KPMG

Tax & Legal

Taxes
Legal
World news
Case law
In brief

September 2018

Obsah

Editorial

Taxes

2019 VAT Act amendment: Do you issue, distribute or accept vouchers? Will you know how to correctly calculate tax in 2019?

Services received – how to prove their tax deductibility?

New double taxation treaty with Korea introducing substantial changes

Legal

Quicker construction of motorways and other key infrastructure, at last?

To what extent may the rights of members of limited liability companies be restricted?

World news

American import duties: a trade war and accumulating WTO complaints

Brexit: What happens if UK leaves the EU with no deal?

OECD's discussion draft on the transfer pricing of financial transactions

Case law

SAC: Involvement in tax fraud must always be proved by tax administrator

In brief

Latest news - September 2018

Editorial

Despite the abnormally high August temperatures and the Chamber of Deputies' holiday season, the financial administration kept very busy over the summer. Our September issue of *Tax and Legal Update* therefore offers an abundance of information that you hopefully will find interesting and useful.

The final part of our VAT news tetralogy deals with two issues: first, new rules for the application of vouchers for goods and services in the EU that will become effective in January 2019; second, a change in the method of determining the coefficient values for the calculation of VAT, making it possible to arrive at the same amount using both the top-down and the bottom-up calculation approach.

In the second half of August, the UK government released a batch of documents that should prepare the public for the possibility that the UK will leave the EU without having negotiated a deal. Even though the scenario is unlikely, it is the government's responsibility to prepare for all alternatives, says the UK government in the documents.

The remaining articles document the growing number of disputes with the tax authorities and the financial administration's tendency towards formalism. The resolution of disputes regarding issues such as proving the entitlement to VAT deduction or the legitimacy of incurred costs requires substantial time and financial resources. We therefore recommend collecting and archiving all documents and other means of evidence in respect of incurred costs on a continuous basis.



Pavel Rochowanski
Partner
KPMG Czech Republic

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Taxes

2019 VAT Act amendment: Do you issue, distribute or accept vouchers? Will you know how to correctly calculate tax in 2019?

The final part of our VAT news tetralogy focuses on vouchers and related changes in tax calculation methods.



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



Petra Němcová
pnemcova@kpmg.cz



Nikoleta Ščasná
nscasna@kpmg.cz
+420 222 123 161

Vouchers from 2019

Do you issue, distribute or accept vouchers for your goods or services? As already mentioned in the February issue of Tax and Legal Update, the EU Vouchers Directive setting new rules for the application of vouchers in the European Union will become effective from January 2019. The Czech Republic is obliged to transpose the new regulation into its legislation and it will do so through the VAT Act. The new rules will not affect discount vouchers.

To determine the correct VAT regime, it is crucial to distinguish between single-purpose and multi-purpose vouchers. Simply speaking, it is necessary to ascertain whether the rate and place of supply associated with the relevant voucher is known at the moment the voucher is purchased. If so, we are talking about a single-purpose voucher; in the other case, it is a multi-purpose voucher. However, making this distinction in practice may not be so easy.

For single-purpose vouchers, the amendment stipulates that even a mere transfer of such a voucher is considered the delivery of goods or the provision of services for VAT purposes. The delivery is carried out by the business entity on whose behalf the transfer is performed. If the voucher has been issued on behalf of a person other than the supplier of goods or services, a special legal fiction applies for VAT purposes, according to which the transfer of goods or the provision of services in exchange for a voucher is regarded as the delivery of goods or services by the end supplier/provider to this other entity (i.e. the voucher's issuer). However, the fiction only applies to part of the consideration covered by the appropriate voucher.

The amendment also stipulates a duty to refund a deduction already claimed in respect of a single-purpose voucher if the voucher is neither used nor transferred in a three-year period. Taxpayers must also take into account already deducted VAT on unused single-purpose vouchers when deregistering from VAT.
We therefore recommend reviewing in detail the existing structures in which various vouchers take place and making sure that their VAT regime complies with the new legislation.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

End of differences in calculated tax amounts

The amendment also affects the tax calculation itself. Currently, there are two methods to calculate VAT: the top-down vs. the bottom-up calculation approach. Tax may differ slightly depending on the chosen calculation method. According to the explanatory report, the method of determining coefficient values has been amended so that both calculation approaches arrive at the same tax amount. Please note that this change may require adjustments to your cash and invoicing software.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Services received – how to prove their tax deductibility?

Do you receive services from intracompany or external providers whose actual substance is uncertain or whose benefit for your company is doubtful? The tax authority may no longer regard the mere provision of such a service's tax document as sufficient: increasingly often it may become necessary to prove much more when claiming expenses for tax purposes.



Markéta Kubíčková
mkubickova@kpmg.cz



Mirka Malá
mmala@kpmg.cz

Whereas in previous years the tax authorities mainly paid attention to services provided by related parties, now they increasingly often also focus on services received from unrelated parties.

Why do tax administrators actually challenge expenses for received services? Two reasons are most frequent: first, a failure to sufficiently document that a service has been delivered (in the period in which it is accounted for) or adequately prove its actual substance; second, a failure to prove that the service recipient has generated the desired benefit, i.e. that the service has served or could/should have served to generate, assure and maintain the recipient's taxable income. We should also not forget the price charged for the provided services, which should be at arm's length, even in the case of third-party relations. If the tax administrator comes to the conclusion that the appropriate contractual relationship has been entered into for the primary purpose to reduce the tax base or increase tax losses, the contracting parties may be regarded as related parties even without any interconnection through capital or personnel.

Let us get back to the proving of services as such. The tax authorities' conclusions in reports on procedures to remove doubt or tax inspections often include a statement more or less similar to the following: "During the proceedings, the tax administrator identified circumstances leading to doubts whether expenses had been rightfully claimed as tax deductible, as the tax administrator had not been provided with sufficient evidence proving that services had actually been delivered or confirming other facts, such as the time of delivery, the specification of services, the scope of services, the quality of provided services, or documenting that the services were provided to assure and maintain the recipient's taxable income." After reaching such a conclusion, the tax authority usually assesses additional tax plus appropriate sanctions for the taxpayer's failure to bear the burden of proof.

After an interval of several months or years, it is quite hard to retrospectively prove the nature and the result of the provided services. Naturally, a much harder task might be to retrospectively prove the specific benefits for the service recipient (i.e. benefit test). In practice, this means that for each received supply, corporations should be able to document that expenses incurred for this supply generated some benefits, while these need not necessarily involve a direct increase in revenues but may have resulted, for example, in cost savings, risk mitigation or improved efficiency.

The Supreme Administrative Court often tends to agree with the tax authority's views, confirming that the mere provision of an invoice or a contract for the services at issue does not in any way prove that the services have really been delivered or that the recipient has really generated benefits from such services.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

How to avoid any unpleasant discussions with the tax authority in this respect? The starting point is to take all this seriously. The approach that everything will somehow prove itself when the tax authority comes for an inspection does not usually work, as it is not that simple. During an actual tax inspection, it often happens that those who remember the services under review are no longer working for the company and any related evidence of the services has vanished with them and their computers. And even if the appropriate personnel is still present, it may nonetheless be quite difficult to find relevant supporting documentation in an overflow of data. The ideal solution is to implement internal processes ensuring the keeping of the best possible documentation for received services and benefits already at the moment the services are delivered, as well as ensuring that this documentation is kept in a safe place and easily accessible at a later point in time.

We cannot but recommend that evidence of all received services be collected and archived on a timely and consistent basis. The evidence may include e-mail communication, task appointment, minutes from phone conversations or meetings, the service provider's timesheets and outputs, etc. Moreover, where the scope of received services is significant, it is also appropriate to continuously evaluate and document the benefits for a corporation (i.e. to be able to provide benefit tests).

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

New double taxation treaty with Korea introducing substantial changes

In Seoul in January 2018, the Czech Republic and Korea signed a double taxation treaty, replacing a document from 1992 no longer meeting current tax and economic requirements. Among other things, the new treaty changes the taxation of paid dividends and interest and expands the definition of a permanent establishment. In early August, the government submitted the treaty to the Chamber of Deputies for ratification. The treaty may enter into force from the beginning of 2019.



Filip Svoboda
fsvoboda@kpmg.cz



Adam Hruzík
ahruzik@kpmg.cz

The major changes arising from the new treaty are as follows:

Dividends

Under the new treaty, dividends paid to residents of the other state will be taxed in the first state at a maximum of 5% of the gross amount of dividends, both with respect to legal entities and individuals. The existing treaty determines a 5% limit only where the dividend recipient owns at least 25% of the registered capital of the company distributing the dividends. In other situations, a 10% limit applies.

Interest

The treaty reduces the limit for taxing paid interest from 10% to 5%.

Royalties

No changes apply to royalties. The use or the right to use the copyrights to works of art, literature and science remains exempt from tax in the source state. A maximum 10% tax rate still applies to patents, trademarks and industrial equipment.

Permanent establishment

The new treaty to some extent amends the conditions under which a permanent establishment arises. It also provides a new definition of a service-based permanent establishment, which arises when services are provided in the territory of the other state over a period or periods exceeding nine months in the aggregate in any twelve-month period. Another novelty is the change of a time test relating to permanent establishments as construction sites. The existing limit of nine months has been extended to twelve months.

Elimination of double taxation

Under the new treaty, a Korean company receiving dividends from a Czech resident is entitled to offset not only the withholding tax but also the Czech tax on the profits of the company paying the dividends. This advantage applies to companies owning at least 25% of the registered capital or voting rights.

Other

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The new treaty allows the source state to tax gains from the sale of securities or ownership interests in a company residing in the state concerned where more than 50% of the company's assets comprise real property located in the territory of such a state.

Considering the current developments and new international legislation, advantages arising from the treaty will not be acknowledged if obtaining such advantages is one of the principal purposes of a measure or a transaction.

The treaty will enter into force after its ratification in both countries, becoming effective no earlier than on 1 January of the following year. If the ratification process is completed by the end of 2018, the new treaty will apply from the beginning of 2019. Otherwise, its effectiveness will be postponed by one year.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Quicker construction of motorways and other key infrastructure, at last?

An amendment to the Act on Accelerating the Construction of Transport, Water, Energy and Electronic Communication Infrastructure (No. 169/2018 Coll.) entered into effect on 31 August 2018. It primarily deals with the backbone motorway network, main railway corridors and high-speed railway lines, the Prague airport, and other facilities included in an appendix to the amendment.



Radim Kotlaba
kpmg@kpmg.cz



Lucie Patková
kpmg@kpmg.cz

When transport infrastructure is being built, a major problem are delays caused by the re-examination of decisions associated with the issue of building permits. The amendment therefore introduces a number of legal concepts aimed to substantially shorten and improve the effectiveness of permit proceedings relating to important structures, the important one of which is a fiction of consent as regards the issue of various binding opinions within permit proceedings. If the building authority does not issue a binding ruling within 60 days, it is conclusively presumed that the permit is not conditional upon this opinion. However, this rule will not apply to binding opinions involving environmental impact assessments.

Other major changes are the possibility to issue interim decisions within expropriation proceedings and the real property owner's duty to suffer the performance of preparatory works (including measurement and exploratory works, access to plots of land) even before the actual commencement of the appropriate permit proceedings. Interim decisions may be issued by the relevant authorities on the expropriator's request when the authority ascertains that conditions for the expropriation of a relevant property item have been met, excepting the determination of compensation for such expropriation. Depending on the subject matter of proceedings, the authority may use an interim decision to cancel easements and superficiary rights to construct, limit the right of ownership or even expropriate ownership and transfer it to the expropriator. The person concerned cannot appeal against such a decision; however, it may file an administrative action and apply for a resolution to suspend the enforcement of the decision.

In contrast with the above, one of the major changes brought forward by the amendment favours the owners of real estate, as it clarifies the procedures preceding expropriation proceedings. According to this clarification, the expropriator must attempt to conclude a contract to acquire the right to real property at issue within 90 days of the date a draft contract is delivered to the owner and if the expropriator does not succeed in concluding such a contract, only then the expropriation may commence. The amendment further clarifies that expropriation may only commence after a draft contract to acquire the right to a plot of land or a structure is delivered to the expropriated party but not concluded within 90 days despite the expropriator's evident attempts to reach an agreement with the owner. In this respect, the amendment adds one rule, according to which it is possible to proceed with the expropriation only if the expropriator attempted to negotiate an agreement with the expropriated party at least 30 days before filing an application for expropriation.

Only practice will show whether we will see less bureaucracy in the construction of key infrastructure while

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

adequately preserving ownership rights.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

To what extent may the rights of members of limited liability companies be restricted?

The Chamber of Deputies is currently discussing an amendment to the Act on Corporations. Below we present a summary of the amendment's changes relating to the types of ownership interests in limited liability companies.



Lenka Kučerová
kpmg@kpmg.cz



Lucie Patková
kpmg@kpmg.cz

The Corporations Act in effect from 1 January 2014 allows corporations to create special types of ownership interests; in other words, corporations are allowed to connect their ownership interests with various types of rights and duties as well as modify, or even entirely withdraw, these rights and duties. Inspired by the German legal framework, the admission of special types of interests constituted a small revolution in corporate law, arousing enthusiasm over the legislator's broadmindedness but also considerable doubts about the limits of the new freedom.

The legal regulation does not prescribe any detailed rules for the creation of special ownership interests. As the limits have not been set, the general and the professional public often disagree about what rights can be connected with special interests and especially what rights can be withdrawn. General legal principles arising from the Civil Code and relating to the prohibition of the violation of goods morals and the prohibition of unjust favouritism or discrimination of a member of a corporation can provide some direction. Despite the absence of an explicit regulation, few of us would challenge the possibility to modify (restrict) the voting right of a member (or to remove it under certain circumstances, which is explicitly allowed by the law) or the amount of a share of profit or liquidation balance. But where is the limit of such restrictions or modifications? German legal regulations do not allow the simultaneous withdrawal of a right to a share of profit, a right to a share of liquidation balance and the voting right. Would these arguments have any legal force in our environment?

The legislator tried to address some of these issues in the proposed amendment to the Corporations Act by explicitly determining the limits for the creation of special ownership interests in limited liability companies. If the amendment is passed in its current wording, any doubt about to what extent 'proprietary rights' rights pertaining to a share can be restricted will be dispelled. The amendment clearly stipulates that an ownership interest must always be connected with at least one right of the following three: the right to a share of profit, the right to a share of liquidation balance or the voting right, each in its full extent. It also stipulates that at least one ownership interest in a limited liability company must be connected with the voting right. This relatively logical provision should ensure that the general meeting remains the functional body of a corporation. The amendment also protects members of limited liability companies holding interests without voting rights: to avoid any potential doubt, the law explicitly states that when adopting a decision to change the memorandum of association, the consent of a member whose rights are affected by such a decision is always required.

Understandably, the amendment does not list all rights that are never to be withdrawn from members of limited liability companies. We agree that such a change to the wording is unnecessary and would not have brought any more legal certainty. The determination of the extent and limits in specific cases therefore remains an issue of

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

legal interpretation.

The latest amendment only clarifies the existing rule applicable to the creation of various types of ownership interests. As in the case of joint-stock companies, the law explicitly prohibits the creation of ownership interests in limited liability companies associated with a right to a certain amount of interest irrespective of the company's results of operations. However, we would have arrived at the same conclusion without the new amendment.

Despite our western neighbour's tradition, the above rules are still quite new in the Czech environment and we will just have to wait and see how they will prove themselves in practice. The use of various types of ownership interests aims to help a corporation adapt as much as possible to the needs of its members. Variable ownership interests may, among other things, compensate for the strong or weak position of such members and the newly defined limits for the creation of special ownership interests may help apply them in practice.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

American import duties: a trade war and accumulating WTO complaints

A few months have passed since the USA introduced duties on the imports of steel, aluminium, solar panels and washing machines. Currently, no end is in sight for one of the modern history's greatest trade conflicts. The number of import duties is growing, as is the number of complaints filed by World Trade Organisation members, as procedures used to introduce customs are not in compliance with the WTO's principles.



Tomáš Havel
thavel@kpmg.cz



Lucie Leopoldová
kpmg@kpmg.cz

According to the WTO's rules, WTO member states may not discriminate against their business partners but instead have to follow the most favoured nation clause, guaranteeing that if one member state grants a special benefit (such as lower customs) to another member state, this benefit must also be granted to all other WTO members. This essential principle was violated by the USA when it imposed customs duties, as the new duties do not apply to all. States such as South Korea, Brazil, Australia and Argentina have negotiated a permanent exception, excluding them from the U.S. customs duties.

Claiming discrimination, the world's leading powers began filing complaints with the WTO against the USA. Chances that the WTO will decide in favour of the complainants are quite high; however, the national security rule must also be taken into account, according to which WTO members may violate their customs obligations for national security reasons, which is what the USA is planning to plead. Since the WTO's resolution of a complaint generally takes at least a year (and some complaints have not been settled since 1995 when the WTO was established), some WTO member states have started to adopt their own retaliatory measures.

Strongest response from China

The trade war is strongest between the USA and China. In early July, the USA began applying a 25% duty on imports of Chinese goods amounting to USD 34 billion, adding other goods at the end of August and involving the aggregate value of USD 50 billion. Within its retaliatory measures, China imposed the same customs duties on the same volume of American goods and filed a second complaint with the WTO. Pending negotiations do not suggest that the situation is likely to be resolved in the near future. Moreover, the USA have made themselves heard that they are preparing a 25% duty on Chinese goods amounting to up to USD 200 billion.

End of exception for the EU

The EU was at first granted an exception from duties on steel and aluminium but this ended in mid-June. Consequently, the EU submitted a complaint to the WTO and adopted its own retaliatory measures, introducing a 25% duty on selected American goods in June. Affected goods include, in particular, steel and aluminium, trucks, motorcycles, jeans, bourbon, whisky, tobacco and orange juice. The USA responded by issuing a threat of imposing duties on European cars, which could also to a larger extent affect the Czech Republic, as a considerable part of its exports involve component parts for the automotive industry.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Brexit: What happens if UK leaves the EU with no deal?

In mid-July, the UK government published more than a hundred-page-long document called the UK-EU Future Relationship White Paper, providing information on how the relationships between the UK and the EU should look like with respect to the economy, security, cross-border cooperation and institutional arrangements. In the second half of August, however, the government presented a batch of new government planning papers that should prepare the public for a no-deal Brexit.



Tomáš Havel
thavel@kpmg.cz



Lucie Leopoldová
kpmg@kpmg.cz

The first planning papers on a no-deal Brexit were presented by Brexit secretary Dominic Raab on 23 August, with more (80 in total) due to be published by the end of September. Some of these papers deal with VAT, trading with the EU, and the customs classification of goods. The scenario in which the UK exits the EU with no deal is unlikely but it is the government's responsibility to prepare for all alternatives, including a no-deal Brexit, says the government in the opening.

In the paper on VAT, the UK government states that VAT rules will not change for the majority of businesses. The UK is planning to apply the existing VAT system and make every effort to preserve as much as possible the condition in which it operates today. The classification of goods codes in customs tariffs should not change.

For imports of goods to the UK, the government intends to implement a deferred duty to pay VAT, in practice meaning that UK importers registered as VAT payers will be allowed to report and pay import tax within their VAT returns and not at the moment goods reach the UK border. This should apply to imports from both inside and outside the EU.

The document also points out that the VAT exemption of shipments of negligible value will no longer apply to goods from the EU, i.e. any goods in parcels from the EU will be subject to VAT. VAT on goods whose value is GBP 135 or less will be paid by foreign suppliers who will also have to register for VAT in the UK; VAT on goods whose value exceeds GBP 135 will be collected from the UK recipients, which is the current system used for shipments from countries outside the EU.

The government experts also added some practical advice to be taken into account by companies importing goods from the EU or exporting goods to the EU if the UK leaves the EU with no deal:

- register the UK EORI number
- make sure that contracts with business partners and the agreed INCOTERMS reflect the fact that the parties concerned act as the importer or the exporter
- assess whether to hire a customs agent, carrier or logistics service provider to ensure all related administration
- ascertain whether a licence for the import or export of the goods at issue is required.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

OECD's discussion draft on the transfer pricing of financial transactions

The discussion draft provides guidance on the pricing of common intra-group financial transactions, such as loans, cash pools, hedging transactions and guarantees.



Daniel Szmaragowski
dszmaragowski@kpmg.cz



Jan Kiss
jankiss@kpmg.cz

In consistence with the previous BEPS reports, the draft calls for looking beyond the contractual terms of the transaction, with consideration to be given to the full set of circumstances surrounding the transaction and all options realistically available to both transaction parties. In particular, companies with limited or no control over the financial risks they contractually assume in intra-group financial transactions should not, according to the draft, be entitled to more than a risk-free rate of return.

The discussion draft specifically notes that the guidance is not intended to prevent countries from implementing approaches to address capital structure and interest deductibility under domestic law. However, it provides guidance for tax administrators on how to treat a certain part of debt as capital financing.

If the discussion draft is approved in its current wording, it may close the door on several pricing approaches still commonly used in intra-group financial transactions, including the use of a group's average funding rate and bank quotes in pricing lending transactions, as well as the use of bank deposit rates in pricing positive balances in group cash pools.

How compliance with the arm's length standard should be demonstrated in practice is not completely clear from the draft. It is our view that the report is missing meaningful guidance when it comes to assessing the arm's length quantum of debt. It also does not provide the detail required to guide taxpayers through to a clear conclusion.

Once finalised, the OECD report will represent the most comprehensive guidance on the transfer pricing of financial transactions, providing some certainty to taxpayers. However, the report will also provide tax agencies with a tool in tax audits, particularly where there is little substance or commercial rationale in the transactions. Groups with existing intra-group financial transactions should start considering whether their arrangements are consistent with the key principles in the discussion draft.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Case law

SAC: Involvement in tax fraud must always be proved by tax administrator

The Supreme Administrative Court (SAC) dealt with a case in which the tax administrator denied a taxpayer's entitlement to deduction of VAT on received taxable supplies, claiming that the taxpayer knew or should have known that they had been involved in a fraudulent chain of transactions.



Martin Krapinec
mkrapinec@kpmg.cz



Dominik Kovář
dkovar@kpmg.cz

In this particular case (5 Afs 252/2017), the tax administrator denied the taxpayer's entitlement to VAT deduction based on the presumption that the taxpayer did not act with sufficient prudence and due managerial care and did not adopt all measures required to eliminate any involvement in VAT fraud.

The taxpayer concerned actually made an effort to review their suppliers in an appropriate manner: they checked the suppliers in the VAT payer register, acquired photo documentation of the goods supplied, with all invoices requested affirmations regarding the origin of goods and the method of transport, producers' certificates, declarations for products with a preferential origin status, declarations that the supplies involved semi-finished goods and not waste, as well as declarations that the supplies did not involve goods of a criminal origin and that the goods had not been pledged in any way. Despite this, the tax administrator and the regional court arrived at the conclusion that the above measures adopted by the taxpayer in question were insufficient and had the taxpayer applied other measures, they would have revealed the taxpayer's involvement in tax fraud.

The SAC stated that in this particular case the taxpayer proved the fulfilment of material conditions for claiming VAT deduction by providing tax documents and documenting that no fictitious supplies were involved and that the goods had been delivered for the arm's length price paid including VAT and subsequently resold to other customers. It was therefore the tax administrator's responsibility to prove that the taxpayer did not act in good faith and had been deliberately involved, or should or could have known that they had been involved, in a chain of transactions designed for the only purpose to acquire tax advantages.

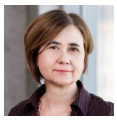
To conclude, a taxpayer's responsibility is to prove that a taxable supply has been effected and statutory conditions for the entitlement to VAT deduction have been met, whereas the tax administrator's responsibility is to prove the taxpayer's potential involvement in tax fraud. The court also again confirmed that measures to ensure the proper collection of taxes and the prevention of tax evasion may not be used in a manner that systematically challenges the entitlement to VAT deduction.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

In brief

Latest news - September 2018

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



Lenka Fialková
lfialkova@kpmg.cz

• To enhance transparency when granting subsidies, the Ministry of Industry and Trade introduced new measures applicable to calls announced within the Enterprise and Innovations for Competitiveness Operational Programme after 1 June 2018 that must be adhered to by applicants. These measures involve, for example, the obligation to ensure the fulfilment of duties arising from the Accounting Act, in particular the duty to disclose financial statements in a particular register, the duty to have beneficial owners recorded in the register of beneficial owners and the ban on issuing common equity certificates for members' shares in limited liability companies. If these requirements are not met, an application for subsidy will be dismissed. Before filing an application, it is therefore necessary to determine whether all the requirements applicable to a specific call have really been fulfilled.

• The Ministry of Industry and Trade will again support cooperation between corporations and research organisations in the development of unique technological solutions. A new call to participate in the TRIO programme was announced on 3 September 2018. Applications will be accepted until the end of October 2018.

• The new Act on Distribution of Insurance and Reinsurance and the accompanying act amending a number of other related laws were published in the Collection of Laws under no. 170/2018 Coll. and 171/2018 Coll., respectively, both entering into effect on 1 December 2018. Compared with the regulations now in effect, the law implementing the EU legislation introduces a number of new regulatory measures when entering into insurance products and services. These measures comply with the European Commission's overall concept of protecting consumers in the financial market by unifying regulatory principles and consumer protection rules across the financial market, ensuring the same level of consumer protection for various distribution methods, putting an increased emphasis on transparency and comparability of information about financial products (especially information about life assurance costs) and imposing higher professional requirements on persons operating within the insurance industry.

• Decree No. 192/2018 on the percentage share of individual municipalities in the national gross income from value added tax and income tax was published in the Collection of Laws.

• The General Financial Directorate issued information about the tax base correction under Section 42 (1)(b) of the VAT Act relating to supplies from/to the debtor whose insolvency is being solved via reorganisation.

• On its website, the GFD points out that a certificate securing the connection between cash registers reporting sales and ERS recipients will change on the part of the ERS recipients in September. Cash register users who wish to check whether their cash register is ready for such a change to be able to report sales without any difficulties should contact their cash register or cash register software vendors to make sure that their device is ready for the

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

change of the SSL certificate and is compatible with certification authority DigiCert's certificates.

• The financial administration entered into a memorandum on the mutual exchange of information related to Airbnb with the Prague City Council.

• On its website, the Ministry of Labour and Social Affairs draws attention to its plan to increase the intensity of inspections of illegal employment starting from September, which has been agreed by the representatives of the ministry, the State Labour Inspection Office and the Police of the Czech Republic. In addition to planned inspection activities, extraordinary nationwide inspections will be carried out irregularly in the entire territory of the CR from September to December 2018, focusing on the detection and elimination of breaches of regulations applicable to the illegal employment of Czech citizens, foreign nationals from countries outside the EU, and EU citizens. Extraordinary nationwide inspections will mostly focus on worksites such as construction sites, industrial and assembly productions, logistics centres, etc. The State Labour Inspection Office inspectors will carry out inspections in cooperation with the Police of the CR.

• At the end of August the government approved a draft double taxation treaty to be concluded between the Czech Republic and Senegal in the area of income tax and prevention of tax evasion and tax avoidance.

• An updated list of countries exchanging country-by-country reports under Section 13zb (2) of Act No. 164/2013 Coll., on international cooperation in tax administration, was published in the Ministry of Finance's Financial Bulletin No. 7/2018.

• The Ministry of Labour and Social Affairs proposes to increase the minimum wage to CZK 13 700 from 1 January 2019. It also submitted for comments a draft amendment to the Labour Code with the proposed effectiveness from 1 July 2019, introducing, for example, a new fixed mechanism for minimum wage valorisation and a new legal concept of job sharing as a new flexible work regime, and also responding to CJEU case law regarding the transfer of employment rights and duties.

• The Ministry of Finance has submitted for comments a draft act on international cooperation in tax dispute resolution, transposing Directive (EU) 2017/1852 of 10 October 2017, on tax dispute resolution mechanism in the EU. Currently, double taxation and arbitration treaties allow taxpayers to approach the appropriate authorities where measures applied by any of the contracting states have resulted or will result in taxation contrary to the appropriate treaty. This procedure does not in fact change. Yet, in accordance with the DRM Directive, it will be codified in a new procedural rule comprehensively regulating international cooperation in resolving tax-related disputes under international treaties. The new regulation will be a special law in relation to the Tax Procedure Code and will be applied with respect to all contracting states. Some additional concepts such as the option of tax arbitration will apply to EU member states.

• As Chamber of Deputies' Print No. 264, the government has submitted to the Chamber of Deputies the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS. The Czech Republic intends to use this convention to implement all minimum standards arising from the OECD's BEPS initiative into its bilateral double taxation treaties.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

LinkedIn | Twitter | Facebook | Instagram

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

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.