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Editorial

The question of tax inspectors' bonuses linked to the volume of tax collections has recently been subject to hot debate. Of course, tax inspectors fulfil an important social role and there should be no complaints if they are effectively incentivized to do their work. But devising motivational models is a fiendishly complex task easily gotten wrong, especially in a public sector context. Policy makers would do well to pay due respect to the law of unintended consequences...

While on the subject of consequences, despite the scheduled date of 30 March 2019, the future of Brexit remains far from certain. Betting agencies are suggesting an over 90 percent probability of delay. It may be reckless to challenge such odds. But in any case how long any delay would last and what the final outcome would be remains undetermined. The prudent course of action for affected businesses and individuals is surely to maintain contingency plans for diverse scenarios.

Diversity in the context of our organisation is an increasingly significant aspect of KPMG's strategic agenda. In recent months, you may have noticed our www.vyrostlyjsme.cz campaign, devoted to our successful female colleagues. As a part of our commitment to promote gender diversity, in particular at the leadership level, KPMG is conducting a 2019 follow-up to 2018's Global Female Leaders Outlook survey, aimed at collecting business insights from women in leadership positions. If you are a female in a leadership position, we would be very grateful if you would contribute to our survey, following this link https://surveys.kpmg.de/GFLO. We thank you in advance.

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Taxes

Amendment to VAT Act: Are meal vouchers liable to VAT?

The tax package returned by the Senate to the Chamber of Deputies, to be discussed again on 12 March 2019, contains, among other things, the implementation of the Vouchers Directive. This directive regulates the rules under which the VAT regime for vouchers is determined. A widely-discussed issue is what vouchers actually fall into the category of vouchers under the new directive. Are common meal vouchers to be viewed as vouchers for VAT purposes?

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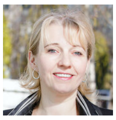

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An amendment to the VAT Act defines a voucher as a document associated with the duty to accept it as consideration for the delivery of goods or services. It must also be evident from the voucher what goods or services will be delivered and by whom.

The explanatory report to the amendment to the VAT Act specifies that the new rules do not apply to discount vouchers that authorise their holders to obtain a discount from the price of purchased goods or services but not to receive specific goods or services for such a voucher. In our opinion, the specification of discount vouchers deserves clarification. The explanatory report provides examples of discount vouchers, e.g., vouchers with a value of CZK 100 that consumers acquire free of charge from advertising flyers and that they may use when purchasing goods in shops, or coupons authorising their holders to acquire a second product free of charge when submitting them at fast food outlets.

Whether meal vouchers meet the definition of vouchers liable to VAT is becoming increasingly topical, as the expected deadline for passing the tax package is approaching. The interpretations regarding the VAT regime on meal vouchers may indeed affect a large number of employers, catering service providers, and distribution and retail networks.

If meal vouchers represent vouchers liable to VAT, the VAT regime will depend on whether they are single-purpose or multi-purpose vouchers, i.e. whether a voucher can be used to acquire goods or services liable to a single VAT rate. This voucher classification must already be made at the moment vouchers are issued, since it is essential not only for applying the right VAT regime on vouchers but also on services related to their distribution (especially commission generated by companies issuing vouchers and potential distributors). The specification of the VAT regime is also crucial for claiming the entitlement to VAT deduction by the concerned providers.

However, deciding what VAT rate should be applied on goods or services acquired for meal vouchers is not a simple task, as the range of goods or services is quite varied (meal services vs purchases of groceries at retailers) and the current legislative development quite turbulent. For example, a motion to amend the tax package proposed by the Senate contains a proposal to reduce the VAT rate on meal services to 10%. Theoretically, if meal vouchers today represent single-purpose vouchers, then once the VAT rate on meal services is reduced, will they then be regarded as multi-purpose vouchers in accordance with the new regulation?

To find an answer to the question on how to treat meal vouchers under the new amendment is the objective of two contributions submitted to the March Coordination Committee, i.e. a professional platform of the representatives of the Chamber of Tax Advisors and the General Financial Directorate focusing on legislation discrepancies. Hopefully, once spring comes along, we will know more.

TREND – a new programme to support industrial research

The National Research and Innovation Strategy for the Czech Republic's Smart Specialisation (National RIS3 Strategy) is preparing an entirely new programme to support applied research and experimental development. The TREND programme builds upon the well-established TRIO, APLIKACE and EPSILON programmes.


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The new programme will focus on industrial research and experimental development, especially on the development of new technologies and materials enhancing the level of automation and robotisation (e.g. nanotechnologies) and on the use of digital technologies such as artificial intelligence or photonics.

TREND, the Ministry of Industry and Trade's programme, should be implemented by the Technology Agency of the Czech Republic. The first public call to participate in the programme is expected to be announced in May 2019, with planned support from 2020. Other public tenders will be announced in 2020–2023.

Total funds to be allocated within the programme are CZK 15 billion for a period of eight years (2020–2027). Since financing from the state budget is substantial, even Prague entities will have a chance to apply for support, similarly as in the current TRIO programme.

The expected duration of projects within this programme is a maximum of 48 months. Projects that may be funded from this programme include projects prepared by corporations themselves as well as projects carried out in cooperation with research organisations. The highest permitted aid intensity is determined as a percentage of eligible costs and is calculated for each project, recipient and another participant separately, not to exceed 70 or 80 percent in aggregate for all participants, according to the type of supported activity. The programme may only support projects that justifiably presume that at least one of the main project outputs, such as utility or industrial design, prototype, functional sample, pilot plant, verified technology and patent, will be attained.

More details will be available together with the May public tender announcement.

Personal Data Protection Office on when to perform a DPIA

When does it become necessary to carry out a data protection impact assessment? The Personal Data Protection Office attempts to answer this question with its List of Types of Personal Data Processing Operations Subject to Data Protection Impact Assessment (the “List of Operations Subject to DPIA”).

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The duty to perform a data protection impact assessment, i.e. a DPIA, is one of the duties the GDPR imposes on personal data controllers. Under the GDPR, a DPIA must always be carried out when it is likely that a certain type of processing will result in a high risk for the data subjects’ rights and freedoms, especially when taking into account the nature, extent, context and purpose of a particular processing operation. However, the text of the regulation itself is very abstract and contains indefinite legal terms. Personal data controllers are therefore left in a high degree of uncertainty.

Attempts have been made to provide a uniform interpretation, such as the Guidelines on DPIAs and High-Risk Processing prepared by the European Data Protection Board (the WP29). These comprise a list of nine criteria according to which it should be possible to determine whether a DPIA must be performed. However, these instructions do not provide an entirely specific answer to personal data administrators, especially concerning marginal cases.

The Czech Personal Data Protection Office has now published a final version of the List of Operations Subject to DPIA, exactly one year after the first version of this document was issued for public discussion purposes. The list determines the characteristics of personal data processing to be used by controllers to describe their personal data processing operations and subsequently to assess whether the processing operation involves a high level of risk for the data subject’s rights and freedoms. The level of risk is determined according to predefined scales allocating certain critical, significant, and low values to each individual characteristic.

The above list has already been approved by the European Data Protection Board. But the Personal Data Protection Office itself admits that the material is not exhaustive and may be subject to changes and additions resulting from the development of technologies, amendments to legislation, etc. Along with the List of Types of Personal Data Processing Operations Not Subject to DPIA published earlier, data controllers should finally have at their disposal clearer guidance on how to determine whether a DPIA should be performed.

Revolution in providing information to investors?

In February, the European Supervisory Authorities (ESAs) disclosed the results of a public consultation regarding the essential elements of key information documents (KIDs). These are obligatorily provided to retail investors in compliance with the Regulation on Key Information Documents for Packaged Retail and Insurance-Based Investment Products (PRIIPs). What were the outcomes of the public consultation? Will new duties arise for those who prepare KIDs?

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The public consultation, held under the patronage of the ESAs at the end of 2018, dealt with potential modifications to the essential elements of key information documents, which are provided to retail investors before they invest their funds in structured retail investment products or insurance-based investment products. They include, among other things, the definition of the type of investor for whom the given product is intended, the risk profile of a product and information on the costs that investors have to bear. KIDs have a highly unified format and their length may not exceed three A4 pages. KIDs need not currently be prepared for standard investment funds. This exception will cease to apply at the end of 2019.

In their report, the ESAs propose a number of changes to the essential elements of KIDs, especially the introduction of standardised and exact wordings. Even though at the beginning of the public consultation ESAs also proposed other changes, e.g., the inclusion of product performance scenarios in the essential elements, these changes will not be incorporated in the final version after taking into account the opinions of the professional public.

The ESAs will also propose that the scope of provided information be extended by performance fees, i.e. fees paid by investors only where instruments meet performance criteria. Another proposal is to take into consideration the specifics of products containing autocallable features where it cannot be determined in advance when they will be redeemed.

Since the exception for standard funds is coming to an end, the ESAs have also prepared motions to amend PRIIPs. These derive from current information documents used with standard investment funds and include, for example, the specification of the name of a supervisory body issuing a permit to an investment company managing a standard fund, or the specification of the name of a group to which the investment company belongs.

It remains to be seen which structural changes to KIDs will finally be approved. Considering the public consultation’s results, changes may actually affect all products that currently require KIDs.

Concerns about new whistleblowing regulation

A bill on the protection of whistle-blowers is another attempt currently discussed by the government to regulate whistle-blowing (i.e. exposing any kind of information or activity deemed illegal, unethical, or not correct within a private or public organisation). Indeed, the current government intends to make the protection of whistle-blowers the flagship of its anti-bankruptcy measures. However, within its comment procedure, the bill was subject to heavy criticism, even from individual government departments like the Ministry of Justice. What does the bill deal with? Where does the criticism come from?

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The bill's content can be summarised in three basic points: the first is to allow new methods of reporting unlawful acts, the second is the explicit definition of the protection of whistle-blowers and the third is the creation of an agency for the protection of whistle-blowers as a new specialised body.

Most importantly, the bill distinguishes between internal (i.e. reporting directly to an employer) and external whistleblowing (i.e. to a third party such as the police). In accordance with the bill, employers who fulfil certain criteria (e.g. have more than 50 employees representing liable persons under the AML Act, etc.) must implement an internal whistleblowing system allowing employees to report unlawful acts, and introduce distinct measures to protect whistle-blowers and keep their identity secret. One new method of external reporting should be a report filed with the Agency for the Protection of Whistle-Blowers that should act as a mediator between the whistle-blower and the bodies investigating the reported actions. The agency should become an organisational department of the Ministry of Justice and its principal goals should be educational and advisory activities, receipt of whistleblowing reports, provision of information to relevant bodies, and issuance of certificates to whistle-blowers, confirming that the information provided by them was indeed reported to relevant bodies.

The law explicitly prohibits the application of any retaliatory measures against whistle-blowers and persons related to them, such as dismissal from employment, wage reduction, transfer to other job positions, etc.

Those criticising the bill draw special attention to the fact that the law was haphazardly prepared before the adoption of a final version of the respective EU directive. It may therefore happen that the Czech law will be at variance with the directive, instead of deriving from it. The highest reservations of the bodies participating in the comment procedure go against the position of the Agency for the Protection of Whistle-Blowers, criticising the high costs for its establishment and operation. These should amount to CZK 22 million in the first year of operation and to CZK 11 million in subsequent years. Critics also find the agency's purpose rather dubious, since today, whistle-blowers may already turn directly to the police and other respective bodies, which will always be quicker than whistleblowing via an agency. Moreover, the agency as part of the Ministry of Justice will never be entirely independent, but open to corruption risk when assessing whistleblowing, so say the critics.

The imaginary ball is therefore in the government’s court, as it will be their task to tackle the criticism before submitting the bill to the parliament.

Legal

Hard Brexit's effect on UK citizens' employment and residence in the CR

At the end of March, two years will have elapsed from the moment the United Kingdom announced its intention to withdraw from the EU. If the British parliament does not approve the agreement on the conditions of the withdrawal by that time, the governmental bill regulating some relationships in connection with the United Kingdom of Great Britain and Northern Ireland withdrawal from the EU ("the Brexit Act") will enter into effect. The Act regulates, among other things, the conditions of UK citizens' employment and residence in the CR in the event of a no-deal Brexit.

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The withdrawal agreement in its present wording stipulates that for a transition period (until 31 December 2020), EU law, including rules regulating the free movement of persons, will continue to apply to the United Kingdom.

If the agreement is not passed and Brexit not postponed, UK citizens will become "third-country foreigners" once the UK exits the EU. To mitigate the intensity of the changes, the Brexit Act stipulates a transition period during which a special regime will apply, providing UK citizens in the Czech territory with more advantageous conditions than other foreigners.

The Brexit Act stipulates that Czechia will not require work (employment) permits from UK citizens and their family members provided that their employment commenced before Brexit. Of course, this will only apply during the transition period; after that, UK citizens will have to obtain such permits. However, they will have to get a residency permit, even during the transition period.

The Brexit Act provides for the possibility to apply for temporary residence for a period longer than three months. Under the Brexit Act, UK citizens or their family members who have obtained a certificate of temporary residence or have applied for it before Brexit will have the right to stay in the territory of the CR, which they may exercise until the end of the transition period, or until the temporary residence certificate expires or is terminated.

Apart from temporary residence, the Brexit Act also regulates long-term or permanent residence, providing some advantages to UK nationals. Applicants for long-term residence, for instance, do not have to meet the condition of prior residence based on a long-term visa, i.e. do not have to prove having had a visa for stays of over 90 days. Applicants for permanent residence will have the time of their temporary residence included in the required period of uninterrupted stay and will not have to submit documents proving their knowledge of Czech.

Last but not least, the Brexit Act regulates the conditions for UK citizens to acquire Czech citizenship, if they apply before the Brexit date. A precondition for acquiring citizenship is permanent residence in the Czech territory for three years for EU citizens, and for five years for other foreigners. UK nationals who have applied for Czech citizenship before Brexit will be viewed as EU citizens, and will therefore only have to meet the shorter permanent residence requirement, i.e. three years.

As of this day, it is not clear when and in what form the United Kingdom will withdraw from the EU. We therefore recommend that UK citizens working in the Czech Republic at least obtain a certificate of temporary residence to legalise their status in our territory in case of a hard Brexit.

Brexit to change application of withholding tax and securing of tax

The United Kingdom has been trying to reopen the negotiation of the Brexit agreement with the EU, so far without success. If the agreement is not approved by the British parliament, a no-deal Brexit appears likely. The Czech Republic has prepared for this by adopting the Brexit Act.

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The act has already been passed by the parliament and is now waiting to be signed by the president. The act is to enter into effect once the Treaty on European Union and the Treaty on the Functioning of the European Union cease to apply to the United Kingdom and the agreement on the conditions of the UK's withdrawal from the EU does not enter into force, i.e. on the date of a "hard" Brexit.

The act mainly addresses issues concerning the free movement of citizens, access to the labour markets, public health insurance, existing supplementary pension insurance and construction savings. However, it also regulates income tax, stipulating that UK residents shall be viewed as tax residents of an EU member state, for the taxable period in which the act entered into effect. By this, the act in fact introduces a transition period, during which British citizens will continue to be subject to EU treaties and directives. This provision, however, does not cover withholding tax and securing of tax, which will be governed by the principle that UK residents are no longer residents of an EU member state.

The provision on withholding tax is likely to have a substantial effect on income that is standardly subject to withholding tax and that is paid to the United Kingdom, such as profit shares (dividends), interest and royalties. At present, taxation of these payments is governed by EU directives, which have been implemented into Czech laws. Under these provisions, income paid to abroad is exempt from withholding tax in the Czech Republic, subject to meeting the conditions stipulated in the directive or in the relevant law.

Once Britain leaves the EU without a deal, EU directives shall cease to apply overnight, meaning that the exemption from income tax can no longer be applied. Taxation of income will then be governed primarily by rules stipulated by the double taxation treaty concluded between the Czech Republic and the United Kingdom. For instance, dividends paid from the CR to the UK will be subject to a withholding tax of 15% or 5%.

Compliance with the conditions for exemption is usually assessed as at the date of the general meeting's decision on the payment of a dividend (or an advance for a dividend), regardless of when the dividend (advance) is actually paid. The bill thus implies that a tax exemption of dividends (advances) paid to the United Kingdom could be applied, as long as the general meeting decides on dividend payment before Britain leaves the EU without a deal (most likely before 29 March 2019).
Similar attention should be paid to interest and royalties. Taxpayers who were issued a ruling awarding them an exemption of income from royalties and interest on financial instruments should take note in particular. As the general conditions stipulated by the Income Tax Act will no longer apply, the validity of the issued rulings will most likely terminate as well, regardless of for what period of time they were issued.

The act also addresses situations where profit shares are paid from the United Kingdom to the Czech Republic. In this case, the United Kingdom shall be deemed an EU member state until the end of the taxation period in which the validity of the act terminates (31 December 2020). This means that taxpayers may exempt income flowing from the United Kingdom from withholding tax until the end of 2020 (except for taxpayers using a financial year, who may apply the exception until the end of the taxable period started in 2020 – before 31 December 2020.

Retaining undisputed portion of excess deduction held unconstitutional

Last week, the Constitutional Court issued a judgement reversing the Supreme Administrative Court's negative standpoint to a partial refund of an undisputable portion of excess deductions. According to the Constitutional Court, retaining the undisputed portion of an excess deduction is an unconstitutional infringement on ownership rights. The tax administrators instead have to decide on the undisputed portion of the excess deduction in favour of the taxpayer.

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Retaining high amounts of excess VAT deductions on the grounds of a few disputed invoices has been causing troubles and cash flow issues to many a taxpayer. The financial administration argued that the Tax Procedure Code did not give them any other option how to proceed. This was rejected by the Regional Court in Ostrava, which ordered the tax authority to issue a partial tax assessment notice. Contrariwise, the Supreme Administrative Court sided with the financial administrators: according to its conclusions, the Tax Procedure Code does not allow the tax administrators to issue a partial tax assessment notice, not even upon a taxpayer's request.

While usually rather restrained in tax matters, the Constitutional Court stepped in this time and held that retaining an undisputed portion of an excess deduction amounting to tens of millions was an unconstitutional infringement on ownership rights. The court did not even wait for the Court of Justice of the European Union to rule on a similar issue submitted to it in May, to see how the issue would be viewed by the EU law. Arguably, the question of constitutionality can be separated from the question of interpretation of European Union law.

Unlike the Supreme Administrative Court, the Constitutional Court did see the possibility to issue a partial tax assessment notice in the Tax Procedure Code, as it allows to assess tax either for a period of time, or for an individual event. And while the Tax Procedure Code does not explicitly mention the possibility of issuing a partial tax assessment notice, nothing prevents it either, according to the Constitutional Court. In fact, a partial tax assessment notice is the only constitutionally-conform option tax administrators have to address such situations. The Constitutional Court also held that such partial tax assessment notices can only be issued in favour of the taxpayers, not against them.

Ground-breaking judgement: vacation compensation to be included in R&D allowance

The Regional Court in Hradec Králové issued judgement No. 31 Af 23/2016-76, dealing with tax allowances for research and development (R&D allowance). The judgment is truly ground-breaking, as it rejects the standpoint so far taken by the tax administration: contrary to their approach, the court is of the opinion that compensation paid to employees during their vacation is a part of payroll expenses, which are definitely covered by R&D allowances.

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Both the tax administrator and the Appellate Financial Directorate had earlier agreed that wage compensation paid to employees participating in a research and development project during their vacation cannot be claimed within the R&D allowance. Their main argument was that an R&D allowance reducing the tax base may only be applied to costs directly connected with solving the project. Wage compensation for vacation time, according to tax administrators, does not meet this condition, as the employee does not carry out research and development activity while on vacation. The fact that the payment of wage compensation for vacation time is stipulated by the Labour Code is irrelevant, according to the tax administration.

The same issue was on the agenda of the Coordination Committee of the GFD and the Chamber of Tax Advisors of the CR, as we previously wrote about in 2015. At that time, the Chamber of Tax Advisors was of the opposite opinion than the tax administration, and since each side insisted on its conclusion, the debate was closed with disagreement. The Regional Court now confirmed the chamber’s opinion.

The court argued that the compensation for vacation time is an obligatory, statutory cost of work, the same as wages or social security and health insurance payments – which are, of course, included in the R&D allowance. According to the court, there is no rational reason why vacation compensation should be treated differently. Moreover, according to the court, the time spent on vacation is necessary for employees to be able to fulfil their role in a research and development project. The cost in form of wage compensation for vacation time should only be reduced where the employee also carries out other activities, unrelated to the research and development project.

The court further supported the above arguments by noting that had the legislators wanted to exclude the vacation compensation from the R&D allowance, they should have done so explicitly in the legal regulation. However, no such restriction can be deduced from the present wording of the Income Tax Act, the court held.

The dispute is now to appear before the Supreme Administrative Court. If the above conclusions are confirmed, it will be yet another hopeful sign of a positive trend in the research and development area.

Punishment in tax

In a recent judgement, the Supreme Administrative Court confirmed that a penalty for late filing of a tax return is by its nature a penal sanction. Therefore, when imposing the penalty, a later legal regulation shall be applied if more advantageous for the “offender”, regardless of explicit transitory provisions. In practice, this may mean reducing the penalty down to a tenth.

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In case No. 9 Afs 197/2018, the Supreme Administrative Court dealt with an individual who had very little capital income apart from income from employment. Yet, because of this capital income, they had the duty to file a tax return, which they did with a two-year delay. The heart of the dispute with the tax administrator was the amount of penalty for a late assertion of tax: in the meantime, a new, more lenient legal regulation had started to apply, reducing the penalty to one tenth in similar cases. However, transitory provisions clearly stated that the milder sanctions shall only apply to tax liabilities for taxable periods after the effective date of the amendment.

First, the court had to establish whether the penalty for late tax assertion by its nature was a penal (criminal) sanction. Here, the court concluded that the purpose of the sanction is repressive and deterrent, as it is meant to be a punishment for conduct contrary to law. It is not a compensation of damage incurred by the state as a result of tax being paid late – this is the case of late payment interest, which is hence not considered a penal sanction.

The penalty for late tax assertion therefore has to be governed by the constitutional principles governing punishment, ensuing, among others, from the Charter of Fundamental Rights and Freedoms. Similarly as before for tax penalty, the Supreme Administrative Court confirmed that the fundamental principles prevail over the wording of the law. In the case in question, the principle of applying the later legal regulation in favour of the taxpayer shall therefore apply, despite the explicit wording of the transitory provisions of the Income Tax Act. For the taxpayer in this concrete case, this means a reduction of the penalty by 90%. Although a mitigation of this scale is only possible for individuals whose income from employment accounts for more than one half of the income tax base, the judgment still confirms, yet again, that principles of imposing penal (criminal) sanctions also apply to tax sanctions.

In brief

Latest news - March 2019

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

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HOME NEWS IN BRIEF

- An amendment to the Criminal Register Act and an amendment to the decree stipulating the essentials of printed forms of an application for a copy or extract from the Criminal Register and an application for an extract from the register of administrative offences (No. 42/2019 and 43/2019 Coll.) were published in the Collection of Laws.

- The Chamber of Deputies published the agenda for its next session, which will commence on 5 March and continue until 29 March. The tax package with the Senate's amending proposals is to be debated on 12 March 2019. Neither the MLI, a double taxation treaty with Korea, an amendment to the Act on Electronic Reporting of Sales, nor an amendment to the Investment Incentives Act are on the session's agenda.

- The government discussed a proposed resolution to issue two declarations on the effective date of the Convention on Mutual Administrative Assistance in Tax Matters for the exchange of information under the Multilateral Competent Authority Agreement on the Exchange of Financial Account Information; and under the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports.

- The government discussed and approved a proposal to amend some laws regulating financial market. The governmental bill was submitted to the Chamber of Deputies, as Print No. 398.

- The General Financial Directorate issued Information on Tax Implications of Possible Changes in the Categorisation of Accounting Entities under Section 1b in connection with Section 1e of Act No. 563/1991 Coll., on Accounting, in the taxation period starting in 2018. Depending on the classification into the respective size category, some accounting entities shall be exempt from certain duties under the Accounting Act, for instance to have their financial statements audited. This may also affect an entity's deadline for filing a tax return.

WORLD NEWS IN BRIEF

- The European Commission published practical guidance on the customs impact resulting from the United Kingdom's withdrawal from the European Union. They mainly outline implications for import and export activities, and what can be done to prepare.

- At its February session, ECOFIN (the council of finance ministers) dealt with the issue of voting on tax matters at the EU level. It became clear that the European Commission's initiative proposing abolishment of unanimous vote on tax matters does not have the member states' support.

- The European Court of Justice issued two important decisions concerning the interpretation of the terms "beneficial owner" and "abuse of right" when applying withholding tax exemption under directives on the common system of taxation of parent companies and subsidiaries, and on taxation of interest and royalty payments made between associated companies. The case involved a subsidiary paying interest and dividend to a parent company, which subsequently paid them to another group company outside the EU. A more detailed analysis of the case law will be presented in the next issue of our *Tax and Legal Update*.

- On 13 and 14 March 2019, a public consultation will be held in Paris on an OECD document proposing changes in approaches to taxation of digital economy within the existing rules of international taxation (double taxation treaties and transfer pricing). The consultation document contains two pillars. The first pillar concerns a revision of the rules allocating the right to tax among states; the second pillar concerns rules of profit allocation based on user participation, marketing intangibles or significant economic presence. At the same time, parallel negotiations are taking place at the EU level and in individual member states. These concern the introduction of digital tax, which would stand outside double taxation treaties, its amount to be derived from income from selected digital activities regardless of their profitability.

- The Slovak Ministry of Finance issued a Guidance on Transfer Pricing Documentation. The guidance amends the criteria for the preparation of TP documentation by creating three categories: 1) full TP documentation (master and local file), 2) basic TP documentation (simplified master and local file), and 3) simplified TP documentation (content essentials stipulated in the appendix to the guidance). The guidance is applicable to taxable periods commencing in 2018 but allows for the postponement until 30 June 2019, when the documentation can still be submitted in accordance with a previous guidance.

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