Tax & Legal

Taxes

Legal

World news

Case law

In brief

April 2017

Editorial

Czechs will be able to deal with all taxes from the comfort of their own homes in the near future. Their tax returns will automatically be filled in by the state administration and they will only check them. However much it may seem, this is not a fragment from a science fiction bestseller, but a quote from a recent interview with Minister Andrej Babiš for Rádio Impuls.

But the forthcoming elections may hamper such great plans, as for future lame ducks, the ability to approve legislation that has been prepared and discussed is rather limited. Keeping our expectations low, we may only hope that at least some of the pending projects will be successfully completed. The upcoming weeks will show to what extent legislators are able to pass changes to tax legislation before elections. The chamber of deputies' voting on a referred-back amendment to the Income Tax Act (discussed below) can be regarded a great success in this respect.

For many taxpayers, Monday was the official deadline for filing tax returns. We can only hope that the tax authority's staff was listening closely to the above mentioned interview with the Minister of Finance and that they did hear him say: "I would like these people to be more human. They should apply common sense..." I dare say that this would be the right and timeless course of action that, if applied in practice, would help prevent redundant and pointless discussions not only in state administration. However, this would of course require a similar approach from taxpayers.

Daniel Szmaragowski
Partner
KPMG Czech Republic

With tax package approved, GFD preparing draft information on amendment to VAT Act

The chamber of deputies has approved a tax package referred back to the chamber by the senate in its original "chamber" wording. In particular, the senate's motions to amend VAT on real property were dismissed by deputies. Even though the effective date set by the original wording was 1 April, the law was not approved and published before this date. Hence, in compliance with a general rule prescribed by the Act on the Collection of Laws, the law will become effective on the fifteenth day of its publication in the Collection of Laws. It is even possible that the government will wait with its publication so that the law will enter into effect from 1 July. This would make sense, especially with respect to the application of the changes to VAT. The General Financial Directorate is currently preparing information on amended VAT areas, also asking the Chamber of Tax Advisors to provide comments.

Veronika Výborná
vvyborna@kpmg.cz

Kateřina Klepalová
kklepalova@kpmg.cz

GFD's information on unsupported shortages and damage

Current legislation does not clearly specify a VAT regime applicable to shortages. The approved amendment to the VAT Act partially clarifies and determines a taxpayer's duty to *balance or adjust the originally-claimed entitlement to VAT deduction* where the taxpayer is unable to support the destruction, loss or theft of an asset in a due manner.

Balancing will be carried out in the taxable period in which a shortage was, or could have been, identified by the taxpayer, but no later than on the date of the physical counting of assets. Adjustments of the VAT deduction will be reflected in the VAT ledger statements.

The GFD's information also clarifies how to proceed when taxpayers are unable to determine the exact amount of their originally-claimed deduction. In such cases, the GFD recommends using the valuation method arising from the taxpayer's accounting or tax records, i.e. FIFO or weighted average. According to the information, the same methods should also be applied where the taxpayer uses valuation methods other than those permitted by the Accounting Act (e.g. LIFO or FEFO).
The draft information also shows examples of documents that support shortages and damage in a due manner.

In light of this clarification, we recommend paying attention to the issue of VAT on shortages and damage as early as possible. At the time of a physical counting and examination of assets, taxpayers should have the appropriate procedures in place to be able to deal with any deduction adjustments, minimising any adjustments within the limits set by law.

GFD's information on the unreliable person concept

The amendment introduces the unreliable person concept in addition to the current unreliable payer concept, aiming to ensure continuity of the unreliability concept after an unreliable payer cancels their VAT registration. However, unreliable persons do not become liable for unpaid VAT as supply recipients.

An entity becomes an unreliable person:

(i) by law, when an unreliable payer cancels their VAT registration. If the entity re-registers for VAT, it again becomes an unreliable payer.

(ii) by a tax authority decision on the grounds of serious violations of duties in relation to VAT administration specifically listed in legislation (for example, the issue of a fictitious document; conviction based upon a final and conclusive judgment; a cumulative VAT underpayment of at least CZK 50 thousand, etc.).

It will also be possible to apply the unreliability concept to VAT groups, for example as soon as a VAT group is joined by an unreliable person/payer. Group members that are designated as unreliable payers remain unreliable payers even after they cease their membership in the group. It will be possible to appeal the tax authority's decision on unreliability. Unreliability arising from the law can only be cancelled upon request, but not earlier than one year after the date on which a decision on unreliability entered into legal force.

Taxes

Penalties for VAT ledger statements: new waiver options

The General Financial Directorate (GFD) is expanding options to waive penalties for the failure to file VAT ledger statements, or for their late filing, amounting to CZK 10, 30 or 50 thousand. It will be possible to waive up to two penalties for 2016 irrespective of the cause of default; in 2017, it will be one penalty.

Aleš Krempa
kpmg@kpmg.cz

Jana Fuksová
jfuksova@kpmg.cz

In early March, the GFD published an appendix to Instruction D-29 on the waiver of penalties for the failure to file a VAT ledger statement. The instruction extends the scope of justifiable reasons for non-filing a VAT ledger statement after the taxpayer is called on to do so by the tax authority. The financial administration is thus trying to accommodate VAT payers who previously were automatically charged for a few days' default with high penalties with amounts set directly by law.

New waiver options primarily relate to penalties charged for the non-filing or late filing of VAT ledger statements in connection with the tax authority's call. Taxpayers who committed only two breaches in 2016 may ask for the waiver of both penalties, irrespective of the cause of wrongdoing. Only one penalty will be waived in this manner in 2017.

Following the Constitutional Court finding email notices purportedly effective once sent to be unconstitutional, related penalties continue to be waived. Under certain circumstances, the tax authorities will also be more lenient towards defaults shorter than five working days. Some of the reasons for waiving penalties will only be applicable to 2016 and 2017. The GFD expects to issue other updates to reflect up-to-date developments.

The GFD's appendix does not change the waiver application process, which will continue to include several phases. First, the tax authority will examine whether the applicant has seriously breached accounting and tax regulations, second, whether justifiable reasons exist and, finally, to what extent the taxpayer has violated tax obligations in the past. Breaches that half the penalty amount that can be waived will no longer include the failure to file a VAT ledger statement.

Please note that an application for the waiver of a penalty is subject to an administrative fee of CZK 1 000 and must be filed within three months of the date a relevant payment order entered into legal force. Once conditions for the waiver of up to two penalties for 2016 or one penalty for 2017 are met, applications for the waiver will not have to include any detailed reasoning, irrespective of the cause of wrongdoing. Nevertheless, formal waiver applications must be filed and the respective fees paid. Waivers will not be automatic, unlike the demise of the one-thousand-crown penalty for the late filing of a VAT ledger statement.

The moment of export from a VAT perspective

Last year’s amendment to the VAT Act changed the definition of a tax document upon the export of goods. A recent contribution submitted by the Chamber of Tax Advisors for discussion in the coordination committee with the GFD clarifies the moment at which a taxable supply involving the export of goods is effected as well as the moment an export of goods is reported in a VAT return.

Veronika Výborná
vvyborna@kpmg.cz

Klára Sauerová
ksauerova@kpmg.cz
+420 222 123 613

Barbora Havlíková
bhavlikova@kpmg.cz

Pursuant to an amendment to the VAT Act in effect from 29 July 2016, a tax document upon the export of goods is a standard tax document, replacing the existing export-accompanying document. The tax document’s essential element is the date of supply, which is the date on which goods exit the EU territory, confirmed by the customs authority. In practice, however, it may happen that the moment at which goods exit the EU territory is not known on a tax document’s issuance date. The date of supply can therefore not be stated in the relevant tax document. Moreover, it is quite unclear in what VAT return the export of goods should be included.

The Chamber of Tax Advisors along with the GFD discussed this issue within the coordination committee. The contribution submitters point out that, at variance with Czech legislation, the EU VAT Directive does not explicitly define the moment at which an export is deemed effected but only applies the same general rules as for the delivery of any other goods. The directive therefore considers an export effected on the date goods are delivered to the buyer.

The contribution submitters propose that the date of supply stated in the tax document upon an export of goods should be the date goods were delivered or the date goods physically left the EU territory. And where the moment of supply cannot be determined on the tax document’s issuance date, the date of supply should be omitted. This procedure should not affect the application of exemption from VAT, as shown in the Court of Justice of the EU’s case law.

The GFD agrees that it is possible to choose between the date of supply under the VAT Act (the date goods exit the EU) or the date of supply under the EU directive (the date goods are delivered to the buyer), but deems it unacceptable to omit such information entirely.

The submitters also propose that the export of goods be reported in a VAT return for the period in which goods were delivered to the buyer, without any possible sanctions imposed for such reporting by the tax authority. The GFD agrees with this proposal but points out that increased attention might be paid by the tax authority to any inconsistences between the data declared in VAT returns and supporting documentation.

What will country-by-country reporting bring in practice?

The proposed amendment to the Act on International Cooperation requires multinational groups with an annual consolidated turnover exceeding EUR 750 million to prepare a country-by-country report. The amendment is currently on the agenda of the next deputies' meeting. At the same time, the prescribed forms Czech parent entities will have to complete with information on their subsidiaries are being presented. At this point, it seems that the Czech Republic will not manage to pass the amendment within the obligatory implementation deadline, i.e. by 4 June 2017. The budget committee has thus proposed to change the effective date to "the date of promulgation in the Collection of Laws".

Daniel Szmaragowski
dszmaragowski@kpmg.cz

Veronika Červenková
kpmg@kpmg.cz

Soňa Saidlová
ssaidlova@kpmg.cz

Soon, numerous Czech companies will face two new duties: the first is to notify the Specialised Financial Authority (SFA), stating who will be filing the report under the act on their behalf, in which country and in what scope. Because of the expected late effectiveness of the act, it is expected that for all reported periods ending before 30 September 2017, notifications will have to be given by 30 September 2017 (or 31 October 2017, if the budgetary committee's amending proposal is passed). Thereafter, the last day of the reporting period will be the notification deadline. A new notification will only have to be made if the reported data change, always within 15 days from when the change took place.

Secondly, Czech companies that are part of a qualifying multinational group will have to provide relevant data to their ultimate parent, which will then be filing the country-by-country report on their behalf with its competent local tax administrator, in a format and structure prescribed by the tax administration at the parent's registered office. Czech parent entities will be handing the filled-in forms to the SFA. They may use local financial statements and consolidated statements as a source for the reported data. According to the Czech financial administration's estimates, the duty will only concern a maximum of 10 to 15 Czech parent companies.

The following information will be reported in the country-by-country report, for instance:

- Revenues generated from transactions with related parties and other revenues; however, the definition of a related party for this purpose does not correspond to the definition of a related party under the Income Tax Act.
- Profit (loss) before tax, including all extraordinary expenses and revenues.
- Income tax paid, including tax prepayments, settlements, or tax additionally assessed (on cash basis).
- Current income tax, or income tax expenses not including deferred tax or tax provision.
- Retained earnings (accumulated losses).

- Number of employees at the end of the reporting period or an average recalculated headcount for the period; independent contractors involved in a company’s ordinary operating activities may be included at discretion.
- Net book value of tangible assets other than cash and cash equivalents, intangible or financial assets. Assets of a branch will be reported separately.

As the content of some of the reported categories is currently ambiguous, KPMG has provided comments on the instructions that are part of the country-by-country report form.

MF issues discussion paper on ATAD implementation

The Ministry of Finance released a discussion paper on the implementation of the EU Anti-Tax Avoidance Directive (ATAD) into Czech law. It mainly focuses on new interest deduction limitation rules, exit taxation, controlled foreign company rules and hybrid mismatches. Below we summarise the most important points.

Luděk Vacík
kpmg@kpmg.cz

Jan Kiss
jankiss@kpmg.cz

Jakub Schaffer
kpmg@kpmg.cz

The ATAD is based on the principle of a minimum standard of avoidance protection, while each state may also implement the rules in a stricter regime. The Czech ministry has summarised its approach in this respect in the presented discussion paper.

Interest expense (from related and unrelated parties) in excess of interest income will be deductible only up to 30% of EBITDA. Under the directive, the 30% of EBITDA rule does not have to be applied to interest expense (in excess of interest income) of up to EUR 3 million. However, the ministry proposes to reduce the limit to EUR 1 million, and at the same time wants to allow excess interest expense not claimed in one taxable period to be carried forward to the subsequent period. Neither the retrospective transfer (carry-back) of excess interest expenses nor a transfer (carry-forward) of the unused EBITDA capacity is planned.

The interest deduction limitation of 30% of EBITDA should be applied to each entity on a separate basis, not to a consolidated group as a whole. The ministry does not plan to exclude loans concluded before 17 June 2016 from the rule, as is proposed in the directive. The above rules will apply neither to stand-alone entities nor to financial institutions. For financial institutions, existing thin capitalisation rules should remain in place.

Other rules, i.e. CFC rules, exit taxation and hybrid mismatches rules, will be implemented in the scope proposed by the directive, with no exceptions. The interest limitation rule and CFC rules will be effective from 1 January 2019, the exit taxation and hybrid mismatches rules from 1 January 2020. Comments and suggestions on the discussion paper and the proposed implementation may be sent to the ministry by the end of April.

New data processing consent required under GDPR?

The new EU General Data Protection Regulation (GDPR) is knocking on our door. Although the new rules are only to be followed from May 2018, due to the complexity of implementation a number of companies have started to prepare for them already. In this respect, guidelines prepared by the Article 29 Working Party or recommendations published by individual national regulators may be helpful: for instance, the British supervisory authority recently published recommendations on the consent to data processing.

Viktor Dušek
vdusek@kpmg.cz

Filip Horák
kpmg@kpmg.cz

Ladislav Karas
lkaras@kpmg.cz

As does nearly any new regulation, the General Data Protection Regulation (GDPR) contains a number of ambiguities that are waiting to be interpreted. The first major interpretation guideline was presented in December of last year by the working party under Article 29 of Directive 95/46/EC (WP29), an independent advisory body composed of representatives of national regulators.

So far, WP29 has prepared and published guidelines on the new right to data portability; however, due to the high number of comments raised within the public consultation procedure, this document will be amended in the near future. WP29 also presented guidelines on data protection officers, as the duty to install data protection officers is a novelty for data controllers in many member states, including the Czech Republic. Finally yet importantly, the working party issued guidelines for identifying a lead supervisory authority, connected with the effort to implement a "one-stop-shop" system regarding supervisory authorities of individual member states in cases involving cross-border data processing.

As the regulation has a direct binding effect on all EU member states, personal data protection practices are bound to gradually be unified across the EU. Hence, Czech data controllers will have to listen not only to the interpretation standpoints of the Czech Personal Data Protection Office, but also to those of other European regulators. In this respect, please note that the British supervisory authority recently published its recommendation on the consent to personal data processing: importantly, it confirms an opinion voiced so far only very quietly, i.e., that consent will have to be obtained separately for each purpose and manner of processing – this approach has not been common practice so far. In this respect, the recommendation also contains an important warning that previously obtained consent not in compliance with the GDPR's high standards will have to be obtained again – otherwise, personal data cannot be processed. It is thus advisable to adapt any existing consents to the GDPR requirements as soon as possible, so that it will not be necessary to obtain consent from new clients again after the GDPR's effective date. If you are interested in a consultation on the GDPR, please contact us.

Effective date of the amendment to the Insolvency Act approaching

The comprehensive amendment to the Insolvency Act published in the Collection of Laws under No. 64/2017 Coll. enters into effect on 1 July. One of its most important changes expands and specifies the definition of bankruptcy. The amendment also brings numerous other changes for both debtors and creditors. We summarise the most important ones below.

Irena Kolárová
ikolarova@kpmg.cz
+420 222 123 724

Bohuslava Jiroušková
kpmg@kpmg.cz

The present Insolvency Act contains a number of criteria intended to indicate whether or not a debtor is in bankruptcy. However, the economic reality is sometimes hard to assess through the prism of legal regulations. In these situations, a new “coverage gap” concept should help debtors by expressing the difference between due and payable liabilities and disposable funds; debtors with a coverage gap lower than one tenth of due and payable liabilities will be considered solvent.

Insolvency tourism, i.e. debtors moving their registered offices to make it more difficult for creditors to assert claims or to get a more favourable treatment of their case, is to be prevented by another new concept: the fixation of local jurisdiction. Under the new rules, the place where the debtor had a registered office six months prior to commencement of the insolvency proceedings shall be decisive in determining the insolvency court. Furthermore, the courts will have the option to preliminarily assess insolvency petitions filed by creditors. Where a court doubts whether an insolvency petition is substantiated, it may decide not to publish it; this will in principle protect debtors against reputation damage from a published but unsubstantiated insolvency petition.

Creditors filing insolvency petitions will have to prove that they have a due and payable receivable from the debtor. Creditors may support such a receivable by the debtor’s acknowledgment of debt signed by a verified signature; an enforceable ruling; a notary’s or bailiff’s record of consent with enforcement; or an auditor’s, certified expert’s or tax advisor’s confirmation that the receivable is in the creditor’s accounting records. A creditor that is a corporate entity acquiring the receivable by assignment (cession) or in a similar manner within the last six months preceding the commencement of insolvency proceedings or after their commencement will also have to produce information on their beneficial owner under the Act on Certain Measures Against Legalisation of Proceeds from Crime (the AML Act). For creditors that form a group with the debtor, the new regulation will substantially limit their voting rights.

Finally, the regulation of an individual’s discharge of debts will also change significantly. For instance, advisory on the discharge of debts may now only be provided by accredited entities holding a permit of the Czech Ministry of the Interior.

CJEU: in mergers, the burden of proof lies with tax administrators

In early March, the Court of Justice of the EU (CJEU) dealt with an interesting question in the Société Euro Park Service (C-14/16) case. The case involved a dispute whether a tax administrator's prior approval was necessary to defer the taxation of capital gains on a cross-border merger, and more importantly, whether the taxpayer had to prove a priori that the transaction had economic grounds. The court held in favour of the taxpayer.

Helena Pajskrová
hpajskrova@kpmg.cz

Ivana Koláčková
ikolackova@kpmg.cz

Under French law, to defer tax for cross-border mergers, approval has to be obtained, which is conditional upon meeting certain conditions; for intra-state mergers, tax deferral is provided automatically. In the case in question, the taxpayer did not apply for prior approval but deferred the tax automatically. The French tax administration assessed additional tax plus penalties on the grounds that the company had not sought prior approval and that there were no economic reasons for the intra-group cross-border merger. Without analysing the case or supporting its assertions, the French tax administrator stated that the transaction was effected for the purpose of tax avoidance or tax evasion.

The French government defended this approach, referring to Article 11(1)(a) of the Council Directive 90/434/EEC on common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states. Under this article, a member state may disallow the benefits of the directive where tax evasion or tax avoidance appears to be one of the principal objectives or the only objective of a transaction.

The CJEU, however, ruled that the article has to be interpreted to the effect that the tax administration has to analyse each individual case on its own merits and prove that tax evasion or tax avoidance is the sole objective of a transaction. The CJEU concluded that the French legislation's requirement that companies should apply for approval and in their application a priori present conclusive arguments for valid commercial reasons of the merger went beyond the scope of the directive.

It is positive that the CJEU took the taxpayer's side against a tax administrator. According to the court, the tax administrator may not argue possible or imminent tax evasion or avoidance without reasonable suspicion, and should be able to support such with sufficient evidence. To quote the CJEU: "To determine whether the operation concerned pursues the objective of tax evasion or avoidance, the competent national authorities may not confine themselves to applying predetermined general criteria but must subject each particular case to a general examination of that operation".

CJEU on hijabs in the work place

In March, the Court of Justice of the EU (CJEU) dealt with the controversial topic of wearing Muslim headscarves – hijabs – in the work place. It held that employers may ban employees from wearing visible religious symbols at work. The verdict, however, should not be construed as employers having an unconditional right to impose a dress code solely based on their will.

Věra Kočicová
vkocicova@kpmg.cz
+420 222 123 869

Barbora Bezděková
bcvinerova@kpmg.cz
+420 222 123 867

The case in question involved a Muslim female employee of a Belgium security agency. The agency's internal rules prohibited employees from wearing visible religious symbols at work; the reason was to pursue neutrality in customer relations. The employee in question carried out her work at the premises of her employer's customers. Despite the rule, she started to wear a headscarf to work. The agency dismissed her for the breach of the ban. The employee took the matter to court, which referred to the CJEU for a preliminarily ruling on whether the dismissal was in breach of the EU directive on the equal treatment of employees.

The CJEU emphasised that the rule was not aimed against Muslims. The agency had applied the neutrality principle to all its employees without a difference; direct discrimination was thus ruled out. However, according to the court, the employer's rule may constitute indirect discrimination, i.e. a situation where an apparently neutral rule in effect puts a group of people that have some common discriminatory feature (such as religion) at a particular disadvantage. The directive does not ban such measures completely: they are acceptable if they pursue a legitimate aim and achieve it by appropriate and necessary means.

According to the CJEU, the employer's pursuit of neutrality in its customer relations can be deemed a legitimate aim. However, in the case in question, the appropriateness requirement will only be met for those workers who interact with customers. Employers can only use the necessity argument in situations that cannot be solved by a less invasive measure – such as transferring the employee to a position not involving any visual contact with customers.

How should employers interpret the ruling? A rule banning only Muslim headscarves would be seen by courts as an inadmissible direct discrimination. Even a general ban on wearing clothes with a religious subtext might be problematic, as distinctive clothing is only characteristic for some religions. Employers thus have to have strong arguments to defend their stance, choose only appropriate and necessary means, and apply them to all employees with the same intensity. Finally, note that the CJEU only interprets EU law – and that employers always have to check that they comply with national regulations as well.

Duty to identify clients and ascertain beneficial owners

According to the ruling of the Municipal Court in Prague, it is not possible to simply identify a statutory body, director or other top manager as the beneficial owner in cases of unclear ownership structures, as such persons may not be in a direct relationship with the ownership structure of the corporation or have ultimate control over it.

Filip Horák
kpmg@kpmg.cz

Jaroslav David
jaroslavdavid@kpmg.cz
+420 222 123 902

The Ministry of Finance penalised a savings cooperative for failing to fulfil its duties under the AML Act as regards customer identification and review. Specifically, the ministry considered it a failure that the cooperative did not make sufficient efforts to identify the beneficial owner for some of its clients. The penalised cooperative filed an administrative action, claiming that the AML Act only required them to identify the customer's ownership and control structure and beneficial owner; the law, however, did not stipulate any duty to actually ascertain the customer's beneficial owner, especially where the customer is passive and relevant information cannot be obtained. The plaintiff was of the opinion that it had met its identification duty by having its customers fill-in an AML questionnaire. For customers with an unclear ownership structure, the cooperative designated the statutory body as the beneficial owner, and classified the given customer as high-risk.

The court ruled for the Ministry of Finance. It pointed out that the beneficial owner is the person who ultimately owns or controls the customer, or the individual for whom the transaction is effected or the activity carried out. This means the individual at the very end of the possible chain of ownership relations, since that person ultimately and factually controls the entire chain.

In the court's opinion, unclear ownership structures call for repeated efforts to fulfil the statutory duty to ascertain them. Otherwise, under the AML Act, the liable person should refuse to effect the transaction and should not enter into a relationship with the customer. The effort should also be supported and documented to allow for retrospective reconstruction – a sole oral inquiry of the person acting on behalf of the customer is insufficient in this respect.

Effecting a transaction after filling-in an AML questionnaire stating only that the ownership structure is unclear, that the statutory body has been designated as the beneficial owner and the customer classified as high-risk, constitutes a breach of the AML Act. According to the court, the impossibility to identify a beneficial owner cannot be a reason to lower the standard of control – instead pursuant to the AML Act it is a reason not to effect the transaction.

Case law

Defence against unlawful procedure to remove doubt may be well worth it

In its recent judgement, the Supreme Administrative Court (SAC) emphasised that the procedure to remove doubt should only serve to clarify concrete uncertainties. It is a tool to ascertain or to check, immediately and without delay, whether a tax duty has been fulfilled.

Veronika Červenková
kpmg@kpmg.cz

Martina Valachová
mvalachova@kpmg.cz
+420 222 124 370

The SAC recently again dealt with the question of the (un)lawfulness of initiating a procedure to remove doubt and a subsequent tax inspection (file No. 10 Afs 22/2016). The case involved a situation where a taxpayer in several subsequent tax periods had reported excess VAT deductions, which became the target of the tax administrator's inquiries. The tax administrator retained the excess deductions and issued a call to remove doubts as regards taxable supplies received. The entity filed a complaint against this and the case thus appeared before the court.

The court emphasised that a precondition for issuing the call to remove doubt is a tax administrator's doubt so specific that it can be communicated in the call in a manner that allows the taxpayer to respond adequately. The SAC also suggested that the sole existence of an excess deduction is not a relevant reason for issuing a call to remove doubt.

In this respect, the SAC previously held that a taxpayer's complaint as to the non-specificity and incomprehensibility of the call to remove doubt was a relevant and objective response, and that the tax administrator had to attend to it. If the tax administrator fails to review the complaint, any further dialog between the parties has been thwarted and the procedure to remove doubt cannot be effectively carried out. Any tax inspection initiated on these grounds would then be viewed by the court as unlawfully initiated.

To a certain extent, the conclusions presented in the SAC's rulings limit the arbitrariness of the tax administration's actions. They clarify the taxpayers' options in defending themselves against an unlawfully initiated procedure to eliminate doubt and the retention of excess deductions. Hence we may hope for less tax administrators' inquiries and tax inspections based solely on reported excess VAT deductions.

Interest on long-retained excess deductions liable to income tax?

Interest on long-retained excess deductions of up to 14% p.a. was first awarded to a taxable entity by the Supreme Administrative Court more than two and a half years ago. Since then, a number of administrative courts proceeded similarly and confirmed taxpayers' entitlements to interest on retained excess deductions. Nevertheless, this interest still evokes considerable uncertainty and heated discussions not only within the state administration.

Veronika Červenková
kpmg@kpmg.cz

Jana Fuksová
jfuksova@kpmg.cz

The road towards awarding interest on excess deductions retained by the tax authority for an unreasonably long time is usually quite bumpy, mostly ending in a courtroom. The SAC's decisions in this respect show that it is necessary to choose the right procedure, depending on the specific circumstances and the relevant tax authority's steps. Therefore, if you consider claiming interest on long-retained excess deductions, we recommend selecting the appropriate procedure carefully.

And once you succeed in the battle, the question arises how to handle such interest in your income tax return. The GFD is currently dealing with the issue whether the awarded interest should be taxed and, if so, how. The Income Tax Act explicitly exempts from income tax *income from interest on overpayments caused by the tax authority*. The exemption of interest on long-retained excess deductions from income tax therefore ended up on the table of the coordination committee of GFD and Chamber of Tax Advisors representatives. The GFD distinctly dismissed the idea of income tax exemption of interest on retained excess deductions, claiming that this does not involve interest on overpayments caused by the tax authority. The taxpayers' joy over the awarded interest will therefore probably be spoiled by the state administration taking something back in the form of income tax. The GFD justifies its decision by the absence of the tax authority's faulty or unlawful action. It also points to a possible non-cooperation or obstructions by taxpayers resulting in the prolongation of the period over which excess deductions are examined, i.e. the period for which interest accrues.

Further conflicts between taxpayers, tax advisors and the tax administration are expected in this area, especially with respect to deductions relating to taxable periods started after 1 January 2015. Since this date, pursuant to the Tax Procedure Rules, interest of 1% on VAT deductions has been in effect on procedures to remove doubt lasting more than five months.

Latest news - April 2017

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

Lenka Fialková
lfialkova@kpmg.cz

- An amendment to the Act on International Cooperation in Tax Administration, extending the automatic exchange of tax information by information about preliminary tax rulings and advanced pricing agreements, has been published under no. 92/2017 Coll.
- An amendment to the Cadastral Decree was published in the Collection of Laws under no. 87/2017 Coll.
- An amendment to the Employment Act published under no. 93/2017 Coll. implements two EU directives. It primarily aims to identify and review the actual assignment of personnel and set rules of administrative cooperation between the relevant EU member states' bodies including cross-border enforcement of monetary administrative sanctions and penalties.
- The GFD published its Information on Taxation of Income Generated by an Individual from the Operation of an Electricity Generation Plant, according to which criteria for assessing whether a licence to operate an electricity generation plant is required include not only the installed output but also the manner in which the electricity generation plant is operated, which is fundamental. Where an electricity generation plant is operated as a business activity under the Energy Act, the licence is required irrespective of the installed output.
- In March, the EU member states' ministers of finance again discussed a motion allowing the implementation of the reverse-charge mechanism on a general basis. They also discussed a motion to reduce VAT rates on e-books.

[LinkedIn](#) | [Twitter](#) | [Facebook](#) | [Instagram](#)

www.kpmg.cz
Tel.: +420 222 123 111