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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Code of Conduct Group (Business Taxation) - Report to the Council = Approval

Slovakia's tax measure aimed at supporting investments in certain fixed assets (SK009)

1. Background:

1. The SK009 measure – Tax measure aimed at supporting investments in certain fixed assets – was notified in the standstill exercise 2021.

2. Relevant legal framework

2. The new measure has been introduced by Article 30e of the Act No. 595/2003 Coll. on Income Tax Act as later amended.[1]

3. The measure entered into force on 1st January 2022.

3. Purpose of the measure

4. The new tax measure aims to support investments in particular industries and activities.

[1] https://www.slov-lex.sk/pravne-predpisy/-/SK/ZZ/2003/595/20220101.

4. Design of the measure

4.1.Beneficiaries

5. The measure is available for natural persons performing business activity and legal entities. The deduction is made against the tax base reduced by tax loss.

4.2. Eligible investments/ assets

6. The measure (also called super-deduction) creates an additional deduction (15% to 55%) of expenses (costs) for investments in certain assets[2]. The investment should be made in a production system or a logistics system.
7. The deduction is limited to investments made in the framework of an investment plan which is made up for four tax years (eligible period: 2022-2025). The investments included in the investment plan should be made within this 4 year period.

8. The tangible asset in which the investment is made may not have been depreciated before the acquisition, i.e. they have to be new.

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[2] Annex 3 of the Act No. 595/2003 Coll. On income tax. It concerns Steam generators, except central heating hot water boilers; Computers and peripheral equipment; Communication equipment; Measuring, testing and navigating equipment; Optical instruments and photographic equipment; Electric motors, generators, transformers and electricity distribution and control apparatus, except Generating sets with compression-ignition internal combustion piston engines; Batteries and accumulators; Wiring and wiring devices; Other electrical equipment; Generating sets with compression-ignition internal combustion piston engines; Agricultural and forestry machinery; Metal forming machinery and machine tools; Turbines; Marine propulsion spark-ignition engines, other engines; Other compression-ignition internal combustion piston engines; Fluid power equipment; Other pumps and compressors; Ovens and furnace burners and parts thereof; Lifting and handling equipment; Non-domestic cooling and ventilation equipment, except Refrigeration and freezing equipment and heat pumps, except household type equipment; Refrigeration and freezing equipment and heat pumps, except household type equipment; Other general-purpose machinery n.e.c., except Gas generators, distilling and filtering apparatus, and except Industrial, household and other weighing and measuring machinery; Gas generators, distilling and filtering apparatus; Industrial, household and other weighing and measuring machinery; Machinery for metallurgy; Machinery for mining, quarrying and construction; Machinery for food, beverage and tobacco processing; Machinery for textile, apparel and leather production; Machinery for paper and paperboard production; Plastics and rubber machinery; Other special-purpose machinery n.e.c..

9. A taxpayer needs to fulfil the following conditions in order to benefit from the increased deduction:
   - The taxpayer has to make an investment (whether through purchase or self-produced) and the investment must be put into use during the period set in the investment plan;
   - The average amount of investment spent on the acquisition of tangible assets that qualify (including software and technical improvement of these assets – which were also put into use or into business assets) must be higher than 0 during the years 2019 – 2021;
   - The deduction of investment expenditure (costs) is made by the taxpayer on the basis of an investment plan that needs to be prepared for a fixed period of four tax periods (years 2022 – 2025). The investment plan is supposed to define the total value of the planned investments, the expected schedule of implementation of the investment plan in each tax period, the calculation of the Average Investment Value, as well as the planned amount to be invested as a percentage of the Average Investment Value (e.g. 700% or 1,400%, as applicable). The investment plan must also include a description of how the acquired assets will contribute to enhancing automation/digitisation of production processes, etc.
   - The beginning date of the investment plan must always be the first day of the tax period (i.e. 1 January of the calendar year, or the first day of the financial year). Each taxpayer can only have 1 investment plan, to which the deduction of expenses (costs) for investments will be applied;
   - The cumulative value of realized investments according to the investment plan may not be less than 7 times (or 700%) the average annual amount of investments for the previous 3 year period preceding the period of implementation of the investment plan, and in any case not less than 1 mil. Eur;
   - The depreciation of the tangible assets may not be interrupted during the period of the investment plan.
10. After the expiration of the given 4-year period of investment realization (years 2022 - 2025), the taxpayer will check the fulfilment of the conditions for the application of the deduction and in case of non-fulfilment of the conditions, the taxpayer must return the deduction already used.

4.3.<u>Tax advantage</u>

11. The additional deduction amounts from 15% to 55% on the so-called productive investments and the height of the percentage depends on two factors:
   - the amount of Average Investment Value for the previous three tax periods and the amount a taxpayer plans to reinvest (the taxpayer may choose a reinvestment in the range of 700 - 1 399,99 % of the Average Investment Value and or 1400 % and above of the Average Investment Value);
   - the (absolute) value of the planned amount of reinvestment of the Average Investment Value.

Percentage of investment relative to the Average Investment Value	Sum invested out of the planned investment amount		
	From EUR 1 million up EUR 20 million	more than EUR 20 million up to EUR 50 million	more than EUR 50 million
from 700% up to 1,399.99%.	15 %	25 %	50 %
1,400 % or more	20 %	30 %	55 %

4.4.<u>Amount of the tax advantage</u>

12. From the information made available in the notification exercise, the law does not seem to provide for any cap regarding the amount of the investment/ eligible costs.

13. Therefore, assuming eligible costs of 1.000.000 EUR stemming from the acquisition price of a new tangible asset and 700% average investment value, the additional deduction from the tax base would amount to 150.000 EUR (15% of the eligible costs). The deduction is spread over the depreciation period of the asset (but no longer than 10 years). The standard CIT rate in Slovakia is 21% (15% for small taxpayers).

14. The 150.000 EUR deduction from the tax base would amount to a tax benefit of 31.500 EUR of CIT reduction. As there is no cap regarding the amount of eligible costs and the available percentage of tax deduction is progressive, the higher the investment, the higher is the tax benefit.

5. Impact of the measure

15. The measure has just been recently introduced, thus such data is at this moment not available.

16. The tax deduction is limited in time to investments made during four tax years (eligible period: 2022-2025).

17. In case of an insufficient tax base, it is not possible to transfer the unused part of the deduction to subsequent tax periods.

18. Moreover, the right to claim the deduction of investment expenditure (costs) ceases, if:
    - The taxpayer reports a tax loss;
    - The taxpayer is wound up with or without liquidation;
    - The taxpayer is declared bankrupt;
    - The taxpayer enters restructuring;
    - The taxpayer’s business is sold or used as a contribution in kind, whether in whole or in part;
    - A tax period shorter than 12 consecutive calendar months is reported (except for a taxpayer who has a shorter tax period due to death)
    - The taxpayer's business or other self-employed activity ceases due to theirs death.

6. Conclusions

19. It is Commission services opinion that such measure – *which relates to an additional deduction of maximum 55% of eligible costs from the tax base at the end of the tax year* – does not need to be assessed, in particular for the following reasons:
    i. The tax relief is linked to real costs incurred upon acquisition of “tangible fixed assets”); tangible fixed assets are *per se* less prone to tax planning;
    ii. Such assets need to be put in use in the business generating profits;
    iii. The assets must be brand-new and not in use before – thus, the law avoids cascading of the asset in the group to benefit several times the additional deduction;

iv. The measure applies temporarily – the increased deduction is only available for eligible costs made within the period 2022-2025;

v. The tax relief can only be used against an amount of income generated by the taxpayer through a business activity in a given tax year; as the increased deduction cannot be carried forward.

vi. The tax benefit is granted only if assets are maintained as no interruption of the depreciation is allowed and the increased tax deduction is based on the yearly depreciation of the asset.

7. Follow-up

20. In light of the aforementioned, the GOCG agreed that the measure does not need to be assessed.