing companies. Since their establishment, they have been providing small, medium-sized and companies active in Slovakia with services in the field of tax consultancy, audit and accounting. Long-lasting cooperation with foreign advisory companies hand in hand with the competence of Slovakian tax advisors and auditors enables us rendering our service to the clients originated from abroad.

In present time, 41 well trained members of our staff are at the disposal to our clients.

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