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Editorial

A Czech proverb claims that “as on New Year's Day, so the whole year.” If this is accurate, we do indeed have 12 months of changes to look forward to. The present biggest change is the abolition of the ‘super-gross wage’, and the introduction of two progressive taxation rates – one at 15%, and the second, applicable to income above a set limit, at 23%. Furthermore, basic tax relief (claimable by each taxpayer) has been increased, employers have been allowed to provide employees with cash meal allowances, and changes have been made to the remuneration of members of corporate entities’ bodies. The tax package was finally passed by the Chamber of Deputies, and after being returned by the Senate just two days before Christmas was published in the Collection of Laws on New Year's Eve, taking effect on 1 January 2021.

The Tax Procedure Code also underwent a major amendment, with changes affecting VAT on real estate leases. And I cannot conclude without mentioning Brexit: after heated negotiations, the UK finally agreed on its future relationship with the EU on Christmas Day. We describe all material changes in the individual articles of this issue of the Tax and Legal Update.

I hope you have started off the new year successfully. I would like to wish you good health, optimism and only changes for the better in 2021.

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Old/new programmes to support employers at the time of the pandemic

At the turn of December and January, the government approved a series of compensatory measures with a total value of CZK 10 billion. Some compensatory measures are brand new; other represent only extensions of existing ones. Below we summarise those intended to help employers preserve jobs.

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At the beginning of January, the government approved a new programme submitted by the Ministry of Industry and Trade called **COVID–Gastro – Closed Operations**, designed for selected businesses, in particular restaurants, retail outlets and services whose sale of goods or services was, at least partly, curtailed or banned as a result of the governmental emergency measures, covering the period from 14 October 2020 to 10 January 2021. It should be possible to draw CZK 400 for every day on which the business activity was curtailed for every full-time employee (and part-time employee whose entitlement will be recalculated using the appropriate coefficient) and/or for every other workers cooperating with entrepreneurs (self-employed persons). Employees in sectors that receive support under the COVID – Culture, COVID – Accommodation and COVID – Sport programmes should not be included in the calculation. Applications are to be submitted electronically via the Ministry of Industry and Trade's Agenda Information System. In compliance with Section 3.1 of the European Commission's Temporary Framework, maximum support may not exceed EUR 800 thousand per one enterprise.

Just before Christmas, the government extended the existing **Antivirus Programme** until the end of February 2021, prolonging all existing regimes under the programme: Regime A (ordered restrictions of operation and quarantine), Regime A Plus (based on Regime A but not applying to employees not working due to ordered quarantine or isolation), and Regime B (associated economic difficulties). The parameters of the Antivirus Programme's current settings have not been amended for this year.

The Antivirus Programme was extended in response to the deteriorating epidemic situation and as a result of the failure to adopt a planned systemic measure to provide support at a time of partial unemployment, the **kurzarbeit** (short-time working) scheme, which was meant to replace Antivirus from 1 January 2021. The bill on kurzarbeit is currently subject to the second reading at the Chamber of Deputies. Unlike the one-time support provided under the Antivirus Programme, kurzarbeit involves a legal regulation of support at a time of partial unemployment that should always be activated whenever the Czech economy suffers a crisis similar to the current one. The kurzarbeit scheme should be activated whenever an increase in unemployment occurs at a rate set by law and based on a government decree in emergencies such as natural disasters, pandemics, etc. Similarly as Antivirus, kurzarbeit should help companies that have to partly curtail their operations in emergency situations. To the employees of such companies, the state should pay 70% of net wages, depending on the employee's activity and time spent in kurzarbeit, over a maximum period of twelve months. However, the final version of the law is still uncertain.

Losing Antivirus contributions owing to formal errors

The Antivirus Programme is considered one of the most successful and best performing support programmes that the government introduced during the pandemic. According to statistics published by the Ministry of Labour and Social Affairs at the end of December, the number of supported companies exceeded 65 thousand and the total amount of provided support amounted to almost CZK 25 billion. However, some employers have ascertained that they will have to refund the aid already received under the programme even though they did not abuse the programme in any way and paid all relevant payments and mandatory premiums within the statutory deadlines.

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Under the Antivirus Programme, contributions to employers are provided as a refund of payroll expenses that have already been incurred, i.e. employers must first pay wage compensation to their employees and settle all relevant mandatory premiums, and only then they are entitled to submit their statement of payroll expenses, based on which contributions under the Antivirus Programme are paid.

Employers confirm that they have paid wage compensations and mandatory premiums before filing the statements via affidavits attached to the statements.
Simultaneously, in agreements on the provision of contributions under the Antivirus Programme concluded between employers and the Labour Office, the employers undertake to refund monthly contributions under the programme if wage compensations and mandatory premiums are not settled before the Labour Office provides the contributions under the programme for the appropriate month.

During inspections of the adherence to the Antivirus Programme’s conditions, labour offices ascertained that some employers had received contributions under the programme earlier than they had actually paid the mandatory premiums. In accordance with the Antivirus Programme’s conditions and the above agreement between the employers and the Labour Office, this means that some employers will have to return the contributions received for a particular month despite having settled their mandatory payments within their common deadlines.

In early December, the Ministry of Labour and Social Affairs issued a press release on the subject, disallowing the possibility of a waiver of the duty to refund the contribution even in cases where the mandatory premiums were paid only a few days after the contribution under the programme was paid out. We understand that, according to the ministry, the refund of contributions may not be waived even if under standard circumstances the contributions would have been paid in a timely manner. In its press release, the ministry also points out that if the employer does not return the contribution when asked to do so, this will be regarded as a breach of budgetary discipline that will be resolved by the tax authority with local jurisdiction.

While a discussion is definitely warranted about whether the above procedure is excessively formalistic or whether the duty to refund the contributions received can be waived after all, especially in cases where mandatory premiums would have been settled in a timely manner under standard circumstances and where these have already been paid at the time of an inspection, we nonetheless cannot but recommend that all conditions for drawing any kind of subsidy or support be always carefully examined and adhered to.

Another tax liberation package waives default interest on selected taxes and some administrative fees

The Ministry of Finance is waiving default interest on VAT and road tax for entities in selected sectors of industry, and default interest and interest on deferred tax amount where the deferment of tax payment or payment of tax in instalments was granted for reasons related to the spread of the SARS-CoV-2 virus. For all entrepreneurs, selected administrative fees have also been waived. The tax liberation package comes in the form of a decision of the Minister of Finance.

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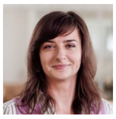

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The decision has been published in Financial Bulletin 38/2020. The waiver of default interest on selected taxes only applies to taxpayers whose prevailing portion of revenues between 1 June 2020 and 30 September 2020 was generated from one or several activities that have been banned or restricted by a government resolution between 22 October 2020 and 31 March 2021. These include, for instance: operation of restaurants and bars, organisation of concerts and other musical, theatrical or film shows, organisation of congresses and other educational events, organisation of trade fairs and other similar activities. For these taxpayers, the following shall be waived:

- default interest on VAT for the taxable period of September, October, November and December 2020, and January, February and March 2021, or for the taxable period of the third and fourth quarter of 2020 and the first quarter 2021;
- default interest on road tax for the 2020 taxable period

provided that the tax to which the default interest relates is paid no later than on 16 August 2021. At the same time, the road tax prepayment payable on 15 April 2021 has been waived (although its waiver does not mean the tax itself is waived). The waiver is conditional upon the taxpayer notifying the appropriate tax authority of the fact that the prevailing portion of their revenues in the relevant period was generated from the defined activities. As regards VAT, this liberation package only waives default interest, not penalties for late tax assertions, meaning that VAT returns and VAT ledger statements still have to be filed within the statutory deadlines.

The decision also generally waives selected administrative fees (or, more precisely, extends the period for which administrative fees were already waived by the Finance Minister's previous decisions). The waiver applies to administrative fees for applications for a waiver of default interest or interest on deferred tax amount, for deferment of tax payment or payment of tax in instalments, for tax debt-free or personal tax account balance confirmations; as well as to selected applications in the customs area, if filed between 1 January and 16 August 2021.

Finally, the decision waives (or, more precisely, extends the period for which it was already waived by the Finance Minister's previous decisions) default interest and interest on deferred tax amount where the deferment of tax payment or payment of tax in instalments was granted for reasons connected with the outbreak of SARS-CoV-2 upon an individual application filed pursuant to Section 156 of the Tax Procedure Code. The waiver remains valid until 16 August 2021.

OECD guidance on the transfer pricing implications of the COVID-19 pandemic

The unique economic conditions arising from COVID-19 and government responses to it have resulted in challenges for the application of the arm's length principle. To enhance tax certainty in the face of such challenges, the Organisation for Economic Co-operation and Development ("OECD") released guidance ("Guidance") on the application of the arm's length principle in the context of the COVID-19 pandemic.

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The Guidance emphasises that the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017 ("OECD TPG") should continue to be relied upon when performing a transfer pricing analysis, including under the possibly unique circumstances introduced by the pandemic. Accordingly, the Guidance focuses on how the arm's length principle and the OECD TPG apply to issues that may arise or be exacerbated in the context of COVID-19, rather than on developing specialised guidance beyond what is currently addressed in the OECD TPG. The Guidance represents the consensus view of the 137 members of the Inclusive Framework.

The Guidance focuses on four priority issues where the additional practical challenges posed by COVID-19 are considered most significant:

- comparability analysis
- losses and the allocation of COVID-19 specific costs
- government assistance programs
- advance pricing agreements (APAs).

The Guidance emphasises that while the four issues have been presented as discrete topics for ease of presentation, these topics may be interrelated and therefore need to be considered together and within the analytical framework of the OECD TPG. Within each of the four priority issues, the Guidance addresses several questions.

A common theme of the Guidance is that an appropriate arm's length response to any issue will depend upon the facts and circumstances of the transaction under consideration, which is indeed a recommendation also valid for Czech taxpayers. The Guidance's encouragement of pragmatism and flexibility provides a welcome practicality to addressing some challenging transfer pricing issues. It remains to be seen how different tax authorities will incorporate the suggestions in the Guidance into their dealings with taxpayers.

What's new in tax for employers and employees in 2021?

The most crucial changes undoubtedly are the abolition of the super-gross wage and the solidarity tax surcharge and the introduction of progressive taxation using two rates, 15% and 23%, the second one applicable to income exceeding the set threshold. Another novelty is an increase in the basic tax relief per taxpayer and an option for employers to provide monetary meal allowances and not just meal vouchers to employees.

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Changes in effect from 1 January 2021:

- From now on, only employees' gross income will be subject to income tax. Apart from a 15% income tax rate, the amendment introduces another rate of 23% that should be applied to income above 48 times the average wage. When recalculated to annual income, the second rate will apply to income exceeding CZK 1,701,168 a year (i.e. monthly income of more than CZK 141,764). Employers should first apply this procedure when preparing their payroll for January 2021.
- As a result of the abolition of the super-gross wage, the gross amount of remuneration for exercising the office of member of a corporation's body considered to be a Czech tax non-resident will be taxed by a 15% withholding tax only, applied to the gross remuneration irrespective of its amount.
- Employees that have so far been obligated to file income tax returns only owing to the fact that their annual income from dependent activity was subject to the solidarity tax surcharge will be relieved from this obligation effective from the 2021 taxable period. These employees will be able to ask their employers to prepare their annual settlement of tax on wages in a standard manner as other employees.
- The basic tax relief per taxpayer will increase to CZK 2,320 a month (CZK 27,840 a year).
- The maximum assessment base for social security insurance purposes will be CZK 1,701,168 in 2021. As previously, health insurance premiums will be paid from all incomes generated by an employee without applying any maximum assessment base.
- From 1 January 2021, the minimum wage will increase from CZK 14,600 to CZK 15,200, which will affect the following amounts:
    - The minimum monthly health insurance premium calculated from the minimum assessment base, or the minimum wage, will be CZK 2,052.
    - The tax credit for placing a child into pre-school facilities will increase to CZK 15,200 for each maintained child.
    - The entitlement to the payment of a tax bonus per child for 2021 will arise after generating income from dependent and business activity up to 6 times the minimum wage, i.e. CZK 91,200 a year (CZK 7,600 a month). Moreover, the maximum tax bonus amount has been cancelled.
- The employee's income threshold for mandatory sickness insurance premiums will increase to CZK 3,500

a month. Consequently, income up to this limit from an agreement to perform work will not be subject to social and health insurance but will be subject to withholding tax, similarly as in the case of agreements to complete a job where the limit of CZK 10,000 remains in effect, unless the employee signs a declaration of the taxpayer liable to personal income tax from dependent activity with the employer.

- Employers may contribute to their employees' meal allowances also in monetary form: on the employee's part, a monetary contribution will be treated as income exempt from both tax and mandatory premiums up to 70% of the meal allowance amount as set by the Labour Code for business trips lasting 5-12 hours. On the employer's part, this will be a tax-deductible expense with no limitation.
- The limit for reporting tax-exempt income or income that is not subject to tax in the Czech Republic under a double tax treaty will increase to CZK 300,000 a month per one non-resident. Under the amendment, the taxpayer will only have to report income not subject to tax once a year, always by 31 January of the following year.

New Year with the new Tax Procedure Code!

The amendment is relatively extensive, thus affecting the lives of all taxpayers. The main areas concern: the possibilities for using tax information mailboxes; changes in deadlines for filing tax returns; a revision of the sanction and penalty system; simplification of inspection procedures; and the introduction of an advance for VAT deduction.


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Compared with other tax regulations, the Tax Procedure Code does not change very often; therefore, its amendment definitely deserves our attention. The amendment affects a large number of concepts regulated by the Tax Procedure Code, the most crucial of which we summarise below.

The extension of the **tax information mailbox's functionalities** is a change connected with the planned formation of the MOJE daně portal. The amendment now provides the legislative framework; we have to wait and see what the changes to the technical parameters of mailboxes will be. The tax information mailbox has been designed to accelerate communication with taxpayers and should be used by the tax administrators for this purpose. However, it is not meant to replace data boxes. Access to tax information mailboxes for third parties will only be possible upon authorisation.

The amendment significantly changes **the deadlines for filing income tax returns**. The basic three-month deadline after the end of the taxable period remains in effect; however, the amendment also stipulates a four-month deadline for tax returns filed electronically. The deadline for electronic filings shall be extended automatically without having to submit an application. Where income tax returns are filed by tax advisors, it will not be necessary to submit a power of attorney to the tax administrator before the end of the three-month period. Contrariwise, where tax advisors file tax returns based on powers of attorney within the basic deadline, the relevant tax will be assessed to the taxpayer within this basic deadline. The provisions on deadlines shall apply already for the taxable period ended 31 December 2020.

The amendment introduces significant changes to **the system of sanctions and penalties**, regulating interest rates and unifying interest for both the taxpayer and the tax administrator. Interest will derive from the amount of default interest under the Civil Code, i.e. 8% + repo rate as set by the Czech National Bank. Simultaneously, the sanction-free period when paying taxes changes: default interest charged for the non-payment of tax starts to accrue on the fourth calendar day of the date the tax is payable. The sanction-free period has thus been shortened from four working days to three calendar days; this is compensated by an increase in the minimum threshold for assessing default interest to CZK 1,000. Compared with the existing wording, the basis for calculating interest will change: the basis will be the current income tax amount that has not yet been paid. This means that under the new provisions, it is necessary that any tax overpayments are actually used to settle the tax (e.g. based on an application), otherwise the accruing of interest will not be suspended.

The amendment significantly simplifies **the commencement and the completion of tax inspections**, abandoning the formalised concept that has so far been applied. Under the new provisions, it will no longer be necessary to commence a tax inspection personally during oral proceedings, but a formal notice on the commencement of a tax inspection delivered to a data box will suffice. Similarly, it will no longer be necessary to close a tax inspection by meeting personally and discussing a report on the inspection's outcomes, but it will suffice to deliver the report to the taxpayer along with a notice on the completion of a tax inspection.

In relation to VAT, the amendment gives the tax administrator the option to pay out to the taxpayer **a part of a VAT deduction that is not subject to examination** in form of an advance. To pay out the advance, part of the unexamined VAT deduction must amount to at least CZK 50 thousand. After completing the examination, the tax authority should issue a decision and make a final reconciliation to determine the amount that should be paid by the taxpayer and the amount that should be refunded.

The financial administration has repeatedly declared that the amendment to the Tax Procedure Code should make taxpayers' lives easier. We just have to wait and see whether this will really be the case.

VAT on the lease of real estate

On 1 January 2021, a provision of the VAT Act restricting the option to tax leases of selected real estate entered into effect. At the end of 2020, the General Financial Directorate (GFD) issued information to ensure a better understanding of the lease of real estate from a VAT perspective and to clarify certain areas of the new provision.

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The lease of real estate is (with certain exceptions) exempt from VAT without the entitlement to VAT deduction. Until 31 December 2020, VAT payers could decide to declare output VAT on leases of real estate to another payer for the purposes of the other payer's economic activity. In accordance with exceptions in effect from 1 January 2021, it will no longer be possible to decide to tax leases of certain real property items, such as:

- a family house under the legal regulations on the Real Estate Register
- residential premises
- a unit that does not include non-residential premises other than a garage, cellar or store room
- a building in which at least 60% of the floor area of such building, or of the part of a building if such part is leased, are residential premises
- a plot of land that includes a family house, residential premises or building under paragraph d) with which the land is leased
- a superficiary right of building that includes a family house or a building under paragraph d) with which the superficiary right of building is leased.

The legislators did not try to conceal that the primary purpose of this provision is to prevent the abuse of the option to tax leases of real estate intended for permanent housing by claiming the entitlement to VAT deduction. The possibility of permanent housing is the very condition that unites all the real property items contained in the new provision. The GFD emphasises that buildings for permanent housing are determined as such mainly based on information from the Real Estate Register and based on other legislation and decrees regulating construction and technical layout requirements. In other words, it will be most crucial for the tax administrator what is the character of the real estate item at issue under relevant construction regulations.

The GFD's information confirms certain facts that have so far not been clear from the law: for example, if a unit recorded in the Real Estate Register does not meet the requirements for permanent housing in terms of its purpose and its construction and technical layout, it will still be possible to tax the lease of such a unit. Such units are most often designated as studios.

Another area that deserves interest is the lease of buildings in which at least 60% of the floor area are residential premises. There are opinions according to which the lease of such a building can only be taxed if the building is not divided by the lessor into units based on the owner's declaration. In other words, the lease of the entire building, after it was divided into units based on the owner's declaration, would be unacceptable, as this lease would actually involve the lease of separate units whose taxation is restricted. Nevertheless, the GFD has not yet opined on the matter. The question therefore remains how tax administrators will proceed in such cases.

In connection with the above, we also draw attention to the fact that any adjustment to VAT deduction relating to buildings, units and their technical improvements must be performed within 10 years of their acquisition.

The GFD issues additional information on reporting under DAC 6

The General Financial Directorate (GFD) has published a list of questions and answers on the new obligation to report cross-border arrangements (DAC 6 reporting).

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The GFD states that reporting must be made via an electronic form available on the Czech financial administration's website or through third-party applications (the file must meet all the requirements and have an XML structure). The authority receiving the reports is the Specialised Tax Authority, and the form can be completed in both Czech and English. If the data is provided in English, the tax administrator may additionally request the translation of some of the provided information.

Obliged entities do not have to report a reportable cross-border arrangement if they have already filed a report containing the same data in another EU member state or if another obliged entity has filed a report on that arrangement containing the same data in one of the EU member states. In such cases, the GFD recommends keeping the identification numbers generated by the respective tax authority – A-ID (arrangement identification number) and D-ID (report identification number); these identification numbers may serve as proof of compliance with the reporting obligation.

Where an intermediary has informed the user that they have exercised professional confidentiality, the user's approach shall depend on other factors, in particular the type of the arrangement and the existence of other intermediaries. If multiple intermediaries are involved in the arrangement, the user shall only become an obliged entity as the last one. In many cases, an agreement between the parties involved in the arrangement will also be important.

According to the GFD, an arrangement is reportable if the following two facts occur simultaneously:

- the existence of a person who proposes such an arrangement (an intermediary, a taxpayer, their employee, etc.); and
- the existence of a specific proposal aiming to give the taxpayer a tax advantage.

According to the GFD, the existence of a tax advantage is a condition that should always be met, not just in connection with hallmarks linked to the main benefit test. If the above conditions do not occur simultaneously, the arrangement is not reportable, according to the GFD. This interpretation, however, does not follow from the wording of the law or the EU directive, and we would not therefore recommend not reporting an arrangement solely on the grounds of the absence of a tax advantage.

As regards the interpretation of individual hallmarks, the document clarifies that the main benefit test involves examining whether there is a causal link between a hallmark (i.e. a characteristic feature of an arrangement) and a tax advantage that can be expected if the arrangement is used. The arrangement will meet the main benefit test if one of the main benefits which its user may reasonably expect, having regard to all relevant facts and circumstances, is obtaining a tax advantage.

The document also comments on two specific hallmarks. As for individual binding assessments of transfer pricing (APAs), these should generally not meet the hallmark of the use of unilateral safe harbour rules (Article E(1)) because when issuing the APAs, the Czech Republic follows internationally accepted standards. According to the GFD, this also applies to the GFD D-10 Instruction on Low Value-Adding Intra-Group Services.

As for the exemption of dividend payment (either under the EU Parent-Subsidiary Directive or under Czech legislation), the GFD subsumes this under the hallmark of the payment benefiting from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes (Article C(1)(c)), where it is also necessary to assess whether or not the main benefit test has been satisfied. In our view however, this hallmark should only apply to deductible cross-border payments. Exempt dividend payments are more likely to fall under the hallmark of multiple relief from double taxation, which is met without satisfying the main benefit test.

The first deadline for reporting historical arrangements is 30 January 2021. This is the deadline for reporting cross-border arrangements whose first step was taken between 1 July 2020 and 31 December 2020, and arrangements made available or ready for implementation between 28 August 2020 and 31 December 2020, regardless of when they are implemented.

Arrangements whose first step leading to implementation was taken between 25 June 2018 and 30 June 2020 must be reported by 28 February 2021.

Coordination Committee: correction of tax base for bad debts – knowledge test

The Coordination Committee of the General Financial Directorate and the Chamber of Tax Advisors of the Czech Republic has finalised its discussion paper concerning the 'knowledge test', i.e. whether a creditor knew, should, or could have known at the time of a delivery of goods or provision of services that the supply would not be properly paid, and its implication for correcting the VAT base for irrecoverable debts.


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The paper mainly deals with determining the point in time of a delivery of goods or provision of services for various types of contracts where goods are let for use (i.e. operating leases) or contracts for work. Generally, the VAT stipulates when a creditor may correct the taxable amount of an irrecoverable debt, and when such correction cannot be made. In particular, this includes a situation where at **the date of delivery of goods or provision of services** at the latest the creditor knew, should, or could have known that the supply provided would not be properly paid – the 'knowledge test'.

In practice, determining the time of the delivery of goods does not cause such problems as does determining the time of the provision of services, in particular where partial supplies are involved, e.g. under a contract for work or an operating lease. The GFD agrees with the conclusions of the paper that the lessor (creditor) evaluates the customer's ability to pay at the time of concluding the contract, and individual partial supplies are then made automatically, as per the contract. If the lessor acts with due managerial care, i.e. monitors the customer's payment discipline and takes the necessary steps (incl. early termination of the contract) in the event of default, then the knowledge test should not apply to them. Due managerial care shall mean in particular warning the lessee of the first and every subsequent unpaid instalment and then making one's best effort to ensure that the first and every subsequent unpaid instalment do not remain unpaid.

Regarding an early termination of a contract, the submitters of the paper propose two possible approaches. Under the first approach, the compensation that the customer is obliged to pay upon early termination shall be regarded as an additional increase in the price of the original supply; the lessor would thus be obliged to correct the taxable amount, which is also in line with the current case law of the Court of Justice of the European Union (Vodafone Portugal C-43/19 case). This would in fact involve an increase in the price of all the partial supplies so far carried out. However, the GFD prefers the second proposed approach, under which the compensation shall be considered a separate partial supply effected on the date of the early termination of the contract.

To summarise the conclusions of the Coordination Committee: the knowledge test shall not apply to partial supplies that occur 'automatically' and for which the creditor, even if acting with due managerial care, has virtually no control over whether each partial supply will be paid. As for the compensation upon early contract termination, the GFD regards it as a separate supply effected at the time of the early termination.

Opportunities for subsidies in 2021

Below we provide up-to-date information on subsidy programmes available in 2021. The Technology Agency of the Czech Republic (TA CR) has clarified the conditions for participating in the TREND programme, while a new call focusing on energy savings has been announced under the Operational Programme Enterprise and Innovation for Competitiveness (OP EIC). Simultaneously, the deadlines for filing applications within the Application and Innovation programmes have been extended.

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A call to participate in the TREND programme organised by the TA CR

TA CR is planning to announce the fourth call to participate in Sub-Programme 2 – Newcomers under TREND, a programme supporting industrial research and experimental development, and designed for businesses that have not been drawing research and development subsidies exceeding CZK 1 million for the last five years.

The TREND programme mainly focuses on research and development to enhance the international competitiveness of enterprises, expand their markets abroad, penetrate new ones, and move higher in global value chains. Project outputs that will be supported include industrial design or utility models, prototypes or functional samples, software, pilot plants or verified technology, and patents or methodologies (both only in combination with previous results).

The period for accepting project proposals will run from 11 March to 28 April 2021. Projects will have to be commenced in the period from 1 January to 31 March 2022 and may not take longer than 48 months. Total funds for allocation under the programme amount to CZK 180 million with a maximum subsidy per project of CZK 15 million and a maximum aid intensity of up to 80%. Support will be provided in respect of operating expenses (wages including scholarships, subcontracting – 20% of total expenses at the maximum, project-related indirect and direct costs). Businesses may apply irrespective of their size, either separately or in a consortium with another business or a research organisation. Support may also be drawn in respect of projects that will be implemented in Prague.

Within the evaluation process, projects concerning sectors such as Industry 4.0, Automotive, Technology 5G, projects aimed at mitigating health threats such as COVID-19 and their effects, and projects carried out in structurally affected regions will be given preference.

Other calls to participate in the Energy Savings programme under OP EIC

In December, the sixth call designated as Energy Savings with EPC was announced under the Energy Savings subsidy programme. EPC, i.e. energy performance contracting, is a method of financing a project through future savings. In practice, this means that within a project, an applicant will enter into a contract with a company providing energy services (i.e. ESCO, or energy service company) that will prepare an energy-saving project tailored to the applicant's needs while guaranteeing savings that will further be used to finance the project.

The evaluation process consists of two rounds: preliminary applications for subsidies must be submitted by 31 March 2021 at the latest, while final applications will be due from 1 April 2021 to 30 September 2021. Total funds for allocation are CZK 500 million with a maximum subsidy per project of up to CZK 200 million. The level of support provided to large businesses is 30% of eligible costs and the number of applications per corporate identification number (IČO) is not limited. Other conditions of this call are practically identical with the standard call we provided information on in the December 2020 issue of the Tax and Legal Update.

OP EIC in 2021

In January 2021, it is still possible to apply for support under the Innovation programme, until 29 January 2021, as well as under the Application programme, where the application acceptance was extended to 15 January 2021.

Other calls planned for 2021 include, for example, a call to participate in the Advisory programme – Call II – Advisory Services for Small and Medium-Sized Businesses, which should be announced in early February 2021. Applications should be accepted until June 2021. This call will focus on the provision of advisory services for start-ups and developing enterprises to help develop the business activities and competitiveness of small and medium-sized businesses.

Depending on the availability of funds, another call is planned under the ICT and Shared Services programme – Digital Enterprise, focusing on the acquisition of ICT products and services (e.g. investment in SW, HW and other machinery and equipment that is directly related to ICT or using ICT solutions provided in form of services). This type of support will only be intended for small and medium-sized businesses.

Should you be interested, we will be happy to discuss with you the individual parameters of your project as well as other specific criteria applicable to individual subsidy programmes.

What will 2021 bring for employers in terms of labour and foreigners' law?

For employers, the past year has been one of the most turbulent in modern Czech history in terms of the number of legislative changes adopted. New regulations relating to the coronavirus pandemic were being adopted non-stop, and literally amended on a day-to-day basis. In this legislative whirlwind, it could have been very easy to overlook both the additional novelties that legislators have prepared for employers for 2021, and several landmark Supreme Court rulings.

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From 1 January 2021, fundamental changes brought by **the amendment to the Labour Code take effect** (while some provisions of the amendment took effect already in July 2020). An employee's vacation entitlement shall be based on their weekly working hours and calculated in hours instead of days. A brand-new concept has been introduced – job-sharing, where two or more employees may share one job position and alternate as per their own schedule, to better balance family and work life. The one-time damage compensation to employee's survivors was increased to at least 20 times the national economy's average wage. The amendment also introduces leave for holiday camp leaders and other persons organising events for children and young people: employees shall be entitled to a paid leave of up to one week per calendar year to participate in these events.

With the beginning of the new year, **the minimum and guaranteed wage have increased**. For employees with a 40-hour working week, the minimum monthly wage has increased from CZK 14,600 to CZK 15,200, the hourly wage from CZK 87.30 to CZK 90.50. The lowest levels of guaranteed wage, divided into eight groups and graded according to the complexity, responsibility, and difficulty of the work performed, shall range from CZK 15,200 to CZK 30,400 per month, or from CZK 90.50 to CZK 181.00 per hour.

Brexit, the United Kingdom's withdrawal from the EU, also affects the employment of UK citizens in the Czech Republic. From the beginning of the year, there is no free movement of workers between the United Kingdom and the EU. Thus, UK citizens shall be regarded as third-country nationals who must have a valid work and residence permit to work in the Czech Republic. An exception applies to those who have resided and worked in the Czech Republic before the end of 2020: these UK citizens and their family members retain the work and residence rights established before the end of the last year, with the exception of posted workers. Workers posted to the Czech Republic before the end of 2020 are guaranteed more favourable treatment, including allowing them to complete the expected period of posting even after 31 December 2020, but they formally have to hold a work permit issued by the relevant branch of the Labour Office.

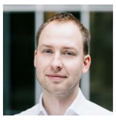
From 1 January, foreigners holding certain types of long-term or permanent residence permits must undergo **adaptation-integration courses for foreigners**. The courses are regulated by the Foreigners' Residence Act and the Decree on the Implementation of Adaptation-Integration Courses.

We conclude our summary with last year's **landmark Supreme Court decision on (un)equal pay**. Although the decision was made in a specific dispute, the Supreme Court's conclusions can be applied generally. The court did not dispute the fact that even on the same position, different work or work of a different value may be performed, for which different remuneration may be payable. However, where employers with workplaces in more than one region remunerate their employees on the same positions differently, they must be prepared to present and prove specific reasons/grounds for doing so; and these may only be based on the criteria admitted by the Labour Code, not on the social or economic circumstances in the given region. For more information, refer to our article in the September issue of the Tax and Legal Update.

Please contact us if you need more information.

The Office for Personal Data Protection advises data controllers on personal data protection impact assessment

The General Data Protection Regulation (GDPR) has introduced a new obligation for data controllers: to carry out a data protection impact assessment (DPIA). The obligation concerns the processing of data that involves a high risk of impacting the rights and freedoms of the individuals (natural persons) whose personal data are being processed. According to the office, controllers are struggling to cope with this obligation, which is why the office has now published a methodology for DPIA.



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The methodology responds to the shortcomings of the current impact assessment practices and aims to ensure compliance with GDPR requirements while also reducing the burden on personal data controllers. Data controllers often do not know what the assessment should look like: for example, they resort only to verbal evaluations, without providing specific information describing specific threats and measures taken.

Importantly, a high-quality and detailed DPIA is a necessary tool to identify threats to personal data protection and impacts on the privacy of data subjects, and to ensure that necessary technical and organisational measures are taken.

The DPIA should be reviewed repeatedly: data controllers should carry out a new assessment in particular when the parameters of data processing have changed, new threats have been identified, or new technologies employed.

The methodology is only a recommendation, which means that different methodologies may be used as long as all GDPR requirements are met. The methodology is intended primarily for the controllers, but can also be used by personal data processors.

VAT after Brexit deal

On Christmas Eve, after lengthy negotiations that were very tense up to the last moment, the UK finally struck an agreement on its future relationship with the EU. For EU companies, this means that preparations made so far will not be wasted. Below we summarise the deal's implications for indirect taxes.

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As for customs duties, the EU–UK Trade and Cooperation Agreement provides for a preferential system, allowing to apply a zero rate of customs duty. To apply the zero rate, it will be necessary to present relevant documents proving the origin of the goods in the EU or in the United Kingdom. If the documents are not submitted in the customs procedure, a standard rate under the EU's Common Customs Tariff shall apply. Detailed information on the 'preferential origin' rules and customs procedures can be found in Guidance Note on the Withdrawal of the UK and EU Rules in the Field of Customs, Including Preferential Origin.

As for VAT, we kept you informed of all changes throughout the past year, and the now concluded agreement on future partnership between the EU and the UK has only confirmed this information. From a VAT perspective, the UK has become a third country from 1 January 2021.

Cross-border trade in goods and services shall be governed by rules on applying VAT upon the import and export of goods (or provision of services) from/to third countries, with an exception for supplies of goods to Northern Ireland, which will continue to be regarded as intra-community supplies. For this purpose, Northern Ireland has been assigned a specific 'XI' identifier, which can already be seen in the VIES system. Services are not covered by this exception.

Supplies of goods whose transportation was initiated in 2020 but only completed in 2021 will still be regarded as supplies to the UK under the European rules. Goods dispatched after 31 December 2020 shall already be subject to the new customs procedure. 'Non-controlled' goods (under customs legislation) imported until June of this year may be imported under a simplified customs procedure. Similar rules shall apply to the reporting of transactions in EC Sales Lists and Intrastat reports.
Intrastat codes have also changed: an 'XI' code has been introduced for Northern Ireland, same as for VAT purposes, and an 'XU' code, intended solely for the purpose of filling-in the state of origin in the UK excluding Northern Ireland.

In January 2021, it will still be possible to report movements of goods between the Czech Republic and the UK in Intrastat, due to the time mismatch related to the goods' transportation or due to reporting of the goods at the same time as for VAT purposes. From February 2021, only movements of goods between the Czech Republic and Northern Ireland shall be reported.

Finally, we draw attention to the possibility of having VAT paid in the UK refunded. An application for a refund of tax paid before the end of the transition period, i.e. 31 December 2020, can be filed through the Czech financial administration's electronic portal. The application must be filed by 31 March 2021 at the latest. It should also be possible to apply for a refund of tax paid in 2021, based on the reciprocity principle, but the application will have to be filed directly with the British tax administrator.

The impact of Brexit on VAT is also briefly summarised in the recently released financial administration's information.

Watch out for the deadline for filing additional tax returns

In its recent decision, the Supreme Administrative Court (SAC) confirmed that the deadline for filing additional tax returns for a lower tax liability is based on a subjective lapse period – in other words, after that period expires, it is no longer possible to file additional tax returns.

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The dispute involved the following situation: in tax proceedings initiated by a tax administrator, a taxpayer failed to support with relevant documentation that certain taxable supplies were effected in January 2013. Therefore a corrective tax document was issued by the taxpayer, with the taxable supply's date of 31 May 2013. In response to the outcome of the tax inspection of the above taxable period and to the issue of a corrective tax document, an additional tax return was filed by the taxpayer on 28 April 2016, for a lower output VAT.

Under the VAT Act, it is not possible to correct the tax base or the amount of tax after three years from the end of the taxable period in which the duty to declare tax on the original transaction arose (the objective period). At the same time, the Tax Procedure Code stipulates that if the tax is determined in an incorrect amount, an additional tax return for a lower tax liability may be filed until the end of the month following the month in which the relevant facts were ascertained by the taxpayer (the subjective period).

The moment of ascertaining the relevant facts is thus crucial to determine the beginning of that period. The SAC stated that the taxpayer must have been aware of the inconsistencies in the transactions, which was also confirmed by them having issued the corrective tax document in May 2013. The SAC therefore concluded that the facts relevant for filing an additional tax return were ascertained on 31 May 2013 at the latest, and the taxpayer should have filed an additional tax return by the end of the following month – according to the court, the subjective period thus had expired on 30 June 2013. On these grounds, the SAC concluded that in April 2016 the taxpayer was no longer entitled to file an additional tax return for a lower tax liability, as the deadline had expired.

To conclude: the date of ascertaining relevant facts given in the tax return form cannot be regarded as a mere formality and must be given proper attention. Taxpayers should be prepared to support the indicated date to tax authorities if any doubt arises.

Case law

VAT stated in a tax document for a fictitious transaction must be paid

In 8 Afs 21/2014-30 case, the Supreme Administrative Court (SAC) corrected the regional court's interpretation of Section 108(4)(f) of the VAT Act. The provision stipulates that the person issuing a tax document indicating tax is also obliged to declare that tax in their VAT return.

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The SAC dealt with a dispute where during a tax inspection received tax documents were found in which VAT was indicated and based on which VAT was deducted. The tax rate and the tax amount indicated in the documents were handwritten. A follow-up review at the supplier, i.e. the entity that had issued the tax documents, found that the supplier had not included these documents with the indicated Czech VAT in their VAT returns. An expert's opinion subsequently proved that the data in the tax documents had been handwritten by the issuer.

In the SAC's opinion, the regional court had based its assessment of the case and its interpretation of the VAT Act on the wrong assumption that the provisions of Section 108(4)(f) only applied to cross-border transactions. According to the SAC, this assumption has no basis in the VAT Act or in EU legislation, therefore the provision is also applicable to domestic transactions.

The SAC also discussed whether the legal provision in question requires it to be proved with absolute certainty that the taxable supply declared in the tax document was effected. Referring to the case law of the Court of Justice of the EU, the SAC concluded that the assessment of additional VAT was not conditional upon proving with certainty that the taxable transaction was effected.

Case law

Prevention of double taxation: SAC deals with mutual agreement procedure between Czechia and Germany

The Supreme Administrative Court (SAC) has held that it is not for a court to determine whether any agreement concluded with another contracting state under a double tax treaty is invalid.

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The SAC judgment No. 5 Afs 468/2019-68, published just before Christmas, dealt with Article 25 of the Double Taxation Treaty between the Czech Republic and Germany. Under the article, if there are any doubts whether taxation took place in accordance with the treaty, both contracting states may resolve the dispute by mutual agreement.

Administrative authorities in Germany had concluded that an individual who was both a Czech and a German citizen had a tax domicile in Germany between 1997 and 2008, and assessed additional tax on dividend for that period. The individual claimed that under the treaty their tax domicile had been in the Czech Republic, and asked the Czech Ministry of Finance as the competent authority to initiate a procedure to resolve the case by mutual agreement with the German Federal Tax Authority pursuant to Article 25 of the treaty.

The Ministry of Finance of the Czech Republic initiated the procedure and informed the German authorities that the individual had been issued a certificate of tax domicile in the Czech Republic for the period 1993 – 2010. The German authorities then submitted evidence indicating that individual's tax domicile had been in Germany. The Czech Ministry of Finance accepted these arguments and confirmed the conclusions of the German authorities.

The individual disagreed with the Czech ministry's approach and, even before the mutual agreement procedure was closed, filed an action with a municipal court demanding the duty to protect their rights as a Czech tax resident to be imposed, and the procedure of the Czech Ministry of Finance to be declared unlawful. The municipal court found the action to be unfounded and dismissed it, and the individual then filed a cassation complaint with the SAC.

The SAC noted that if an individual submits their case for resolution to the competent authority of the contracting state (i.e. the Ministry of Finance of the Czech Republic), the authority has in principle three options how to respond to this request: they can reject the request as unjustified, find a satisfactory solution to the case itself, or initiate a procedure to settle the dispute by mutual agreement.

In the case in question, the Ministry of Finance of the Czech Republic chose the third option and initiated the mutual agreement procedure. According to the SAC it is also the responsibility of the administrative authority to inform the taxpayer of its choice. If the competent administrative authority considers the objections raised by the taxpayer justified and seeks to resolve them through mutual agreement procedure, such a procedure then already constitutes a negotiation within the realm of public international law, where two sovereign states are seeking an agreement. Although the taxpayer has a primary interest in reaching an agreement in their favour, they are neither a party to nor a participant in this negotiation. Article 25 of the treaty does not grant them any subjective public rights as to the outcome of the procedure to which the administrative court could afford protection. It is therefore not for the court to decide how international negotiations are to be led. Neither should it assess whether the competent authority has defended the taxpayer’s rights vigorously enough in the particular case.

As the SAC summarised in its decision, a review of the competent authority's opinion pursuant to Article 25 of the treaty is only possible in two cases: firstly, if the competent authority rejects the taxpayer’s request for the procedure provided for by Article 25 of the treaty as unjustified – which did not happen in this case; and secondly, after the mutual agreement procedure has been closed, which had not yet happened in the case in question. In view of this, the SAC dismissed the cassation complaint. However, as the SAC added, even if the administrative court had dealt within its review with the competent authority’s approach to a mutual agreement procedure already concluded, its assessment would have no effect on that procedure, since it is not for the court to determine whether any agreement concluded with the other contracting state is invalid.

To conclude, the SAC *inter alia* noted that the fact that tax liabilities may have expired shall not lead to a refusal to initiate a mutual agreement procedure, not even if this resulted in a double non-taxation of income; the treaty does not contain any clause that would make non-taxation in one contracting state conditional upon taxation in another contracting state. According to the SAC, the Ministry of Finance of the Czech Republic should therefore not take a passive approach to the mutual agreement procedure just because the income can no longer be taxed in the Czech Republic due to expiry of the lapse period.

News in brief, January 2021

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

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DOMESTIC NEWS IN BRIEF

- The tax package for 2021 was published in the Collection of Laws under No. 609/2020 on 31 December 2020 and entered into effect on 1 January 2021. The package, inter alia, repeals the super-gross wage, introduces two personal income tax rates of 15% and 23%, introduces monetary contributions for meals, increases the basic tax relief per taxpayer, and abolishes the limit for the tax bonus that may be payable to taxpayers if their child credit for the year exceeds their tax liability. Moreover, the package amends the taxation of bonds, introduces accelerated depreciation for selected categories of assets acquired in 2020 and 2021, increases the limit for tangible fixed assets to CZK 80 thousand, and repeals the category of intangible assets for tax purposes.
- The Minister of Finance decided on a general waiver of penalties for the late filing of real estate tax returns for 2021 and road tax returns for 2020 on the condition that such returns are submitted no later than on 1 April 2021 (published in Financial Bulletin 3/2021 on 7 January 2021). The sanction-free period for filing tax returns will thus be postponed from 31 January 2021 to 1 April 2021. For road tax, the waiver also applies to default interest if the tax is paid no later than on 1 April 2021. Any road tax underpayments will also have to be paid by 1 April 2021 at the latest. The date on which real estate tax is payable remains the same: 31 May 2021 and 30 November 2021, primarily owing to the restriction of the tax authorities’ opening hours.
- Regulation No. 589/2020 Coll., amending basic compensation rates for the use of road motor vehicles and meal allowances and determining the average price of fuel for the purpose of reimbursing travel expenses, has been published in the Collection of Laws. The basic compensation rate for 2021 will increase to CZK 4.40 per 1 km driven by passenger car.
- Regulation No. 581/2020 Coll., amending the regulation on the essentials of filings and e-filing forms in insolvency proceedings and the regulation on the rules of procedure for insolvency proceedings, has been published.
- A notice of the Ministry of Labour and Social Affairs disclosing the average wage in the national economy for the first to the third quarter of 2020 for the purposes of the Act on Employment has been published in the Collection of Laws under No. 574/2020 Coll. The average wage for this purpose amounts to CZK 34,611. A similar notice for the purposes of the Labour Code has been published under No. 575/2020 Coll.
- On its website, the Ministry of Finance has updated an overview of effective double taxation treaties, also including treaties in effect from 2021 - with Kyrgyzstan (No. 50/2020 Coll. of Int. Tr.) and Botswana (No. 49/2020 Coll. of Int. Tr.)
- An overview of the Ministry of Labour and Social Affairs’ changes and updates for 2021 has been published on the ministry’s website.
- After evaluating the outputs of the Committee for Fair Pensions, the Ministry of Labour and Social Affairs has submitted three draft amendments to the Act on Pension Insurance for comment procedure, which are as follows:
- A basic proposal of the pension reform amending the architecture of the pension system, involving the transformation of the old-age pension scheme into the zero pillar and the first pillar, i.e. solidarity part and merit-based part of old-age pensions (proposed to be effective from January 2022). The amendment also

regulates the mandatory payments by self-employed persons from 1 January 2023 to strengthen the pension entitlements of these persons.

- A proposal to introduce an early retirement option for persons performing demanding professions, who would retire up to 5 years earlier than normal. To cover the increased cost of the earlier payment of old-age pensions, employers of this category of employees should get involved (increasing social security premiums by 5 percentage points). This is proposed to be effective from 1 January 2024.
- A proposal to increase the merit-based part of old-age pensions by the number of raised children, in particular by CZK 500 per raised child (for a maximum of three children). Pensions awarded both before and after the effective date of the law will be increased. This is proposed to be in effect from 1 January 2023.

FOREIGN NEWS IN BRIEF

- The European Union and the United Kingdom have concluded the EU-UK Trade and Cooperation Agreement. The agreement covers measures aimed at ensuring a level playing field in areas such as state aid, tax transparency, VAT, customs and social security coordination. Additionally, both parties have endorsed a Joint Political Declaration on Countering Harmful Tax Regimes.

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