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Editorial

Astronomical summer has started, and hopefully we will finally see some real summer weather, too. So far, it has been as erratic and fast-changing as the conditions for claiming governmental support going through the legislative process.

In the previous issue of the Tax and Legal Update we asked you what form of pandemic-related governmental support you were using and what in your opinion would most help the local economy recover. It comes as no surprise that the Antivirus programme attracted most interest: 55% of all respondents have already used it, and 9% consider doing so in the future.

The possibility to carry back tax losses also met with a positive response – approximately one quarter of respondents are considering it. I personally found this option very interesting when it was first brought up; however, it remains to be seen how the final wording of the law and its specific conditions will affect the taxpayers' decisions to actually use this concept.

17% of respondents have applied, or plan to apply, for tax deferment with a subsequent waiver of interest on the deferred tax amount. One quarter of respondents have used, or plan to use, the COVID I-III and COVID plus programmes; around one tenth are considering using COVID – Rent.

According to 62% of the respondents, their firms would be helped most by tax reductions. One fifth would welcome a faster depreciation of assets, another fifth, a faster creation of adjustments. Apart from these, a reduction in the administrative burden or lower mandatory premium payments by employers were also mentioned, and our survey certainly brought a wide range of inspiring and thought-provoking ideas to light – perhaps we may even see some of them in practice!

Have a beautiful summer!

Pavel Otevřel
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Subsidies

Practical experience with applications under COVID – Rent programme

On 26 June 2020, the Ministry of Industry and Trade (MIT) launched the COVID – Rent programme. Applications should be accepted until 30 September 2020. Persons carrying out retail or performing services may apply for the compensation of rent for April to June 2020 up to 50%, or 80% where the lessor is a public institution.

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The basic parameters of the COVID – Rent programme are described in this article.

Applications should be submitted via the MIT's information system. To access the system, every applicant must create an e-Identity, an identification instrument for whose creation one of the following tools is necessary:

- eObčanka (electronic identity card)
- NIA ID (formerly the user account of the eIdentita.cz portal) or UPS
- Starcos chip card issued by První certifikační autorita, a. s.

In the case of signing in via NIA ID, it is first necessary to activate the account on eIdentita.cz, using eObčanka, a data box (only individuals) or visit any Czech Point. Then it is necessary to register with the MIT's system: the registration process is simple and can be done directly using the above link.

Considering the tools specified above, it is clear that the applicant signing in to the MIT's system must be an individual; during the registration process, individuals can specify whether they are applying on behalf of a corporate entity or as a self-employed person.

After signing in to the system, the applicant creates an application that can be saved as an unfinished version and reprocessed repeatedly. It is also possible to file an application through an authorised person based on a verified/notarized power of attorney. In such cases, the appropriate power of attorney must be attached to the application. Any affidavits and documents necessary for the successful submission of an application must be directly loaded into the system; or the applicant may only assert compliance by ticking-off individual requirements in the application.

If an applicant has several business premises, information about each one of them must be included in the system (including the address and the rent amount). The maximum amount of support is CZK 10 million and its distribution among business premises is up to the applicant, and depends on the rent amounts. Applicants must also describe the ownership structure of their business, including a list of statutory representatives and co-owners as well as entities in which applicants hold ownership interests.

If all necessary appendices and information are available, the application completion should not be very time consuming. In any case, it must be completed correctly and entirely the first time, as incorrectly completed applications may be excluded from the approval process.
Should you be interested in COVID – Rent support, do not hesitate to contact us and we will help you successfully

complete your application.

Compensation bonus for persons working under agreements to complete job / perform work outside employment relationship

The government has approved the provision of compensation bonuses also to persons performing work outside employment relationship, i.e. those who have been working based on an agreement to complete a job or an agreement to perform work resulting in their participation in the sickness insurance scheme. In the case of an agreement to complete a job, this involved gross monthly income exceeding CZK 10,000; in the case of an agreement to perform work, gross monthly income of CZK 3,000 and more.

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On 29 June, the government approved an amendment to the Act on Compensation Bonus. It will be possible to apply for a bonus of CZK 350 for each calendar day even retrospectively, for the period from 12 March to 8 June 2020.

Claiming the compensation bonus is conditional on whether, based on a given agreement, the given person contributed to the sickness insurance scheme for at least four calendar months in the period from 1 October 2019 to 31 March 2020 . Moreover, apart from the work performed based on such an agreement, such a person must not have performed any other activity as a result of which it participated in sickness insurance as an employee (excepting foster parents or social service volunteers).

Another condition is that the work could not be, fully or partially, performed as usual for reasons on the employer's part resulting from health risks or emergency measures (in particular, closure or restriction of operations, or limited demand for products, services or other outputs, etc.) or on the given person's part (i.e. quarantine or care for a child or another family member).

Under the amendment, compensation bonuses (of CZK 500 a day) will also be available to the self-employed and members of small limited liability companies who previously were not entitled to the bonus due to the concurrence of their activity with agreements to complete a job or agreements to perform work giving rise to the participation in sickness insurance.

Compensation bonuses will again be managed and paid out by the tax authorities. Applications should be submitted to the tax authority with local jurisdiction via a data box, email or personally. Along with the application, it will be necessary to submit a copy of the appropriate agreement and copies of payroll sheets or any other relevant certificates issued by the employer. The deadline for filing the application for a compensation bonus expires three months of the amendment's effective date.

The amendment is expected to be discussed by the deputies during their extraordinary session on 10 July, in a fast-track legislative procedure.

2021 tax package heading to the Chamber of Deputies

The government has submitted to the Chamber of Deputies a bill to amend tax laws in 2021. What news are to be expected in income tax? Apart from the monetary contributions for meals, the changes mainly concern bonds and reporting of income flowing abroad.

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In the April issue of the Tax and Legal Update we presented the governmental wording of the amendment to the Income Tax Act. Below, we now summarise the most important changes to be expected from January 2021.

- The amendment cancels the exemption of Czech non-residents' interest income from Eurobonds, i.e. bonds issued by Czech companies or by the Czech Republic abroad. After going through the comment procedure, the bill now also contains the exemption of income from governmental bonds issued by member states of the EU or European Economic Area, for both individuals and corporate entities. The new rules should apply to Eurobonds and governmental bonds issued after the amendment's effective date.
- The intention to change the taxation of discounted bonds remains unaltered from the original wording: under the new rules, the actual income from bonds determined as the difference between the bond's nominal value and its acquisition cost should be taxed, rather than the difference between the bond's nominal value and its issue price. The income should be taxed by individuals within their income tax returns, as part of a separate income tax base – income from capital. For foreign investors, the redemption of bonds will be subject to a tax securement of up to 1% of the nominal value if other criteria are met as well.
- The monthly administrative burden associated with the reporting of income paid to abroad that is not subject to tax or is tax-exempt should be reduced to one summary report prepared for the entire calendar year. The monthly limit for the reporting of tax-exempt income paid to abroad at CZK 100,000 should increase to CZK 300,000. It is also proposed that income reportable under the Act on International Cooperation in Tax Administration (such as income covered by GATCA or FATCA reporting) should not have to be included in the report. The reporting of income that is taxed using withholding tax and paid to abroad on a monthly basis remains unchanged.
- The employer's option to contribute to meal allowances also in monetary form remained in the bill: on the employee's part, a monetary contribution would be treated as a tax-exempt income up to 70% of the meal allowance amount; on the employer's part, as a tax-deductible expense with no limitation. The ministry thus intends to help employees as well as small entrepreneurs without their own foodservice facilities for whom the administration connected with meal vouchers would be excessively burdensome.
- The original proposal also contained an extension of the time test for exempting income from the sale of real property. However, this has instead been included in the bill cancelling the immovable property acquisition tax: the time test for exempting proceeds from the sale of real property is to be extended to 10 years, rather than the originally assumed 15 years. The exemption should also apply before the elapse of 10 years, if the proceeds from the sale are used to satisfy the taxpayer's own housing needs.

Last chance to draw support from OPEIC

The Enterprise and Innovation for Competitiveness Operational Programme (OPEIC) under the Ministry of Industry and Trade (MIT) is slowly coming to a close before being replaced by the Technology and Application for Competitiveness Operational Programme (OPTAC). Businesses thus have the last chance to apply for support from the OPEIC and its favourite subsidy programmes. Calls to participate in the programme should be announced in late August/early September. Make use of the less busy summer time to prepare project applications!

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R&D activities and innovation in manufacturing

The Potential Programme providing support to the establishment and development of research and development centres should be announced on 21 August 2020, with total funds for allocation of CZK 1 billion. Applications will be accepted from 4 September to 23 November 2020.

The Application Programme is intended to provide support to the industrial research and experimental development project solutions, in particular related operating expenses. The call to participate in this programme is expected to be announced on 1 September 2020, with total funds for allocation of CZK 2.5 billion. Applications will be accepted from 14 September to 15 December 2020.

The Innovation Programme focusing on innovation in production after completing research and development activities will offer funds for allocation of CZK 2.5 billion and will be announced on 29 September 2020. Applications will be accepted from 15 October 2020 to 29 January 2021.

Large businesses intending to participate in the OPEIC programmes must again meet the following intervention code criteria:

- Intervention Code 065 – projects must have a significant positive effect on the environment, focusing on low-carbon economy and resilience against climate change.
- Intervention Code 063 – large businesses must directly cooperate with small and medium-size businesses on specific research and development projects.

To apply for support from the Potential Programme, large businesses must fulfil at least one of the above criteria. With respect to the Innovation Programme, large businesses cannot choose among the criteria but must meet Intervention Code 065. Contrariwise, within the Application Programme, so far, it has been possible to file an application without having to prove that any intervention code criteria have been met (claiming a lower maximum subsidy per project) and the current schedule for now confirms the same.

Energy Savings and Low-Carbon Technology

Other calls within OPEIC expected in 2020 will focus on energy-saving measures and will include calls under the Low-Carbon Technology Programme, which should be announced in September and target Electromobility, Energy Accumulation, and Secondary Raw Materials. Applications for support will be accepted from 11 (or 14)

September to 25 November (or 21 December) 2020.

The last interesting programme under OPEIC also available for large businesses is the Energy Savings Programme focusing on the reduction of energy consumption in companies (e.g. through building insulation, lighting replacement, energy measurement and regulation systems, etc.). The acceptance of applications for this type of support ended on 30 June 2020; however, the MIT has announced its intention to organise another call with funds for allocation of CZK 2 billion, depending on the amount of funds unallocated within the current call.

More detailed information about applicable criteria for individual calls will be available once the calls are announced. Should you have any questions, please do not hesitate to contact us.

When shall we report under DAC 6 for the first time?

The first-time reporting of cross-border arrangements, originally planned to occur already this summer, will be postponed, most likely to the beginning of the next year: the legislative process implementing DAC 6 has been delayed, and the amendment is now expected to enter into effect in the course of September, at the earliest. Also because of the COVID-19 pandemic, the European Union has now provided member states with the option to postpone the reporting duty, due to extraordinary circumstances. The Czech financial administration has already let it be known that they will make use of this option.

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Because of the failed completion of the legislative process, the effective date of the amendment transposing into Czech law the EU Directive extending automated exchange of information to information on selected cross-border arrangements, known as DAC 6, has been postponed. Czech parliament was unable to pass the necessary amendment to the Act on International Cooperation in Tax Administration within the deadline required by the EU Directive. The original effective date, 1 July 2020, thus does not apply. The bill has been passed on to the Senate, which is expected to debate it by the end of July. The bill is thus not expected to enter into effect before September of this year.

In June, a discussion took place on the EU level on postponing the deadline for the first-time reporting of cross-border arrangements because of the impact of the COVID-19 pandemic. The EU responded by adopting the COVID-19 DAC, which, among other things, allows member states to postpone the duty to report under DAC 6 by up to 6 months. This directive has already been published in the Official Journal of the EU, and it is now up to the individual member states to transpose it. Most states, including Luxembourg, the Netherlands, France and the United Kingdom decided to postpone; so far, only Finland announced that they will not use this option. Notably, the disunited approach may cause problems mainly for large groups operating across the continent.

Czech legislators responded rather quickly, and incorporated the option to postpone the reporting in an amendment to certain laws in connection with the COVID-19 pandemic that was already passed in the state of legislative emergency. The amendment to the Act on International Cooperation in Tax Administration has authorised the government to postpone the deadline for the automated exchange of information with other member states by means of a governmental regulation/decree. However, a governmental regulation to this effect has not yet been issued.

At the moment, the financial administration assumes the following deadlines for meeting the reporting duty:

- Reportable cross-border arrangements whose first steps were taken between 25 June 2018 and 30 June

2020 must be reported by 28 February 2021.

- Reportable cross-border arrangements made available or ready for implementation or whose first steps were taken between 1 July 2020 and 31 December 2020 must be reported by 30 January 2021.
- Reportable cross-border arrangements made available or ready for implementation or whose first steps were taken in after 1 January 2021 must be reported within 30 days of the relevant event.

COVID-19 and transfer pricing policy – comparability analysis

With the economic downturn brought about by the COVID-19 pandemic, companies face the challenge of determining whether they should modify their transfer pricing policies. The decision has to be made at a time when comparable data necessary for the analysis are not yet available. At the moment, relying on prior-year data and three-year averages of financial results of comparable companies may not be an appropriate method of setting intra-group prices.

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Under normal circumstances, profit margins (of limited-risk and limited-function entities) for 2020 would be determined/tested using the data for 2016–2018 (2019). Yet, the economic downturn has introduced a volatility of profits, making it difficult to apply transfer pricing methods in a 'standard manner', as defined by the OECD Transfer Pricing Guidelines.

In this respect, the trends identified during the 2008-2009 global financial crisis may provide certain guidance. The KPMG LLP analysis: What's News in Tax: COVID-19 and Transfer Pricing Policy: A Lookback Analysis of Routine Returns implies, among others, the following:

- In the analysed set of European manufacturers of motor vehicle products, the profit margins fell significantly in 2009 and 2010, resulting in a negative lower quartile and a median of < 1 %. The profit margins of these producers, however, recovered quite quickly, returning to near pre-economic downturn levels already in 2011.
- Wholesale distributors also experienced a rapid downturn in profitability – for distributors of machinery and equipment, the median of their profits dropped by 50%; the downward trend turned around in 2010, and the profitability of these distributors achieved the pre-economic downturn levels in 2011-2013.

The analysis also pointed out significant differences in the impact of the downturn, both across various sectors of industry, and across individual entities within these sectors. These differences illustrate the absolute necessity of conducting a thorough market analysis when selecting comparable entities. An appropriate market analysis – often neglected in transfer pricing documentations – has never been more important than in times of an economic downturn.

If we apply the above findings to 2020, we may recommend modifying the available data (of comparable companies or of the tested entity) so as to show the results that would have been achieved had there been no COVID-19 pandemic:

1. A detailed analysis of the income statement to document changes in revenues and expenses caused by the COVID-19 pandemic, including, for instance, analyses of deviations from the pre-downturn plan.
2. A detailed profitability analysis adjusted so as to show results that would have been achieved had there been no COVID-19 pandemic, including analysis and recording of all factors that had an effect (positive or

negative) on the resulting profitability.
3. Justification and documentation of any changes in cost allocation or decrease in revenues (and subsequent changes in operating margin) resulting from changes in contractual conditions, taking into account the functional and risk profile of the tested company.
4. Quantification of the effect of various subsidies and support received in connection with the COVID-10 pandemic.

As we wrote in a previous article, the Czech financial administration has indicated that even in (post)-coronavirus times, they expect local companies' profits to be reported in the amount corresponding to the arm's length principle. Documenting and recording all analyses and effects to support compliance with this will be the alpha and omega of future negotiations with tax authorities regarding the profitability for 2020 and subsequent periods when the effect of COVID-19 is bound to still be felt.

Postponement of digital economy taxation in both CR and other world countries

Despite assurances made in early March that the COVID-19 pandemic will not slow down negotiations on new international taxation rules applicable to the digital economy, the OECD has now made it clear that it is no longer certain that agreement will be reached by the end of this year.

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According to the OECD's original plan, agreement on how to proceed on the taxation of the digital economy on a global level was supposed to be reached by the end of 2020. However, the OECD's May webcast showed that the member states were devoting all their attention to COVID-19-related issues and did not have any time left for other issues, among them the taxation of the digital economy. This was further confirmed by the fact that the originally-planned July date for reaching a consensus has been postponed until October.

Any chance of reaching agreement before the year-end has been further marred by the USA recently withdrawing from the debates at the OECD level, all this after their long-time criticism of the introduction of international digital economy taxation rules, as the rules would mostly affect American technology giants. The USA announced that they will examine the procedures of the states that have already introduced or intend to introduce a digital tax on national levels. The Czech Republic is among such countries. It will be interesting to see where the USA pressure will be strong enough to bring about a change similar to that in France, recently deciding to suspend the collection of the national digital tax until the end of 2020.

The postponement of consensus at the OECD level may also result in the acceleration of efforts to implement a digital tax at the EU level, as indicated by the European Commission, proposing that the digital tax may be one of the new internal resources for the financing of extensive investment to revive the European economy after the coronavirus crisis. While the Commission has been actively supporting the negotiations led by the OECD and G20, it remains ready to interfere if worldwide consensus is not reached.

Nevertheless, despite growing pressure from the USA, the Czech Republic continues to make preparations for the introduction of a Czech digital tax. In early June, the Budget Committee of the Chamber of Deputies confirmed the proposal of a 7% tax effective from 1 July 2020. But the coalition council subsequently agreed to postpone the effective date until 1 January 2021 and reduce the rate to 5%. These changes were submitted in form of an amending proposal to be discussed by deputies.

Labour-law earthquake to hit for the first time in June

The years of effort to adopt an extensive amendment to the Labour Code have finally borne fruit: the governmental bill has passed through the legislative process and was promulgated in the Collection of Laws under No. 285/2020, with the effective date of 30 July 2020, while some provisions, such as those regulating vacations and job sharing, will enter into effect only on 1 January 2021.

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The new regulatory concept of vacations has remained the amendment's notional flagship. Under the amendment, an employee's weekly working hours should form the basis for assessing vacation in hours, which will be fairer especially for employees working in shifts with varying length. The amendment also changes the regulation concerning the reduction of vacations: whereas today, employers may reduce an employee's vacation by one to three days for an unexcused missed shift, under the new rules, vacations can only be reduced by the number of working hours actually missed.

A job-sharing concept is also part of the amendment: to promote work-life balance, two or more employees will be able to share one job and take turns within working hours they themselves schedule to perform the job. The job sharing must be agreed in writing between each employee and the employer, and the shorter working hours of individual employees sharing one job may not in aggregate exceed the weekly working hours.

The amendment also responds to practical problems associated with the delivery of written documents to employees. For example, for the delivery of a written document to an employee by post it should suffice that the employer has attempted to deliver the document at the workplace; it will no longer be necessary to chase down the employee at home or anywhere else.

The amendment also cancels the employer's duty to issue a confirmation of employment for an employee whose agreement to complete a job has been terminated (excepting agreements subject to the participation in the sickness insurance scheme or garnishment of a portion of wages). The amendment also increases the amount of one-off compensation paid to a worker's surviving family members to at least twenty times the national economy's average wage. Last but not least, the amendment transposes the EU Directive on the Posting of Workers.

By an amending proposal, the regulation of a leave of absence for persons working as holiday camp instructors or otherwise arranging events for children and young people was included in the amendment: employees will be entitled to paid leave of absence for up to one week per calendar year to take part in these events. The maximum amount of the wage compensation to which such employees will be entitled shall be derived from the national economy's average wage for the previous year. To this extent, the state will also contribute to the employers for the wage compensations.

The amendment to the Labour Code brings rather fundamental changes in labour law and employers will have to

cope with them. In particular, the conceptual regulation of vacations and job sharing (and other novelties), will surely necessitate many revisions of labour-law documentation and internal procedures. We will be happy to assist employers in this respect.

Planned changes to Act on Residence of Foreign Nationals for 2021

The government has proposed changes to the Act on the Residence of Foreign Nationals as part of an amendment responding to a new bill on identity cards deriving from a new EU regulation on strengthening the security of identity cards of EU citizens and of residence documents issued to EU citizens and their family members through the integration of biometric data in identity cards (Regulation of the European Parliament and of the Council 2019/1157).

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Due to the coronavirus pandemic, the government was forced to change its legislative work plans for 2020 and mainly dealt with emergency measures. The proposed amendment to the Act on the Residence of Foreign Nationals in the CR has thus so far been neglected. However, the planned changes are important and definitely deserving of attention. As in the case of most recent amendments, this amendment again involves an adaptation of the Czech laws to EU regulations.

The amendment is now at the very beginning of the legislative process; it is expected to become effective from summer 2021. Some of the changes proposed have earned a lot of criticism. The question therefore arises of how much the final wording will differ from the draft currently proposed.

The draft especially clarifies the range of persons that will be regarded as EU citizens' family members and determines requirements on documents that will newly be issued to EU citizens and their family members. Unlike the terminology used by other EU countries, the definition of a family member in Czech law does not differentiate between the family members of migrating EU citizens, and those of non-migrating Czech citizens. The wording of the law would thus be clarified to regard foreign relatives of Czech citizens as family members of EU citizens when they accompany these citizens back to the Czech Republic after a common long-term residence in another EU member state or when providing services in another member state. Simultaneously, a new category of 'other' family members of EU citizens would be introduced, applicable, e.g., to persons in partnerships. These proposals significantly alter the concept of EU citizens' family members defined in the law for many years.

The need to clarify the range of such persons is also associated with preparations for the European Travel Information and Authorisation System (ETIAS), which will rely on the uniform definition of a family member within the EU when dealing with applications for granting travel permits.

The law should also respond to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the EU. This will mostly involve legislative and technical changes, in particular regarding documents – biometric identity cards that will be issued to UK nationals and their family members.

EU citizens should no longer be granted confirmations of temporary residence; these should be replaced by registration certificates. The ten-year validity should remain in application. EU citizens' family members will receive residence cards, i.e. biometric identity cards. Similar changes should be made to documents certifying

permanent residence. Holders of existing residence permits for EU citizens and Great Britain will have to replace their permits with biometric identity cards. However, it is not certain yet when exactly and on what conditions this will take place.

How did the Labour Inspection Office sanction employers in 2019?

The State Labour Inspection Office (SLIO) has published its inspection report for 2019. What were the outcomes of its inspections focusing on agency employment, illegal employment, concealed employment mediation and employee monitoring?

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The highest penalties were imposed by the SLIO in connection with illegal employment, i.e. allowing the performance of work by a foreign national without having the appropriate permits or the performance of dependent work outside employment relationship (the so-called 'Svarc' system). Delicts were quite frequent as a result of a considerable shortage of labour, which many times led employers to hire personnel from abroad, especially from countries outside the EU. When employing foreigners, it is necessary to adhere to legislation regulating both labour-law relationships and residence of foreign nationals in the CR.

In 2019, the SLIO carried out a total of 8,160 inspections focusing on illegal employment. The most frequently identified foreigners were citizens of Ukraine, Moldavia and Vietnam, especially working for employers operating in construction, wholesale, retail, manufacturing, and the food and accommodation services segments. When identifying illegal employment, the SLIO cooperated with other administrative bodies such as Labour Offices, the Czech Social Security Administration and with armed forces such as the Police of the CR, the Czech Alien Police, and the Customs Administration. A total of 485 penalties were imposed for allowing illegal employment, totalling CZK 182,991,500.

Inspections were also carried out to examine agency employment, the SLIO's traditional priority. In 2019, the office mainly focused on examining the validity of permits to perform a relevant form of mediation activities and on the content of agreements on temporary assignments and adherence to comparable working and payroll conditions for agency employees. The most frequent violation was employment agencies not providing temporarily-assigned employees with working and payroll conditions equal to those of comparable employees. A total of 59 penalties amounting to CZK 3,558,500 were imposed by the SLIO on the employment agencies for the violation of agency employment regulations, and a total of nine fines, amounting to CZK 230,000, were levied on the users of agency employees.

Concealed mediation of employment was mainly identified at entities which for various reasons did not have a permit to perform a relevant form of employment mediation activities but which nevertheless acted as employment agencies. The SLIO identified instances in which personnel working for several employers was working at one workplace, some of them working there based on an alleged contract for the provision of services but in fact performing their work based on the instructions of a person other than their legal employer. The inspection of such a workplace then usually led to a number of other inspections involving several other entities. To untangle the chain of relations involving many times three and more entities was often an uneasy task for the SLIO. In 2019, the SLIO imposed a total of 69 penalties for the concealed mediation of employment, amounting to CZK 34,768,000.

The SLIO's inspections also focused on the open or hidden monitoring of employees via CCTVs and on the monitoring of telephone calls, emails and post, and on the monitoring of employees' locations via GPS locator systems. According to the SLIO, the number of installed camera systems has been growing continuously, especially due to the development of modern technologies and the affordability of such equipment. As the reason for the invasion of the privacy of their employees, employers most often pointed to the protection of their property and the health of their employees. The SLIO mainly focused on entities from manufacturing, food and accommodation services, provision of services, and sales outlet operations. The SLIO imposed a total of 10 penalties in the aggregate amount of CZK 267,000. The number of imposed penalties tripled compared with the previous year.

The penalties imposed for the above violations were relatively high. We therefore recommend performing regular checks of whether all relevant labour-law obligations are being met, as these may change over time (see, e.g., the recently approved extensive amendment to the Labour Code). Any uncertainty in this matter should be consulted with professionals.

Modernisation of consumer rules

A new EU directive revises the consumer right rules that must now be transposed into the legislations of the individual member states. The duties of traders towards consumers have been extended, as have the sanctions for their violations.

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Directive (EU) 2019/2161 on the better enforcement and modernisation of EU consumer protection rules is part of a New Deal for Consumers strengthening consumer rights with respect to digital technologies. It amends the four existing directives on consumer protection and expands certain definitions, such as online marketplaces and products that now also include digital services and digital content.

For example, the new regulation deals with the issue of artificially increasing reference prices during price reductions. Except for perishable goods, sellers will have to indicate as reference price the price applied within a period of at least 30 days preceding the price reduction announcement. Another issue the directive deals with are false consumer reviews. Under the new directive, operators will be responsible for their authenticity. The delivery of different-quality goods to different states will also be sanctioned unless the difference in quality is caused by objective factors and consumers are sufficiently informed of the fact. Consumers must also be provided with a sufficient explanation of the manner of ranking of the offers, especially as regards paid advertising. Online marketplace relationships must also be described in a transparent manner.

Consumers should also be clearly informed when the price presented to them has been personalised on the basis of automated decision-making, which is quite common in the sale of air and ride tickets, or when the price on a comparison website differs from the price available through a direct visit of a particular website.

The new directive also amends the compensation of damage caused to consumers and the maximum amount of penalties: for a violation on an EU scale amounting to up to 4% of the annual turnover or EUR 2 million.

Member states must approve the rules before 28 November 2021 and start applying them from 28 May 2022.

Case law

Pitfalls of managing transfer prices by means of marketing services

The Municipal Court in Prague confirmed the tax administrator's approach reclassifying marketing services contracted and provided to abroad to 'consideration received from a third party'. In the court's opinion, the services were rendered directly to the Czech recipients of the goods. The consideration received from abroad shall thus enter into the tax base of local sales of the goods, and shall be subject to Czech VAT.

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A Czech pharmaceutical distributor sold drugs in the Czech Republic (and in Slovakia, but this is not our area of focus). At the same time, they invoiced marketing services to Switzerland, to their Swiss supplier. The distributor was purchasing drugs from the supplier at a price higher than the regulated selling price of the drugs in the Czech market.

Both the Appellate Financial Directorate and the Municipal Court were of the opinion that the case did not involve the provision of marketing services to Switzerland. In fact, the services were provided directly to the Czech buyers of the drugs (for the Swiss supplier, the marketing was only a secondary benefit). The marketing services therefore comprised an ancillary supply to the main supply, which was the local sale of drugs. The consideration received from the Swiss supplier thus constituted a consideration received from a third party for the ancillary supply, and should have been subject to the same VAT treatment as the local sale of drugs. This means that the consideration received from the Swiss supplier should have in the final effect been subject to Czech output VAT.

The Court also noted that due to the regulated prices of the drugs in the Czech market, the distributor was unable to demand from their customers a consideration including all its usual components (such as the mentioned marketing services), which is why the situation was dealt with on the group level, whereby the marketing costs were paid to the distributor by the Swiss supplier.
The originally declared provision of services with a place of taxation in Switzerland (therefore not subject to Czech VAT) was thus reclassified as a supply of goods, where consideration received is subject to Czech VAT.
Furthermore, based on the evidence gathered, the court concluded that the entire business models was artificial.

Notably, this is so far only a judgment by the Municipal Court in Prague, and the matter is yet to be dealt with by the Supreme Administrative Court, which will decide, finally and conclusively, whether the tax administrator's approach is in accordance with legislation.

For the sake of completeness, it should also be noted that the additional assessment of VAT resulted from a tax inspection of transfer prices: in the course of the tax inspection, among other things, evidence was submitted that was held implausible, even contradictory. Under these circumstances, the tax administrator concluded that the

supplies did not in fact take place as invoiced, and attributed the consideration to local supplies.

Case law

CJEU: supply recipient must correct a tax deduction even though the supplier did not correct the tax

The Court of Justice of the EU (CJEU) has answered the prejudicial questions concerning a Romanian company that corrected a previously claimed VAT deduction for just a part of the supplies received. In this respect, the CJEU held that national tax authorities have to impose on the taxpayers the duty to correct an initial VAT deduction if it is higher or lower than the one they were entitled to, even if they do not have a separate tax document supporting such a correction.

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World Comm Trading, a Romanian distributor of mobile phones, concluded a contract with Nokia Corporation on supplying mobile phones: they were supplied locally within Romania, or acquired from other European Union member states and delivered to Romania. On a quarterly basis, a volume discount was provided, for both local and intra-community supplies. Nokia, however, only issued a tax document for the discount in the tax exemption regime applicable to intra-community supplies. Based on this document, World Comm Trading only corrected their claimed deduction for intra-community supplies.

The Romanian tax administrator issued orders to pay tax in the amount of the difference between the original entitlement to deduction on received local supplies, and the entitlement to deduction reduced by the proportionate amount of the discount attributable to local supplies.

The Romanian Court of Justice then referred the following prejudicial questions to the CJEU:
Does a company have to correct their entitlement to deduction even if they do not have a separate invoice for the proportionate part of the discount constituting the basis for such correction?
If so, would the answer change if the supplier has ceased its economic activity and can no longer correct the tax base?

The CJEU held that the previously claimed deduction has to be corrected to equal the deduction to which the taxpayer would have been entitled if the change had been reflected at the beginning. This means that the taxpayer must correct the deduction even though they do not have a separate corrective tax document, just an overall one, which nonetheless shows that the discount also concerns local supplies.

In the CJEU's opinion, the duty to correct the initial deduction remains even after the supplier has ceased their economic activity and therefore can no longer claim refund of the part of VAT they had paid. Whether or not the tax base has been corrected has no effect on the duty to correct the deduction for the respective supplies. World Comm Trading therefore had the duty to correct the deduction claimed on received local supplies.

News in brief, July 2020

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

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DOMESTIC NEWS IN BRIEF

- Amendment No. 283/2020 Coll. to the Tax Procedure Code, extending the options for electronic communication with the financial administration and introducing the concept of advances for tax deductions effective from 1 January 2021, has been published in the Collection of Laws.
- Act No. 300/2020 Coll., on the waiver of social security premiums and state employment policy contributions paid by some employers as taxpayers in connection with the 2020 pandemic-related emergency measures and on changes to Act No. 187/2006 Coll., on sickness insurance, as amended, regulating the conditions for the waiver of premiums within the Antivirus C programme, has been published in the Collection of Laws.
- The government has issued Decree No. 215/2020 Coll., which extends the scope of entities that may apply for the provision of guarantees under the COVID plus programme. Under the amendment, these entities include those performing the following activities: land and pipeline transport; waterway transport; air transport; travel agency, office and other reservation and related activities. Accommodation services and gambling, casino and betting establishments remain excluded.
- In the Collection of Laws, the Ministry of Finance has announced that the conditions have been met for applying the appendix to Act No. 45/2020 Coll., on the prevention of double taxation in relation to Thai-wan, from 1 January 2021 (309/2020 Coll.).
- The GFD has published information on the changes to VAT rates from 1 July 2020.
- On 1 July 2020, the following laws entered into effect: Act No. 299/2020 Coll., amending certain tax laws in connection with the SARS-CoV-2 coronavirus outbreak, and Act No. 159/2020 Coll., on compensation bonus in connection with emergency measures associated with the SARS-CoV-2 coronavirus outbreak. The financial administration has published extensive information on the matter.
- The financial administration has issued an alert regarding income tax return forms for taxpayers who are planning to deduct an expected tax loss from their tax base in their income tax returns.
    - The alert for individuals.
    - The alert for corporate entities.
- The amended conditions for drawing carer's allowances in connection with the coronavirus-related emergency measures became ineffective on 30 June 2020. Information on carer's allowances after this date is available on the Ministry of Labour and Social Affairs' website.

FOREIGN NEWS IN BRIEF

- The Polish Ministry of Finance has once again postponed the effective date of new withholding tax rules for foreign entities. The new effective date is 31 December 2020. The new rules require that Polish entities making payments of interest, dividends, or royalties or payments for certain intangible services to foreign taxpayers must collect withholding tax at a standard rate (20% or 19%). Subsequently, foreign taxpayers or the payers themselves (depending on who bears the economic burden of tax) may apply for a refund of the collected withholding tax (under the pay and refund mechanism). The postponement applies only to the mechanism of collection of the withholding tax and not to the duty to verify whether foreign taxpayers

qualify as the beneficial owners.
- The Dutch government has announced its intention to implement a withholding tax on dividend payments to low-tax jurisdictions (i.e. a jurisdiction with a statutory corporate income tax rate of less than 9%) as of 1 January 2024. This new tax would work alongside the withholding tax on royalty and interest payments to such jurisdictions, taking effect from 2021.
- The OECD has released an updated database on tax policy measures which have been taken in response to the COVID-19 pandemic.

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