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Tax & Legal

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December 2018

Obsah

Editorial

With the end of the year comes a time to look back. Hence, let us review 2018 from the perspective of the authors of the Tax and Legal Update: In 2018, we prepared 12 issues and wrote 139 articles, covering the Court of Justice of the EU's case law, EU directives, decisions of national courts as well as local legislation. It is impossible to highlight just one topic – all of them were important. Nonetheless, to some we devoted more attention; those I would like to mention.

At the beginning of the year, we aimed to prepare you for the GDPR. This regulation affects not just financial institutions, retailers or transportation companies – it touches every one of us as businesspersons, employees and parents. It changed practices at firms, in preschools and schools. And you yourself know whether it actually did relieve your mailboxes.

At the beginning of summer, the DAC 6 EU directive entered into effect, under which cross-border transactions meeting specified defining features (hallmarks) of tax planning must be reported. Tax administrators will now have a more detailed view of transactions potentially involving tax optimisation. Even though the directive has not yet been implemented in Czech law, we already have to monitor all transactions today.

And we must not forget about Brexit – of course, its effects on social security, migrating workers, VAT, or customs duties will be considerable. In this issue, Ondřej Vykoukal will take you through the complex process, pointing out another interesting aspect of Brexit – its effect on intellectual property rights.

Last but certainly not least, there is the 2019 tax package. However, many regulations that were supposed to enter into force on 1 January 2019 will be postponed – the talk is about 1 April 2019 now, while the effect of changes in income tax is only expected in 2020. This is good news for those who have not yet dealt with the interest deductibility under the ATAD directive or CFC rules. Of the amending proposals, in this issue we look into the one that maintains the VAT treatment of executives/statutory representatives of limited liability companies and board members of joint stock companies – generally, we expect nothing to change in their VAT status as a result of the amendment.

Finally, I am not worried that we will not have anything to write about in the upcoming year. New technologies continue to change our professions and lives. Yet, according to our study "In Step with the Customer", Czech customers still most appreciate traditional values such as a fair and human approach, plus "something extra". We hope that you as our customers will come to see the Tax and Legal Update as our effort to bring you just this. I would like to thank all our authors for their excellent work this year, and wish you a beautiful preholiday season.

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Taxes

Seven tax news items for employers and employees in 2019

The maximum assessment base for social insurance and the minimum wage will increase, which will also affect other mandatory payments and tax credits. The waiting period, i.e. the first three days of a temporary inability to work during which employees do not receive any wage or salary compensation, should be abolished from 1 July 2019, meaning that employers will also have to pay salary compensation for their employees' first three sick days. But probably the most significant change relates to employees that are subject to public insurance in the EU, EEA member states and Switzerland and their super-gross wage calculations.

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- The 15% income tax rate on the super-gross salary and the 7% solidarity tax surcharge remain applicable. The monthly limit for solidarity tax payments will be CZK 130 796.
- In 2019, the maximum assessment base for social insurance premiums will be CZK 1 569 552. A maximum assessment base for health insurance has not been set.
- With effect from 1 January 2019, the minimum monthly wage will increase from CZK 12 200 to CZK 13 350. The minimum monthly health insurance premium calculated from the minimum assessment base, i.e. the minimum wage, will be CZK 1 803.
- The tax credit for placing a child into pre-school facilities will increase to CZK 13 350 for each maintained child in the 2019 taxable period.
- With effect from 1 January 2019, income decisive for mandatory sickness insurance payments will increase to CZK 3 000 a month. Consequently, income of up to CZK 2 999 a month from an agreement to perform work will not be liable to social and health insurance. The related Income Tax Act provision should also be amended to apply withholding tax on the increased amount of CZK 2 999 a month.
- The deputies voted for the original wording of a draft amendment to the Income Tax Act (Print No. 80) which the Senate meant to dismiss. Consequently, from 1 January 2019, the amendment will change the method of calculating the super-gross wage of taxpayers whose public insurance is governed by the legal regulations of the European Union, the European Economic Community and Switzerland. The amendment is yet to be signed by the president. According to the amendment, the tax base of taxpayers who are participating in public insurance in another EU or EEA country and Switzerland will increase by the employer's actual contributions to this foreign insurance scheme, instead of increasing by the hypothetical Czech insurance contributions applicable to date. This will result in an increased administrative burden for employers who will have to ascertain foreign insurance contributions and adapt payroll software accordingly.

- Deputies passed an amendment to the Labour Code (Print No. 109) abolishing the waiting period, which means that employers will have to pay salary compensation to their employees also for the first three days of their temporary inability to work. The employers' increased costs in this respect should be compensated by a reduction in contributions to the sickness insurance scheme (2.1% instead of current 2.3%). The amendment is proposed to be effective from 1 July 2019. The amendment is yet to be passed by the Senate and signed by the president.

Taxes

2019 amendment to the VAT Act: What changes may the amending proposals bring?

An amendment to the VAT Act, with planned effectiveness during the course of 2019, has recently passed through the second reading in the Chamber of Deputies. Below we present a number of submitted amending proposals.

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Statutory representatives of limited liability companies subject to VAT?
This widely-discussed issue involves the proposed new concept of limited liability company statutory representatives as persons subject to VAT, especially the question whether and on what terms limited liability company statutory representatives (i.e. some of them depending on whether criteria such as the elements of subordination have been met) become persons subject to VAT and, potentially, VAT payers after exceeding the limit of CZK 1 million. The proposed definition of persons subject to VAT remains unchanged, i.e. persons whose income is taxed as income from employment will not be explicitly excluded from persons liable to VAT.

Using the amending proposal, the budget committee de facto requires to keep the definition of activities that are not regarded as independent economic activities unchanged, i.e. employee activities and activities of persons that are taxed as income from employment are not to be considered independent economic activities, which means that no significant changes to the current state will occur.

Leasing not earlier than from 2020
An interesting topic (not only) for lease companies is the response of our lawmakers to the Court of Justice of the EU's recent case law. CJEU Decision No. C-164/16 in the Mercedes-Benz case significantly affects how finance leases are perceived. Under certain circumstances, it used to be possible to treat a finance lease as the provision of services, allowing for the gradual payment of VAT in the individual lease instalments. The amendment responds to the newly defined principles and concept of finance lease arrangements, i.e. clarifying the definition of a finance lease in a way to better reflect the transaction's economic nature.

According to the amendment, a supply of goods will also be defined as the handing over of goods for use pursuant to a contract if the handing over has been agreed and if it is clear at the contracting date that the transfer of the ownership title to the hired goods after the end of the lease term is the only economically reasonable option. Decisive will not only be the text of a lease contract but also the setting of parameters for the future repurchase of the goods. This provision should not become effective earlier than from 1 January 2020 to give the entities

concerned sufficient time to prepare for this change.

Doing away with the new price subsidy definition?
The amendment's proposed definition of a price subsidy may entirely be cancelled, as it has given rise to heated discussions and concerns among subsidy recipients. This was discussed in the last issue of the Tax and Legal Update.

Lower VAT rates
Some other motions to amend the VAT Act include the reduction of VAT rates or, in other words, their restoration to levels applicable in 2010. If this motion is passed, the basic VAT rate would decrease to 20% (or 19%) and the only reduced VAT rate would amount to 10%.

Effectiveness of amendment?
As the amendment is not likely to be passed in sufficient time to become effective from 1 January 2019, the budget committee proposes to postpone its effectiveness to the month following the month the amendment is promulgated in the Collection of Laws. Please remember that for certain areas, its effectiveness will differ.

Subsidy opportunities for entrepreneurs in 2019

The time schedules for calls planned in 2019 within subsidy programmes have been published. Below we provide a short overview.

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INNOVATION
Under the Enterprise and Innovations for Competitiveness Operational Programme, the Ministry of Industry and Trade is planning to announce a call for projects focusing on water management, particularly water recycling, during a manufacturing process.

- The call is planned to be announced in May 2019.
- Subsidies may amount to a minimum of CZK 1 million and a maximum of CZK 40 million per project.
- Percentagewise, subsidies granted to large enterprises may amount to 25%.

A criterion that may disqualify large enterprises is the fulfilment of the 065 intervention code condition: the ministry will support large enterprises only if they can prove that their projects have a positive impact on the environment. Further details will be disclosed within the call.

EPSILON
The EPSILON programme, focusing on applied research and experimental development, supports projects whose results have a high potential to be quickly applied in new products, manufacturing procedures and services. However, support is only granted to projects that result in at least one of the following: patent, prototype, functional sample, pilot plant, verified technology, software, industrial and utility design, certified methodology and procedures, and specialised maps with technical content.

- The call is planned to be announced in February 2019.
- CZK 1 billion for all years should be distributed among projects participating in the public tender.

Employment Operational Programme
The programme aims to support employment. In 2019, entrepreneurs may apply for a subsidy under the Intracompany Employee Education II programme, designed to support, in particular, professional education of employees by employers focusing on the development of professional and key competencies, IT, languages, soft skills, and technical skills.

- The call is planned to be announced on 15 March 2019.
- Funds for allocation amount to CZK 1.7 billion.

EFEKT
EFEKT is an accessory programme to the operational and national energy programmes aimed at promoting energy savings. It is divided into two sub-programmes: small-scale investment projects (sub-programme 1) and non-investment projects in form of energy consulting, energy management implementation, preparation of energy-

efficient projects, and preparation of events and documents to support energy saving (sub-programme 2). Entrepreneurs may only apply for a subsidy under sub-programme 2; for example, they may obtain funds to implement an energy management system or to carry out high-quality and energy-efficient projects. The EFEKT programme is announced via separate calls to participate in individual activities.

- The planned programme budget is CZK 150 million.

Additional calls are in preparation for subsidy applicants representing small or medium-size enterprises. If you are interested in applying for the above subsidies, we will be happy to discuss with you your project's specifics and objectives as well as a particular call's applicable criteria.

GFD: Assessing transfer prices and determining a permanent establishment's tax base, revisited

In November, the General Financial Directorate published new Instruction D – 32, dealing with a binding assessment of the manner in which the price agreed between related parties and the tax base of a tax non-resident relating to activities performed via a permanent establishment were determined.

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This replaces Instruction D – 333 that only dealt with a binding assessment of the manner of determining transfer prices between related parties pursuant to Section 38nc of the Income Tax Act. According to a new provision stated in Section 38nd of ITA, from January 2018 it is also possible to apply for a binding assessment of the method in which the tax base of a tax non-resident relating to activities carried out via a permanent establishment is determined. This is also reflected in new Instruction D – 32. Both Section 38nc and Section 38nd of ITA regulate the procedure of issuing a decision on the binding assessment on a general level. For taxpayers, such a decision brings a higher level of certainty on how the tax administrator will view their method of setting transfer prices and determining the income tax base or, potentially, tax losses.

The instruction also defines periods in respect of which requests for binding assessments can be filed: they may only be filed for the taxable period in which a request is submitted and for subsequent taxable periods, but only for a maximum of three years. It is not possible to request a binding assessment for elapsed taxable periods. However, if the taxpayer applied the same method of determining transfer prices and allocating profits to the permanent establishment under similar conditions in previous years and if the binding assessment issued for subsequent periods is positive, taxpayers may assume that the tax administrator will during tax inspections proceed similarly as in the case of the binding assessment at issue.

As before, the new instruction does not regulate deadlines within which the tax administrator must issue a decision. It usually takes 6 – 18 months, depending on the complexity of the transaction at issue.

In addition to Instruction D – 32, the GFD is preparing an update of Instruction D – 332 to reflect key changes introduced by the OECD Transfer Pricing Guidelines from 2017. Other modifications should include, for example, changes to the taxpayers' functional and risk profiles (i.e. taxpayers may have more profiles depending on their position in each individual intercompany transaction). The instruction should also clarify benchmarking analysis rules and recommend that benchmarking analyses be performed at least every three years. It should also provide a more detailed description of the difference between an intangible asset's legal and economic ownership and comment on the related impacts on the determination of remuneration from a transfer pricing perspective. Updated Instruction D - 332 is expected to be published in the first half of 2019.

Have you registered your beneficial owner yet?

From January 2018, entities recorded in Czech public registers have to register their beneficial owners in a new register maintained by the registration courts. The law set a one-year time limit to do so. The deadline is slowly drawing to an end, but a lot of information in the register of beneficial owners is still missing.

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The beneficial owner concept is not new in the Czech legal environment. It has been introduced by anti-money-laundering legislation deriving from EU regulations. The beneficial owner is generally understood to be an individual who, directly or indirectly, exercises decisive influence over the management of a legal entity. Czech legislation imposes a duty on all legal entities to know their beneficial owners and on some of them, to register them in a new register.

In operation since the beginning of 2018, the register of beneficial owners is a non-public register to which access is permitted only to persons specified by law, including in particular public authority bodies such as courts and tax authorities as well as persons liable to identifying their clients pursuant to Act No. 253/2008 Sb., on Some Measures against the Legalisation of Proceeds from Criminal Activity and the Financing of Terrorism (the AML Act), including but not limited to tax advisors, auditors and accountants.

Much uncertainty prevails with respect to both the administrative process of registration and the actual identification of a beneficial owner. Especially where large holding structures are concerned, it is often very difficult to determine who should actually be recorded as the beneficial owner in the register. Czech lawmakers have not made the situation easier for liable persons, as some legal provisions are ambiguous from an interpretation viewpoint. Since the registration courts have no experience with recording information in the register and no clear rules for documenting the registered information are in place, the registration of their beneficial owner poses difficulties for many entities. The failure to meet this duty is not sanctioned by law and, as a result, many a company regard the recording of their beneficial owner in the register as a redundant administrative burden they knowingly ignore.

However, it should be kept in mind that the identification of a beneficial owner plays an important role, e.g. in the awards process of public contracts or subsidies. If an applicant for a public contract or a subsidy does not have their beneficial owner registered or if they do not document their beneficial owner on the awarding entity's or the subsidy provider's request, the applicant can be excluded from the proceedings. In addition, the identification of a beneficial owner is also a prerequisite for access to certain types of services; e.g., a bank may refuse to provide a loan or any other service if it is unable to determine the beneficial owner of its client as a legal entity in the register and the client does not provide any supporting documentation in this respect.

It is therefore not reasonable to perceive the registration of beneficial owners as a redundant formality. In fact, meeting this statutory duty may actually help improve the everyday operations of a large number of companies.

Deal or no-deal. Brexit from an intellectual property rights viewpoint

Brexit, probably next year's most important international event, will significantly affect many areas: from EU citizens' rights, through finance sector regulations to the enforcement of British court judgments in the EU (and vice versa, of course). The future of intellectual property rights, harmonised a number of times during the UK's membership in the EU, remains somewhat on the side lines of the main information stream on Brexit.

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Let us consider the future of copyrights and EU trademarks for both a Brexit deal and a no-deal (hard) Brexit. For copyrights, the situation is simpler and more transparent for both authors and users, as copyrights in the EU are harmonised through directives. The directives themselves are not immediately effective and must always be transposed into national legislations by the lawmakers of individual member states (in the Czech Republic, for example, into the Copyright Act). Naturally, Brexit will not have a significant impact on the existing wording of UK laws. The Copyright, Designs and Patents Act 1988, implementing the majority of the EU copyright directives, will not change at all as a result of Brexit. This holds for both the deal and no-deal versions of Brexit. Moreover, copyrights are also regulated by international treaties whose application was never affected by the UK's membership in the EU.

In principle then, the protection of copyrighted works in the UK will not be affected by Brexit. However, Brexit will have an impact on some cross-border aspects of using works protected by copyrights, such as their satellite transmission or the transmissibility of online content. The fundamental protection of copyright works will remain unaffected no matter what kind of Brexit will occur, while the current draft Brexit deal does not mention copyrights at all.

For EU trademarks, the situation is entirely different. In contrast to copyrights, the EU trademark in the EU is governed by a directly applicable regulation without being treated by any international treaties.

If the UK does not adopt any unilateral domestic solution, the EU trademarks will simply cease to exist and will not be protected in any way in the UK after 29 March 2019, should the UK leave the EU without a deal. Consequently, in the existing draft Brexit deal it has been determined that the owner of the EU trademark will, automatically and without any review, become the holder of a national trademark in the UK that has the same wording and applies to the same products and services as the original EU trademark. But for that to happen, a Brexit deal must be passed, something which currently seems quite uncertain.

Even in the case of a hard Brexit, however, the holders of EU trademarks will have no reason to despair. According to information disclosed by the UK government, EU trademarks will be protected through a new equivalent UK right and all owners will be notified by the UK authorities about having acquired new UK domestic names. Whether this will really happen we do not yet know, as information provided by the UK authorities is not yet binding. But this does not at all mean that it will not become binding in the future.

If a Brexit deal is not entered into, we strongly recommend monitoring the legislative measures of the UK government and, if necessary, registering a UK domestic trademark in a timely manner to replace the EU trademark that will cease to exist.

Decision on digital services tax postponed

The Economic and Financial Affairs Council (ECOFIN) did not pass the draft directive on digital services tax at its meeting on 4 December 2018.

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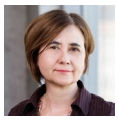

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A compromise text, put forward by the Austrian presidency, is based on the following principles:

The tax shall only apply to multinational groups with worldwide revenues exceeding EUR 750 million per year and total EU revenues from taxable digital services exceeding EUR 50 million per year, regardless of where the services are provided from.

- Taxable revenues shall mean revenues from advertising on digital interfaces (e.g. websites or mobile applications), revenues from intermediation services on digital interfaces, and revenues from the sale of user data.
- The tax rate shall be set at 3%.
- Taxable revenues shall be attributed to individual member states based on the location (to be determined primarily by the user IP address) of the users who viewed the advertisement, used the intermediation service, or whose data were sold, regardless of whether they themselves financially contributed to generating the revenues.

The member states' representatives also dealt with a joint declaration by France and Germany put forward just before the meeting was opened, when it was already clear that the Austrian proposal was not going to win the member states' unanimous support. The declaration asked the European Commission and the Council to narrow the scope of the digital tax to revenues from advertisements, with a possibility having the member states voluntarily widen the taxation scope. The declaration also proposed that the directive should be adopted by the end of March 2019, with effect from 2021.

Both proposing countries urged the European Commission and the Council to work on legislative proposals that would result in a permanent and global solution to the taxation of the digital economy, in line with the conclusions at the OECD level. This solution is expected in 2020. If a consensus is reached on the OECD level, and if the EU subsequently adopts the relevant legislation, the Digital Services Tax Directive will then be repealed.

The discussion on the proposal was frank, with various levels of support for the proposal. Some states, however, expressed their preliminary disagreement (Ireland, Sweden, and Estonia). Alternatively, they would prefer waiting for a solution on the OECD level. The fate of the digital tax is thus uncertain.

SC on proportionality of penalty under non-compete clause in employment contract

The Supreme Court (SC) dealt with the case of an employee bound by a non-compete clause who terminated employment with one employer and the following month began employment with a competitor. The former employer demanded that the employee pay a contractual penalty arising from the non-compete obligation. The Supreme Court found the demand contrary to good morals, as the employment with the new employer only lasted three days.

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A non-compete clause can be included in an employment contract of an employee who while performing their work may gain information significant for the employer's competition. It stipulates the employee's obligation not to carry out work identical or in competition with the former employer's activity for a certain time (one year at maximum) after the termination of employment. The clause is used by employers to protect valuable information, knowledge, processes or technologies. However, this protection does not come free-of-charge – to their employees, employers have to pay a remuneration of at least one half of an average monthly salary for each month of compliance with the obligation. The employee's adherence to the clause may be secured by a contractual penalty; by paying such a penalty, the employees may liberate themselves from the obligation.

Under the law, the amount of the contractual penalty must be proportionate. Its proportionality may be reviewed by court, on a case by case basis, both in terms of its purpose, the nature and significance of information protected, and of the amount of the remuneration the employee is entitled to for complying with the clause.

In the case in question, the proportionality of the penalty was at the heart of the dispute. The court found the amount of the penalty adequate – the employee had gained competition-relevant information while performing the work, and the amount of the penalty was not higher than what employee would have gained from the employer had she complied with the clause. Nevertheless, the court ruled in favour of the employee, as it took into account the fact that her employment with the new employer had only lasted a few days, and held that she had only breached her obligation to a negligible extent. The former employer's demand to pay the contractual penalty was thus dismissed on the grounds of being contrary to good morals. The court also stated that the situation could still be addressed by seeking damages or invoking remedies against unfair competition.

With the described judgement, the Supreme Court further narrowed the already rather limited possibilities of employers to protect their know–how. Not only do they have to correctly assess the vague criteria of proportionality, they also have to deal with whether any breach of a non-compete clause is "negligible" – no matter that sensitive information may be disclosed within minutes. The non-compete clause thus seems to be a rather expensive tool for employers, providing them with only limited protection. Seeking damages or claiming a breach of fair competition regulations is a rather theoretical option – it is difficult enough for employers even to find out that their former employee subject to a non-compete clause is working for the competition, and even harder to prove that the employee has actually disclosed any sensitive information.

Tax administrator must not assess evidence put forward with bias

If a taxpayer produces evidence in tax proceedings, a tax administrator must assess such evidence both separately and in combination. If they have doubts about the evidence, they may invite the taxpayer to submit further or different evidence. They may not, however, assess the evidence with a bias, highlighting what incriminates the taxpayer while side-lining any favourable evidence.

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The Supreme Administrative Court (SAC) dealt with Case No. 6 Afs 365/2017 – 41 of a Czech company exporting cars to Cambodia through a customs agent in Belgium, where the Belgian customs agent has the same powers as state customs authorities and is also authorised to release goods into an export customs regime.

The Czech company submitted to the tax administrator a single administrative document (SAD), together with other documents concerning the export of the goods (shipment documents, handover protocols, bank statements, etc.). The tax administrator did not accept the VAT exemption for the transaction on the grounds that the SAD did not contain all required essentials (the stamp and signature of the Belgian customs agent). The tax administrator's main argument was that the goods had not been released into the export customs regime (one of the statutory preconditions for applying the VAT exemption). Obviously, the Czech tax administrator was not aware that Belgian customs agents are authorised to release goods into such regime in lieu of the Belgian state authority.

Although the tax administrator did not challenge the legal status of the Belgian customs agent, they requested that relevant facts be proved. As the taxpayer failed to do so, they, according to the tax administrator, also failed to bear the burden of proof.

Regarding the above, the SAC stated that the tax administrator may express doubts as to the reliability, provability, accuracy or completeness of accounting and other records. They are, however, obliged to identify and support concrete reasonable doubts that render such records unreliable, unprovable, inaccurate or incomplete. This means that tax administrators cannot challenge evidence proving that goods were released to export customs regime without explicitly stating on what facts they are doing so.

Super-gross tax base for benefits from third parties – the case continues

In July 2018, the Regional Court in Hradec Králové confirmed the duty to apply the "super-gross tax base" also for benefits provided to employees by third parties. The issue was now dealt with by the Supreme Administrative Court, which did not support the Regional Court's interpretation, and returned the case for further proceedings.

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In the initial proceedings, the Regional Court in Hradec Králové agreed with the tax administrator who had assessed additional tax on income from dependent activity to a company that had provided benefits to the employees of another entity, Česká pošta (Czech mail service company). When performing their work, the employees of Česká pošta also offered the products of the company, based on its contract with Česká pošta. The company then taxed the non-monetary benefits it provided to the employees without increasing the tax base by the employer's contribution for social security and health insurance (the "super-gross tax base").

In the subsequent cassation proceedings (No. 1 Afs 162/2018- 40), the Supreme Administrative Court (SAC) disagreed with the Regional Court's interpretation. SAC argued that to meet the definition of an employer for the purposes of social security and health insurance, the sole existence of taxable income from dependant activity is not sufficient (as is the case under the Income Tax Act), but another condition has to be met: the income must come from "employment", meaning an activity carried out by an employee for an employer.

The SAC was of the opinion that in the case in question, the tax administrator failed to prove that the company was the employer of Česká pošta's employees in the meaning of social security and health insurance legislation, or that Česká pošta's employees carried out any activities for the company concerned. SAC thus vacated the Regional Court's judgment as well as the Appellate Financial Directorate's decision and returned the case for further proceedings and proving.

SAC: additional tax may be assessed even if tax inspection is unlawful

Less than three month ago, we informed you about recent case law in which the Supreme Administrative Court (SAC) confirmed that tax administrator had proceeded unlawfully by not giving the taxpayer the chance to correct their error by filing an additional tax return, and instead initiating a tax inspection. The tax inspection thus initiated was found to have been unlawful and the SAC prohibited its continuation. In its judgment of October of this year (6 Afs 61/2018), the SAC opined in more detail on whether the unlawful initiation of a tax inspection automatically renders the subsequently issued notices on tax assessment unlawful.

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The SAC has repeatedly confirmed that if a tax administrator becomes aware, otherwise than by a tax inspection of the period in question, that tax should have been assessed in a different amount than given in the filed tax return, then the tax administrator first has to call upon the taxpayer to file an additional tax return. Only if a taxpayer does not respond to the call, it is appropriate to initiate a tax inspection. Unlike an additional tax return, a tax inspection involves a penalty of 20% of the additionally assessed tax.

In its recent judgement, the SAC dealt with the question whether an unlawfully initiated and continued tax inspection always results in the unlawfulness of tax assessment notices issued based on such an inspection. According to the SAC, it is necessary to consider on a case by case basis whether the tax administrator's procedural error might have had an effect on the result of the tax proceedings unfavourable for the taxpayer. If a tax inspection was initiated in a situation where the taxpayer should have been first invited to file an additional tax return, the tax administrator infringed on the taxpayer's right by assessing the penalty.

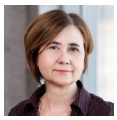
In the case in question, however, the SAC concluded that there was no direct link between not calling upon the taxpayer to file an additional tax return, and assessing the penalty. The truth was that throughout the tax proceedings the taxpayer had argued against the reasons for assessing additional tax, therefore is was likely that the taxpayer would not have followed the call to file an additional tax return anyway. This means that, for this specific taxpayer, the tax inspection would most likely have been initiated and the penalty would have been assessed even if the tax administrator had proceeded lawfully and issued the call. The SAC hence did not find the tax assessment notices to have been unlawful.

The SAC's standpoint indicates that a failure to call upon taxpayers to file an additional tax return does not always affect the lawfulness of subsequently issued tax assessment notices. We therefore recommend that taxpayers actively defend themselves against the tax administrator's procedure immediately after a tax inspection is initiated – at that point, according to the SAC constant case law, it should be possible to have the tax inspection discontinued on the grounds of it being an unlawful infringement.

In brief

Latest news - December 2018

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



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- A group of deputies submitted to the Chamber of Deputies a draft amendment to the Labour Code increasing the minimum vacation to 5 weeks per year. Presently, the basic vacation for employees in the business sphere is 4 weeks per year, which may be further expanded on a voluntary basis. Employees in the non-business sphere are presently provided 5 weeks of vacation per year, but without the possibility of further increases. The proposers of the amendment aim to eliminate this difference and unify the vacation entitlement for both spheres. Still, if the amendment is passed, a voluntary increase in vacation days will only be possible in the private (business) sphere. The draft amendment does not concern teaching and academic professionals at schools, for whom the Labour Code stipulates 8 weeks of vacation per year.

- From 1 January 2019, some rates of foreign per diem meal allowances will increase (Decree No. 254/2018).

- Information on the practical application of Article 11 of the Treaty between the Czech Republic and Chile on Preventing Double Taxation and Tax Evasion in the Area of Income and Wealth Tax (Collection of International Treaties No. 5/2017), and the List of Countries Exchanging Country by Country Reports under Section 13zb(2) of Act No. 164/2013 Coll., on International Cooperation in Tax Administration and Changes to Related Regulations, as amended, were published in the Ministry of Finance CR Financial Bulletin No. 10/2018.

- The Chamber of Deputies passed an amendment to the Act on Money Changing Activities aiming to prevent unfair practices of some exchange offices, mostly located in the centre of Prague, when dealing with foreign tourists.

- The financial administration reminds VAT payers of rules of the VAT treatment of members of companies. Under the new legislation, each member in a company shall proceed on an individual basis, following the general provisions of the VAT Act.

- The General Financial Directorate published new printed forms for payers of tax on dependent activity, which have changed. Other printed forms for 2018 remain unchanged.

- Starting next year, the Financial Administration will offer a new option to pay administrative fees – by a card via terminals located in the buildings of the tax authorities' territorial branches. Taxpayers submitting filings that are subject to a fee will now be able to pay the fees by card. Also, the financial administration's executors will accept bank cards to settle underpayments, offering a quick and efficient way for tax debtors to clear their debts (often caused by negligence) when dealing with the executors.

- The Chamber of Deputies passed an amendment to the VAT Act proposed by deputies, which is now to be debated in the Senate. If passed, it will change the VAT rate for train, bus and ferry fares to 10% (from the present 15%).

- An updated overview of valid double taxation treaties concluded by the Czech Republic in the area of income tax and tax on income and wealth was published on the Ministry of Finance's website.

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