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Exchange and provision of information in the field of tax administration and prevention of tax evasion

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Abstract

The exchange and provision of information on taxpayers generally pursue different objectives. According to the provisions of tax law, the main purpose of obtaining information on taxpayers was to implement effective tax administration. Subsequently, other tasks have been added to this objective, including prevention of tax evasion, tax avoidance and related tax crime detection and investigation. The provision and exchange of information between the tax administration authorities and other legal entities, especially the national supervisory authority or national central bank, is subject to a strict regulatory regime, based on an explicit legal mandate to utilise the information. The reason is that the subject of the provision and exchange is often information that has a special secrecy protected by the law, such as banking secrecy, professional secrecy or protected information regarding securities. The authors identify and analyse the legal regime for providing information for the purposes mentioned, especially in the conditions of the Slovak Republic. The legal regime in the Slovak Republic is also more or less affected by legal acts adopted at global (OECD) level and EU level, so the authors take into account, to some extent, these legal acts when dealing with the automatic exchange of tax information between the tax administration of EU and non-EU member states. In this context, the authors differentiate according to whether the provision of information takes place under vertical or horizontal institutional relations. Following that, the aim of the paper is to identify how the related authorities/persons interact in horizontal institutional relations and vertical institutional relations.

Keywords

banking secrecy, supervisory authority, tax administration, automatic exchange of tax information

1 Introduction

The subject of the provision and exchange of information is often information about the taxpayer, which has special secrecy protected by law (in particular, banking secrecy, trade secrecy).[1] At the moment that this information is obtained by the financial administration authorities (or tax administrator) in the process of tax administration, it simultaneously acquires the status of tax secret, which is protected by the tax law.[2] Apart from this, the disclosure of tax secrecy is subject to criminal law protection.[3] For the above reasons, the exchange and disclosure of information between the tax administration in the Slovak Republic and other legal entities in the Slovak Republic or abroad is subject to a strict regulatory regime, based on an explicit legal mandate to handle the information. Such a legal mandate can be identified in two areas:

- in the legal regulation of administrative cooperation between domestic and foreign tax authorities,[4] between which information is exchanged (i.e., in horizontal institutional relations), and
- in the legal regulation of the financial market, in particular in the provision of cooperation by financial market operators vis-à-vis tax authorities (i.e. in vertical institutional relations) with regard to information concerning taxpayers or in the legal framework of cooperation between the financial market supervisory authority and other public authorities (i.e. in horizontal institutional relations).[5]

The aim of the paper is to identify the forms of interaction between the parties mentioned in horizontal institutional relations and vertical institutional relations. The forms of interaction between financial administration authorities and financial market entities can be illustrated by examples of legislative texts. In what follows, we will limit ourselves exclusively to the existing selected national regulation of institutional cooperation, the purposes of which may be diverse. In our opinion, this may include in particular

- tax administration (for example, establishing the correct tax base),
- automatic exchange of information on financial accounts,

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1 This protection in a broader sense is related to the concept of protection of economic goods as part of private property. See for example Vladár (2015).

2 In the Slovak Republic, it is § 11 of Act no. 563/2009 Coll. on Tax Administration (Tax Procedure Code) and on Amendments to Certain Acts.

3 In the Slovak Republic, this is § 264 (entitled "Threat to trade, banking, postal, telecommunications and tax secrecy") of Act no. 300/2005 Coll. Criminal Code.

4 In the European Union, the legal basis for this cooperation is Art. 6 letter g) the Treaty on the Functioning of the European Union, known as "administrative cooperation"; in this context, a number of legally binding EU acts governing international tax cooperation have been adopted. Outside the EU, international double taxation treaties can be mentioned. The beginnings of international cooperation in tax administration are connected with direct taxation, only later this cooperation was extended to indirect taxes. See Babčák et al. (2018, 264).

5 The relations listed are regulated by national legal regulations (laws) in the field of the financial market. In principle, the exchange of information with the central bank can only be regulated on the basis of reciprocity, by a written agreement on mutual cooperation with other authorities. See Slezáková et al. (2018, 84).

- eliminating tax evasion and tax avoidance,[6]
- preventing and investigating tax crime (tax frauds),
- obtaining tax information for financial market supervision purposes (as a special purpose in the financial market area).

2 Exchange and disclosure of information protected under financial market regulation

The legal framework for cooperation under financial market regulation should be seen as a legal framework under which such information is provided, the scope of which is defined in specific financial market laws. It should be noted that such a legal framework also contains exemptions, defined by the relevant law, from the obligation of confidentiality of certain facts about a taxpayer (e.g. banking secrecy), which applies to anyone who has access to such information by virtue of their employment or other status. The disclosure of data is mainly carried out in the framework of cooperation or collaboration, which is enshrined in the laws regulating the financial market. On the other hand, tax laws that regulate the procedural aspect of tax administration also contain provisions that regulate the procedural obligation of various legal persons (who are not considered taxpayers and who have rights and obligations under tax administration) to provide data. These other persons include selected financial institutions (payment service providers, insurance companies, reinsurance companies, branches of foreign insurance companies, branches of foreign reinsurance companies) (Babčák, 2022, 502).

The tax authority with substantive competence in the administration of taxes on commercial financial market entities is the *Office for Selected Economic Entities.* The creation of a separate tax institution for financial market entities demonstrates the importance of this part of the economy for the generation of the revenue component of the public budget. The provision of information occurs here:

a) by financial market entities (credit institutions/banks, financial institutions other than banks) or selected groups of persons with a special relationship to these entities (e.g. members of the board of directors or supervisory board of a financial institution, its employees, proxies, liquidators, trustees, provisional administrators in bankruptcy, restructuring, arrangement or insolvency proceedings, or supervisory trustees exercising supervisory administration), providing information to the tax authorities (tax administrators such as municipalities or tax authorities, or financial administration authorities),
b) between the financial market supervisory authority and other public authorities or other legal persons (including tax authorities).

Ad a) In the provision of information by financial market entities, it is particularly important to break banking secrecy by introducing *exemptions for banks (or branches of a foreign bank),*

[6] Tax evasion can have various causes (political, social, legal and economic). For the causes of tax evasion in detail, see Šimonová (2017, 17). Morawski states that international tax avoidance gives the taxpayer new opportunities. The taxpayer can take advantage of several national tax systems, or more specifically their inconsistencies, to avoid taxation by making additional use of double taxation conventions between them. In such a case, the actions taken in each country, if considered separately, may not only not be abusive, but may be perfectly natural for the authority. See Morawski (2020). For the conditions of automatic exchange of information for this purpose in concrete, see Morawski (2017).

which is tied to a written request from authorized entities according to the Banking Act. It lists 29 cases when banking secrecy can be breached upon written request, while only the following two exceptions apply to the disclosure of information on a taxable entity. The Bank and a branch of a foreign bank shall report without the client's consent on matters concerning the client's secrecy, only upon a written request from

(i) the tax office, customs office, Financial Directorate of the Slovak Republic or the tax administrator, which is a municipality, to the extent necessary for the performance of tax administration and customs supervision, if they apply to a client of a bank or a branch of a foreign bank or to the client's property or a branch of a foreign bank, including recovery of tax arrears in tax enforcement proceedings or recovery of customs debt, fines and other payments assessed and imposed under customs and
(ii) the Criminal Office of the Financial Administration and the Financial Directorate of the Slovak Republic, to the extent necessary for the purpose of 1. performing tasks in detecting criminal offenses, identifying their perpetrators and searching for them, or 2. performing tax administration and customs supervision, if they apply to a client of a bank or a branch of a foreign bank, or to assets of a client of a bank or a branch of a foreign bank.[7]

As of 1 May 2022, a thirtieth case of breaching banking secrecy will be added, upon a written request from the Criminal Office of the Financial Administration for the purpose of providing data to the European Anti-Fraud Office.

The written request must, in general, contain at least the information by which the bank can identify the matter in question (in particular, the exact identification of the person about whom the information is requested and the definition of the scope of the information requested). The information to the required extent can be claimed by the applicant (relevant tax authorities) if the declared purpose is proven.

In this context, we must point out that such minimum identification data do not need to be stated in the written request of the tax authorities referred to in points (i) and (ii) or even during the tax control at the relevant bank or branch of a foreign bank. For both situations mentioned under points (i) and (ii), the possibility to submit a written request without the necessary minimum data was introduced from 1 January 2019[8] (on this date, this option was also introduced for tax control in the relevant bank or foreign bank branch).

A special case of breaking banking secrecy in relation to tax authorities is the fulfilment of the notification obligation pursuant to a different provision of the Banking Act,[9] which was introduced into the Banking Act by its amendment (Act no. 359/2015 Coll., with effect from 1 January 2016). According to this exception, the fulfilment of the notification obligation to the competent authority of the Slovak Republic is not considered a breach of banking secrecy:

(i) for the purpose of automatic exchange of financial account information for tax administration purposes pursuant to Act no. 359/2015 Coll. on the automatic exchange

[7] See § 91 par. 4 letter c) and s) of Act no. 483/2001 Coll. on Banks and on Amendments to Certain Acts.

[8] With the effect of Act no. 373/2018 Coll., Amending Act no. 371/2014 Coll. on Resolving Crisis Situations in the Financial Market and on Amendments to Certain Acts, as amended, and Amending Certain Acts.

[9] See § 91 par. 11 of Act no. 483/2001 Coll. on Banks and on Amendments to Certain Acts.

of information on financial accounts for tax administration purposes and amending certain laws, and

(ii) for the purpose of the automatic exchange of information on cross-border measures subject to notification for tax administration purposes under Act no. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration (Koroncziová et al., 2019).

Another case of the provision of data by financial market entities (specifically banks) is the *statutory information obligation for the purposes of the proper performance of tax administration*, which has been in the Banking Act since its inception (from 1 January 2002). Its purpose is that banks and branches of foreign banks are obliged to notify the competent tax office according to the entrepreneur's registered office or permanent residence of the number of each current and deposit account opened and cancelled by the entrepreneur who is or was their client, within 10 days after the calendar month in which the account was opened or canceled.[10] As in the previous case, this is not an exception to a breach of banking secrecy, which would be subject to a written request from the tax authority.

A similar notification obligation (in terms of its content) is the *special notification obligation of the value added taxpayer according to the* Value Added Tax Act (in its wording effective from 15 November 2021), under which the payer of value added tax is obliged to notify the Financial Directorate of the Slovak Republic of each bank account kept with the payment service provider or with the foreign payment service provider that he will use for the business subject to value added tax, immediately after he became a taxpayer or from the date on which he set up such a bank account. In addition, the payer of value added tax is obliged to notify any change, addition or cancellation concerning this bank account, as soon as this fact occurred.[11]

For selected persons (with a special relationship with a financial market operator), the exemption from the duty of secrecy vis-à-vis the tax authorities of facts which they have learned by virtue of their position in the performance of their duties and which are relevant to or affect the development of the financial market interests of its individual participants, is found in several sectoral laws of the financial market. For example:

(i) the Insurance Act, which states it does not constitute a breach of confidentiality if the information is provided by a state administration in the field of taxes and fees in matters of tax administration, if the person involved in the administration of taxes is an insurance company (or reinsurance company, insurance company from another EU Member State, reinsurance undertaking from another EU Member State, a branch of a foreign insurance undertaking, a branch of a foreign reinsurance undertaking), a policyholder or insured person,[12]

(ii) the Act on Collective Investment which states it does not constitute a breach of confidentiality if the information is provided to the tax authority for the purposes of tax proceedings.[13]

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[10] See § 90 par. 1 of Act no. 483/2001 Coll. on Banks and on Amendments to Certain Acts.

[11] See § 6 par. 1 and 3 of Act no. 222/2004 Coll. on Value Added Tax. On duplication with § 90 par. 1 of the Act on Banks will not work, because the term "payer of value added tax" is not the same term as the term "entrepreneur" (pursuant to § 2 par 2 of Act no. 513/1991 Coll., the Commercial Code), to which § 90 par 1 of the Banking Act refers.

[12] See § 72 par. 3 letter d) of Act no. 39/2015 Coll. on Insurance and on Amendments to Certain Acts.

[13] See § 162 par. 3 letter f) of Act no. 203/2011 Coll. on Collective Investment.

In the capital market, we can find similar legislation on the provision of information at the written request of authorized entities, as is the case with breaking banking secrecy. These are the so-called "protected facts" under the Securities and Investment Services Act. This law introduces 15 authorized entities to which, at their written request, the central securities depository or investment firm is obliged to provide information on protected facts. Tax authorities are also included among these eligible entities if the client of the central securities depository or investment firm is a participant in the tax proceedings.[14]

A completely new legal regulation in the area of data provision by financial institutions is the Act no. 123/2022 Coll. on the Central Register of Accounts and Amendments to Certain Acts, which entered into force on 1 May 2022 and was approved on 17 March 2022.[15] The main objective of the Act is the transposition of Art. 32a of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU, and the transposition of Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offenses, and repealing Council Decision 2000/642/JHA. Its target must be considered as a new *specific case of breaching banking secrecy under the Banking Act and a new specific case of providing information that is protected under the Securities and Investment Services Act as "protected facts".* This Act establishes a central register of accounts, which is an information system of public administration and which is maintained in order to allow access for defined authorized authorities to data on accounts maintained and safe deposit boxes leased in the territory of the Slovak Republic. The administrator and operator of the central register of accounts is the Ministry of Finance of the Slovak Republic, which has put it into operation on 1 January 2023. Data on the payment account, deposit account, building savings account, account of the owner of the book-entry security, rental of the safe deposit box, and their changes are entered in the central register of accounts, but the register does not contain data on mortgage loan accounts. For example, the identification of the financial institution that maintains the account or leases the safe deposit box, the account opening date or the rental lease start date, the client identification details, the account cancellation date, or the safe deposit box rental termination date are recorded. The National Bank of Slovakia, the central securities depository and financial institutions are obliged to send data on the creation, change or termination of data to the central register of accounts electronically.[16] The central register of accounts will not contain data on account balances (financial balances), but only basic account information.

Data from the central register of accounts will be provided electronically in a direct, continuous and remote manner, only after stating the purpose of the search and entering specific (albeit incomplete) data relating to the account, safe deposit box or client of the financial institution. The Act identifies 11 cases for which authorized entities may request data from the central

[14] See § 109 and 110 of Act no. 566/2001 Coll. on Securities and Investment Services and on Amendments to Certain Acts (Securities Act).

[15] The approved bill is available at: https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/123/20220501

[16] A financial institution means a bank, a branch of a foreign bank, a payment institution, a branch of a foreign payment institution, an electronic money institution, a branch of a foreign electronic money institution, an investment firm and a branch of a foreign investment firm.

register of accounts, including (i) the Financial Directorate of the Slovak Republic, the customs office and the tax office for the *purpose of tax administration and customs supervision,* (ii) the Financial Directorate of the Slovak Republic for the *purpose of detecting tax crimes,* (iii) the Criminal Office of the Financial Administration *for the purpose of detecting and investigating criminal offenses and providing data on them to the European Anti-Fraud Office*. The data provided to or from the central register of accounts remain subject to banking secrecy or protected facts pursuant to the Securities and Investment Services Act.

As the National Bank of Slovakia is to supervise the fulfilment of the obligations of financial institutions and the central securities depository in providing data to the central register of accounts, the draft law, as a regulation that interferes with the national central bank's existing competences, has been consulted according to European Central Bank 98/415/EC of 29 June 1998 on the consultation of the European Central Bank (ECB) by national authorities regarding draft legislative provisions. In this context, the ECB stated that the exercise of the new supervisory role for the National Bank of Slovakia was not in conflict with its institutional set-up.[17] For the purpose of supervision, the National Bank of Slovakia should have access to data in the central register of accounts.

The provision of data by a bank, a branch of a foreign bank, a central securities depository or an investment firm to the central register of accounts pursuant to this Act shall not constitute a breach of banking secrecy or a breach of "protected facts". Nevertheless, we have to state that the constant addition of new cases of breaches of banking secrecy in the Banking Act (as well as protected facts under the Securities and Investment Services Act) raises the question to what extent the protection provided by banking secrecy can still be considered effective.

Ad b) *For a supervisory authority* (in the Slovak Republic, the National Bank of Slovakia), the provision of information is provided for as its legal entitlement in order to ensure synergy with other public authorities. As it is a public authority, the legal entitlement is based on Article 2(2) of the Constitution of the Slovak Republic. The provision of information is not implemented as an exception to the obligation of confidentiality (by employees of the central bank) but ex lege exclusion from the scope of selected confidentiality provisions.[18]

The supervisory authority is entitled to disclose information to tax authorities, for example, under the Insurance Act. The reasons for such disclosure may vary (e. g. to establish the correct tax base). As such, the National Bank of Slovakia may provide information obtained in the course of supervision to tax and fee authorities in tax administration matters if the tax and fee authority requests it in writing.[19] As the central bank also supervises the commercial insurance industry and obtains information that may also have an impact on the control of tax compliance by the taxpayer (for example, in the area of technical provisioning), it was necessary for the central bank to be able to provide such information to the tax administrator, which could use it in its activities.

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[17] Opinion of the European Central Bank of 1 March 2022 on the establishment and operation of the central register of accounts (CON/2022/7), p. 6 (2.7).

[18] This is an obligation in § 7 and 41 of Act no. 566/1992 Coll. on the National Bank of Slovakia, and in § 2, 3, 17 and 24 of Act no. 747/2004 Coll. on Financial Market Supervision and on Amendments to Certain Acts (in Relation to Facts Detected in Supervision or Proceedings before the National Bank of Slovakia).

[19] See § 79 par. 26 letter i) of Act no. 39/2015 Coll. on Insurance and on Amendments to Certain Acts. It is worth noting that this authorization was added to the Insurance Act with effect from 29 June 2021 and its justification can be found in a separate part of the explanatory memorandum to Act no. 209/2021 Coll.

The general legal framework for cooperation, exchange of information and interaction in the framework of financial market supervision between the National Bank of Slovakia (as a supervisory authority) and other public authorities and other persons having information on supervised entities (including tax administration authorities) is the Financial Market Supervision Act.[20] This Act also specifies that the details of the provision of interaction can only be regulated by a written agreement on mutual cooperation and provision of information between the National Bank of Slovakia and the competent authority.

The importance of the exchange of information between the tax authorities and the supervisory authority can also be very beneficial for sanction proceedings conducted by the tax authorities or the supervisory authority, due to the observance of the principle of "ne bis in idem" in administrative punishment. At the same time, a certain sanction in the area of administrative punishment can subsequently have a major impact on the related criminal proceedings for a tax offense. The need for cooperation between national authorities is also emphasized here by the judiciary (Milučký & Milučký, 2021, 624). On the other hand, the principle of "ne bis in idem" can be curtailed according to the case law of the Court of Justice of the European Union and the European Court of Human Rights. However, such a restriction must not go beyond what is strictly necessary to achieve the objective[21] (principle of proportionality).

The general legal framework for cooperation and interaction in the activities of the central bank is the Act on the National Bank of Slovakia, according to which the National Bank of Slovakia is entitled to cooperate and exchange information with public authorities in the Slovak Republic and other countries and with international organizations (including tax authorities) to the extent necessary to ensure the performance of its tasks under this Act and special regulations.[22]

When exchanging information with the central bank in accordance with the above-mentioned provisions of the Financial Market Supervision Act and the Act on the National Bank of Slovakia, it is always a matter of breaking so-called professional secrecy, which applies to employees of the National Bank of Slovakia.

3 Administrative cooperation and exchange of information in the field of taxation

Tax evasion and tax avoidance represents a problem, as a result of which individual states lose a substantial part of their state budget revenues, as taxes represent the main revenue to the state budget. In the event of a loss of this income, the state is unable to finance its societal tasks and goals, and therefore strives to protect, maintain and secure its largest revenues as much as possible. For this reason, states are fighting the problem of tax evasion and avoidance in various forms and ways. The most effective tool in the fight against tax evasion and tax avoidance seems to be the automatic exchange of information in the field of taxation as one of the forms of administrative cooperation.[23]

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[20] See § 1 par. 3 letter h) and § 3 par. 1, 3 and 7 of Act no. 747/2004 Coll. on Financial Market Supervision and on Amendments to Certain Acts. See interpretation for this Slezáková et al. (2018, 51, 81).

[21] For example, judgment of 20 March 2018, *Luca Menci*, C-524/15, EU:C:2018:197, or *A and B v Norway* App no 24130/11 and 29758/11 (ECtHR, 15 November 2016), also see Rakovský (2021, 145).

[22] See § 34a par. 3 of Act no. 566/1992 Coll. on the National Bank of Slovakia.

[23] Other forms of administrative cooperation are stipulated in Chapter III of Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC which was implemented also to Act no. 442/2012 Coll. of the Slovak Republic.

Administrative cooperation in the field of taxation has a long history and exists at the global, EU and national level. At the global level, where the Organisation for Economic Cooperation and Development (hereinafter OECD) is the decision-making body; administrative cooperation is enshrined in the Convention on Mutual Administrative Assistance in Tax Matters (hereinafter the Convention), Base Erosion and Profit Shifting Action Plan (hereinafter BEPS), as well as in the Model Tax Convention on Income and on Capital[24] (hereinafter OECD Model Tax Convention). At the EU level, the EU addresses administrative cooperation in the Directive on administrative cooperation in the field of taxation[25] (the so called DAC1 and its amendments) and, to some extent, international cooperation in the field of tax claims is also stipulated in the Directive concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.[26] These Directives are implemented into the national legal order of the Slovak Republic. OECD legal acts affect legislative processes within the EU, which in turn affect national law-making.

3.1 Exchange of information in the field of taxation in the conditions of the Slovak Republic

National legal systems are largely influenced by the situation and global (OECD) legislation, but of course mainly by European law, as directives must be transposed by Member States into their national legal systems. Legal acts in the field of exchange of information adopted by the EU are influenced by legal acts adopted by the OECD (e.g., OECD BEPS / EU Anti Tax Avoidance Directive[27] (the so called ATAD), OECD BEPS Action 12 (Mandatory Disclosure Rule, the so called MDR) / EU DAC6, OECD BEPS Action 5 / EU DAC3). However, a more proac-

[24] Article 26 of the OECD Model Tax Convention reads as follows: *The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention.*

[25] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (the so called DAC1) and its amendments:
DAC2 - Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation;
DAC3 - Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation;
DAC4 - Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation;
DAC5 - Council Directive (EU) 2016/2258 of 6 December 2016 amending Directive 2011/16/EU as regards access to anti-money-laundering information by tax authorities;
DAC6 - Council Directive (EU) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements;
DAC7 - Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.

[26] Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

[27] 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 (so called ATAD).

tive and prompt approach to addressing exchange of information issues by the EU has recently emerged (especially in the case of DAC7 and DAC8[28]).

There are several types of exchange of information, namely spontaneous, on-request and automatic. The greatest potential in the fight against tax evasion and tax avoidance has the automatic exchange of information.[29] In the field of taxation, this is enshrined in the conditions of the Slovak Republic in Act no. 442/2012 Coll. and in Act no. 359/2015 Coll., to which a Decree of the Ministry of Finance of the Slovak Republic no. 446/2015 Coll. laying down the details of the verification of financial accounts by notifying financial institutions was also adopted. Act no. 442/2012 Coll. regulates all types of automatic exchange of information, except for the automatic exchange of information on financial accounts, which is regulated by Act no. 359/2015 Coll. International cooperation and assistance in the recovery of certain financial claims is enshrined in Act no. 466/2009 Coll.

3.1.1 Automatic exchange of information on specific categories of income and capital

The automatic exchange of information on specific categories of income and capital was introduced into the national law of the Slovak Republic as a result of the implementation of DAC1. This Directive was not the first directive which ensured administrative cooperation in the field of taxation: it followed Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation, which for the first time legally established administrative cooperation between Member States, including the exchange of information. In 2003, the EU adopted Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, which for the first time introduced a mechanism for the automatic exchange of information between Member States' competent authorities on non-resident savings income. DAC1, which repealed Directive 77/799/EEC and subsequently Directive 2003/48/EC, became a milestone in the field of administrative cooperation in the field of taxation.

It expanded and strengthened administrative cooperation in the form of spontaneous exchange of information, exchange of information on request, automatic exchange of information and other types of administrative cooperation – such as simultaneous controls; presence in administrative offices and participation in administrative enquiries; and administrative notification. DAC1 enshrined the automatic exchange of information, although not for the first time, as it appeared in Directive 77/799/EEC and, in practice, the system of automatic exchange of information was first introduced by Directive 2003/48/EC. However, DAC1 was certainly the first to introduce the automatic exchange of information for tax purposes concerning, *inter alia,* the following income sources: employment, director's fees, pensions, ownership of and income from immovable property, and from life insurance products not covered by other Union legal instruments on the exchange of information.[30]

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[28] Final text of DAC8 is still a work in progress.

[29] According to 2 letter h) of Act no. 442/2012 Coll. automatic exchange of information means the exchange of a predefined type of information between competent authorities, without prior request, within preestablished time limits.

[30] Royalties were included in the categories of income subject to mandatory automatic exchange of information in order to strengthen the fight against tax fraud, tax evasion and tax avoidance by DAC7.

The Slovak Republic, like all Member States, is obliged to exchange information only on those categories of income which they have at their disposal, which are located in the tax files / relevant registers of the tax administrator of the notifying Member State and which can be obtained in accordance with the information gathering and processing procedures in that Member State. At the same time, states can bilaterally agree on the automatic exchange of information on other categories of income as well. The competent authority of the Slovak Republic[31] may also notify the competent authority of the Member State that it does not wish to receive information on selected category of income.

The essence of this is the exchange of information on the available categories of income of non-residents between the competent authority of the Slovak Republic and the competent authorities of the Member States through the CCN network, no later than 6 months after the end of the tax period. This exchange of information exists exclusively between EU Member States and is carried out in compliance with DAC1.

3.1.2 Automatic exchange of information on financial accounts

Exchange of information on financial accounts was introduced by the OECD in 2014 by adopting the *Standard for Automatic Exchange of Financial Account Information in Tax Matters* (hereinafter the Standard), of which the Common Reporting Standard (CRS), the model Competent Authorities Agreement (MCAA), comments to the CRS and MCAA and the user manual for the CRS XML schema are integral parts. The EU was inspired by the Standard and this resulted in the adoption of the DAC2, which the Slovak Republic implemented into national law by Act no. 359/2015 Coll. and details are enshrined in Decree no. 446/2015 Coll.

In the case of this exchange of information, the *Reporting Financial Institution shall communicate the following information in connection with the Reportable Person and Reportable Accounts to the competent authority of the Slovak Republic for a calendar year or another appropriate reporting period*: details of the reporting financial institution, details of each financial account holder or controlling person, financial account number, and financial account balance or financial account value, as well as other data in the case of a manager's account or deposit account, by 30 June of the calendar year following the calendar year for which the reporting obligation is fulfilled. Subsequently, information on reportable accounts held by non-resident taxpayers (reportable persons) shall be exchanged between the competent authority of the Slovak Republic and the competent authorities of the Member States, competent authorities of Contracting States[32] or the competent authority of the United States of America by 30 September of the calendar year following the calendar year which fulfils the reporting obligation. The Slovak Republic exchanges information with EU Member States on the basis of DAC2, with Contracting States on the basis of the Convention and with the USA on the basis of the FATCA[33] agreement.

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[31] The competent authority of the Slovak Republic in the field of exchange of tax information is the Financial Directorate of the Slovak Republic.

[32] A Contracting State means a Contracting Party to an international treaty by which the Slovak Republic is bound. In this case the international treaty is the Convention on Mutual Administrative Assistance in Tax Matters, as amended by the provisions of the Protocol (Notification of the Ministry of Foreign Affairs and European Affairs of the Slovak Republic No. 461/2013 Coll.).

[33] Foreign Account Tax Compliance Act.

3.1.3 Automatic exchange of information on advance cross-border rulings and advance pricing arrangements

The exchange of information on advance cross-border rulings and advance pricing arrangements was enshrined in the BEPS Plan of the OECD, but only on an ad hoc basis. This *mandatory spontaneous exchange* of advance cross-border rulings and advance pricing arrangements takes place between the Convention's signatories, who at the same time have committed themselves to the *minimum standard of Action 5 of the BEPS Plan* adopted by the OECD. DAC1 also laid down a mandatory spontaneous exchange of advance cross-border rulings and advance pricing arrangements. However, the downside of the spontaneous exchange of information is *the discretion*[34] of the State, which allows the issuing Member State to decide which other Member States should be informed. The EU went further and introduced an *automatic exchange* of advance cross-border rulings and advance pricing arrangements through DAC3, which the Slovak Republic transposed into national law through Act no. 442/2012 Coll. The essence of this exchange is the exchange of advance cross-border rulings and advance pricing arrangements between the competent authority of the Slovak Republic and the competent authorities of the Member States, automatically within three months from the end of the calendar half-year during which the advance cross-border rulings and advance pricing arrangements were issued, amended or renewed. The automatic exchange of advance cross-border rulings and advance pricing arrangements between EU Member States takes place on the basis of DAC3 and the spontaneous exchange of advance cross-border rulings and advance pricing arrangements between Contracting States takes place on the basis of the Convention.

3.1.4 Automatic exchange of country-by-country reports

The OECD enshrined the exchange of country-by-country reports (CbCR) in Action 13 of the BEPS Plan. The legal basis for the automatic exchange of CbCR lies in Art. 6 of the Convention. The preamble of DAC4 clearly states that it has followed the work of the OECD under the BEPS Plan, and was transposed into the national law of the Slovak Republic by Act no 442/2012 Coll. Its essence is the automatic exchange of reports of multinational groups of companies, which will achieve consolidated revenues for the group of at least 750 mil. eur. The report contains information on their amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, registered capital, accumulated earnings, number of employees and tangible assets other than cash and cash equivalents, with regard to each tax jurisdiction in which the multinational enterprises group (MNE) operates, including a list of each constituent entity of the MNE group and the nature of the main business activity of the constituent entity.

The Ultimate Parent Entity, Constituent Entity or Surrogate Parent Entity shall submit the CbCR to the competent authority of the Slovak Republic. It must be submitted in accordance with the format stipulated by the law and within 12 months of the last day of the reporting fiscal year of the MNE group (timing for filling). An earlier filing deadline (e.g., aligned with the tax reporting filing deadline in the jurisdiction) is not prohibited, but it is not recommended (OECD, 2017, point 24). The competent authority of the Slovak Republic shall send CbCR by automatic exchange of information to the competent authority of the Member State or competent authority of the contracting state in which the Constituent Entity is resident for tax purposes or in which the Constituent En-

[34] Preamble of DAC3 para 4.

tity is subject to income tax in respect of activities carried on through a permanent establishment; this shall be done within 15 months of the last day of the fiscal year in question of the MNE group to which the CbCR relates. The exchange of CbCR with EU Member States takes place on the basis of DAC4 and with the Contracting States on the basis of the Convention (Art. 6).

3.1.5 Access of tax administrations to information about beneficial owners within the anti money-laundering legislation

DAC5, as well as DAC2, followed the Standard adopted by the OECD. Information on financial accounts also includes information on beneficial owners for these financial accounts, if the financial account is owned by a legal entity or another legal arrangement of assets. The DAC stipulates that, if the account holder is an intermediary, the financial institutions shall review that entity and identify and report its beneficial owners (due diligence). The information is obtained in the framework of the anti money-laundering Directive (EU) 2015/849,[35] which is used to identify beneficial owners. For the financial administration to be able to monitor the application of due diligence procedures by financial institutions effectively, it must have access to information obtained in the fight against money laundering. Without such an approach, it would not be able to monitor, confirm and verify that financial institutions properly apply the DAC2 Directive by correctly identifying and reporting the real owners of intermediaries.[36]

DAC5 was implemented into the national law of the Slovak Republic by Act no. 267/2017 Coll., amending Act no. 563/2009 Coll. on Tax Administration (Tax Procedure Code). Its Section 26 par. 17 (amended by Act no. 267/2017 Coll.) stipulates that the *liable person is obligated to provide the Financial Administration upon request the data obtained in meeting the obligations under anti money laundering (AML) legislation*.[37] The legislation in question ensures that tax authorities have access to the mechanisms, procedures, documents and information on financial institutions in order to monitor compliance with the financial institution's obligations regarding the identification of the beneficial owner under AML legislation,[38] thus ensuring a more effective fight against tax evasion and fraud.

3.1.6 Automatic exchange of information on cross-border reportable arrangements

The disclosure of information on potentially aggressive tax planning measures has been enshrined by the OECD in Action 12 of the BEPS Plan, which the EU followed up with the adoption of DAC6.[39] The Slovak Republic implemented DAC6 by Act no. 442/2012 Coll.

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[35] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

[36] Explanatory note general to the Act no. 267/2017 Coll. which amended the Tax Procedure Code.

[37] Act No. 297/2008 Coll. on Protection Against Money Laundering and Terrorist Financing and on the Amendment to Certain Acts.

[38] For more details about AML issue see Daudrikh (2020).

[39] Preamble of DAC6, para 4: the Commission has been called on to embark on initiatives on the mandatory disclosure of information on potentially aggressive tax-planning arrangements along the lines of Action 12 of the OECD Base Erosion and Profit Shifting (BEPS) Project.

Through this exchange of information, timely, comprehensive and relevant information on a potentially aggressive tax scheme, meaning a structure which could lead to tax avoidance or evasion, shall be provided to tax administration; moreover, this exchange of information should help to identify intermediaries who provide general or tailor-made "tax schemes" to their clients and to identify the users of these schemes / clients themselves.

Intermediaries or relevant taxpayers (if an intermediary does not exist or enjoys legal professional privilege under the national law of the Member state) are required to file information on reportable cross-border arrangements with the competent authority of the Slovak Republic, which, by means of an automatic exchange, communicates the information on the reportable cross-border arrangement to the competent authorities of all other Member States within 30 days from the last day of the calendar quarter in which the information was submitted by the liable person to the competent authority of the Slovak Republic. Recently there have been a few cases pending before the Court of Justice of the EU which deal with the issue of lawyers' legal professional privilege in connection with DAC6 obligations.[40]

3.1.7 Automatic exchange of information on the income of active sellers achieved through digital platforms

DAC7 was adopted on 22 March 2021 and is intended to ensure the automatic exchange of information on the so-called active sellers achieved from the sale of their goods and services through digital platforms.[41] The OECD has also developed Model Rules for Reporting by Platform Operators with respect to Sellers in the Sharing and Gig Economy. Although the OECD Model Rules of are *not identical to the scope of DAC7 (DAC7 is wider) in terms of the sellers on which information must be reported and the digital platforms through which information must be reported, the Model Rules are expected to provide for the reporting of equivalent information in relation to relevant activities that are in the scope of both DAC7 and the Model Rules, and which may be expanded further to cover additional relevant activities.*[42]

In a period of rapidly evolving digitalisation of the economy, this automatic exchange of information should assist tax administrations in correctly quantifying the taxable income of people selling through digital platforms without a physical presence. The intention is not only to cover the cross-border use of the platforms, but also to obtain information on domestic sellers via domestic digital platforms. To ensure this automatic exchange of information, the obligation of Reporting Platform Operators to collect and provide the competent authority of the Slovak Republic with information on Reportable Sellers who carry out relevant activities (so actively sell goods and provide services through platforms) was introduced.[43] This means any activity carried out for consideration in the following categories: *the rental of immovable property, including both residential and commercial property, as well as any other immovable property and parking spaces; a personal service; the sale of goods, and the rental of any mode of transport.*

[40] Judgment of 8 December 2022, *Orde van Vlaamse Balies and Others*, C-694/20, EU:C:2022:963, and see also Béra (2021).

[41] The issue of collective lending, which is provided through digital platforms, also known as peer-to-peer lending, is addressed in Heseková (2018).

[42] Preamble of DAC7 para 16.

[43] Explanatory note to the proposal of Act by which the DAC7 will be implemented into the Slovak national law.

DAC7 was transposed to the national order of the Slovak Republic by Act no. 250/2022 Coll., Amending Act no. 442/2012 Coll. on International Assistance and Cooperation in Tax Administration.

3.1.8 Automatic exchange of information on taxpayers using crypto assets and electronic money

In the context of another amendment of DAC (DAC8), the final text of which is still a work in progress, the EU seeks to extend the scope of the automatic exchange of information between Member States' tax administrations on information on taxpayers using crypto assets and electronic money, investing through them, as well as on revenues from or related to crypto assets and electronic money investments. The OECD has also started developing the Crypto-Asset Reporting Framework CARF), a new global tax transparency framework designed to ensure the collection and exchange of information on transactions using Crypto-Assets. The OECD has also started proposing a set of amendments to the CRS, in order to bring new financial assets, products and intermediaries into its scope, because they are potential alternatives to traditional financial products. In order to obtain as much information from relevant parties as possible and to regulate this area as well as possible, the OECD has started public consultations relating to this topic with a deadline for comments of April 2022 (OECD, 2022).

3.2 Methods of tax information exchange

The information communicated through the automatic exchange of information takes place electronically between the Member States of the EU via the CCN platform, which, according to Article 3 para 13 of the DAC, constitutes a common platform based on the common communication network (CCN) established by the EU for all electronic transmissions between the competent customs and tax authorities. The competent authorities of the EU Member States automatically exchange only the information obtained under DAC1, DAC2 and DAC4 through the CCN platform. The automatic exchange of information under DAC3 and DAC6 is ensured through a secure central register set up by the Commission, where Member States record relevant information to which the competent authorities of other Member States have access. In the event that the competent authority of the Slovak Republic also exchanges information with non-EU member countries, hence with other State Parties to the Convention, the exchange of information takes place through the Common Transmission System (CTS). This communication channel was developed by the OECD with annual financial support from the participating jurisdictions. The aim of the CTS is to exchange information securely, and it allows competent authorities to transmit information covering additional information exchanges, namely CRS, CbCR, MDR, exchange of information on request and spontaneous exchanges of information.

3.3 Benefits of automatic information exchange

The main benefit and also the main goal of introducing the automatic exchange of information is the effective *fight against tax avoidance, tax evasion and tax fraud*, which are associated with aggressive tax planning by multinational companies, but also "large" taxpayers – individuals. With the current freedom of movement, there is an increased risk of transfer of income and assets to countries where taxpayers are not residents and there is a risk that the transferred income will not be reported to the competent authorities of the country of residence, neither by the tax-

payers themselves nor by third parties – such as banks and employers. A benefit of automatic exchanges of information can be the *assessment of the correctness of the submitted tax return* and *an assessment of the correctness of the tax levied*, which, however, does not automatically mean the generation of additional tax revenues for the state budget. Informing taxpayers of the existence of an automatic exchange of information can also have a *deterrent effect* on those who would like to avoid their tax obligations by transferring income/assets to other Member States/ Contracting States. This effect could contribute *to voluntary tax compliance by taxpayers*. Administrative cooperation in the form of the exchange of information should also aim to *reduce harmful tax competition by ensuring transparency in the tax rules of the Member States*. The general objectives of administrative cooperation are to contribute to the proper functioning of the internal market, to protect Member States' tax revenues and to increase fairness in the tax system. However, the Commission has stated on several occasions that its main objective is to increase the transparency of tax rules, as opposed to reducing harmful tax competition, which is also reflected in the preambles to the DAC amendments.[44]

3.4 International assistance in the recovery of tax claims

International cooperation/assistance means the exchange of information necessary for recovery and delivery of documents related to tax recovery, securing a claim or other acts related to recovery on the basis of reciprocity between the competent authority of the Slovak Republic and the competent authority of another EU Member State and the competent authority of a State Party to a Convention.

The recovery of claims between the Member States of the European Union is ensured on the basis of Council Directive 2010/24 / EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties and other measures (Directive on recovery of claims), which was transposed into our Act no. 466/2009 Coll. on International Assistance in the Recovery of Certain Financial Claims and on the Amendment of Certain Laws.

With non-member states of the European Union, recovery of tax claims is ensured on the basis of the Convention, which is also enshrined in Act no. 466/2009 Coll. The Slovak Republic is a signatory to the Convention, which results from the Notification of the Ministry of Foreign and European Affairs of the Slovak Republic no. 461/2013 Coll.. As of 22 December 2021, this Convention has been signed by 144 jurisdictions, some of which have entered reservations[45] under Art. 30 par. 1 letter (b) of the Convention, as a result of which they do not provide administrative assistance in the recovery of a tax claim or administrative sanction, in respect of those taxes specified in the reservations. If one State reserves the right not to provide any form of administrative assistance in the recovery of certain taxes (which is stated in the reservations), the other State shall not provide that State with administrative assistance in respect of those taxes, because under the Convention there is a need for mutual administrative assistance, which, according to the OECD Explanatory Memorandum, means on the base of reciprocity.

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[44] Report from the Commossion to the European Parliament and the Council on overview and assessment of the statistics and information on the automatic exchanges in the field of direct taxation, COM/2018/844 final, 13; and also see Commission staff working document evaluation of the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, SWD/2019/327 final, 14.

[45] List of Declarations, Reservations and other Communications, available at: https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=127

Assistance in the collection of taxes may also be provided on the basis of Article 27 OECD model Tax Convention, which should also ensure the recovery of tax claims in bilateral relations. Its Art. 27 par. 1 reads as follows: "*The Contracting States shall lend assistance to each other in the collection of revenue claims. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.*"

4 Conclusions

First of all, we can conclude that the general goal of exchanging information is to increase the transparency of the tax rules and to reduce harmful tax competition.

The aim of the paper was to map the forms of interaction in horizontal institutional relations and vertical institutional relations in the regulation of tax law and the financial market. Based on the analysis of the current legal situation in Slovak tax law and financial market legislation, it can be stated that their interaction is reflected in the anchoring of cooperation between financial administration authorities (or tax administrators) and financial market entities. In particular, the cooperation between financial administration authorities (or tax administrators) and (i) the financial market supervisory authority (within the basic procedural regulation for the exercise of financial market supervision, i.e., the Financial Market Supervision Act) and (ii) the central bank (according to the legal framework of the Central Bank Act, i.e., the Act on the National Bank of Slovakia) are regulated. In both special cases, an identical entity acts, as the supervision of the financial market in the Slovak Republic is ensured by the central bank. The general framework for cooperation with the central bank does not take into account the specifics of cooperation with tax authorities.

Cooperation and interoperation, as manifestations of the interaction between tax law and financial market legislation, pursue several objectives: not only tax administration, prevention and detection of tax crimes and the elimination of tax evasion, but even the acquisition of tax information for the purposes of financial market supervision. Achieving these tasks must be distinguished according to which tax authority the data are to be provided (whether it is the Financial Directorate of the Slovak Republic, Criminal Office of the Financial Administration, tax office, customs office, municipality as tax administrator), or whether they are provided to the supervisory authority.

As mentioned in the paper, existing financial market regulations have recently been supplemented with provisions aimed primarily at ensuring a legal framework for cooperation and interoperation with financial market entities without violating existing legal obligations, such as a banking secrecy or professional secrecy.

The paper on the other hand has also analysed the forms of administrative cooperation and it was concluded that the most effective tool to combat tax evasion and tax avoidance is to secure the automatic exchange of information between tax administrations of EU and also non-EU member states. The exchange of information and international cooperation on a global level is secured by OECD legal acts, such as the OECD Model Tax Convention, BEPS Plan and also the Convention, and on the EU level there are Directives (e.g., DAC1 – DAC8 and the Directive on recovery of claims). All these acts and documents affect the legal order of the Slovak Republic. It is given by the fact that the Slovak Republic, as a member state of the EU, has to transpose directives into its national law and also by the fact that the Slovak Republic is a member of OECD and signatory to the Convention.

The extent of automatic exchange of information is still growing and expanding. The exchange of information has been constantly adapted to the needs of the time and responded to

the constantly evolving practices of aggressive tax planning. The Slovak Republic is receiving much information via automatic exchanges of information and it is a must for the Slovak Republic to use them effectively.

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