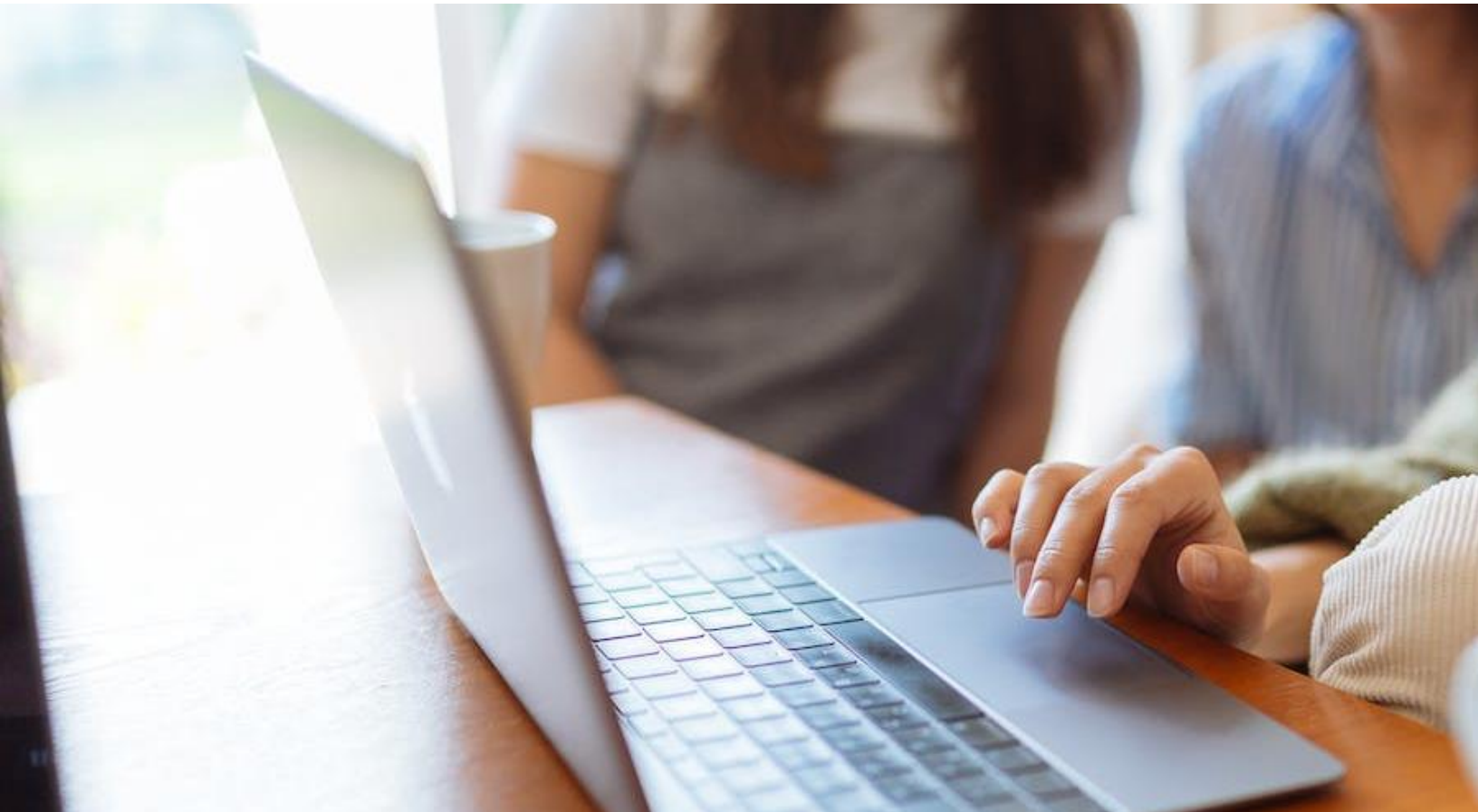


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News Flash

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The Act on top-up tax in Slovakia

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In this edition of our News Flash, we would like to introduce you to the approved law on the so-called **top-up tax**, which transposes Council Directive (EU) 2022/2523 of December 14, 2022 on **ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union**. The aim of the introduction of the top-up tax is to limit tax competition between states in the area of low effective corporate income taxation and to ensure minimum level of taxation of companies in the Slovak Republic, that are part of multinational groups of at least 15%. **The Act on top-up tax is effective from December 31, 2023.**

Entities to which the top-up tax applies

In order to avoid adverse impacts on smaller MNEs (multinational enterprises) in the internal market, the top-up tax should only apply to entities located in the European Union that are members of MNE groups or large-scale domestic groups that meet an annual consolidated revenue **threshold of at least EUR 750 million** in at least two of the four fiscal years preceding the tested fiscal year.

That threshold is consistent with the threshold of existing international tax rules such as the country-by-country reporting rules (CbCR rules). The Ministry of Finance of the Slovak Republic estimates that the new obligation will affect approximately 5,000 tax subjects in the Slovak Republic.

Tax rate and calculation method

The law sets a **minimum tax rate of 15%**. First, entities that are members of MNE groups or large-scale domestic group located in the territory of the Slovak Republic shall monitor their **effective tax rate** to ensure it is at least 15%. If the effective tax rate for these entities falls below the minimum tax rate, the entity is obliged to pay the difference in the form of a top-up tax.

The effective tax rate is calculated as the **proportion of covered taxes**, which are mainly payable or deferred corporate income tax, withholding taxes from interest, license fees, dividends, a special levy on business in regulated industries and the **accounting result (profit or loss)** adjusted for certain items defined in the law.

Since the effective tax rate applies to a particular state, entities of one multinational or national group located in the Slovak Republic, will have to coordinate with each other at certain point and calculate the effective tax rate together.

The law also specifies the calculation of income that will not be subject to the top-up tax. The major aim is to provide an **exemption** from taxation to those constituent entities that in the performance of their economic activities report payroll costs for employees and independent contractors who participate in the ordinary operating activities of the MNE group or large-scale domestic group under the direction and control of the MNE group of enterprises or a large-scale domestic group and which in the performance of their activities use tangible assets located in the Slovak Republic.

The wording of the law also stipulates that the transactions between constituent entities must be established based on the **arm's length principle**. If these transactions are not consistent with the arm's length principle, the necessary adjustments must be made.

Exceptions to the calculation of the top-up tax

In addition, the law provides for several exceptions, where there is no obligation to calculate top-up tax at all, while some exceptions are of a temporary nature.

De minimis exclusion will basically apply to groups conducting business in the Slovak Republic through smaller entities. The condition for applying the exception is that each entity

within the given group has revenues of less than EUR 10 million and an economic result of less than EUR 1 million. In both cases, these values must be adjusted in accordance with the law (referred to as qualifying revenues and qualifying income) and recalculate the average values for all entities in the Slovak Republic and for the current and two previous accounting periods belonging to each individual entity. In essence, after the recalculation, either all the group's constituent entities in the Slovak Republic meet the exception, or none.

The exemption based on a qualified report by individual states applies, for example, if the total amount of revenues of constituent entities in the Slovak Republic reported in the DAC4/CbCR report for a given accounting period does not exceed EUR 10 million and the total amount of their economic results does not exceed EUR 1 million. Alternatively, the exemption is applicable if the simplified effective tax rate of constituent entities in the Slovak Republic will not exceed:

- 15% for the accounting period of 2024
- 16% for the accounting period of 2025
- 17% for the accounting period of 2026

Excluded entities

Governmental entities, international organizations, non-profit organizations, and pension funds are **excluded** from the scope of this Act. Investment funds and real estate investment entities are excluded if they are the ultimate parent entities. If an investment fund or a real estate investment entity is part of a group subject to the top-up tax obligation, but is not the

ultimate parent entity, the special provisions for investment entities will apply. Under certain circumstances, entities that directly or indirectly own the abovementioned excluded entities are also excluded from the scope of the law.

Notification obligation and the deadline for filing a tax return

The entity to which the top-up tax applies is obliged to submit a notification with information to determine the top-up tax **no later than 15 months** after the end of the relevant tax period. According to the legislative wording, this deadline cannot be extended or missed. However, in the first year, which is 2024 (for business entities applying calendar year), the deadline for submitting a notification with information to determine top-up tax will be extended by three full calendar months (i.e. until the end of June 2026).

Within the same period, entities will be obliged to file a **tax return** and pay the relevant tax.

If there are several taxpayers from the same group in the Slovak Republic, they can agree on the fulfilment of the obligation by only one of them, or under certain circumstances, the obligation can also be fulfilled through notification of the ultimate parent entity.

If you believe that your company may be subject to the obligation of the top-up tax calculation from 2024 and you would like to obtain additional information, our tax experts will be happy to provide you with consulting in this area.

Disclaimer

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Contact

Michaela Salayová

Senior Tax Manager

E-mail: michaela.salayova@accace.com

Tel: +421 2 325 53 000



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