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Editorial

The 2019 tax package entered into effect last month. While most changes to income taxes will only affect you starting from the next accounting period, some new duties will apply immediately, as, e.g., the duty to report tax exempt income (such as interest, dividends or royalties) paid to tax non-residents. While the tax authorities have already issued waivers of this duty to some entities, their approach to the scope of such waivers seems rather cautious. Yet, it may be advisable to consider applying, in particular where payments are made repeatedly to the same entity.

The Ministry of Finance is already busy preparing a 2020 tax package; we cover its most important changes in detail in this issue. Preparations for the implementation of DAC 6 are also underway. The directive imposes the duty to inform tax administrators about selected arrangements/transactions that may provide their users with tax benefits. The duty to inform may concern not just the users of such arrangements, but also other parties (such as advisors) participating in the arrangements' preparation or implementation. Unlike the tax administrations of other EU member states, the Czech Ministry of Finance is now proposing to implement the directive's requirements only to the extent of reporting arrangements with a cross-border feature. At the same time, client-attorney (tax advisor) confidentiality should be preserved. Let us hope that any further developments, both before the government and parliament, will not bring any unexpected surprises and not increase the taxpayers' already extensive information duties beyond what is required by the EU.

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Taxes

Quick fixes to introduce significant changes in 2020

A draft amendment to the VAT Act for 2020 introduces significant changes for consignment stock arrangements and intra-community transactions with goods. These quick fixes are aimed at harmonising the rules for the delivery of goods among the EU member states. Below we describe two of the four major changes.

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The changes will become effective as early as in January 2020, are systemic, and the most significant in recent history, so preparations for them should not be underestimated and should commence as soon as possible.

Change to the VAT regime applicable to consignment stock arrangements
The transfer of goods to a warehouse in another member state for the purpose of their subsequent sale to a local customer generally requires the registration (or identification) for VAT in the state of sale. To reduce the administrative burden, it is currently possible to use simplification procedures such as call-off (consignment) stock arrangements, generally to avoid the redundant registration or identification for VAT of a European supplier in the state of ultimate sale. However, the rules for these simplification procedures vary materially in individual member states. One of the quick fix measures therefore aims to unify and simplify the procedures in these particular cases.

At present, the consignment stock regime in the Czech Republic functions as follows: the transfer of goods from another member state to the CR can be regarded as the acquisition of goods by a particular customer already at the date of transfer. The customer then self-assesses the acquisition of goods as early as goods are received into stock.

From 1 January 2020, the entire system of taxing consignment stock arrangements will completely change. According to the draft amendment, the customer will neither pay VAT nor declare the acquisition of goods from another member state earlier than at the moment the goods are actually withdrawn from stock. In connection with this, a new time limit over which goods can be stored has been set at twelve calendar months within which goods must be dispatched from the warehouse and taxed. The duty to monitor the time over which goods are stored may represent a significant administrative change to stock records. Another condition is that goods stored may not be lost or destroyed, since this could be classified as a violation of conditions for the application of simplification procedures. The question remains whether shortages within the limit or substantiated thefts and losses that are being recovered in due manner from responsible persons will be tolerated.

Conditions for VAT exemption of supply to another member state
According to the draft amendment, in all member states the exemption of the delivery of goods to another member

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state from VAT will only be applicable to sales to customers registered for VAT in that particular state. This condition will have to be duly verified via VIES. According to the existing case law of the Court of Justice of the EU, this condition has so far only been a formal one; from 2020, it should turn into a substantive condition, i.e. essential for the claiming of a VAT exemption. It should be pointed out that, in this respect, the Czech VAT Act is ahead of its time, as it specifies this duty beyond the EU VAT Directive. This measure will therefore not have a significant impact on Czech suppliers.

Other changes introduced by the draft amendment will be discussed in the next issue of the Tax and Legal Update.

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Draft amendment to tax laws to increase public budget revenues

The Ministry of Finance disclosed a draft amendment to tax laws for 2020, aimed at increasing revenues for public budgets. Changes will primarily affect insurance companies that will have to additionally tax, on a one-off basis, the difference between recorded technical provisions and provisions under the Solvency II rules. According to the draft, taxes on gambling, spirits, cigarettes and tobacco will also increase.

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In early April, a draft act to amend certain tax laws in connection with a plan to increase revenues for public budgets was submitted for inter-ministerial comment procedure. The related explanatory report expects that the amendment may add more than ten billion of Czech crowns to public budgets in 2020.

The proposed amendment to the Act on Reserves will substantially affect the insurance sector. According to the draft, only technical provision amounts determined pursuant to the EU Solvency II directive would be tax deductible. At present, insurance companies must calculate their technical provisions in compliance with the EU directive for the purpose of reporting to the Czech National Bank, and only technical provisions in the amounts reported in the accounting books tax are deductible. It must be pointed out that in terms of their value, provisions under Solvency II tend to be significantly lower than technical provisions under accounting regulations. According to the amendment, the difference between technical provisions calculated under accounting regulations and technical provisions under the EU directive will have to be additionally taxed on a one-off basis. In its estimate, the Ministry of Finance believes that this amendment should result in an additional CZK 3.8 billion for the state budget.

The draft amendment to the tax laws also intends to substantially increase excise duties on spirits, cigarettes and tobacco: a 10 percent increase on cigarettes and tobacco and approx. a 13 percent increase on spirits. Similarly, the amendment plans to increase the tax on gambling, especially on lighter forms of gaming such as lotteries and bingos (an increase of 7 percentage points). In addition, gas used in residential homes boiler rooms / heating systems should no longer be exempt from tax on natural gas.

However, the above amendment is not the only legislative step to increase revenues for public budgets, as the Ministry of Finance is planning to submit a digital tax proposal by the end of May. According to the ministry’s estimate, this should generate additional annual revenues of CZK 5 billion. The Act on Tax on Selected Internet Services should introduce a new 7 percent tax on placing targeted advertising on digital interfaces by corporations with a global turnover exceeding EUR 750 million. The ministry also intends to tax the use of multilateral digital interfaces and the sale of collected user data. The amendment is planned to become effective from mid-2020.

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Establishing trades or corporations easily, quickly and on-line?

To the Chamber of Deputies, a group of deputies has submitted a motion to amend legislation regulating the establishment of corporations. The proposal should enable the establishment of a trade or a limited liability company easily from home via the internet in one day while incurring expenses of CZK 500 and being able to pay the fee by card.

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The deputies' motion to amend legislation, supported by deputies across the political spectrum, aims to substantially simplify the establishment of limited liability companies and unqualified trades. Under certain conditions, both should be possible through an application designed for this purpose while using information from the public administration's information systems and without the need to visit a notary, the trade licensing office, or a bank. The motion targets limited liability companies that without a doubt are the most common type of corporations in the Czech Republic, in particular those having a simple basic structure to perform unqualified trades.

The incorporator would be able to establish a limited liability company using the application and a model memorandum of association while signing the petition to register the company in the Commercial Register by a qualified electronic signature or sending it via a data box. Other approvals necessary for the registration of a company in the Commercial Register (in particular, consent with the entry as well as consent with the registered office's location) would be obtained in a similar way. Simultaneously with entering the incorporation of a company it should be possible to register the establishment of an unqualified trade for such a company in the Trade Register. Another novelty is the cancellation of the duty to make a contribution by companies with the registered capital not exceeding CZK 5 000. When registering such a company in the Commercial Register, the incorporator would not have to submit the bank's certificate confirming the payment of a contribution. In practice, an applicant would hence really be able to establish a limited liability company from home within a few hours after paying a court fee of CZK 500.

Despite the fact that deputies from both opposition and government political parties are in consensus in this matter, some ministries have voiced concern regarding possible abuses of the proposed online application process, in particular pointing to potential abuses for criminal acts because of the insufficient identification of persons. Another reservation voiced by the ministries is giving unjust preference to a limited group of corporations. The government as a whole adopted a neutral position in this respect; however, this does not mean that entrepreneurs will entirely lose their opportunity to register a company in the Commercial Register on a remote basis using the internet if the motion is not passed. One of the reasons for the government's rather reserved opinion is the Directive on Digitalisation in Company Law, expected to enter into force sometimes in May. Among other things, this directive aims to enable the online establishment and registration of limited liability companies in the Commercial Register as well as the simplification of registration of branches from other member states. The

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directive should be transposed into the Czech legal order roughly in mid-2021. According to the Ministry of Justice, however, the motion submitted by deputies does not fully correspond to the European regulation.

Considering the above, it is certain that the longed-for online establishment of companies will be feasible under certain conditions no later than in the second half of 2021. If parliament does not pass the currently proposed motion, entrepreneurs planning to establish a company online will only have to wait until the Directive on Digitalisation in Company Law is transposed into Czech law.

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New EU Prospectus Regulation: more obligations for issuers or less strict rules?

What major changes in disclosing information about securities are to be introduced by Regulation (EU) 2017/1129 of the European Parliament and the Council? The regulation will be directly applicable from 21 July of this year. Will issuers of securities only be subject to additional duties, or will the regulation also liberalise the so-far very strict rules?

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The first significant change is the prospectus summary's reduced maximum number of pages from the current fifteen prescribed by European legislation to seven. Information included in the summary should thus be more concise and more transparent for retail investors. The regulation explicitly determines that the prospectus summary must be prepared to be easy to read and should omit any technical terms.

A relief for issuers should be the simplified disclosure regime for secondary issuances. The details for secondary issuances should have been determined in January. But the anticipated implementing regulation has not yet officially been published by the commission and, at present, the internal settlement of comments is expected to take place in June. More details regarding the conditions of this interesting instrument have not yet been made available.

Apart from a standard prospectus, an alternative for smaller issuers will also be an EU growth prospectus, available not only for small and medium-size companies but also for issuers specified in the regulation. Similarly as in the case of simplified disclosure regime for secondary issuances, details should have been determined in January but the anticipated implementing regulation has not yet been published.

The regulations also plans simplifications for frequent issuers (i.e. issuers who offer securities to the public on a regular basis), introducing a universal registration document containing information about the issuer. The document can be prepared once in the issuer's accounting period: after having it approved by the regulator, the issuer may submit for review the description of securities and the prospectus summary only. If the registration document is approved in two successive accounting periods, the issuer may subsequently submit such a document to the supervisory body without prior approval.

The involvement of the European Securities and Markets Authority (ESMA) in prospectuses is expected. Every year, the ESMA should publish a report containing prospectus statistics and analyses, offering an interesting summary of the methods of disclosing information about securities across the European Union.

The prospectus regulation reflects the needs of this particular capital market segment and introduces improvements for issuers and more user-friendly environment for investors. However, only practice will show whether and how the new concepts will actually be utilised.

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Outsourcing in financial services – new and stricter guidelines

The European Banking Authority (EBA) has issued new and stricter guidelines on outsourcing arrangements, affecting all entities subject to its supervision, including payment and electronic money institutions. EBA's guidelines have been prepared in response to the digitalisation of the financial sector, associated with a large number of new and complex FinTech outsourcing arrangements. The guidelines will become effective on 30 June 2019.

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The aim of the guidelines is to establish a more harmonised framework instead of the one that is currently fragmented into individual legal regulations of the EU and member states as well as various forms of supervisory bodies' recommendations. Among other things, the guidelines will also affect the outsourcing of cloud services. At the same time, the guidelines define circumstances under which a certain function will be deemed critical, and additional obligations that will have to be fulfilled when such function is outsourced.

First, it is necessary to assess whether the subject-matter of outsourcing is a critical function, testing a number of aspects, such as (i) assessment whether the outsourced function immediately relates to the provision of financial services; (ii) the method in which the outsourcing of a particular function affects the entity's ability to provide financial services; (iii) the impact of outsourcing on risk management, compliance, audit, etc.

The guidelines' applicability has been extended to cover intracompany outsourcing. This is a major change compared with the original guidelines of 2006 and will result in an additional administrative burden for the entities concerned. The good news is that cloud solutions will not a priori be regarded a critical function and will be subject to the same testing as other functions.

If the entity determines a function to be of a critical nature, it will subsequently have to fulfil a number of additional obligations set by the guidelines. These mainly affect risk management and the legal assessment of whether the particular entity is able and suitable to perform the outsourced function. It may be quite demanding to adhere to the guidelines, especially for FinTech companies as they will have to meet a number of strict requirements on management and control systems.

We expect that the Czech National Bank will decide to follow these guidelines and that the institutions concerned will adopt all procedures arising from the guidelines on outsourcing into their internal regulations, contractual documentation, and internal processes within the set deadline.

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Government to disallow certain foreign investments

On 10 April 2019, Regulation (EU) 2019/452 of the European Parliament and the Council, establishing a framework for the screening of foreign direct investments into the European Union, entered into effect in record time. In connection with this, the Czech Ministry of Industry and Trade submitted a bill on screening foreign investments to the legislative process, based on which as a last resort it will be able to disallow certain foreign investments in Czech companies.

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At present, 14 out of 28 member states apply a mechanism for screening incoming foreign investments. As this mechanism varies in individual member states to some extent, the EU decided to harmonise the regulation in this respect, taking a relatively revolutionary step involving the introduction of a legally binding instrument for screening foreign investments for security reasons, i.e. to protect the EU's strategic goals. The EU thus confirmed that despite the EU's general openness to foreign investors the approval of foreign investments is a desired tool to protect security, internal order, and fair competition throughout the Union.

It was not a sudden or surprising step by the EU; in contrast, the adoption of the regulation can be viewed as the culmination of tendencies and concerns over several years. The foreign investment screening mechanism should complement the EU's existing policies, e.g., member states may review transactions in the energy sector or upon the merger of businesses and asses any potential violation of legitimate interests. However, the approved regulation does not impose the duty to introduce the foreign investment screening mechanism on member states; it only defines its key characteristics if member states decide to adopt it. These essential requirements include, for example, the possibility to judicially review a decision and the prohibition of discrimination among third countries. The regulation also introduces the duty to exchange information among member states and between the member states and the commission, which is of utmost importance.

Despite the facultative nature of the mechanism, the Czech Republic has decided to adopt it. The parliament is expected to vote on the appropriate bill in the near future. According to the bill, the Ministry of Industry and Trade should screen foreign direct investments primarily from non-EU countries. A foreign investment shall generally mean the acquisition of at least a 10% share in the voting rights in a Czech corporation or gaining access to information or technologies vital for the security of the CR or its public order. Screening will also apply to investments made by an EU entity controlled by a third-country investor. Some foreign investments will require approvals: mainly those involving investments in transactions with military material or critical infrastructure. The ministry will also be able to screen other investments any time within the five years of their realisation if it suspects that the country's security or public order may be at risk. Where such investments are concerned, the foreign investor may ask for them to be screened, thus avoiding their possible abolishment. If the Ministry of Industry and Trade arrives at the conclusion that the investment undergoing screening might be risky, the government will make a final decision: it may authorise it or conditionally authorise it, or decide not to authorise

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it, or even cancel any investments that have already been made.

Proceedings to authorise an investment under the bill will represent special administrative proceedings. It will not be possible to file remonstrance against the government’s decision; however, the investor will be allowed to turn to the court. The new legal regulation will apply to investments made after 1 January 2020 when the act is expected to enter into effect. Only after this date we will be able to see whether the act has fulfilled its purpose and has not exceedingly discouraged foreign investors.

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Where to pay VAT on professional training courses – CJEU rules on Swedish case

The CJEU’s judgement has again shuffled the cards as regards the place of taxation for professional training courses. Should the venue of a course be decisive?

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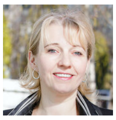

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In the Srf konsulterna AB case (C 647/17), the Court of Justice of the EU ruled that the place of taxation of a professional training course is where it actually took place. The judgement concerned a Swedish company providing professional training courses in form of seminars to its members and third parties. While most of the training courses took place in Sweden, some of them also took place in other EU member states.

The courses’ syllabi are determined in advance, but also adapted on the spot depending on the participants, who must have certain skills and professional experience in accountancy and management. Participation is subject to prior registration and payment in advance.

The training courses are provided to Swedish businesses, therefore, if the basic rule of taxation of services were applied, they would be taxed in Sweden. The Swedish tax administrator, however, expressed doubts as to whether this may also be the case of services that should be taxed at the place where the educational event takes place, i.e. the place of the admission to the educational event. The merit of the dispute thus was whether the training courses in question were subject to VAT in Sweden (according to the basic rule), or at the place of their venue (if involving an admission to an event).

The Swedish Supreme Administrative Court therefore referred to the CJEU on how to interpret the term “admission to an event” where it concerns an accounting course for entrepreneurs lasting several days and requiring registration and payment in advance.

The CJEU held that the case in question indeed involved an admission to an educational event, therefore it had to be taxed at the place of the event, regardless of the increased administrative burden for the company organising the event. The fact that the participation required registration and payment in advance was not relevant for determining the place of taxation.

The question now arises to what extent the conclusions of the Czech Coordination Committee regarding training courses for a limited range of participants remain valid. Will the above CJEU conclusion also apply to training courses organised by a parent company within the group? We will keep you informed about further developments.

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SAC on proving delivery to another member state and on abuse of right

The abuse of right concept has been recently quoted mainly in connection with the adoption of the tax package. According to the amended Tax Procedure Code that defines it, the abuse of right concept applies to transactions whose predominant purpose (not the principal one, as implied by current case law) is to obtain a tax benefit contrary to the meaning and purpose of tax legislation. What stance has the SAC taken?

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In its judgement 5 Afs 314/2016-55, the Supreme Administrative Court (SAC) expressed its opinion on the abuse of right concept in the case of a VAT exempt supply to another member state, mainly as regards the correct use of the term 'abuse of right'.

In the case in question, a Czech taxpayer supplied ultralight airplanes to Denmark on a VAT-exempt basis. In Denmark, the Danish business partner immediately sold the airplanes to a Czech end customer, applying a zero VAT rate. In a tax inspection, the taxpayer was unable to prove the entitlement to exemption, and VAT was additionally assessed on these transactions.

The tax authority, and subsequently also the Regional Court of Justice in Prague, concluded that the taxpayer failed to bear the burden of proof and had not sufficiently proven the entitlement to a VAT exemption of an intra-community supply of goods. At the same time, in their opinion, the taxpayer committed an abuse of right, as the main purpose of the transaction was to obtain a tax benefit, i.e. to avoid paying VAT.

The SAC disagreed with this opinion, arguing that these two conclusion excluded each other. If the abuse of right concept is to be applied, the right to the exemption must first originate – meaning that the conditions for the tax exemption stipulated by law must be met. Where such conditions have not been met, there may be no abuse of right. According to the SAC, an abuse of right should not be identified with the mere failure to meet the conditions stipulated by law.

The SAC concluded in its judgement that an abuse of right only occurs where all conditions required by law for a certain action have been formally met, and where, at the same time, the result of the action is contrary to the meaning and purpose of the legislation. Based on this, the SAC vacated the regional court's judgement and returned the case for further proceedings.

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Supreme Court confirms strict rules for serving notice of termination

Under the Labour Code, employers must deliver documents by which an employment is terminated to their employees primarily in person, at the workplace, at their residence or wherever the employees can be found. Only of this is not possible may employers deliver the documents by mail. Recently, the Supreme Court dealt with the practical implications of this rule. Its subsequent verdict is rather strict on employers.

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In the case in question, an employer first attempted to deliver a notice of termination to an employee at the workplace. However, the employee was on vacation that day, and the personal delivery was not successful. Still on the same day, the employer sent the notice of termination to the employee by mail. The mail carrier did not find the employee at home and the letter was deposited at the post office, where the employee did not collect it within the stipulated deadline. The employer considered the notice of termination delivered, by a legal fiction of delivery. The employee challenged this in court.

At the core of the dispute was the question whether it had indeed been impossible to deliver the notice of termination to the employee in person, i.e. whether the employer had had the right to proceed with the delivery by mail. The law does not provide any detail specification of this precondition, therefore the Supreme Court offered its own interpretation. It stated that in each specific case it was necessary to consider whether the employee had been objectively reachable, whether the employer had attempted to deliver the document in person, what the reason of failure had been and whether it would have made sense under the circumstances to make another attempt to deliver, how urgent the delivery of the written document had been, and whether it had been reasonable to expect that a delivery by mail would be more successful than a repeated personal delivery. The court also emphasised that the purpose of the legal regulation was to make sure that employees actually receive the written document – as it was not just about observing the formal processes, which in this case obviously would not have been able to meet the pursued objective.

In the case in question, the employer had only attempted to deliver the notice of termination to the employee once, on a Friday, even though being aware that the employee was at the time on vacation. The mail posted on that day could not have been delivered earlier than on the following Monday. According to the Supreme Court, the employer did have the opportunity to attempt a repeated personal delivery at any place, even on the weekend or on the following Monday, when the employee was due back at work. The court thus concluded that the conditions for the delivery by mail were not met in the case in question, and the delivery had no legal effects.

The decision places rather strict demands on employers: to proceed with delivery by mail, they first have to "chase" the employees even outside the workplace, possibly even before or after their working hours. In practice, a single attempt to deliver at the workplace may not suffice. This situation may be improved by the extensive amendment to the Labour Code, currently being discussed by the government – under the amendment, to be able to proceed with delivery by mail, it would suffice that the employer has attempted to deliver the document at the

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workplace; it would no longer be necessary to investigate the possibility to deliver the documents in person, at the workplace or elsewhere. However, even under the amendment, a single attempt to deliver may not be sufficient.

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Case law

Office for Personal Data Protection imposes fine for excessive keeping of copies

Last year, the Office for Personal Data Protection dealt with a case of an employer who kept excessive copies of employee documents. This is common practice among employers who, for safety's sake make copies of all such documents. Nevertheless, this is against the law, as was confirmed by the office in the case in question. The inspected entity was fined CZK 180 000 for the ascertained breaches.

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Employers are obliged to keep a personnel file for each employee. The file may only contain documents necessary for the employee's work performance; yet, no specific list of such documents has been stipulated. At the same time, employers must observe legal regulations regarding personal data protection; namely, they may only keep copies of documents stipulated by law, and follow data adequacy and data minimisation principles.

In an inspection, the office ascertained that in personnel files, the employer kept copies of health insurance cards, extracts from criminal register, cards stating bank account numbers, and other copies. It was also ascertained that the employer kept copies of birth certificates of some of the employees' children, and scanned photographs of the employees. In its ruling, the office summarised that an employer is not generally authorised to keep copies of documents submitted for HR purposes; an employer may only make a note in the personnel file that the requested information was supplied by the employee, and by whom, when and based on what documents it was verified.

In the inspection, it was also discovered that the employer excessively retained copies of employees' ID cards. This is only possible with the employee's consent under the Act on Identity Cards. Even if the employer were to prove having obtained such consent, making a copy is only possible under the condition that all personal data be processed solely for the purpose stipulated by the employer. If the employer has not stipulated the specific processing purpose for retaining the personal data given in the ID such as the employee's photograph or their spouse's name and surname, the employer is not authorised to process such personal data.

Finally, the office pointed out that the automated systems used by the employer for personal data processing did not have a log-in feature, meaning that it was impossible to check when, by whom, and for what purpose the personal data had been recorded or otherwise processed; yet, the duty to keep electronic records of this is explicitly stipulated by law.

The inspection was carried out by the office based on previous legal regulations. However, in light of the GDPR, its conclusions remain applicable. As for the content of personnel files, let's just say that in this case, the fewer documents, the better.

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Rules of profit distribution for joint stock and limited liability companies clarified

Late in March, the Supreme Court issued a decision significantly diverging from its previous case law concerning the rules of profit distribution for joint-stock and limited liability companies (capital companies). The case law had mostly been established under the Commercial Code no longer in force. Replacing the Commercial Code from 1 January 2014, the Act on Corporations has significantly extended the profit distribution options of capital companies. At the same time, it puts more demands on statutory bodies as the main guarantors of compliance with the law when making payments from profit and other components of equity.

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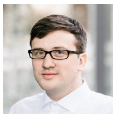

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At the times of the old Commercial Code, the Supreme Court forged the opinion that once the deadline for convening the general meeting to approve the regular financial statements had elapsed, the financial statements could no longer serve as a basis for making a decision on the distribution of a capital company's profit. The lapse of six months, counted from the last day of the accounting period, was thus viewed as the latest date when the results as per the ordinary financial statements may provide a true and fair view based on which the shareholders/members could make a qualified decision on profit distribution. With the effect of the new civil law (the Act on Corporations), the professional public voiced the opinion that these rules no longer applied. The expected change in interpretation was already covered in the November 2017 issue of the then Financial Update, and the same conclusion has now been confirmed by Supreme Court decision No. 27 Cdo 3885/2017. This means that from 1 January 2014, ordinary financial statements may in principle serve as a basis for profit distribution until the end of the following accounting period.

The reason is that, unlike the previous legislation, the Act on Corporations explicitly stipulates an 'insolvency test', whose application should in itself be sufficient to achieve the aim pursued by the now obsolete case law, i.e. to prevent the siphoning of funds from a company to the harm of its creditors. In effect, the insolvency test restricts the payment of profits and other 'own resources' (and advances for such), if this should cause a company's bankruptcy. The responsibility for observing this restriction is with the statutory body, whose members have the duty to exercise their offices with the due managerial care. For clarity's sake, other 'own resources' mean components of equity other than profit and registered capital, in particular share premium and capital contributions, and decreases in the registered capital.

The same judgment also overrules another case-law rule, under which a general meeting could not determine the profit share to be paid to the members of the company's bodies (a royalty) without approving at least a part of the profit to be distributed to shareholders/members (a dividend).

What remains valid is the rule that the right to a share in a capital company's profit is its shareholders'/ members' fundamental right. This means that if a company generates profit, the general meeting may decide not to distribute it to shareholders/members only for important reasons and while respecting the prohibition of abusing

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the voting majority. Important reasons may include, inter alia, the provisions of the company's founding legal act (memorandum of association/deed of foundation) stipulating that a part of the profit is to be distributed among the members of the company's bodies, its employees, or transferred to a fund established by such founding legal act. The remaining portion that is not used according to the rules stipulated in the founding legal act also does not have to be distributed to shareholders/members. Yet again, this has to be supported by serious reasons, including, for instance, the company's financial situation or expected future expenditures requiring the creation of necessary reserves. For joint stock companies, these reasons have to be stated in the invitation to the general meeting.

The Supreme Court's decision has opened a wide range of options on how to distribute a company's profits. At the same time, it places rather high demands on statutory bodies, as the failure to observe the profit distribution rules would be viewed as a breach of due managerial care (fiduciary duties).

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In brief

Latest News, May 2019

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

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HOME NEWS IN BRIEF

- Ministry of Labour and Social Affair Notice No. 103/2019, announcing the amount of 50% of the average monthly wage for the purpose of life and subsistence minimum, and the amount of 50% and 25% of the average monthly wage for the purpose of state social support was published in the Collection of Laws. The ministry also issued Notice No. 104/2019 on the average gross annual wage in the CR for 2018 for the purpose of issuing blue cards under the Foreigners’ Residence Act.

- The new Personal Data Processing Act incorporating EU regulations into Czech law was published in the Collection of Laws under No. 110/2019. A number of other laws were amended in connection with this, by Act No. 111/2019 Coll.

- On its website, the GFD draws attention to a paper of the Coordination Committee of the General Financial Directorate and the Chamber of Tax Advisors in the CR answering the question of how to calculate a (partial) tax base – income from employment for employees covered by foreign social security regulations within the EU/EEA and Switzerland, from 1 January 2019.

- The General Financial Directorate published on its website Amendment No. 1 to the General Financial Directorate Information on Registrations for Value Added Tax.

- Financial Bulletin No. 3/2019 published by the Ministry of Finance contains:
  - an overview of taxes and their parts for which personal tax accounts are maintained by the Customs Administration of the Czech Republic
  - a list of customs offices’ bank account numbers (without prefixes).

- The Chamber of Deputies passed to the third reading the governmental proposal for an amendment to the Act on Electronic Reporting of Sales (EET) regulating the launch of the third and fourth reporting phase and introducing the option for smallest entrepreneurs to report their sales off-line. The proposal also includes an amendment to the VAT Act reducing the VAT rate for water and sewerage, meals (catering) and professional services, as well as electronic books, newspapers and magazines, and similar printed materials provided electronically. The third reading is expected to take place in the first half of May.

- The planned amendment to the Investment Incentives Act passed through the second reading on 17 April. As expected, the bill in its present wording defines an investment project with higher added value and significantly strengthens the government’s role in approving the applications for investment incentives. Following the amendment, an enormous decrease in the number of supported investment projects and a significant decrease in the volume of granted investment incentives are to be expected. The Economic Committee discussed the changes proposed in the second reading on 2 May. According to preliminary information, the amendment should already be relevant to applicants starting in the summer or autumn of

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this year.

- Deputies submitted to the chamber a draft amendment to the Income Tax Act aiming to reduce citizens’ tax burden by increasing the annual tax relief for each taxpayer from the present CZK 24 840 to CZK 30 000. The expected loss in tax collection is CZK 18.5 billion. The deputies’ bill also introduces a limit for the tax exemption of income from the sale of securities upon meeting the ‘time test’: the maximum amount to be exempt would be CZK 20 million per year.

- A double taxation treaty with South Korea is awaiting its reading in the chamber; the senate has already agreed to the ratification. The same applies to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).
- In April, the first reading of the Act on Prevention of Double Taxation in relation to Taiwan took place in the chamber.

WORLD NEWS IN BRIEF

- The deadline stipulated by the Treaty on European Union for the United Kingdom’s withdrawal from the EU was extended until 31 October 2019. Should the United Kingdom not arrange for the elections to the European Parliament and not ratify the withdrawal agreement by 22 May 2019, the validity of the extension shall terminate on 31 May 2019.

- Luxembourg has become yet another country that deposited with the depository (OECD) their ratification documents for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). From 1 August 2019, it will start to apply the adopted measures vis-à-vis other countries that have also ratified the MLI.

- The French parliament has passed the introduction of a 3% tax on digital services, while the Austrian government has approved a 5% tax on digital services for income from internet advertising, within the first part of the package on the taxation of the digital economy.

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