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In brief

Latest News, August 2019

Editorial

A fundamental amendment to the Investment Incentives Act passed by the Chamber of Deputies before the parliamentary vacation has been confirmed by the Senate. Rumour has it that after 20 years this in effect will mean the end of investment incentives in the Czech Republic. Thus, if you are planning to expand your capacities or launch new products and want to apply for incentives, you should start preparing the underlying documentation, as you only have a month or two to file the application. While this deadline is still manageable, please bear in mind that it may take at least three weeks to prepare all that's necessary.

Just like every year, the Czech financial and customs administration issued a yearbook viewing 2018 from the perspective of numbers. Do not expect a captivating holiday read with a sophisticated plot, although an interested reader will indeed find a thrilling passage or two. And there is even the powerful story needed by every good book. This year I had the pleasure of reading about the good condition of our country's economy, and more targeted inspections leading to better tax collections.

The plot in the form of appeals and judicial reviews is not quite so impressive, but at least it gives a true view of how far individual institutions are ready to back up one another. From our practice, I can confirm that the state administration has indeed made progress year-on-year in processing and using digital data, and is now much better positioned to target its inspections. However, too much time is still being devoted to formal clarifications of data in VAT ledger statements and other formal errors, bringing zero revenues to the public budget.

If only this activity were to be cut down in the future, giving instead space to digital transformation! At the moment, this is a major challenge for Czech companies, and I keep my fingers crossed that the financial administration will be able to use it to its full potential. Read more in the August edition of the Update.



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2018 through the eyes of the Ministry of Finance

What was the last tax year like according to financial administration officials? The published statistics show interesting figures and facts: In 2018, the financial administration completed, among other things, 32 577 tax inspections and procedures to remove doubt, while 21 065 of them resulted in an additionally-assessed tax or a tax loss reduction.



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Every year around this time, the Ministry of Finance publishes its Report on the Activities of the Czech Republic's Financial and Customs Administration. The ministry's evaluation of 2018 is positive. According to the report, it managed to fulfil its set goals to improve the collection of taxes, implement measures against the high outflow of revenues from direct foreign investments and tax evasion, and adopt an amendment to the Act on the Electronic Reporting of Sales. A public opinion survey conducted on behalf of the financial administration also shows that the majority of respondents views the financial administration as an institution that is trustworthy and open to the public.

According to the report, the financial administration continued in its fight with tax evasion and fraud, focusing mainly on excess VAT deductions, one-crown bonds and the shared economy (Airbnb or Uber platforms) while using existing tools such as VAT ledger statements and the reporting of sales but also new information on the identification of persons providing accommodation via internet platforms, acquired based on a signed memorandum. In legislative and international cooperation matters, 2018 was a busy year for the financial administration, as it managed to implement the EU Anti-Tax Avoidance Directive (ATAD) into the Czech legal order and pass an amendment to the Electronic Reporting of Sales Act, and put into use an international data collection system, i.e. country-by-country reporting.

Some statistical figures are also worth mentioning. Overall revenues from taxes and custom duties for 2018 amounted to CZK 1 038 billion, showing a year-on-year increase of 6.6%. The major revenue item was (yet again) VAT (CZK 413 billion), showing an 8.3% increase compared with 2017, primarily as a result of an increase in the value of tax liabilities contrary to a lower increase in claimed deductions. According to the ministry's statistics, the year-on-year increase in the collection of VAT primarily owes to VAT ledger statements. However, as a result of the failure to implement Phases 3 and 4 of the electronic reporting of sales, the state did not collect as much as it had planned in its prognoses. The collection of corporate income tax increased, compared with the prior period. The ministry believes that this was primarily owing to positive economic developments.

The financial administration continues in its targeted inspection activities. In 2018, it mainly focused on transfer pricing, assessing additional tax of CZK 1.2 billion and reducing tax losses by more than CZK 12 billion in this area. It identified major deficiencies, such as incorrectly set pricing considering a company's functional and risk profile, the tax deductibility and price of intra-company services, intra-company financing, and payments for intangible assets. The major deficiencies in corporate income tax identified by the financial administration related to market surveys and advertising; for VAT, it mainly concerned agency employment and advertising services. Overall, in

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2018, the financial administration carried out 12 358 tax inspections and 20 219 procedures to remove doubt, while assessing additional tax of more than CZK 15 billion and reducing tax losses by almost CZK 38 billion.

The financial administration reported a total of 15 722 appeal proceedings pending, an increase of over 16% compared to last year. The highest number of appeals related to VAT. In 2018, the financial administration dealt with a total of 6 370 filed appeals, of which more than half (3 447) were dismissed and 2 344 partially granted. Almost 1 000 cases ended up before court. Administrative courts dealing with tax issues upheld taxpayers' claims in 291 of 1 011 actions handled in 2018. When looking at the total amount of additionally-assessed tax, it is evident that the financial administration erred mainly in cases where large amounts of tax were additionally-assessed – 291 decisions reversed by the court account for additionally-assessed taxes of CZK 3.2 billion, whereas CZK 3.4 billion relate to 571 decisions confirmed by the court.

What is to be expected this year? The financial administration is planning to continue with its *MOJE daně* project and launch the *APED* application for electronic auctions. During tax inspections, officials will focus on the examination of the accuracy of information in personal income tax returns, following the data reported in electronic sales reports, tax fraud in the area of online shopping, and the review of income from sharing economy.

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GFD sheds light on application of VAT on vouchers

The General Financial Directorate (GFD) issued its Information on the Application of VAT on Vouchers, clarifying the application of value added tax on various types of vouchers and illustrating tax implications on several examples from practice.



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The division of vouchers into single-purpose and multi-purpose ones, and new principles for the application of VAT in this area have already been discussed several times in the previous issues of our *Tax and Legal Update*. The GFD's new information provides more details on the tax aspects of vouchers and illustrates them on practical examples.

The information endeavours to distinguish between vouchers subject to new VAT regulations and discount vouchers. The basic criterion is whether a voucher is associated with the right to receive goods or services: if it is associated with such a right, it is a voucher for the purposes of the VAT Act; if not, it is not a voucher for the purposes of the VAT Act. As an example of a discount voucher, the GFD provides a CZK 100 voucher that can be used on a purchase exceeding CZK 500. Such a voucher is generally considered a token of value in accordance with the Act on Accounting.

If you accept single-purpose vouchers issued by another entity (the issuer) in their own name, it is worth paying attention to the related legal fiction under which a supply is effected between the entity accepting the voucher and the issuer. Also, in the case of complaints regarding goods or services, it is necessary to monitor the flow of supplies. This means that when a complaint regarding goods/services is made with an entity that has not issued the single-purpose voucher in their own name but only accepted it as consideration, the voucher recipient must make a correction of VAT vis-à-vis the issuer and, subsequently, the issuer shall make a correction vis-à-vis the person who has delivered the single-purpose voucher.

The information emphasises that if single-purpose vouchers are not used within a period of three years of the end of the taxable period in which the VAT payer could claim a VAT deduction, the VAT deduction must be refunded, excepting cases when it is proven that vouchers have been destroyed, lost or stolen. The fact that a voucher has not been used does not affect the voucher issuer's tax liability.

According to the GFD's information, the same applies to transfers of single-purpose vouchers within the EU and in third countries.

For multi-purpose vouchers, the GFD in detail analyses the method of determining the tax base. The price for which a voucher has been bought represents the base; if this price cannot be determined, it is the nominal value of a multi-purpose voucher.

The GFD also pays attention to rounding differences, giving a number of examples when payment is made by a meal voucher in form of a multi-purpose voucher. If the customer pays with a meal voucher and the seller does not return cash, the difference is regarded as a tip that is not included in the tax base. Rounding differences on the

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payment by meal vouchers are not included in the tax base.

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One step closer to efficient resolution of disputes arising from interpretation of double taxation treaties

The governmental bill on international cooperation in resolution of tax-related disputes in the EU has been submitted to the Chamber of Deputies. The bill responds to the necessity to implement the EU Directive on tax dispute resolution mechanisms in the EU (DRM Directive).



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The directive follows the long-term effort for efficient resolution of disputes arising from the interpretation of double taxation treaties on a national and international level. While tax treaties usually contain a clause on dispute resolution by mutual agreement or the Arbitration Convention, such procedures are rather time-consuming, and their outcome uncertain. The proposed legislation lays down clear rules, and brings new legal remedies to taxpayers.

The main pillar of the directive being implemented and the governmental bill is a broadening of the scope of disputes to be governed by these rules. The new legal regulation will apply to any disputes arising from the interpretation of double taxation treaties between the member states of the EU or the Arbitration Convention. The disputes will be resolved by a harmonised procedure concluded by a report on the final outcome.

For the parties to the proceedings, the law stipulates specific time limits to complete each individual phase of the proceedings. Taxpayers affected may initiate the harmonised procedure with an application to be filed no later than within three years of the date when they learned of the measure leading to the 'question of dispute'. The authority competent to resolve the issue shall decide on its admissibility and initiate the harmonised procedure within 6 months from receiving the application. The time limit for the competent authority to assess the matter and reach an agreement is two years. For serious reasons, this time limit may be extended by a maximum of one year. If no agreement is reached, the question will be considered by an advisory authority, whose conclusions must be reflected by the competent authorities within 6 months.

Apart from setting clear and legally enforceable time limits, the bill enhances the transparency of dispute resolutions by introducing the duty to publish the decisions issued. The report of the outcome of the harmonised procedure may only be published with the consent of all parties, and upon the agreement of the competent authorities. Yet, there is also an option to publish a summary report, in an anonymised form not containing taxpayers' sensitive data, while containing the main conclusions of the resolved dispute. Decisions must be sent for publication to the European Commission, which has to keep records of all decisions issued, archive them and publish them on its website.

The application of the bill in terms of time is stipulated in its transitory provisions: It shall not apply to 'questions of dispute' concerning taxable periods commencing before 1 January 2018.

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New call to receive support for energy saving measures in enterprises

The Ministry of Industry and Trade announced the fifth call within the Energy Savings programme on 16 July 2019, aiming to provide support to businesses adopting energy savings measures in their enterprises (including the use of energy from renewable resources). It is possible to apply for support from 16 September 2019 to 30 April 2020.



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The level of aid provided to large enterprises will amount to 30% of eligible expenses, where the subsidy per one project will be a minimum of CZK 500 thousand and a maximum of CZK 380 million. Eligible are expenses incurred for tangible and intangible fixed assets, engineering activities, energy-related appraisals (constituting an integral part of the filed application), project documentation, and the organisation of tender proceedings.

Projects may only be carried out outside the territory of the capital of Prague. The call does not restrict the number of applications that can be filed by one economic entity, which really is a positive piece of news. The call within this programme aims to support activities such as:

- modernisation and reconstruction of electricity, gas and heat supply in buildings and manufacturing plants' energy management units
- implementation and modernisation of measurement and regulation systems (e.g. hardware and networks incl. appropriate software)
- modernisation of lighting systems at buildings and industrial sites (only where obsolete technologies are replaced with new efficient lighting systems, e.g. LED)
- measures affecting the energy efficiency of buildings
- use of waste energy in manufacturing processes
- installation of renewable resources for the enterprise's own consumption (the use of bio-mass, solar systems, heat pumps and photovoltaic systems)
- installation of co-generation units using the electricity, heat or cold for the enterprise's own consumption while considering its operational conditions
- installation of electricity accumulation (the accumulator must be operated in energy management units having their own electricity resources).

The ministry has determined several specific criteria in respect of individual supported activities, e.g. activities must not be part of a single independent project but should be part of another comprehensive undertaking.

Should you be interested, we will be happy to provide more information in this respect and discuss with you the adequacy of this programme and other specifics for your planned activities.

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New regulation of beneficial ownership

The Ministry of Justice has recently prepared a bill on the register of beneficial owners, which should replace and enhance the transparency of the existing beneficial ownership regulation contained in the Act on Public Registers and the AML Act (the Act on Some Measures against Legalisation of Proceeds from Criminal Activity and Financing Terrorism). The bill is proposed to be effective from the end of 2020.



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The first change introduced by the new act is a more detailed and clearer definition of beneficial owner. The existing legal regulation defines a beneficial owner based on a system of rebuttable presumptions while at the same time prescribing a material condition, i.e. the exercise of direct or indirect controlling influence in a particular legal entity. The new legal regulation defines the beneficial owner as every individual who is the ultimate recipient or exercises ultimate influence. Contrary to current legislation, it will be possible to determine several individuals as beneficial owners meeting the criteria set by law and not necessarily acting in concert. The bill also regulates the beneficial owner determination where more complex ownership structures are concerned. It also lists legal entities that do not have beneficial owners. In contrast with the existing rules, a beneficial owner will no longer have to be determined only for persons recorded in the public register under the Public Register Act.

Moreover, the bill introduces a procedure to be followed when the beneficial owner cannot be determined. In such cases, every person in top management of the entity at issue will be regarded the beneficial owner; as a matter of priority, top managers directly subordinate to the statutory body when exercising their offices. Where such persons are non-existent, the statutory body members will be the entity's beneficial owners. However, this procedure will only be applied after the legal entity has made every effort to ascertain the beneficial owner but did not manage to do so pursuant to law, or where ultimate influence is exercised by a legal entity that does not have a beneficial owner. The entity in question will have to document the steps it took to determine its beneficial owner as well as document the structure of relations if such a structure exists, to avoid the excessive use of this provision.

Currently, the question frequently arises whether the beneficial owner of a company owned by another company is a member of its statutory body or a member of the statutory body of its parent company. The new law removes these discrepancies: the beneficial owner will be a person in the top management of the legal entity that is the ultimate recipient or exercises ultimate influence. To record beneficial owners in the register, courts will carry out proceedings similar to registration proceedings, only examining whether the recorded information is supported with appropriate documentation. The recording of information in the register via notaries will be simpler: notaries will not have to prepare supporting notarial deeds. It can therefore be expected that the majority of acts will be done by notaries, as this will be faster and cheaper. Owing to the new law, in simple cases (especially concerning smaller companies with only one member), the automatic recording of information about the beneficial owner should be the standard, resulting in a smaller administrative burden. Another simplification will be the linking of the form to record the beneficial owner with the form used to record a new company in the Commercial Register.

The law introduces a number of welcome novelties that should facilitate the record-keeping, determination and registration of beneficial owners. At the same time, however, it imposes a number of specific duties on legal entities when determining beneficial owners, especially regarding documentation accompanying motions to

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record beneficial owners in the register, and also regulates the enforcement of such duties. Parts of the records will also be available to the public, which should increase transparency and the level of monitoring over the fulfilment of statutory obligations.

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Simpler liquidation of corporations?

The government approved a draft decree aiming to simplify the liquidation process for legal entities from an administrative and financial viewpoint. Some entities will be entirely released from their duty to publish the date of their entering into liquidation in the Business Journal, some only partially. Owing to the complexity of the entire liquidation process, however, the declared simplification is of a rather cosmetic nature, in the majority of instances not bringing the desired relief for companies in liquidation or liquidators.



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Some issues concerning the Business Journal will be modified effective from 1 August 2019, among other things, the method of publishing a notification about entering into liquidation. Currently, all legal entities in liquidation must publish, twice and for a fee, a notification about their entering into liquidation in the Business Journal, including a call for creditors to lodge their claims. In the case of legal entities recorded in registers other than the Commercial Register, this duty will entirely be replaced with the free-of-charge possibility to publish information about entering into liquidation and a call for creditors in a public register over a period of three months and two weeks. For corporations recorded in the Commercial Register, this will replace one mandatory notification in the Business Journal.

The standard process of liquidating corporations is administratively highly demanding; consequently, one less duty of publication in the Business Journal will not substantially help either the liquidator or the company in liquidation, not even financially. The fee saved for one publication in the Business Journal amounts to thousands of Czech crowns, which is a negligible amount for the majority of companies in liquidation.

The Ministry of Justice justified the change claiming that the information published in a public register, i.e. a source available to the wide public, may fully replace the notification in the Business Journal. However, this raises the question why the duty to publish a notification in the Business Journal should not also be waived for legal entities recorded in the Commercial Register. It should be also noted that companies entering into liquidation must notify of this fact not only their creditors but also some state bodies such as the tax authority and the social security administration. If a notification in a public register is sufficient for private persons, why not regard it sufficient towards state administration bodies? Abolishing the duty to notify these bodies would help liquidators facilitate the process of liquidation from an administrative viewpoint more than the reduction in the number of obligatory publications in the Business Journal.

The change under preparation will thus help only those legal entities that do not have any debt, assets and employees, are recorded in a register other than the Commercial Register and their motivation to enter into liquidation is reduced by the expectation of costs associated with the entire process. Compared with this, the liquidation of properly functioning companies recorded in the Commercial Register is a very complex process, highly demanding in terms of legal, tax, and accounting aspects.

Where the management of a corporation considers liquidation, it should take into account the fact that the termination of business activities during the process of liquidation is more demanding administratively than their termination prior to the liquidation. Once a company enters into liquidation, the statutory body's power is

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practically suspended. It is only possible to perform steps leading to the completion of liquidation while proceeding in close cooperation with the liquidator. Only companies that have duly prepared themselves for liquidation, becoming only shells of their former selves before the process commences, can pass through liquidation easily and formally. Even then the process usually takes at least four months.

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Personal Data Protection Office imposes first fines for GDPR breaches

With the adoption of the General Data Protection Regulation (GDPR) has come considerable uncertainty among personal data controllers and processors as to the amount of penalties to be imposed by the Personal Data Protection Office for its breaches. More than a year has now passed since the adoption of the GDPR –what is the reality of the fines imposed?



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The office most often imposed penalties where a data controller failed to properly inform data subjects of their personal data's processing. Furthermore, penalties were also imposed for personal data leaks, such as leaving a box of consumer contracts next to a waste bin.

A fine for the failure to inform about personal data processing was imposed, for instance, in the case of a company renting cars with installed GPS locators that the clients were not informed of. The office formulated a list of information that should have been disclosed to clients, and imposed a penalty of CZK 30 000 on the car rental company. In another case, a personal data subject was contacted by phone with an offer to trade on the stock exchange. When they asked how their telephone number had been obtained and in what manner their personal data were processed, the information was not provided, not even upon repeated requests for a confirmation of personal data processing. Here, the office imposed a penalty of CZK 20 000. The office also dealt with a situation where an employee requested a personal data processing confirmation from their employer, together with a request to correct the data. While the office found the request to correct the data unfounded (as the personal data were correct), the office still fined the employer CZK 5 000, for the failure to provide the requested confirmation.

Personal data leaks as a result of the data's insufficient protection were dealt with in the case involving an online game. Apart from player players' user names, account IDs and passwords, e-mail and IP addresses were leaked as well. The leak occurred as a result of the abuse of authority on the part of the game's programmer with whom the administrator had not even concluded a personal data protection agreement. For this breach, the office imposed a penalty of CZK 15 000. A company that failed to safeguard the personal data of approximately 300 clients contained in consumer loan agreements was fined CZK 30 000. Clients' contracts were kept for at least 14 days in a paper box in a parking area of the statutory representative's apartment house, and later found next to a paper bin.

The processing of personal data without a legal title was dealt with in the case of a former employee who had requested a schoolmaster to remove all her photographs from the school's internet sites once her employment terminated. After some time, she noticed that the schoolmaster had failed to remove her photographs from the school's Facebook account, and requested their removal again. The office then also called upon the schoolmaster to remedy the situation, and after no response from the schoolmaster, imposed a penalty of CZK 10 000.

The office's highest penalty so far was imposed on a personal data controller who to simplify the process of concluding and maintaining contractual documentation processed clients' biometric signatures. The office found this in breach of the rule that personal data must be processed in a manner that is relevant, adequate, and limited

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to what is necessary for its purpose (the data minimisation principle), and imposed a penalty of CZK 250 000.

It is clear from the above overview that the office primarily aims to eliminate unlawful situations, rather than impose draconian penalties. When determining the fine, the office takes into consideration a number of factors, such as the nature, severity and duration of the breach, the number of data subjects affected, and the harm caused. Except for the last case mentioned, penalties imposed were mostly rather low. Please note, however, that the Czech Office for Personal Data Protection has not yet dealt with an extensive leak or a large-scale abuse of personal data; the penalties imposed so far thus cannot be compared to those imposed for instance by the French or British supervisory authorities, who have dealt with breaches much more severe and larger in scope.

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Interest on retained excess deductions after 1 January 2015 – part one

The issue of compensation for unreasonably long examinations of excess deductions has again been raised with the Supreme Administrative Court. This time the court discussed the amount of interest for the period after 1 January 2015 when a 1% interest rate on tax deductions became effective. According to the SAC, the tax administrator may not use this date to split the examination into two phases and reduce the awarded interest in the second period. To the contrary, the tax administrator must award interest of 14% + repo rate on retained excess deductions for the entire period of their examination.



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The case in question involved an excess deduction for the December 2013 taxable period. In compliance with the General Financial Directorate's methodology, the tax authority applied the Kordárna interest (based on the well-known Kordárna judgement) amounting to 14.05% a year until the end of 2014 but proceeded in compliance with the amended Tax Procedure Rules from 1 January 2015, thus awarding only interest of 1.05% a year on the retained excess deduction.

The SAC rejected this procedure, claiming that it was crucial in this particular case that the state was in default in paying the excess deduction before the effective date of the amended Tax Procedure Rules and, therefore, a new interest rate on excess deductions of 1% + repo rate a year may not be applied. Since explicit transitory provisions are non-existent, general rules must be followed, meaning that new interest rate may only be used in respect of deductions whose default in refund occurred after 1 January 2015. As the decisive date for acknowledging the taxpayer's entitlement to interest occurred before 2015, the taxpayer is entitled to interest on the retained excess deduction of 14.05% over the entire period of default as a result of the tax administrator's examination of the claimed VAT deduction.

The taxpayer also argued that in accordance with EU regulations, the new 1% interest rate on tax deductions was too low. Unfortunately, the SAC decided not to comment on this, explaining that legislation effective from 1 January 2015 should not have been used in the case at issue at all. We just have to wait for the final decision in this respect.

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Case law

Court explains the treatment of tax (non-) deductible expenses before 2015

The Municipal Court in Prague recently (10Af 60/2018 - 46-53) dealt with the applicability of Section 24(2)(zc) of the Income Tax Act as amended effective 1 January 2015 to taxable periods before 2015.



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The Municipal Court in Prague rejected the approach of a tax administrator who in a tax inspection of the 2010 taxable period challenged the application of Section 24(2)(zc), arguing that the expenses in question that mainly involved refreshments of a tax non-deductible nature, should not have been treated as tax deductible under Section 24 (2)(zc) of ITA, as the taxpayer had not re-charged them but only included them in the base for calculation of the price for services rendered. However, the condition stipulating explicitly that the provision should only apply to expenses that are subsequently re-charged was only introduced by the mentioned amendment (and is noted in its explanatory report).

The court concluded that the failure to meet the condition of re-charging the expenses cannot be invoked when assessing a situation dated 2010. According to the court and in line with the Supreme Administrative Court's previous case law, when assessing cases dated before 2015, tax administrators must consider solely the following conditions for applying the provision:

- The expense is not an expense (cost) incurred to generate, assure and maintain income under Section 25 of the Income Tax Act.
- An income (revenue) must be directly related to the expense.
- The expense shall be tax deductible only to the extent of the directly related income (revenues).
- The income (revenues) affected the profit/loss (tax base) in the same or preceding taxable periods.

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Case law

Passengers entitled to compensation also for delays of flights operated by a non-EU carrier outside the EU

Mid July 2019, the Court of Justice of the EU (CJEU) dealt with the issue of claiming compensation for a significant delay of a flight operated by a non-EU carrier. When two connecting flights are booked by a single reservation with an EU-based carrier and the first flight departs from an airport located in an EU member state, passengers are entitled to compensation even though the delay only occurred during the second connecting flight (outside the EU) operated by a third-country carrier. The CJEU thus sided with 11 passengers claiming flight-delay damages from Czech Airlines.



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In this case, passengers booked a flight from Prague to Bangkok through Abu Dhabi with CSA, by a single reservation. The flight was operated in two parts and by two air carriers. The first part of the flight, from Prague to Abu Dhabi (CSA) was not delayed; the second part, from Abu Dhabi to Bangkok (Etihad Airways – a non-EU carrier) was delayed by more than 8 hours on arrival.

In its answer to the prejudicial question, the CJEU interpreted Regulation (EC) No 261/2004 (on air passengers' rights) establishing common rules on compensation to passengers in the event of flight delays. Passengers of a connecting flight departing from an airport located in the EU are entitled to a compensation for the delay of the second connecting flight, outside the EU, as long as two conditions are met:

- The two connecting flights were subject to a single reservation with an EU air carrier.
- The aircraft arrived at its destination with a delay of at least three hours.

The fact that the delay was caused by the second flight operated by a non-EU carrier does not change this. The CJEU also pointed out that under its previous case law, flights with one or more connections that are the subject of a single reservation must be regarded as a single unit. This means that in the context of such flights, the air carrier that has operated the first flight cannot take the defence that the delay was caused by the subsequent flight operated by another air carrier. The payment of compensation to passengers does not affect CSA's right to seek damages from any entity that caused CSA to breach its duty to transport passengers to the place of destination on time.

The judgment thus supports the declared aim of the regulation, i.e. to provide passengers a high level of protection. According to the CJEU, it must be ensured that passengers obtain compensation from the operating air carrier that entered into the contract of carriage with them, and that they do not have to take account of arrangements made by that carrier for the performance of the second of the connecting flights.

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Case law

Supervisory board member a taxable person for VAT purposes

Last month, the Court of Justice of the European Union (CJEU) dealt with the question whether a member of a foundation's supervisory board is a taxable person for VAT purposes. In the case in question, the supervisory board member did not act in their own name or for their own account, and did not bear any economic risk arising from their activity. The court thus concluded that the supervisory board member did not carry out economic activity independently, therefore was not a taxable person for VAT purposes.



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The Dutch case of IO (C-420/18) involved a foundation's supervisory board member receiving a fixed fee for exercising an office, regardless of their actual participation in board meetings or hours worked. Under the circumstances, the board member was not authorised to exercise the powers vested in the supervisory board independently, but was acting for the account and in the responsibility of the supervisory board. On the other hand, supervisory board members were independent and required to act critically vis-à-vis other members of the board and the foundation's managing body.

Because of the Dutch court's doubts regarding the classification of the supervisory board member as a taxable person, the following prejudicial question was submitted to the CJEU: 'Is a member of the supervisory board of a foundation who is in a subordinate position to the board as regards working conditions and remuneration but not otherwise subordinate to the supervisory board or to the foundation carrying out an economic activity independently for the purposes of VAT?'

The CJEU mainly focused on the economic nature and independent carrying out of the supervisory board member's activity. The court concluded that the board member's activity was indeed an economic one, as it was of a permanent nature and was carried out for consideration. The court also held that supervisory board members cannot be viewed as employees, even though their remuneration is subject to tax on income from dependent activity (employment) by operation of legal fiction, while they carry out their activity under a service agreement.

To answer the question asked, it was crucial to determine whether a supervisory board member bears the economic risk arising from the activity carried out. Here the Dutch court pointed out that members of the supervisory board in question could not exercise the powers vested in the board independently, but were acting on the board's account and in its responsibility. The court thus held that is was obvious that independently, supervisory board members bear neither the responsibility arising from the board's activity nor any liability for damage caused to third parties when exercising the office.

The CJEU thus concluded that, in the case in question, the supervisory board member did not bear the economic risk arising from their activity and did not carry out economic activity independently, as they received a fixed fee, regardless of their participation in board meetings or hours actually worked. Negligence, if any, committed while exercising the office, would not have a direct effect on remuneration. Therefore, they are not taxable persons for

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VAT purposes. The judgement itself is rather extensive, referring to many specificities of the case, and it is thus questionable how far it may be applied to similar situations in a Czech context.

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Case law

Time period for providing additional information to a tax refund application not a limitation period

The Court of Justice of the EU (CJEU) ruled in the case of Sea Chefs Cruise Services GmbH (C-133/18) that the one-month period to provide additional information to an application for tax refunds is not a limitation (lapse) period. What does this mean for those claiming tax refunds?



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German Sea Chefs Cruises Services GmbH applied for a refund of VAT paid in France for the 2014 taxable period. The French tax administrator then requested additional information, which the company was to submit within one month from receiving the request for such additional information. As the German company did not respond within the stipulated deadline, the French tax administrator dismissed the application for a tax refund.

The German company appealed to a national court in France, also submitting the documents originally requested by the French administrator. The case then appeared before the CJEU, with a prejudicial question whether in the context of the right of appeal laid down in the directive, and having regard to the principles of neutrality and proportionality of VAT, it was possible to regularise the application for VAT refund before the tax court.

The CJEU held that the deadline for providing additional information to an application for VAT refund was not a limitation (lapse) period; therefore, the failure to meet it does not mean that the taxable person would lose the possibility of regularising their refund application directly before the national court. The court based its opinion mainly on the fact that additional information may also be requested from persons other than the taxable person/applicant, and that their failure to respond or provide a reply would harm the applicant's rights. The court also pointed out that the VAT Directive contains provisions stating that the member state is not liable for payment of default interest where additional data were not provided within stipulated deadlines; the legislators' intention is thus obvious.

This means that if companies applying for tax refunds fail to meet the deadline for providing additional information requested, all is not yet lost– it suffices that the application itself has been filed within the stipulated deadline.

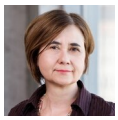
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Latest News, August 2019

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



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DOMESTIC NEWS IN BRIEF

- Late July, the Senate passed an amendment to the Investment Incentives Act. The bill is now waiting to be signed by the president and will enter into effect on the 15th day after its promulgation in the Collection of Laws.

- The Senate rejected a draft amendment to the Act on the Electronic Reporting of Sales. The amendment is now going back to the Chamber of Deputies, which will have to pass it by a simple majority of all votes.

- The government discussed a bill amending certain laws to implement EU regulations in the area of double taxation. The most important changes concern the Act on International Cooperation in Tax Administration, which implements into Czech law the EU Directive on Administration Cooperation in the Field of Taxation (DAC 6).

- Following the amendment to the VAT Act effective 1 April 2019, the General Financial Directorate (GFD) amended its information on the application of the unreliable person concept. The changes are mostly of a technical nature, such as references to the current numbers of the laws' sections. The information also reflects that the law now explicitly stipulates that the middle (intermediate) party in a triangular transaction may also be a person identified for tax.

- The GFD published its information for taxable persons not established in the Czech Republic, summarising the basic facts about these persons' registration for Czech VAT. Special attention is paid to VAT aspects of sending goods to end customers/non-payers (typically by e-shops).

- An amendment to the Valuation Decree was published in the Collection of Laws under No. 188/2019. Coll.

- An amendment to the Act on the Residence of Foreign Nationals in the Czech Republic effective 31 July 2019 was published in the Collection of Laws under No. 176/2019 Coll.

- An amendment to the Consumer Protection Act published under No. 179/2019 enters into effect on 16 July 2019.

- The Ministry of Labour and Social Affairs website (www.mpsv.cz) and its integrated portal (portal.mpsv.cz) have a new visual format. The log-in systems using the e-identity system (NIA) or the data boxes information system will change as well. Changes also affect users working with electronic forms. This mostly concerns the pre-filling of forms, dynamic hiding/showing of blocks based on filled-in data, and collective sending support. The new portal solution has been available to the public since 28 June 2019 at web.mpsv.cz and web.uradprace.cz.

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- The Ministry of Labour and Social Affairs has noted that the electronic sick note project has successfully proceeded to the next stage of preparations and should enter into effect from 1 January 2020. At the moment, external communication is being tested with the help of SW developers of 20 companies that create specialised software for hospitals and doctor's offices. A shared e-mail address is available to the SW developers, as well as detailed information on the CSSZ website, including a regularly updated file with the most frequent questions. In line with the work's progress, the ministry also launched an RSS channel linked to an update section for SW developers. Anybody who needs to be informed on the progress may subscribe to the channel.

- The Ministry of Finance initiated a comment procedure on the digital tax bill. The bill introduces a 7% tax for companies with global revenues over EUR 750 million per year who generate revenues in the territory of the Czech Republic of at least CZK 50 million in a calendar year from services in three specified areas: placement of targeted advertising on a digital interface; uses of multi-sided interfaces; and sale of user data. This is the DST model of a digital tax as previously proposed by the European Commission. The bill is expected to enter into effect in the middle of 2020, depending on the legislative process.

FOREIGN NEWS IN BRIEF

- The British personal data protection authority – the Information Commissioner's Office (ICO) has proposed a penalty of CZK 5 billion to British Airways for insufficiently protecting its passengers' personal data: the personal data of approximately half a million of passengers were leaked as a result of redirecting from the company's website to a fraudulent website. Marriot hotels also face a penalty for leaking the personal data of more than 339 million guests; in this case, the ICO has proposed a penalty equal to CZK 2.7 billion.

- On 4 July, Finland's programme for its EU presidency was published. As regards taxation, Finland will focus on combating aggressive tax planning and tax evasion to reduce the harm caused by tax competition. Furthermore, it will address the issue of taxation of the digital economy.

- On 28 and 29 June, G20 leaders gathered in Osaka, Japan, to discuss the international tax system and the impact of the digital transformation on economies worldwide. The leaders concluded the summit by recognising the progress made towards resolving tax challenges that arise from digitalisation, and committed to reach a unanimous resolution by 2020.

- A bill introducing digital services tax (DST) was adopted by the French Senate. The tax will apply retroactively from 1 January 2019. In this respect, an investigation into its alleged discriminatory nature against US companies was initiated by the US trade representative.

- In July, the UK Government published draft legislation and guidance on the new digital services tax to be included in Finance Bill 2019-20. At the same time, a policy paper on the introduction of the new tax was published by the HMRC.

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