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December 2024

Editorial

In the last issue of Tax and Legal Update, your interest was most piqued by our article on the effectiveness of the new Accounting Act. Hence, I found it important to focus on this issue during our Tax and Legal Forum, where I discussed it with Stanislav Kouba, Chief Director of the Tax and Accounting Section at the Ministry of Finance.

He confirmed that the law is in principle ready for debate by the government. However, work is still ongoing on the accompanying law, which contains changes to tax laws and where some issues are still unresolved. The whole process is also affected by next year's elections to the chamber of deputies, as the legislators will meet in their current structure for the last time in June 2025. The ministry, nevertheless, foresees at least a one-year period between passing the law (validity date) and its effective date. For now, we can only guess what the exact date will be; my personal bet is January 2028.

At this year's Tax and Legal Forum, we also discussed other amendments to tax laws currently in the pipeline. The VAT Act and changes to agreements on work outside employment and employee benefits should be approved by the end of the year. Contrariwise, the approval of changes to the taxation of employee stock option plans is uncertain, as is the tax exemption of income from the sale of cryptocurrencies, complicated by the tax administration's strong opposition and the ministry's cautious approach. We will be watching developments in this area closely in the coming days.

The good news is that we are not going to see another major consolidation of public finances on the revenue (tax) side or the introduction of a financial transaction tax like in Slovakia anytime soon (phew!).

I wish you all pleasant Christmas. While rumour has it that only true ballers will gift bottles of wine this Christmas, I do believe that this unpleasant change in the tax deductibility of expenses will not spoil your mood and that you will still enjoy your holidays. I look forward to possibly seeing you in person in the new year - or even maybe as early as next week at our Daňovky On Air broadcast!

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ViDA : key changes to VAT and their impact on EU business

The European Union reached a major milestone in tax policy when the ECOFIN Council approved a package of measures aimed at modernising VAT rules, known as the VAT in the Digital Age (ViDA) Directive in early November 2024. This comes after almost two years of intense negotiations and despite obstructions from several member states. The package represents an important step forward towards digitisation, the fight against tax fraud, and the simplification of administrative obligations for taxpayers.

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Digital reporting and e-invoicing

One of the key elements of the new package is the introduction of a digital VAT reporting system in (near-) real time through electronic invoicing. This system is to be fully implemented by 2030 for intra-community (EU) transactions, replacing EC sales lists. By 2035 at the latest, the changes will also affect the reporting of domestic transactions, replacing VAT ledger statements. This will allow for the faster and more accurate tracking of the flow of goods and services as well as of the payments for these transactions. Businesses will be required to automatically report transaction data to their tax authorities, which will improve the quality of data available to the tax authorities and thus help in the fight against VAT fraud.

Following the agreement of the ECOFIN Council, the Standard EN 16931 common template will be used for e-invoicing. The deadline for uploading an e-invoice into the system has been extended from the original proposal to 10 days after the transaction takes place or payment is received (whichever is earlier). The possibility to issue summary tax documents monthly will remain, under certain conditions. Summary tax documents will have to be uploaded into the system within 10 days after the end of the calendar month.

Digital (online) platforms

Another important change is the introduction of the deemed supplier concept for online platforms. This is intended to ensure that platforms do not only charge VAT on the service they provide (the service of linking supply and demand - i.e. the online platform service) but also on supplies “purchased” from individual providers of the services offered, even from VAT non-payers. The scheme is intended to apply to the provision of short-term accommodation rentals and passenger transport services to ensure a fairer competitive environment between traditional and digital services and to increase VAT collection in the digital economy sector.

Extension of the One-Stop-Shop for VAT purposes

The new rules also extend the One-Stop-Shop scheme for VAT purposes (e.g. to include transfers of own goods between EU member states). This will make it easier for businesses to register (only one registration will be necessary instead of having to register for VAT in each member state) and will simplify the payment of VAT under this scheme for selected transactions (goods and services) across EU member states. This will reduce the costs incurred by taxable persons to register for VAT in different countries.

Further context and implementation in the Czech Republic

The position of the Ministry of Finance of the Czech Republic has been rather passive. According to information from tax administration representatives, the Czech Republic will implement the ViDA only when mandatory; voluntary implementation before the deadline is not expected. The whole package of measures will now be discussed by the European Parliament. Once formally adopted and published in the Official Journal of the EU, the new rules will enter into force.

These measures are expected to significantly simplify VAT administration and boost the competitiveness of EU businesses in the digital age. However, the phase of setting-up e-invoicing will be financially and technically challenging for taxable entities and for tax administrations. We should see single EU registrations from 2027, new rules for the platform economy from July 2028, and digital reporting from 2030.

VAT deduction: what year-end obligations to watch out for

The end of the calendar year is associated with several obligations related to the right to deduct VAT. If a VAT payer claims a proportional or reduced deduction, it is good to know what needs to be done in the December VAT return. This article gives an overview of the basic steps that should be taken as well as some tips on when you do not need to do anything at all.

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Correction of proportional VAT deductions

For received taxable supplies used for both economic and non-economic activities, taxpayers are entitled to claim only a proportional VAT deduction. Typical uses for non-economic activities are supplies provided free of charge or for private consumption by the taxpayer and their employees. A proportional VAT deduction should also be applied where a company provides company vehicles to employees for both business and private purposes.

The proportional right to deduct is calculated using a coefficient that depends on a specific measurable criterion, such as floor area or mileage. At the time of claiming the right to deduct, it is also possible to estimate this coefficient.

Where an estimate was used, the taxpayer must recalculate the coefficient at the end of the year based on actual facts and correct the VAT deduction in the VAT return for December, specifically on line 45. However, the VAT Act allows the estimated coefficient to differ from the actual coefficient by up to 10 percentage points without the need for correction. Moreover, if after the recalculation it turns out that you were entitled to a higher deduction, you do not need to make this correction but can do so voluntarily.

Settlement of reduced VAT deductions

The settlement of VAT deductions also includes the correction of deductions claimed in a given year. The term 'settlement' applies to received taxable supplies where the taxpayer is entitled to a reduced deduction - i.e., taxpayers who carry out both taxable and exempt supplies without the right of deduction. These are mostly banks and insurance companies, but the obligation to reduce the right to deduct may also apply to you if, e.g., you rent property to both VAT payers and non-payers, and the rent to non-payers must be exempt from VAT.

The right to deduct at a reduced rate corresponds to the extent of the use of taxable supplies expressed as a proportion of the value of taxable supplies with the right to deduct and all the taxable supplies carried out. However, the calculation need not include one-off events representing supplies exempt from VAT whose value is generally high and which would thus bias the coefficient away from reality (e.g. the provision of financial services or the supply or rental of immovable property where it is an ancillary activity).

If you are reducing your VAT deduction in 2024 for the first time, you can use a qualified estimate. If you already have experience with reducing your VAT deduction, during 2024, you have already used the coefficient calculated as part of last year's settlement.

In the December return, line 53 is then used to make an accurate calculation based on the supplies made and to adjust the claimed right to deduct. Here, the VAT Act no longer provides for any "headroom" and the settlement must always be performed even if the coefficient changes only by one percentage point, in any direction.

The coefficient shall always be rounded up to whole percentages. If it is greater than or equal to 95%, the coefficient shall be rounded to 100%. Hence, if the coefficient is even a fraction higher than 94%, you can claim the full deduction.

VAT deduction adjustment

Another statutory obligation in the December VAT return is the obligation to make a VAT deduction adjustment on line 60, which relates to the deduction of VAT on fixed assets if there is a change in the scope of its use within 5 years (or 10 years for real property) from its acquisition.

Changes in the scope of use can be summarised as any use that results in a difference between the possible claimed VAT deduction, and the facts upon the acquisition of the fixed assets. This may involve situations where, e.g., real property was rented out on a taxable basis, but the lease changed to an exempt one in 2024 (or vice versa). Or where an employee used a company vehicle in 20% for private purposes in the year of acquisition and in 45% in 2024.

These changes are assessed separately for each calendar year of the 5-year/10-year period, always compared to the originally claimed deduction. Thus, for 2024, there is an obligation to monitor the scope of use for fixed assets acquired since 2020 or 2015 for real property.

The adjustment amount is always set as one-fifth, or one-tenth, of the product of VAT on received taxable supplies and the difference in the indicators of the right to deduct VAT. The indicator of the right to deduct is either 0%, 100%, or the coefficient amount.

However, if the difference between the indicators of the right to deduct is no more than 10 percentage points, no VAT deduction adjustment shall be made. Should the adjustment lead to an increase in the right to deduct, it is voluntary.

Legal

Workplace equality after takeover of employees: how to address differences?

A merger, purchase of a part of business, or transfer of activity: these are the typical situations when employees are automatically (by operation of law) transferred from their original employer to the acquiring entity. This process, referred to as the transfer of rights and obligations from employment relations, raises numerous issues concerning the equal treatment and remuneration of employees. A recent judgment of the Supreme Court has addressed this issue for the first time and provided valuable conclusions.

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Transfer of rights and obligations – what does it involve?

Upon the transfer of rights and obligations from employment relations, workers automatically become employees of the acquiring employer without having to sign a new employment contract. They are transferred to the new employer with a package of their existing rights and obligations arising from their original employment contracts, collective bargaining agreements or internal regulations of the previous employer. Thus, there may be employees with different sets of rights at a single workplace, as the successor employer may have different arrangements for their employees' rights and obligations. Legislation and until recently case law provided no guidance on how to deal with this situation: i.e. whether the employees' rights need to be levelled to the higher standard, whether they can be levelled to the lower standard, or whether duality should be maintained, and if so, for how long.

Equal treatment and remuneration in the context of transfers of employees

The judgment dealt with a case where an employee sued her employer for unequal remuneration following a transfer of employees' rights and obligations: employees of another organisation had been transferred to the plaintiff's employer and were carrying out the same work, but for better wages. The employer argued that they did not cause the inequality but only preserved the existing rights for the old and new employees, i.e. did not level them.

Nevertheless, the courts found that the employer was in breach of the principle of equal treatment enshrined in the Labour Code. The conclusion was confirmed by the Supreme Court, as it stated that the transfer of rights and obligations was not a justifiable reason to (permanently) favour one group of employees over another if they perform comparable work. The Supreme Court also declared that it was not necessary to level the employees' rights to a higher standard and that it was also possible to curtail them. In the court's opinion, the rights of both groups of employees should be levelled within two months of the transfer, except for rights arising from the original employer's collective agreement, which could for a time be maintained. If an employer fails to comply with this obligation, the employee may seek redress in court.

Implications for practice

The judgment clearly shows that equal treatment and fair remuneration are fundamental principles of labour law that cannot be ignored even in the context of the transfer of employees' rights and obligations. If, as a result of a transfer, there are groups of employees with different rights and obligations at a single employer, the employer should act promptly and level their rights within two months. Otherwise, they risk a penalty for an unequal treatment and possibly a lawsuit by employees seeking their rights to be levelled.

For rights arising from a unilateral document, employers themselves can decide whether to level them upwards or downwards. However, if they decide to level the rights to the lower standard, they must bear in mind that, should this be the reason for an employee to terminate their employment, they may be entitled to severance pay. Where unequal rights arise from a contract, employers should initiate an amendment to the contract. However, this situation can be rather complex, and the employee's cooperation will be necessary.

New subsidies to support research and development in digitisation and new technologies

The Ministry of Industry and Trade in cooperation with the Business and Innovation Agency plans to announce two new calls under the Applications programme. It will be possible to obtain support for experimental development and industrial research in digital and technological solutions.

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Both calls are open to businesses of all sizes. If the applicant is a large business with more than 3,000 employees (group-wide), it can only apply for support if the project is carried out in cooperation with an SME.

Call II - Development of Digital Solutions

This call intends to support the implementation of experimental development of digital solutions. Applications will be accepted **from 20 February to 20 May 2025**. The funds for allocation shall be CZK 1.5 billion. Subsidies can reach up to CZK 50 million, with an aid intensity of 25-60% of eligible project expenses, depending on the size of the enterprise. Support can be obtained for direct expenses, such as selected external services and personnel expenses, and for indirect expenses in the form of a lump sum. Specific areas that can be supported under this programme include:

- artificial intelligence and machine learning, including big data and security
- cybersecurity
- advanced manufacturing and robotics
- sustainable energy and clean (low-emission) technologies
- intelligent transport applications for cities
- communication and networking technologies.
- Under this call, support will not be given for the development of digital solutions related to manufacturing, processing, transport, distribution, storage, or combustion of fossil fuels.

Call III - DEEP TECH

Call III is aimed at supporting industrial research and experimental development in connection with increasing the level of technological readiness of advanced technological solutions. Applications for support are to be accepted **from16 December 2024 to 19 March 2025**. The funds for allocation shall be CZK 3 billion. Subsidies can amount to up to CZK 125 million, with an aid intensity of 25-80% of eligible expenses, depending on the size of the enterprise and the project's activities. Eligible expenses may include external services, personnel expenses, costs of tools, instruments and equipment in the form of depreciation, costs of materials and components, as well as lump-sum expenses. Support can be obtained for research and development specifically in:

- advanced materials
- aviation and aerospace, smart mobility, and unmanned systems robotics
- semiconductors
- biotechnology and advanced technologies in healthcare
- electronics and photonics
- sustainable energy and clean (low-emission) technologies, including transport communication and network technologies
- artificial intelligence and machine learning, including big data.

Projects eligible for support under these calls can be implemented in the whole territory of the Czech Republic, excepting Prague.

If you are interested, we will provide you with more information.

Subsidy programme to construct charging stations

The Ministry of Transport has announced another call to apply for support for the construction of charging stations, this time in towns and municipalities. Support opportunities have thus been expanded compared to previously announced calls.


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We wrote about the previously announced calls here.

This call intends to provide support for the construction of publicly accessible charging stations in towns and municipalities across the Czech Republic. Owners of the infrastructure can apply for support, and applications will be accepted until 28 February 2025. The funds for allocation shall be CZK 370 million. The maximum aid intensity can be up to 80% of eligible project expenses. The subsidy amount shall be CZK 70-220 thousand per charging station, depending on how many charging points a station has and whether it is anchored to the ground or to a vertical building.

The minimum project scope is 40 AC/DC conventional charging points. Expenses incurred no later than 31 December 2028 can be supported, and the project must be completed before 30 June 2029.

If you are interested, we will be happy to provide you with more information.

SAC upholds denial of mineral oil tax refund

The Supreme Administrative Court (SAC) dismissed a cassation complaint filed by a company seeking to annul a judgment denying its claim for a refund of excise duty on mineral oils. The company was unable to prove that the mineral oils purchased were actually used to produce heat.


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The company claimed that they had purchased light fuel oil (LFO) including excise duty and subsequently used it to produce heat. They did not transfer (sell) the LFO to end customers who could potentially claim a refund. However, the General Directorate of Customs (GDC) argued that the company had not demonstrated immediate control over the heat production process, which is a condition for a refund under the Excise Duty Act. Specifically, the company should have kept more detailed records of the oil supplied and its specific consumption and should have allocated sufficient staff to continuously monitor the entire heat production process, down to the points of consumption.

The company argued that the law does not require physical control over the heat production, and that the excise duty should be refunded to the person who purchased the oil and used it to produce heat. The company pleaded that the requirement of control over the heat production process was beyond the scope of the law.

The Municipal Court stated that to be able to recover the excise duty, it must be proved that the oil had actually been used to produce heat, which is conditional upon full control over the production of heat and the consumption of the oils. The company was unable to prove that its employees had had control over the heating facilities at the points of oil consumption and heat production; hence, the company's claim was denied.

The company further argued that the change in the customs authority's practices was contrary to their expectations based on previous inspections that had revealed no irregularities. However, the Municipal Court held that the change in the practices was supported by sufficient legal reasoning and was based on proven facts. The SAC agreed with the opinion of the Municipal Court and the GDC that the company failed to bear the burden of proof.

The decision has implications for excise duty refunds in the Czech Republic, particularly for companies engaged in the production of heat from mineral oils. To successfully claim the refund of excise duty, it is vital to have demonstrable control over the production of heat (and to keep detailed records).

CJEU: are building foundations a residential structure?

In its judgment, the Court of Justice of the European Union stated that land with the foundations of a residential housing structure is still regarded as building land. The connection of the plots to utilities does not have the effect of changing its qualification as land.

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A Danish company acquired land which they subsequently subdivided and built utility connections on the plots. After obtaining a building permit, the company started to cast foundations. Subsequently, the company sold the plots and treated the transaction as a supply of a structure exempt from VAT, as Danish legislation at the time treated the supply of building land as a transaction subject to VAT, and the supply of a structure as a transaction exempt from VAT.

According to the VAT Directive, a building is characterised by being able to be occupied and used for that purpose. On the other hand, building land means any undeveloped or developed land defined as building land by the member states. However, it is necessary to comply with the objective pursued by the VAT Directive, which is to exempt from VAT only supplies of land which has not been built on and is not intended for building. The CJEU emphasised that land on which a structure is located that must be classified as a building under the VAT Directive cannot be regarded as building land.

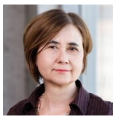
At the time of the supply, only the foundations of residential housing structures were located on the land. It was therefore necessary to determine whether those foundations as such constitute buildings whose supply prior to their first occupation would be subject to VAT. In the light of the VAT Directive, the criterion of first occupation of a building must be understood as corresponding to the first use of the property by its owner or tenant or the point at which it may leave the construction process to enter the field of consumption.

According to the CJEU, the modification of land, such as its connection to utility networks, cannot lead to a change in the legal classification of that land as a building, i.e., as a structure fixed to the ground by its foundations. The foundations of residential housing structures cannot be qualified as a building or its part. For this reason, the CJEU concluded that if just the foundations of a residential structure are located on the land, it should be regarded as a building plot subject to tax.

In brief

News in Brief, December 2024

Last month's news in one or two sentences.



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DOMESTIC NEWS

- The chamber of deputies has approved the government's amendment to the Employment Act and other regulations (including the amendment to the Income Tax Act). The amendment abolishes the notified agreement scheme and introduces a special limit for the exemption of health-related benefits. The chamber of deputies has also approved an amendment to the Excise Duty Act. We have previously reported on the approval of an amendment to the Value Added Tax Act. The senate is expected to discuss these regulations at its December session.

- Awaiting approval in the chamber of deputies are, among other things, amendments that extend the increased tax support for donations, modify the taxation of employee stock option plans, introduce changes to retirement savings products, and modify top-up taxes.

- The General Financial Directorate has launched a new tool to improve the administration of tax and its communication with taxpayers. By sending out a ‘nudge letter’, the GFD seeks to increase voluntary tax compliance and a more efficient tax collection.

- The Ministry of Finance has published an updated Overview of Valid Treaties as of 1 December 2024.

- In December, three issues of the Financial Bulletin of the Ministry of Finance of the Czech Republic were published with the following content:
    - Communication on Double Taxation Treaties in relation to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, specifically those concluded between the Czech Republic and the following countries:
        - Mongolia (income and wealth taxes)
        - Barbados (income taxes)
        - Bosnia and Herzegovina (income and wealth taxes)
        - the Republic of Azerbaijan (income and wealth taxes)
        - the Kingdom of Bahrain (income taxes).
    - GFD Instruction No. GFD-D-64 on the location of the file or its relevant part at the tax authorities and their territorial offices.

- The government has approved an amendment to criminal legislation. The bill modernises criminal law, following the EU trends and at the same time responding to some new social phenomena. Find out more on the Ministry of Justice’s website.

- The chamber of deputies has approved the government's bill on (work) integration social enterprises. Thanks to the legislation, it will be possible to better integrate those who are in some way disadvantaged in the labour market. The bill is expected to enter into force on 1 January 2025. Some sub-provisions will not take effect until 12 or 24 months later. More detailed information can be found here.

- Two directives have been published in the Official Journal of the EU, which will make it much easier for people with disabilities to travel within EU member states. An EU Disability Card and an EU Disability Parking Card for people with disabilities will become a reality. The full system should be operational in the member states by 2028. For more information, click here.

- The General Financial Directorate and Charles University's Faculty of Social Sciences have concluded a memorandum on professional cooperation on corporate income tax analysis.

FOREIGN NEWS

- The European Commission has published an updated implementing regulation setting out a single template and electronic formats for reporting under the Public Country-by-Country Reporting Directive (the public CbCR). The changes are minimal compared to the original proposal and include, e.g., the possibility to disclose additional information, moving some optional data to a separate table and clarifying the requirements for the content of the section on subsidiaries. The updated proposal still needs to be formally approved and will enter into force upon publication in the Official Journal of the EU. Details on country-by-country reporting can be found here.

- The European Parliament has issued a favourable opinion on the updated version of the FASTER Directive (faster and safer withholding tax relief procedures). The directive is now awaiting formal adoption by the Council of the EU. Member states will be required to transpose the rules into their legislation by 31 December 2028, with the directive expected to take effect from 1 January 2030.

- Portugal has passed a law transposing the EU Minimum Tax Directive. The law also introduces a domestic top-up tax. Each constituent entity in Portugal is required to file a notification with the Portuguese tax authorities within twelve months of the end of the first accounting period.

- The Czech Republic, Germany, and Hungary have joined the multilateral agreement on the exchange of information on digital platforms. The agreement now covers a total of 29 jurisdictions.

- The European Commission has published explanatory notes on the changes to VAT in the EU concerning the special scheme for small businesses (Council Directive (EU) 2020/285 and Commission Implementing Regulation (EU) 2021/200). In the Czech Republic, these changes are included in the amendment to the VAT Act to be discussed by the Czech Senate at its December session.

- The KPMG EU Tax Center regularly summarises changes in direct taxes in the EU and internationally that may affect your business. You can read up on important case law and new legislation at OECD, EU, and individual member state levels. The complete latest edition of 20 November 2024 can be found here.

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