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Editorial

Real winter has come after a two-year break, with all it entails, both good and bad. Inversion is one of this winter's side effects. As I am writing this foreword, I can't really see anything out of my window; Prague is enveloped in grey misty smog with no wind on the horizon.

Unfortunately, tax legislation, and especially the Income Tax Act, has also been contaminated by smog. The last amendment only serves to prove my point. It includes about two hundred items but really important changes can only be seen with a magnifying glass. In fact, it is mostly a traditional hodgepodge, reflecting tax legislation's outdated concept focusing on detailed descriptions, without first naming principles or dealing with certain issues common to all taxes, e.g., electronic communication. This makes it necessary to constantly amend regulations all over again, clarifying things not made sufficiently clear last time or adding what should have already been there but the law didn't allow it. This year's inversion is truly horrendous. In contrast with previous years, when amendments were approved so as to make it into the Collection of Laws on New Year's Eve, this amendment was not approved by the end of the last year and will thus be in effect only from 1 April. Therefore, from a time perspective as well, the application of this law will in many ways resemble groping around in the mist, or is it inversion?

We should probably not expect much more at the beginning of an election year. And it may actually be good for us. Changes making their way into tax legislation within pre-election squabbles are usually out of context, have no logic, are expensive, require further clarification, and last only until the next government sweeps them under the table and repeals them. Or, maybe, it will prepare another hundred clarifying alterations. And the smog will be back. Or will it?

To all of you, a pleasant winter without too much inversion!



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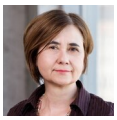
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Expected income tax changes

A tax package, containing changes in income taxes, VAT and tax procedure rules, has passed its third reading in the chamber of deputies and is currently moving to the senate. The important changes to the Income Tax Act that have already been approved are as follows:



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- The amendment rectifies the former inaccurate implementation of an amendment to the EU Parent-Subsidiary Directive regarding the exemption of dividends. The exemption of dividends paid to parent companies should not apply to all dividends treated as items decreasing the tax base by the entity paying the dividends.
- Under the new regulations, the periods of amortisation of intangible assets prescribed by law will be set as the minimum periods. However, it will be possible to apply longer amortisation periods to intangible assets put into use after the amendment's effective date.
- Sub-lessees will also be allowed to depreciate technical improvements but only those put into use after the amendment's effective date.
- In accordance with the amendment, instead of the net book value, the tax residual value of assets being liquidated will be included in the cost of a new construction.
- Under the new regulations, non-residents' gratuitous income from tax residents or Czech permanent establishments relating to the transfer of real estate located in the CR, ownership interests in corporations with their registered offices in the CR and business establishments located in the CR will be subject to withholding tax.
- The amendment introduces a two-year deadline for filing a request for clarification whether correct tax amounts were withheld. Foreign entities will hence have additional time and space to arrange for all administrative papers and certificates required by the Czech tax administration.
- When refunding advance payments for profit shares, the tax withheld will be refunded to the entity obligated to refund the advance payment. The new regulations also explicitly confirm the current approach, consisting of separate assessments of exemption criteria for advance payments and additional payments.
- The maximum amount of expenses that can be claimed as a percentage of income by individuals (natural persons) will be reduced to 50%. On the other hand, even taxpayers claiming expenses as a percentage of income will be allowed to apply tax credits for their spouse and for dependent children.

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- It will be possible to apply for a binding ruling regarding the tax base allocated to a permanent establishment of a foreign entity.

- The amendment also anticipates a further increase in tax credits for the second and third child to CZK 19 404 and CZK 24 204.

- The rule under which a 15% withholding tax is applied on income generated from an agreement to perform work and not exceeding CZK 10 thousand a month, in cases when a payroll tax statement has not been signed with one employer, will also apply to small-scale income in accordance with the social security rules. This involves an amount of up to CZK 2 500 irrespective of the legal title of a relevant contract.

As the amendment was not discussed before the end of 2016, its effective date has been postponed to 1 April 2017. As a result, the majority of approved changes will be applied in the taxable periods started after the amendment's effective date. This means an application not before 2018 for all taxpayers who use calendar years as their taxable periods (mostly all natural persons). However, certain provisions of the amendment that are explicitly mentioned in the transitional provisions will already be applied in 2017. This, for example, applies to the increases in tax credits.

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Deputies approve amendment to VAT Act

The chamber of deputies approved a government bill to amend certain tax laws, including the VAT Act and the Tax Procedure Rules. Amendments to both of these acts are to become effective on 1 April 2017. The summary of major changes in VAT focusing on shortages or damage and vouchers is as follows.



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Unsupported shortages and damage

The existing VAT Act neither defines shortages and damage nor provides guidance on how these should be treated with respect to VAT. Case law repeatedly confirmed that unsupported shortages, destructions, losses or thefts of business assets are considered utilisation for other than a taxpayer's business purposes and, consequently, VAT on output should be paid (where VAT deduction has been claimed upon purchase).

The amendment to the VAT Act directly defines how to apply VAT on unsupported business asset shortages, damage, destructions or thefts. It introduces the duty to settle the entitlement to input VAT deduction originally claimed, all this within three years with respect to inventories and low-value assets and five (or ten) years with respect to fixed assets. In such cases, taxpayers will have to prove the age of the relevant business assets. Some questions, however, remain unanswered, for example, it could be quite problematic to clearly allocate the originally claimed entitlement to VAT deduction to replaceable inventories. The question is whether it is possible to adjust the deduction based on, for example, the cost at which inventories are kept in the stock records at the time. If shortages and damage are supported with proper documentation, the procedure that has been applied before the amendment remains the same: it is not necessary to adjust the original deduction in any way.

Duty to pay VAT on received advances

With reference to the Court of Justice of the European Union's decisions, the amendment specifies what information about a taxable supply must be known as at the date an advance was received to give rise to the duty to declare VAT before the supply is effected. The supply will be sufficiently specified if (i) the goods or services constituting the supply, (ii) the applicable VAT rate, and (iii) the place of supply are known. The requirement to include information about a person effecting the supply has been omitted from the amendment's original wording. This new taxable supply definition seems to comply with a new directive regulating vouchers, adopted by the Council of the EU in June 2016. These changes should be integrated into the VAT Directive from 2019.

For single-purpose vouchers where all the above specifics are known (e.g. a voucher for accommodation in one specific hotel), the duty to pay VAT originates already at the moment of receiving consideration. The subsequent use of the voucher is irrelevant for VAT purposes. However, the question remains what specific information must be known about a supply for its accurate definition. Is it necessary to match the consideration with specific goods or services or is it sufficient just to know the appropriate VAT rate?

For multi-purpose vouchers (e.g. a gift voucher to a department store for the purchase of various goods with

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various VAT rates), the moment that a voucher is used (i.e. the moment certain goods or services are delivered) is decisive for VAT purposes.

Other changes

- To fight tax fraud, the amendment extends the application of a local reverse-charge mechanism to include the provision of personnel for construction and assembly work and to various forms of forced delivery of property.
- The amendment introduces the unreliable person concept and expands the concept of liability for unpaid VAT to include instances in which consideration for taxable supplies is provided in a virtual currency.
- The new legislation also amends the definition of fixed assets and the same rules will now apply to both fixed assets acquired via finance leases and fixed assets acquired in a standard manner.
- The amendment repeals special rules on societies (formerly associations without legal personality). Under the new regulations, unit funds and investment fund sub-funds will be regarded entities liable to VAT.
- Taxable supplies provided over a period longer than twelve months during which no consideration liable to the duty to declare VAT has been received should be regarded as effected no later than on the last day of each calendar year.

Interest on long-retained excess deductions

An amendment to the Tax Procedure Rules, approved within this tax package, includes, among other things, a provision increasing interest paid to taxpayers by the tax authority in cases of long-retained excess VAT deductions.

Under the new amendment, interest will apply to the retention of excess deductions not only resulting from the procedure to remove doubt but also from tax inspections. The amendment also reduces the period for which the tax administrator may retain – without punishment - excess deductions within the procedure to remove doubt from five to four months from the end of the deadline for filing a VAT return. Interest will be paid equal to the Czech National Bank's annual repo rate increased by two percentage points, compared with one percentage point currently in effect.

Although we may find the adequacy of the interest rate questionable (especially when considering the default interest rate charged to taxpayers when they misstep), it is definitely a step forward.

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Binding rulings now also on allocation of profits to permanent establishments

Thanks to the budget committee's amending proposal, the above mentioned amendment to the Income Tax Act (Print No. 873) expands the applicability of binding rulings. These will now also apply to the method in which profits are allocated to a permanent establishment of a foreign entity.



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Where a tax non-resident carries out business activities in the Czech Republic through a permanent establishment, they must correctly allocate the revenues generated via the permanent establishment as well as the expenses related to these revenues. The Income Tax Act prescribes that the permanent establishment's tax base cannot be lower (or tax losses higher) than the tax base reported (or tax losses incurred) from the same or similar business activities performed under similar conditions by a taxpayer residing in the Czech Republic.

The purpose and goal of this legal regulation is apparent; in practice, however, it may not be apparent whether the rule above has been fulfilled or will be considered fulfilled by the tax authority. The taxation of permanent establishments often comes under the tax administration's scrutiny, as proven by Decision No. 10 Afs 147/2016-45, recently published by the Supreme Administrative Court, in which the tax authority, and subsequently relevant courts evaluated transactions between a foreign entity and its permanent establishment.

Under the new opportunity, tax non-residents in similar circumstances may ask the tax authority for a binding ruling on how to determine the tax base of a tax non-resident who performs activities through a permanent establishment.

Foreign entities with permanent establishments in the CR should get this chance after 1 January 2018. The preparation of such a request will not be technically easy. We recommend taxpayers considering this option start with the preparation of the request immediately after the amendment's effective date, which is 1 April 2017.

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Low-Carbon Technologies Programme: second call for applications

The Investment and Business Development Agency announced a second call for applications under the Low-Carbon Technologies Programme, aiming to support the competitiveness of businesses and the sustainability of the Czech economy through the introduction of innovative technologies relating to electromobility, renewable energy management and secondary raw material utilisation.



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Application deadline and aid amount

Applications for support will be accepted electronically from 1 March 2017 to 31 May 2017.

The amount of provided aid depends on the type of individual activities; large enterprises may receive 25–60% of eligible expenses. The amount of aid granted for electromobility projects will range from CZK 50 thousand to CZK 10 million. CZK 50 thousand to CZK 30 million will be provided to activities relating to energy accumulation and fast-charging stations. Aid ranging from CZK 1 million to CZK 100 million will be granted for activities relating to secondary energy raw materials.

Supported activities and eligible expenses

For electromobility, support will be granted for the acquisition of electric vehicles and non-public charging stations for an entity's own consumption. For energy accumulation activities, aid will be provided to innovative projects intending to implement energy accumulation technologies, including the installation of renewable energy resources, and to acquire non-public compact charging stations for internal consumption. Support will also be granted for the implementation of innovative technologies to acquire secondary raw materials, to manufacture innovative products from secondary raw materials and to acquire precious secondary raw materials from used products in an effective manner.

Eligible expenses will be expenses related to the following items:

- tangible fixed assets
- intangible fixed assets
- business plan and project documentation (if these expenses were incurred after 1 January 2014).

Other conditions and restrictions for obtaining aid

The programme is intended only for projects taking place outside of Prague. Within the second call, a business entity may submit a maximum of ten applications for support. The level of innovativeness or the eligibility of

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a particular project's expenses will be assessed using the TRL (technology readiness level) evaluation. Activities concerning electromobility will not be able to draw subsidies for high-class, medium-class, luxury, off-road or sports electric vehicles; support is also not available for the acquisition of used cars. Other conditions and restrictions are specified in the call itself.

We will be happy to discuss any aspects of your project and the call's other specific conditions with you.

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New non-profit sector bill proposed

A long-awaited draft Act on Publicly Beneficial Status, which aims to enhance the transparency and trustworthiness of non-profit organisations by recording their publicly beneficial status in a public register, has finally been prepared. Although the Civil Code assumes the possibility of obtaining the publicly beneficial status, there is currently no legal regulation allowing for the recording of the status in a public register. This should now change.



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Under the Civil Code, a publicly beneficial legal person is an entity whose mission is to carry out its own activities to contribute to achieving common welfare, if the decision-making of the legal person is significantly influenced only by persons with no criminal record, if it has acquired its property from fair sources, and if it uses its assets and liabilities economically for a publicly beneficial purpose. A publicly beneficial legal person is entitled to register its publicly beneficial status in a public register if it meets the conditions set forth by a currently non-existent special legal regulation. As the government was unable to approve the new bill on publicly beneficial status earlier than at the end of 2016, its effectiveness is planned for 1 January 2018.

The act aims to increase the transparency of the non-profit sector and to implement certain simplifications. Potential donors and supporters should be able to see from the publicly beneficial status that a relevant entity really serves publicly beneficial purposes. The adoption of the act may therefore significantly affect the non-profit sector. The law more accurately defines the conditions that must be met by legal persons to be able to record their publicly beneficial status in the public register. The key criterion is non-profitability, according to which only a legal person not distributing profit, not paying settlement shares and restricting liquidation balance payments may obtain publicly beneficial status. An entity holding this status will have to establish a supervisory body to monitor the entity's activities. The bill also further elaborates on the requirement generally stipulated by the Civil Code, imposing that members of publicly beneficial organisations' bodies and management have clear records of criminal convictions.

Entities with registered publicly beneficial status will have to prepare a detailed annual report of their activities. The report will have to include an overview of administrative expenses, assessments of achieved goals, as well as information on the remuneration paid to members of the entity's bodies, etc. The bill also prescribes special rules on the audit of the financial statements, as well as conflict of interest rules relating to the members of the organisation's bodies, incorporators and other persons involved with the publicly beneficial entity.

Neither the bill nor the Civil Code restrict the type of persons that may obtain the status. Where statutory conditions are met, not only typical non-profit organisations (e.g. institutes) but also corporations and other legal entities will be allowed to apply to record their publicly beneficial status in the public register.

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Do you know about switching?

Are you happy with the bank in which you have your account? If not, do not despair: changing or switching banks will become an easy matter from as early as March of this year. Owing to an amendment to the Act on Payment Services, implementing Directive 2014/92/EU, bank fees charged by individual banks for their services will become much more transparent: before concluding a contract with a bank, a document containing information about the fees charged for payment account services will have to be provided to potential clients. The amendment also stipulates conditions for the operation of comparison websites offering impartial fee information.



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Switching, i.e. transferring a payment account, will be carried out via a prescribed form provided to the client by the bank the client wants to transfer its account to. Simultaneously, the law explicitly prescribes the tasks for the existing and target banks and related deadlines. Based on information stated in the prescribed form, the target bank will arrange everything for the client, including the transfer of the client's standing orders and direct debits. Clients will thus be certain that no administrative obstructions await them when switching banks. Only a reasonable fee, corresponding to the actual transfer costs, will be charged by banks for switching. However, banks will not be obligated to transfer accounts maintained in a different currency than the target account.

Banks will further be required to provide information about bank account maintenance fees sufficiently in advance before concluding a contract. This information must be provided free of charge in a separate document to all who ask for it. In addition, banks must disclose fee information on their websites and make it available at all their branches. This is to provide payment account users' with sufficient information and protection.

New rules will also apply to comparison websites for bank maintenance fees. Operators will have to ensure equal treatment of all banks, thus making comparisons based on clear and impartial criteria. Information disclosed on such websites will have to be true, specific and comprehensible, requiring regular updates. To ensure effective supervision, operators will have to notify the Czech Trade Inspection Authority and the Czech National Bank about their plans to operate a comparison website before commencing operations. They will also have to implement appropriate procedures to deal with any possible complaints about the inaccuracy of comparison results.

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How to tackle damages relating to competition law?

At the end of 2016, the government submitted to the chamber of deputies a bill on damages relating to competition law, aiming to facilitate the recovery of damages for infringements of national and EU competition law on a private-law basis.



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The bill implements Directive 2014/104/EU, whose objective is to provide comprehensive and uniform rules for the recovery of private-law damages for infringements of competition law in all member states. The new law introduces a number of novelties into Czech competition law. First, it prescribes special rules on the extent and manner of damage compensation. The new act regulates damage compensation differently from the Civil Code: for example, it disallows the possibility for the court to determine (reduce) the amount of damages; damage incurred will thus have to be compensated fully. The law also introduces the legal presumption of damage occurrence, according to which damage occurs every time cartel agreements infringe upon competition. Another novelty is a special provision regulating the length of the limitation period, which will be five years and will commence on the date on which the injured came to know about the damage, the person liable for its compensation and about the competition infringement, but not before the date on which the competition infringement ended. The bill also provides a new definition of a cartel agreement and sets rules for the compensation of damage caused by several persons.

From a procedural viewpoint, the bill specifically regulates proceedings to compensate for damage caused by competition infringements. A new concept of providing access to documentation will be introduced, according to which courts will be authorised to impose a duty on certain persons to provide access to documentation supporting the state and condition of a thing, potentially charging a penalty of up to CZK 10 000 000 or 1% of net turnover for the accounting period. Another important novelty is that all decisions confirming competition infringements made by other courts, the Office for the Protection of Competition or the European Commission are binding for the courts that decide on damage compensation. When applying the presumption of damage occurrence due to competition infringements through a cartel agreement, the injured parties will be in a better position during evidence proceedings, as it will be upon the wrongdoers to prove that competition infringements did not result in any damage.

It is evident that the new law will strengthen the position of injured parties in private-law proceedings for damages arising from infringements of competition law. The entire process of recovering damages should become more effective. On the other hand, the introduction of procedural concepts into a legal regulation other than the Civil Procedure Rules, the legal system's primary civil procedural regulations, may make procedural law less transparent. The bill is currently at the first reading in the chamber of deputies. It is quite clear that the deadline for transposing the directive into local legislation will not be met, as it was 27 December 2016.

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New international treaties to alter withholding tax amounts

In 2016, the Czech Republic entered into two new double-taxation treaties and several agreements on the exchange of tax information and cooperation in tax matters. As a result, the amount of withholding tax on payments made to persons in the involved countries will change.



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Two new double-taxation treaties with Iran and Chile entered into force in 2016. The treaties have been in effect from 1 January 2017. Both of them regulate the amount of withholding tax that can be imposed by the source country on income from dividends, interest and royalties. Under both treaties, a 5% withholding tax applies to the gross income from dividends and interest, while an 8% withholding tax pertains to the gross income from royalties. A double-taxation treaty with Turkmenistan is expected to enter into force, with an effective date of 1 January 2018.

In addition, the Czech Republic entered into three tax information exchange agreements (TIEAs) with Monaco, the Cook Islands and Aruba. Based on these agreements, the tax authority may ask the contracting state's tax authority for all information necessary to determine, collect and recover taxes. The conclusion of these agreements also led to a decrease in withholding tax on the payment of income from the Czech Republic from currently 35% to standard rate of 15%.

It is also possible to apply a 15% instead of a 35% withholding tax in respect of countries that have not concluded either a double-taxation treaty or a tax information exchange agreement with the Czech Republic but have signed the Convention on Mutual Administrative Assistance in Tax Matters. The convention represents a comprehensive multilateral instrument developed by the Council of Europe in cooperation with the OECD, facilitating various forms of international administrative assistance in tax matters. In 2016, the following states signed the convention: the Marshall Islands, Nauru, Niue, Saint Christopher and Nevis, Saint Vincent and the Grenadines, Senegal, Samoa, Uganda and Uruguay. A 15% instead of a 35% withholding tax thus applies in respect of these states.

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Case law

Good news for creditors and collection agencies

In December, the Court of Justice of the EU gave a special Christmas present to all creditors and collection agencies. In its decision, the court explained when legislation regulating the provision of consumer credits should (not) apply to instalment payment agreements concluded between business entities and consumers.



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Consumers in default with the payment of their loans often enter into new instalment payment agreements with creditors, usually through companies engaged in debt collection. While the major part of consumer credit regulations, including the requirement to hold a permit issued by the Czech National Bank, does not apply to "free-of-charge postponements of the existing debt payment", the interpretation of circumstances in which the postponement is free of charge has so far been unclear. At the same time, exactly defined criteria for the application of consumer credit regulations are absolutely essential for creditors and collection agencies, as, apart from banks and similar institutions, only entities holding a Czech National Bank licence are allowed to grant consumer credits in the Czech Republic.

The Court of Justice considered the provisions of Directive 2008/48/EC, on credit agreements for consumers, which are reflected in the Czech Act on Consumer Credits. The court decided that an agreement on instalment payments relating to an existing debt is not free of charge in the meaning of the directive only if the consumer agrees to pay expenses that were not determined in the original credit agreement. The court thus did not agree with Advocate General Eleanor Sharpston, according to whom an instalment payment agreement is free of charge (gratuitous) only if the consumer does not have to repay anything but the principal itself; such an interpretation, however, would de facto result in the inability to enter into an instalment payment agreement between the consumer and any entity not holding the above Czech National Bank licence. The court, however, was of the opinion that the payment of interest or other expenses associated with the original credit agreement is to be viewed as the repayment of the original debt; thus, according to the court, the instalment payment agreement in which the consumer agrees to pay such interest and other expenses is still free of charge. This means, among other things, that creditors and collection agencies entering into instalment payment agreements do not have to have the CNB licence in this respect.

The Court of Justice of the EU's approach will definitely make creditors and collection agencies happy. When concluding instalment payment agreements, they may, under the above described conditions, actually avoid a considerable part of strict regulations applicable to the provision of consumer credits. Ultimately, the decision may also be beneficial for consumers: when they have repayment problems, they may be offered to conclude an instalment schedule agreement, thus avoiding pending enforcement proceedings or insolvency.

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Case law

Duty to call for additional tax returns not absolute

The Supreme Administrative Court (the SAC) recently had to decide under what circumstances the tax administrator is obligated to call upon taxpayers to file an additional tax return before commencing a tax inspection.



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In this particular case, the Police of the CR identified a large number of invoices that had been issued but had not been recorded in the taxpayer's accounts. This resulted in a decrease in the taxpayer's tax base for several taxable periods. After receiving this information, the tax administrator commenced a tax inspection of one of the taxable periods at issue without informing the taxpayer in advance that an additional income tax return should be filed. And this omission was the subject of the taxpayer's appeal against the tax administrator's procedure, claiming this to be at variance with the Tax Procedure Rules.

The extended panel of the SAC judges held that in compliance with the basic principle of tax administration, which is to accurately ascertain and determine tax, it is the taxpayer who should rectify the incorrect amount of tax. The tax administrator's duty is to respect taxpayers' rights and interests. They should therefore be given a chance to increase their tax liability without incurring any penalties. The extended panel of judges also held that the tax administrators should indeed call on the taxpayer to file an additional income tax return where the tax administrator has ascertained facts indicating a higher tax liability, but only where these facts have been ascertained outside the scope of a tax inspection (i.e. within an on-site investigation). Yet, the tax administrator exceptionally does not have the duty to call for the submission of an additional income tax return in circumstances specified by the SAC, for example, where facts ascertained by the tax administrator suggest fraud or where the tax administrator not only examines but also determines a tax liability within a tax inspection of a larger scope.

The SAC's first panel of judges elaborated that the tax administrator may issue a call to the taxpayer only if it can be justly assumed based on available facts that additional tax will be assessed and if the reasons for the additional tax assessment are properly specified in the call. In other words, the tax administrators must have sufficiently clear information about the reasons for assessing additional tax so that they can specify them in their call. The court decisions and related implications are highly likely to be further discussed by the professional public. The SAC also stated that an additional income tax return may also be filed after the taxpayer learns that the tax administrator is planning to commence a tax inspection. And this should indicate to the taxpayer that not all is lost once the tax administration discloses its intentions.

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