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February 2024

Editorial

By February, it has usually become pretty clear how this new year's resolutions will turn out. We can see already which did not survive Quitter's Day (the second Friday in January) and in which we've so far managed to persevere. This year, both employers and employees have been prescribed a new year's diet as part of the consolidation package. Unfortunately, this has been accompanied by uncertainties and questions about how to apply the new dietary measures in practice.

In February's issue of Tax and Legal Update, we cover areas that appear to become clearer. You can read about the General Financial Directorate's explanatory information on the application of changes in VAT, and we also help you find your way around the changes in the treatment of employee benefits. Since the beginning of the year, the whole area has been something of a labyrinth, as our tax experts aptly describe.

It seems that the Ministry of Finance has also entered the new year with a resolution – to bring the new Accounting Act into force. The new law brings reporting closer to international standards, with some entities switching to IFRS altogether. Here, too, some questions remain, as it is not yet clear how the changes will be reflected in the tax area.

Our litigation team has brought to a successful end a case involving a supplier of gas at a virtual trading point. I am happy that the company trusted us and stood by their opinion despite the unfavourable decisions of the financial administration. Thanks to this, we could see the Supreme Administrative Court take our side.

For our Tax and Legal Update team, the new year's resolution is to keep bringing to our readers useful news in an engaging way. The new "Daňovky on Air" broadcast will help with this, as it summarises and comments on the most essential news in 30 minutes. Its first broadcast will take place on Thursday, 15 February at 9 am. Join us here!

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Practical information on changes to VAT rates

In mid-January, the General Financial Directorate (GFD) issued two pieces of information on the practical application of changes to VAT from 2024. In this article, we focus on the Information on VAT Rate Changes. Another piece, the GDF's Information on the Determination of the Tax Base where an Advance Subject to a Different Reduced Rate Was Received in the Previous Year was published at the end of January.


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VAT rate changes from 2024

From 1 January 2024, the Czech Republic has only two VAT rates: a reduced rate of **12%** and a basic rate of **21%**.

The information lists **the items that have been reclassified** from the reduced rate to the standard basic rate - bicycle repair services, household cleaning services, draft beer, hairdressing services, textile and shoe repair services, firewood, cut flowers, municipal waste collection and transportation and related services, services of authors and performers, and scheduled air mass transportation. In contrast, non-regular land mass transport is now subject to the reduced rate, which will be of interest to tour operators (including those organising school trips or cultural bus transport) and employers who provide transport services to their employees. The information explicitly points out that this transport does not include taxis or similar alternative transport services.

Another major change in VAT rates is t**he reclassification of soft drinks** from the reduced to the basic rate. Exceptions are selected beverages and potable (tap) water, which remain at the reduced VAT rate. The selected beverages are milk and liquid dairy products further defined in the VAT Act (e.g., flavoured dairy products or their plant-based alternatives). The reduced rate can be applied to potable water supplied via taps or tanks. The information specifies that, e.g., the addition of mint as decoration does not preclude the application of the reduced VAT rate. Conversely, mint lemonade would be considered a drink subject to the basic rate since here, the water is flavoured. Coffee, irrespective of the amount of milk added, is a basic VAT rate beverage. However, **the line** between coffee-flavoured milk drinks and coffee with milk may in practice not be entirely clear.

Ready-to-feed follow-on baby food, despite its substantial water content, is subject to a reduced VAT rate. Similarly, plant products in their dry state (coffee, tea, etc.) and syrups or powdered beverages constitute foodstuffs subject to the reduced rate.

As the reduced VAT rate will continue to apply to food services, when serving beverages in a restaurant, it will be necessary to separate drinks from the food service. If, e.g., the menu does not allow this, the basic tax rate shall apply to the whole supply. A similar procedure should be applied to the provision of accommodation services, with the exception of accommodation with breakfast included in the price (here it will be an ancillary supply subject to the same VAT treatment as the main supply). The GFD also draws attention to its separate Information on the Application of VAT to Activities Provided in Hotel Establishments, the principles of which remain in application.

The application of the reduced rate to **single-use medical devices**, where the assessment may be problematic in practice, is only very marginally addressed in the information and provides no guidance on the meaning of a single use.

The VAT exemption for the delivery of books shall also apply to incidental expenses such as those incurred for books packaging and transportation. It is possible to request a binding assessment of the correct VAT rate and exemption for books. However, the time limit for processing the request is 90 days. As many such requests are to be expected, the GFD will most likely use the full length of the time limit to respond.

Determination of the tax base when VAT rates change

Uncertainties have in particular arisen concerning **advances for supplies where the rate changed on 1 January 2024**, i.e., the transfer of supplies between rates or supplies subject to a reduced rate.

The information confirms the application of the relevant provisions of the VAT Act concerning the rules for settlement of advances, which vary depending on its result.

Generally, on the date of taxable supply, the difference between the total consideration for the supply excluding tax and the sum of the advances received (less tax) is taxed. The result (tax base = taxable amount) may be either positive (underpayment) or negative (overpayment).

In summary, if there is an underpayment, the remainder of the tax base shall be taxed using the new tax rates; if there is an overpayment, the original tax rates shall be used for the settlement. In the case of multiple advances, it is necessary to proceed from the last advance paid. The information also gives some practical examples of how to proceed with settlements (including the supply of books).

How to apply VAT on selected passenger cars in 2024?

In mid-January, the General Financial Directorate (GFD) issued two information pieces on the practical application of changes to VAT from 2024. In this article, we focus on the Information on the VAT Deduction for Passenger Cars with a Purchase Price of more than CZK 2 million.

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For **selected passenger cars** (category M1 with a purchase price of more than CZK 2 million), which are part of the taxpayer's fixed assets, the right to deduct VAT is limited to **CZK 420,000**. If the taxpayer is obliged to claim the deduction only on a proportionate basis, the VAT deduction limit shall be reduced by the relevant coefficient.

Vehicles for which an advance has been received whose amount corresponds to normal practice and was subject to taxation before the end of 2023 shall not be subject to this limitation. Such vehicles will also not be subject to the limitation of VAT deduction where subsequent technical improvements to these vehicles have been made (the same applies to technical improvements to selected vehicles acquired before the end of 2023).

In general, however, when assessing whether the taxpayer is entitled to deduct VAT on the cost of technical improvement, it is necessary to consider the originally claimed VAT deduction (the VAT amounts are to be added together when assessing the limit).

The limitation on the right to deduct does not apply to the acquisition of vehicles that are not part of the taxpayer's fixed assets (e.g., inventories). If the vehicle is subsequently classified as a fixed asset, the taxpayer is obliged to reduce the VAT deduction in the VAT return for the period in which the vehicle was classified as a fixed asset.

Any sale of a vehicle for which the VAT deduction has been limited does not give rise to the right to adjust the VAT deduction above the limit.

An **exception** is made for taxpayers who acquire vehicles for the purpose of providing them via finance lease arrangements, as the vehicles then become part of the fixed assets of the customer who is already subject to the limitation. A limitation on the part of the lessor would thus in fact lead to double taxation (of amounts above the limit). The exception does not apply to vehicles provided via operating lease arrangements.

The right to deduct VAT claimed in the amount up to the limit (with the tax document showing a higher tax) is shown in the 'full entitlement' column of the VAT return (assuming that the entitlement reduced by the coefficient is not applied). The tax base will be declared in full (the purchase price of the vehicle) in the VAT return.

The information also provides practical examples of the above rules. Unfortunately, however, it does not address the problematic interpretation of the law in the case of demo cars that are often classified as tangible fixed assets by car dealers.

Tax labyrinth of employee benefits - most discussed topics

Below, we summarise the problematic areas discussed during our January seminar focused on employee benefits and meals from 1 January 2024. Most questions were related to topics causing difficulties for employers in practice.

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Employer contributions for employee meals and meal allowances on business trips

Employers appear to mix two separate areas, namely the provision of contributions for meals for employees and the provision of travel meal allowances on business trips. However, just as until the end of 2023, these are completely **separate schemes** governed by separate rules.

Business travel arrangements are governed by the Labour Code. Meal allowances on domestic or foreign business trips up to the amount provided for in the Labour Code are not subject to tax on the employee's part.

Employer contributions for employee meals are by their nature employee benefits (employers are not obliged to provide them) and exempt from tax under the conditions of the Income Tax Act, one of which being that the employee be not entitled to a travel meal allowance during the work shift.

Meals in company canteens

Given the employee’s exemption limit applicable to contributions for meals, many employers **will have to determine the value of meals** - either for in-house canteens run by the employers or for canteens on the employers’ premises where meals are provided by other caterers.

A new complication arises if former employees such as pensioners or employees on maternity or parental leave may take meals in the company canteen: these groups will no longer meet the condition for exemption.

Scope of leisure related benefits

For leisure related benefits, only the amount to which they are tax exempt on the employee's part is subject to limitation from 2024. The limit is half of the average wage (i.e., CZK **21,983.50** for 2024). Please note that there has been no factual change to the types of benefits covered by this scheme.

Non-financial benefits for any purposes other than those defined in that provision are not included in the limit of half the average wage (i.e., CZK 21,983.50 for 2024). If they are not eligible for any other exemption or not excluded from the subject matter of the tax, they will be included in the employee's taxable income.

Donations to employees

The abolition of the exemption of donations from tax on the employee’s part from January 2024 raises several questions for employers. It appears that even before the amendment to the Income Tax Act the procedure concerning donations was often applied incorrectly. Until the end of 2023, it was possible to exempt a **non-monetary gift of up to of CZK 2,000** on the employee's part if it was provided from non-deductible expenses or from after-tax profit and if the purpose defined in the Decree on the Cultural and Social Needs Fund was fulfilled (e.g., work anniversaries of 20 years, life anniversaries of 50 years, the first granting of an old-age pension or disability pension for third degree disability, etc.). Under this provision, even before the end of 2023 it was not possible to exempt, e.g., Christmas gifts to employees. From 2024 onwards, regardless of the purpose of the donation, any gifts to employees are taxable unless they are exempt from tax under other provisions of the Income Tax Act.

(Anonymous) counselling for employees

One of the new employee benefits today is the possibility for employees to use online or telephone counselling of various kinds, often provided on an anonymous basis.

However, if such counselling is not meant to ensure working conditions for the performance of work or training

in connection with the performance of work, it will be taxable on the part of the employee. Employers will have to deal with how to identify and value the employee's non-financial income and how to keep records of the use of the service by individual employees.

Teambuilding events

A much-debated topic among many employers is the organisation of teambuilding events, **the purpose** of which can be wide-ranging. The nature of the event will have an impact on taxation on the employee’s part. The amendment does not introduce an approach different from the one that applied before it came into force. Only occasional cultural and sporting events organised by the employer for a limited number of participants are eligible for special treatment.

If you have any uncertainties regarding employee benefits, please do not hesitate to contact us. We will be happy to advise you on the correct benefits set-up or revise your company's existing internal policy to comply with current tax legislation. Or, as part of our advice, we can provide you with a recording of the seminar.

Accounting

Approval process begins for new Accounting Act

The Ministry of Finance has published a draft of the new Accounting Act, for which the comment procedure has been completed. According to the proposal, the law should enter into effect on 1 January 2025. The bill will now be discussed by the government's legislative council and then submitted to the government for approval. Of course, its wording may still change as it goes through the legislative process. The act is expected to be passed in the autumn at the earliest.

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The new Accounting Act is an extensive regulation (draft Accounting Act). Here are some of the changes it should bring, compared to the current law:

- It mainly focuses on financial reporting, i.e., on the preparation of financial statements that give a true and fair view of an entity’s financial position and financial performance, not so much on the keeping of accounts.
- It defines a number of principles which are based on international accounting standards and which, e.g., give preference to (the same) economic content of (different) legal facts (the same approach to the ownership of things and to their acquisition in the form of financial leases: in both situations, the things are treated as the entity’s assets).
- It extends the use of international standards as adopted by the European Union in account keeping and the preparation of financial statements. It distinguishes between the mandatory use of international accounting standards, e.g., by financial institutions and funds, and the voluntary use by entities that are included in consolidations under international accounting standards (or whose tax administrator is the Specialised Tax Authority).
- It narrows down the scope of entities: individuals, branches of foreign entities or certain non-profit organisations should not be obliged to keep accounts under this act, although they will have to keep some form of accounts to determine their tax base.
- It extends the possibility of using a foreign currency as an accounting currency to currencies other than euros, dollars, and British pounds, as long as they meet the functional currency conditions.
- It proposes to increase the thresholds for statutory audits to entities with assets amounting to more than CZK 120 million, an annual net turnover above CZK 240 million, and an average number of employees of 50 (at least two criteria must be met).
- The published document also includes the basic theses of the implementing regulations allowing to reflect the changes in accounting methods in the preparation of an amendment act (including an amendment to the Income Tax Act), which is currently being prepared and should enter into effect together with the new Accounting Act.

However, only the final form of the amendment act, and in particular the amendment to the Income Tax Act, will show whether the aim of reducing the administrative burden for accounting entities will be fulfilled.

Principles of tax administration: free evaluation of evidence and legitimate expectations

Tax proceedings usually involve a large amount of evidence: some is provided by the taxpayer, other by the tax authority. It is on the tax authority to assess the evidence and evaluate its relevance and significance. But can it do so in an arbitrary manner?

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Free evaluation of evidence

No tax legislation stipulates that **some evidence shall have more weight than other**. For example, when you submit photographs in tax proceedings or propose the questioning of a witness, the tax authority may not automatically give them the same weight as it does to accounting documents. It is therefore entirely up to the tax authority to decide what significance to give to each piece of evidence. However, they cannot act arbitrarily; instead, they must always give logical and unquestionable reasons why they consider certain evidence to be more or less relevant/significant than others.

It is also not easy for the tax authority t**o refuse to take evidence** proposed by the taxpayer. They must always justify why they did not do so. Typically, they do not have to take redundant evidence (i.e., where such evidence is intended to clarify facts that have already been reliably established in the proceedings) or evidence that cannot be taken (e.g., the questioning of a deceased witness).

Even if the tax authority considers any of the evidence not to be credible, they must **provide** convincing and reviewable reasons for its conclusions. The tax authority must assess any evidence both individually and in relation to each other. If they disregard or fail to take any of the evidence, taxpayers may seek remedy, e.g., by appealing to a superior tax authority.

Legitimate expectations

The tax authority must consider not only all the evidence but also decisions made in similar cases, **as it is bound by its own decision-making practice** that must be consistent, coherent, and constant. Therefore, if the same tax authority has already decided another case of yours with similar features, they should take their earlier decision in that case into account.

However, you cannot rely on the tax authority to automatically consider the decision of another tax authority. At present, **there is no common database** that would allow the taxpayer to find out how other tax authorities have ruled in similar cases. Therefore, if you know that another tax authority has ruled in favour of the taxpayer in a similar case, it is advisable to draw the tax authority's attention to this in the proceedings and, if possible, provide it with the decision in question.

Anti-trust office wants access to location data

The Office for the Protection of Competition is proposing several changes to competition law that would significantly strengthen its powers in detecting and punishing cartel agreements. Access to telephone location data, random and preventive investigations, and the possibility to prohibit even the mergers of competitors not meeting the turnover criteria are only some of them.

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Access to location

The Office for the Protection of Competition, or the anti-trust office, proposes to be able to request **traffic and location data** from mobile operators, thereby, like the police, gaining access to the location of telephones of the managers and employees of competitors. This, so the office argues, would make it easier to prove cartel agreements (e.g. secret meetings between competitors). In addition, the office demands access to other data collected by various state authorities and institutions, including data on public contracts.

More sectoral and on-site investigations

Currently, the office can intervene in markets where competition is distorted by cartel agreements, abuse of dominance, or mergers of competitors. However, it would also like to **have the power to intervene in markets where competition is distorted otherwise.** This includes oligopoly markets (e.g., food markets) and markets with a strong network effect (e.g., digital markets). The proposed new rules should allow the office to carry out sectoral investigations in these markets, and to impose remedial measures, e.g., to review the heightened incidence of mergers in a given market, to impose the obligation to provide access to networks, infrastructure or data, or to disclose certain information. As a last resort, the office could even order the sale of part of a business.

Moreover, to facilitate the investigation of cartel agreements, the office wants to be able to carry out r**andom or preventive on-site investigations**. It is to be expected that such power would lead to a significant increase in the number of raids of individual competitors, and thus the necessity to always be prepared for such situations (e.g., to have internal regulations on how to respond to such situations, or to have a lawyer specialising in competition law readily available).

Further powers

The office would also like to be able to make the life of competitors difficult in mergers and acquisitions. At the moment, the office must be notified of mergers of competitors that exceed set turnover criteria. Following the EU example, t**he office is demanding a 'call-in model'**, allowing them to also request notification from competitors who do not meet the turnover threshold. The office would thus be able to prevent the implementation of mergers where turnover criteria have not been reached.

Finally, the office proposes **financial rewards for whistleblowers** (individuals/natural persons) who report anticompetitive conduct and, the other way round, penalties for individuals/natural persons who have been involved in violations of competition law.

To date, no bill to introduce the above changes has been published. So far, the office has only made their intentions known on their website. We will continue to monitor the changes and inform you in more detail in a future issue of Tax and Legal Update.

Jubilee for health insurance debtors

Another debt jubilee is being prepared, this time focusing on health insurance. A group of deputies has submitted to the chamber of deputies a bill on the extraordinary remission of penalties on public health insurance premiums, under which penalties and enforcement costs will be forgiven if outstanding premiums are paid. The law is to apply only to individuals/natural persons.

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This debt relief initiative builds on the previous jubilee years, which saw, among other things, a remission of tax and social security debts. In this case, the bill focuses on natural persons' (entrepreneurs or individuals with no taxable income) debts to health insurance companies that are being recovered in an enforcement procedure under the Tax Procedure Code. In practice, it will therefore mainly affect clients of VZP CR.

Under the bill, the extraordinary remission would apply to:

- any penalty on public health insurance premiums that has not been paid as at the date of filing the application for remission and for the recovery of which an enforcement procedure has been ordered by 31 December 2023 at the latest
- any costs of enforcement procedure relating to the recovery of outstanding premiums or unpaid penalties which have been determined by an enforcement order issued by 31 December 2023 at the latest and which have not been paid by the date an application for remission is filed.

As a prerequisite for the extinction of the unpaid penalties and enforcement costs, the debtor must submit a written application for remission to the appropriate health insurance company between **1 July 2024 and 30 November 2024**. In addition, the premiums to which they relate must be paid by 31 December 2024 or by the due date of the last instalment (if the outstanding premium exceeds CZK 5,000, debtors may spread the payments over 12 or 36 monthly instalments, depending on the amount of the debt).

Individuals/natural persons for whom penalty has been assessed that have not yet been subject to enforcement proceedings may also apply for remission under the Public Health Insurance Act. Once the outstanding insurance premiums have been paid, the law allows to apply for the 'removal of the harshness of law,' and if the debtor substantiates the failure to pay the premium with relevant reasons (e.g., their health, financial or social circumstances), the penalty may be reduced (usually by at least 50%) or waived completely.

The Act on the Extraordinary Remission of Penalties on Public Health Insurance Premiums should enter into force on 1 July 2024.

RSUs as employee remuneration option

Abroad, RSUs (restricted stock units) are a relatively common and effective tool for rewarding employees. They are becoming increasingly popular in the Czech Republic where, in a highly competitive labour market, retaining the best employees is a challenge for all companies.

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An RSU is a non-transferable, contingent equity right that entitles employees to receive a certain number of shares in the company, usually upon the achievement of set targets (KPIs) or after the elapse of a specified period of time. The setup of these plans varies widely in practice, but by default, unlike traditional stock plans, RSU schemes do not require employees to purchase shares. RSUs are granted to employees free of charge, which is an attractive incentive for employees in particular. Also, in the period before they acquire the shares, employees are usually granted the right to receive dividends equivalent to already owning the promised shares.

The vesting period for RSU plans is usually several years, which encourages employees to stay with the company to achieve the full benefit. RSUs can be linked to KPIs, ensuring that employees are rewarded for their contribution to the company's growth.

When implementing RSUs, it is essential to take the following basic steps:

- develop a plan - a framework document describing the rules of the scheme
- conclude award agreements with employees, which set out the terms and conditions, and the manner how the promise of shares is to be exercised.

In the Czech Republic, we more often come across a situation where **RSU plans are implemented by foreign companies for the employees (or board members) of their Czech subsidiaries**. In such cases, the RSU plans and the rights and obligations arising from the securities granted are governed by foreign law. Nevertheless, it is necessary to observe the rules set by Czech law, such as the requirement for the equal remuneration of employees or the board members' remuneration being subject to approval.

In the less common situation where a RSU or similar plan is being implemented by a **Czech company**, it is also necessary to consider amending the company's articles of association or statutes (should they contain restrictions for the issuance of such shares or interests), to regulate the rights and obligations of shareholders as regards transferring the shares (interests) to another person, and, possibly to enter into an agreement with the new shareholders on exercising their rights arising from the shares granted.

RSUs go beyond the common cash bonus or salary increase, as they give employees a tangible sense of ownership in the company. This aligns the interests of employees with those of the shareholders, fostering a stronger employee commitment to the organisation's long-term growth. When employees perceive themselves as co-owners, they are more likely to take responsibility for their work, make strategic decisions, and contribute to the overall success of the company.

New call under TRANSPORT 2030 programme

The Technology Agency of the Czech Republic has announced the preliminary parameters of the second call for proposals under the Transport 2030 programme. You can get support for applied research and innovation in transport.

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The call for proposals will be launched on 28 February 2024, and applications will be accepted from **29 February to 24 April 2024**. The call is intended for small, medium and **large enterprises**. The maximum amount of support per project is EUR **40 million**, the maximum aid intensity is limited to 70% of eligible costs (for large enterprises, usually 25-65% depending on whether the project involves experimental development or industrial research, and whether the project is carried out in effective cooperation). Eligible costs are personnel costs, subcontracting costs, indirect costs, and other direct costs.

Applicants should choose from one of the following project objectives:

- sustainable, accessible and safe transport
- automation, digitisation and technologically advanced transport
- low emission and green transport.

The call for proposals is aimed at all modes of transport, i.e., land, water, and air, as well as all types of means of transport and transport infrastructure.

The duration of the project must not exceed 48 months. The latest date for completing the project is December 2028. **The output** of the project must be, e.g., an industrial design, utility model, prototype, functional sample, patent, software, or pilot plant.

We will keep you informed of further developments.

Czech Republic prolongs temporary protection and extends residence permits for applicants in Ukraine

The Ministry of the Interior has launched a system for the extension of temporary protection, allowing Ukrainian refugees to prolong their legal stay until 31 March 2025. At the beginning of the year, the range of residence permits that can be applied for at Czech embassies in Ukraine was also significantly expanded. Czech employers will be pleased to hear that the previous restrictions on residence cards with work permits have been relaxed.

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Extension of temporary protection

Similarly to last year, temporary protection will be extended in two steps. First, the foreigner must register through the portal of the Ministry of the Interior. This will automatically extend their temporary protection status until 30 September 2024 even though visa stickers state to be valid only until **31 March 2024**. It is therefore advisable for foreigners to always carry a registration certificate that can be generated via the portal. The latest deadline for this step is 15 March 2024, which is shorter than last year.

Subsequently, it is necessary to obtain a new visa sticker in a personal visit to the Asylum and Migration Policy Department of the Ministry of the Interior. Applicants must make an appointment and present a valid travel document and proof of accommodation. The new sticker will extend the validity of the temporary protection until **31 March 2025**.

Employers of foreigners must not forget their obligation to notify the relevant branch of the Labour Office of the Czech Republic of any extensions (including both the above mentioned) of their employees' temporary protection status.

Extension of the residence permit and visa agenda at embassies in Ukraine

From **1 January 2024**, further residence permits and visas can be applied for at the consulate in Lviv and the embassy in Kiev. As regards residence permits allowing foreigners to work, in addition to the blue card, i.e., a work permit for highly skilled workers, it is now also possible to apply for an intra-company transferred employee card, and for a classic employment card. The foreigners no longer have to be holders of temporary or international protection in another EU member state or to have at least applied for it. However, foreigners who have been granted temporary or international protection in the Czech Republic cannot apply. Also, for the employment card, the applicant must be a participant in one of the government's economic migration programmes. Several conditions must be met to be included in the programme: for instance, applicants residing in Ukraine must prove that they are legally allowed to leave the country.

The range of visas that can be applied for this year has also been expanded to include, e.g., an extraordinary work visa. It is only available to applicants residing in Ukraine and allowed to leave the country.

Annual quota for accepting applications

All applications submitted in Ukraine that are included in government programmes are subject to annual quotas (500 applications in the Highly Skilled Employee and Key and Scientific Personnel programmes in both Kyiv and Lviv; 11,000 in the Skilled Employee programme in Lviv and 1,100 in Kyiv; and 1,500 exceptional work visas in Lviv).

The application numbers have been spread evenly throughout the year, so the embassies will not accept more applications than set for the given month.

SAC's landmark verdict on deadline for assessing tax

The extended chamber of the Supreme Administrative Court (SAC) has dealt with the conflict between the new and old legal regulation of tax assessment deadlines. The SAC opposes existing case law according to which the 10-year time limit for tax assessment for old taxes shall be suspended even if court proceedings were initiated after 1 January 2011 when the Tax Procedure Code was already in force.

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In practice, we can still see cases dealing with the correctness of assessment of tax for 2010 and prior years. At that time, the Act on Administration of Taxes and Duties was in force, which did not contain comprehensive rules for calculating time. The Administrative Procedure Code was thus applied, providing that the deadline in which a tax administrator may assess tax shall not run during court proceedings. However, the Tax Procedure Code makes it clear that the time limit for assessing tax always ends ten years after its commencement, with court proceedings having no effect on this ten-year maximum.

The Tax Procedure Code contains transitional provisions that regulate the relationship between new and old legislation. Some courts, including the SAC, have held that the 10-year time limit for tax assessment shall be extended by court proceedings even if they were initiated after 1 January 2011 (when the Tax Procedure Code was already in force). Dealing with such dispute, the ninth chamber of the Supreme Administrative Court (SAC) wanted to depart from the SAC's established case law; so they had no choice but to refer the case to the extended chamber for consideration.

Existing case law unconstitutional

In its November judgment No 9 Afs 95/2021, the extended chamber upheld the opinion of the ninth chamber. The extended chamber summarised that the Tax Procedure Code regulates the running of time limits fully and exclusively, and therefore the rules on time limits under the Administrative Procedure Code no longer apply in tax matters.

The transitional provision of the Tax Procedure Code clearly stipulates what legislation to apply as regards time limits for tax assessment. It states that the effects of legal events that occurred before the Tax Procedure Code entered into effect shall be assessed under the old legislation. It follows that if tax-related court proceedings were initiated before 31 December 2010, the 10-year maximum period for the tax assessment shall be suspended and not run during the court proceedings. Conversely, if court proceedings were initiated after 1 January 2011, the time limit rules under the Tax Procedure Code shall apply, and therefore the maximum possible length of the tax assessment period shall not be extended.

According to the extended chamber, the wording of the transitional provision of the Tax Procedure Code is unambiguous and the existing case law is unconstitutional as it contradicts the law, deforms it and puts taxpayers at a disadvantage. The tax administration has declared that they will follow the new legal opinion in their practice.

SAC on actual supplier of gas on virtual trading point

The Supreme Administrative Court (SAC) has dealt with a case of determining a gas supplier when trading in this commodity on a virtual trading point in Germany. The SAC confirmed that the supplier was the person that declared themselves as the supplier. The SAC emphasised that when assessing similar cases, it is always necessary to consider all specificities of the trading, including its technical aspects.

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In a case involving trading in natural gas on a virtual trading point, the Supreme Administrative Court (SAC) sided with the taxpayer and overturned the unlawful decisions of the administrative court and the Appellate Financial Directorate. The SAC concluded that the taxpayer had indeed purchased natural gas from a Czech supplier, as they had claimed from the beginning, and **were therefore entitled to deduct VAT without having to pay the VAT themselves under the reverse charge mechanism** (whereby the liability for VAT payment is transferred from the seller to the buyer). The tax administration had claimed that the supplier was a foreign person which had been registered with the market operator.

To resolve the case, t**he specific regime of gas trading on a virtual trading point was the key**. Unlike in normal trading, there is no physical delivery of the gas upon its sale. Once the trade is executed, only the registered owner changes while the gas in fact remains in the transmission system. This places particular demands on proving the identity of the supplier. The trade is executed by entering identification data (unique counterparty code, quantity, gas day).

The Appellate Financial Directorate disputed that the gas was supplied to the taxpayer by a Czech company. The directorate argued that the actual supplier of the gas was the supplier's UK-based fellow subsidiary, which was registered with the market operator and in whose name the matching symbol was registered. However, this could not be verified with the operator at the time. When purchasing gas from a person from (at that time) another EU member state, under the reverse charge mechanism, VAT must be paid by the taxpayer themselves. The customer thus paid VAT twice: once in the price of the gas to their supplier, and the second time to the state, according to the Appellate Financial Directorate's decision. This was also confirmed by the administrative court.

The taxpayer disagreed with their conclusions as they were convinced all along that the quantity of documents they had and demanded before concluding the trade with the Czech company had been sufficient to prove that they really had traded with the Czech company and not with another entity of the group. And the SAC agreed. According to the SAC, it was clear from the evidence presented that the taxpayer had traded with a Czech company and that the Czech company was able to supply them with natural gas on the exchange (albeit using a trading account of another entity).

We are pleased that the taxpayer trusted our litigation team and stood by their opinion despite the adverse decisions of the financial administration. As a result, we could see the SAC confirming that our opinion was correct from the outset.

SAC on simultaneous technical improvement and repair of real property

In the tax administrator’s opinion, a company carrying out extensive structural modifications to a real property should treat all the work collectively as a technical improvement, and not part of it as repairs. The Supreme Administrative Court (Judgment No. 6 Afs 273/2022-43) disagreed with the tax administrator's generalising conclusions and held that it was necessary to examine the mutual interdependence and time sequence of the work carried out.

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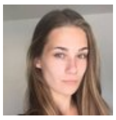

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The company carried out extensive construction work (renovation) on a hotel building (technical improvement). In addition, they also carried out repairs of the heating system, carpeting, and CCTV system. The company insisted that the repairs involved merely removing physical wear and tear and, as the work was carried out in other parts of the hotel, there was no connection with the technical improvement.

However, the tax administrator concluded that the renovation carried out was so extensive that all the work had to be regarded as a technical improvement, also because the company had not sufficiently proven that it was a mere repair.

The SAC r**eiterated two possible approaches to the situation**, referring to its earlier case law:

1. If construction work is carried out within a single construction project and is aimed at changing the technical parameters and the manner of use of the property, it is not necessary to examine the nature of each partial repair individually.
2. The other view is the opposite - repairs and a technical improvement can be carried out within one investment project.

So how should we proceed? According to the SAC, the line between repair and technical improvement must be assessed on a case-by-case basis, using sufficiently conclusive evidence.

In view of the evidence provided and the overall course of the proceedings, the SAC in its judgment granted the objections and sided with the company. The SAC believed that it was not correct to assess the entire investment project simply as a technical improvement and agreed with the company that the work being assessed (the repairs) had no material or temporal connection with the technical improvement carried out on the building. Even the state of disrepair of the property was not in itself decisive for the work to be assessed as a technical improvement.

Moreover, the SAC found the tax administrator's procedure wrong as the company was not given the chance to prove the technical condition of the equipment and the materials used for the repair. The tax administrator did not allow proposed witnesses to be examined and denied the company this opportunity arguing that the witness statements were redundant in this case.

The SAC judgment confirms that in the context of structural modifications of real property, each case must be examined on an individual basis, and it is not possible to classify all work carried out within a renovation automatically as technical improvement.

In practice, it turns out that the line between repair and technical improvement is often blurred. Companies thus must have **sufficient evidence specifying** the technical parameters of the repairs.

Constitutional Court on concurrence of executive service agreement and employment contract

The Constitutional Court confirmed that a management contract should be treated as an amendment to an executive service agreement subject to approval by the general meeting. If not approved, a usual remuneration shall be payable for the performance of such work. However, if a member of the statutory body has breached the duty of due care, no remuneration is payable to them.

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In the case decided by the Constitutional Court, there was a genuine concurrence of functions: one person held the position of the chairman of the board of directors on the basis of an executive service agreement, and at the same time had a management contract with the company, i.e., an employment contract for the position of CEO.

The Constitutional Court has already ruled in its earlier rulings (No. I. ÚS 190/15 and No. III. ÚS 669/17) that an employment contract is to be viewed as an amendment to an executive service agreement, which subordinates certain provisions of the agreement to the Labour Code.

Since an executive service agreement must be approved by the company's supreme body, the Constitutional Court concluded that even if the provisions of the agreement were subject to the Labour Code, the executive service agreement must be approved by the general meeting. In the present case, this did not happen, and the Constitutional Court therefore ruled that the chairman of the board of directors was not entitled to the remuneration agreed in the management contract but only to a remuneration in a usual amount.

The Constitutional Court emphasised that the statutory bodies of a company are obliged to exercise their office with due care, i.e., with the necessary loyalty, knowledge and diligence. In the event of a breach of due care, they are obliged to compensate the damage they have caused to the company, or return the unjust enrichment.

According to the court's decision, the chairman of the board of directors had breached the duty of due care, among other things, by having a variable remuneration component paid to him without having been entitled to it. The court therefore held that as a result of that breach, the chairman of the board of directors was not even entitled to remuneration in a usual amount.

News in Brief, February 2024

Last month's tax and legal news in a few sentences.

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DOMESTIC NEWS

- The Ministry of Finance has published an infographic and explanatory notes on the long-term investment product on its website.
- An amendment to the Act on the Right to Digital Services has been published in the Collection of Laws and introduces the possibility of obtaining digital copies of ID cards to serve the same purpose as physical documents, i.e., proving their holders' identity and the facts stated in ID cards. Such digital IDs will have the same legal effects as the proof of identity with a physical document, except for instances of proving one's identity to entities that are not public authorities and do not have an obligation to require proof of identity by means of a document prescribed by a legal regulation; unlike with the physical document, these entities will have the right but not the obligation to accept a digital copy.
- On its website, the financial administration explains its approach from January 2024 to be applied to the taxation of company day care provided by employers as a non-financial benefit to their employees. The tax treatment will be based on the fees charged for municipal kindergartens in the relevant locality. If the normal fee for a municipal kindergarten at a relevant place and time is CZK 1,500 per month and the employee pays CZK 500, CZK 1,000 shall be included in the limit for the exemption of this non-financial benefit from income tax. If the employee pays CZK 1,500 or more, nothing will count towards the limit. In the coming months, a legislative and technical amendment will be adopted to the Income Tax Act and this rule will be explicitly enshrined in the law.
- The financial administration has issued a notice to sellers using digital platforms. If a natural or legal person sells goods, provides personal services, leases real property or provides a means of transportation through a digital platform, such a person is required to provide necessary assistance to the reporting platform operator to fulfil their relevant reporting obligations under DAC 7 (reporting obligations for digital platform operators regarding sales made on these platforms).
- The Ministry of Finance has launched a comment procedure on an extensive amendment to the VAT Act with a comment deadline of 1 March 2024. The amendment includes both changes associated with the transposition of EU legislation (VAT treatment for small businesses and adjustment of tax rates already started by the consolidation package) and non-transpositional changes. These changes include the following areas: the right to deduct VAT upon the registration of a VAT payer; construction; tax base corrections; irrecoverable receivables; tax refunds; and the abolition of the specific treatment of internally produced fixed assets. Most of the provisions of the act are proposed to take effect on 1 January 2025, with the exception of the tax exemption for the export of goods and tax refunds to travellers from third countries (1 July 2025) and the abolition of the limitation on claiming part of the right to deduct VAT for selected vehicles (1 January 2027). The most negative impact on the state budget is expected for the change concerning irrecoverable receivables, which will cost several billion of Czech crowns per year.
- The Ministry of Finance has initiated a comment procedure on the amendment to the Excise Duty Act with the deadline for comments of 9 February 2024. The amendment proposes substantive changes based on application practice and case law (inter alia, a conceptual change to the regulation of small independent breweries, changes in the area of handling of waste oils, and a change to the procedure of setting prices of

cigarettes for final consumers). The main objective is to streamline the process of excise duty administration, reduce administrative costs, and increase legal certainty for the entities concerned. The amendment is proposed to come into effect on 1 January 2025.

FOREIGN NEWS

- During its six-month EU presidency, Belgium plans to update the list of non-cooperative jurisdictions and continue working on the UNSHELL Directive (artificial use of entities that exist only formally, i.e., shell entities), the SAFE Directive (regulation of the activities of tax enablers), and the FASTER Directive (uniform procedural approach to withholding taxes). For indirect taxes, it will continue with the preparation of the ViDA Directive (VAT in the Digital Age).
- The EU Public Country-by-Country (CbyC) Reporting Directive is expected to apply for taxable periods starting on or after 22 June 2024. Information on the implementation status in individual member states can be found here.
- The EU Minimum Tax Directive (Pillar 2) should apply in the EU in taxable periods starting on or after 31 December 2023. For an overview of its implementation in the individual member states, click here.

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