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Editorial

After a period of uncertainty, we finally got to see the final form of the consolidation package. For many, its changes will be the main tax topic in the months to come. In the current issue of the Tax and Legal Update, we are bringing to your attention the new obligations that the package introduces for employers and employees. In the future, we will continue to analyse selected topics of the consolidation package, so there is much to look forward to.

Changes in labour law are never ending. In the Update's legal section, you will read about two upcoming amendments to the Labour Code. This year, we devoted a significant portion of the more than 200 articles published in the Tax and Legal Updates to labour law, as it indeed is a topic of interest for everyone.

To highlight a major legal development of recent times, I would like to mention the law on preventive restructuring. It gives entrepreneurs in financial difficulties a legal framework for a procedure to avoid bankruptcy while keeping their business establishment operational. We will look further into this law in future issues of the Tax and legal Update.

I wish you a pleasant holiday season and all the best for the new year 2024.

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Taxes

Chamber of deputies approves long-term investment product

In its third reading, the chamber of deputies has approved a bill on the development of the financial market and the promotion of old-age security, which, among other things, introduces a long-term investment product as a new tax-efficient old-age savings product. The bill will now be debated by the senate.

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The final regulation of the long-term investment product primarily derives from the government bill that we wrote about in the May issue of our Tax and Legal Update. However, the amending proposals submitted during the approval procedure have brought about several partial changes.

Notification obligation for providers

The first change is the obligation for providers to notify the Czech National Bank of the commencement and termination of the provision of a long-term investment product. The CNB will now maintain a list of providers that will be disclosed on its website.

Adjusted scope of financial products

The scope of financial products that may constitute assets registered under a long-term investment product has also been partially modified. For investment securities and money market instruments, a requirement that these instruments be traded on public markets has been introduced, which means that the assets registered under a long-term investment product are limited only to the most regulated products, such as publicly traded instruments, government and covered bonds, collective investment securities, and bank accounts.

Abolition of the portfolio approach

From a tax perspective, the most significant change is the abolition of the 'portfolio approach' through which all income from the transfer of assets registered under a long-term investment product for consideration was to be exempt from tax. Thus, all transactions carried out by the taxpayer or provider were to be tax-exempt.

The abolition of this additional tax relief will thus result in the preservation of the standard rules for the taxation of investments while allowing an exemption where the value or time test is met.

However, the abolition of the portfolio approach may be problematic where providers are actively involved in portfolio management or where the investment strategy related to a long-term investment product changes.

Although providers can be expected to notify taxpayers of any potential tax implications of individual transactions, this notification obligation is not part of the proposed legislation. Providers may thus perform transactions that may give rise to taxable income from the sale of assets. Taxpayers will thus have to file tax returns, which was not foreseen in the original government bill, and there will also be practical implications on taxpayers when paying the tax if the tax cannot be paid from the funds in the long-term investment product, as this would breach the conditions of the tax relief.

Stricter rules but tax relief still in application

Although the adopted changes substantially increase the demand on the taxpayers' tax awareness and the liquidity of their funds where taxable income has arisen, the long-term investment product is still an interesting alternative to other tax-efficient old-age savings products. However, only practice will show whether the set-up of the adopted legislation meets the needs of the target group of taxpayers. We will inform you about further changes in tax relief for old-age savings products in the January issue.

Taxes

Registration in central CBAM registry launched

The carbon tariff (CBAM Directive) is a much talked about topic, especially now at the turn of the year. The directive entered into force on 1 October 2023, starting the transitional period that ends at the end of 2025. The Czech Republic has entrusted the administration of the carbon tariff to the Ministry of the Environment.

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Taxpayers must file their first CBAM reports by the end of January 2024 for the preceding calendar quarter of 2023.

When preparing the CBAM Directive, the European Commission envisaged the introduction of a transitional CBAM registry, which is part of the specialised EU Customs Trader Portal. At the local level, it is managed by the customs administrations of the individual member states.

The Ministry of the Environment as the administrator of the carbon tariff in the Czech Republic is obliged not only to check the accuracy of reporting and compliance with the directive's rules but also to ensure the transfer of data to the central register. The ministry will actively cooperate with the Customs Administration of the Czech Republic, which will ensure the registration of entities in the central register and will publish more detailed information on the registration procedure in the coming days.

After opening an account on the Trader portal, taxpayers will be able to get acquainted for the first time in detail with the CBAM report that they currently know only from EU manuals.

Tips and tricks

Tax administration principles: legality, legal licence, and self-restraint and proportionality

In October's Tax and Legal Update we covered the basic principles of tax administration and why it pays to know them. Today we look in more detail at the principle of legality, the principle of legal licence, and the principle of self-restraint and proportionality.

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The principle of legality and the principle of legal licence

Private individuals can do what the law does not prohibit them from doing (the principle of legal licence). However, this principle applies neither to state bodies nor the tax authorities. Instead, their activities are subject to the principle of legality, under which tax authorities can only do what the law expressly allows them to do. In practice, they must abide by the rules of tax legislation and must follow other rules laid down in the Charter of Fundamental Rights and Freedoms, the Constitution, and international treaties. Especially for these regulations, tax administrators should not only pay attention to the wording of the text but also respect its meaning.

Tax administrators therefore must exercise their powers within the limits of the law and for the purposes for which they have been entrusted to them. It is not enough that the tax administrator's action is in accordance with the law, but it should also be consistent with its purpose.

Principle of self-restraint and proportionality

This principle prohibits tax administrators from interfering with the legal position of taxpayers unless they have a legal reason to do so. Moreover, it again underlines the importance of the purpose or objective of the law to be pursued. Finally, it obliges tax administrators to ensure that their action against taxpayers is proportionate to the result they seek to achieve. This is perceived differently by everyone, but if, e.g., the tax administrator initiates a tax inspection by requesting the entire accounting records, including contracts and documents for several years without further explanation, their request is unlikely to be reasonable.

Using the principles to one’s advantage

All these principles can be invoked during the course of tax proceedings, not only where the tax administrator is acting in a manifestly unlawful manner but also where the procedure does not seem proportionate to the objective it is intended to achieve. A breach of one or more of the above principles may result in the unlawfulness of the tax administrator's actions and consequently of their decision. Lastly, it should be noted that where there are several

possible interpretations of the law, the tax administrator must proceed according to the interpretation that is most favourable to the taxpayer. You can actively advocate for the use of this procedure during tax proceedings.

Consolidation package - labour law perspective

The Act on the Consolidation of Public Budgets, or the consolidation package, brings numerous changes in labour law, in particular new obligations for both employers and employees. Major changes concern agreements to perform work outside employment. The law has already been signed by the president and is now awaiting its promulgation.

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For the agreements to perform work (outside employment), two new limits for obligatory payments of social security premiums by employees are being introduced. The original fixed limit of CZK 10 thousand will change to a **variable limit of 25% of the average wage** (CZK **10,500** for **2024**). The second limit will apply to concurrent agreements with multiple employers: both employees and employers will be obliged to payments if the worker's remuneration exceeds **40% of the average wage** (CZK **17,500** for **2024**). This means that a worker's earnings from all their agreements with all employers shall be added up. This may make work under agreements (outside employment) much less attractive for many workers.

Employers will also be obliged to inform the social security administration of the commencement and termination of work under the agreements, and of the amount of income accounted for the workers. They will also have to keep all related records. A centralised register of agreements and the income arising from them has been established, making the treatment of work performed under the agreements rather similar to that of common employment. Employers will also be obliged to notify employees in writing that they may be liable for social security contributions should they work under several agreements at the same time.

Employers who provide their employees with **non-financial benefits**, typically under the cafeteria system, should also be more vigilant. The advantageous tax treatment of defined non-financial leisure related benefits (admission to sports facilities, cultural events or health services) will now be capped at half the average wage for the calendar year. This means that for 2024, benefits up to CZK **21,983** should not be taxable.

Furthermore, employer contributions to **employee meals** are being unified in the conditions for their tax exemption, i.e., regardless of their form. The limit for the exemption of meal allowances will thus also apply to meals provided in non-financial form (meal vouchers or meals in a company canteen). For this non-monetary income to be tax exempt it will be necessary to observe the limit of CZK 107 per working shift. This is expected to increase to CZK **115.5** for **2024**.

To cover the deficit caused by the COVID-19 pandemic, employees are to start contributing to **sickness insurance premiums**. For employees, this means that they will pay a total of **7.1% instead of the current 6.5% for social insurance. Sickness insurance will therefore account for** 0.6% of gross wages.

The consolidation package is set to take effect on 1 January 2024. The effective date for the changes to the agreements to perform work (outside employment) has been postponed to 1 July 2024, hence, there is still time to prepare. Yet, by being aware of the new obligations early on, potential penalties from the inspection authorities

can be avoided.

Indexation of minimum wage and abolition of vacation scheduling – further changes to Labour Code ahead

One major amendment to the Labour Code has barely entered into force, and the government is already discussing two more amendments. According to the proposal of the Ministry of Labour and Social Affairs, the mechanism for increasing the minimum and guaranteed wages is to change, the obligation to draw up a vacation schedule is to be abolished, and changes are to be made to collective bargaining where several trade unions are active at one employer. The ministry also envisages the introduction of a liability for wages in the construction sector.

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The key change proposed is the introduction of a minimum wage indexation mechanism. The minimum wage should now be calculated as the product of a coefficient set by the government and a prediction of the average gross monthly wage in the national economy. The ministry thus promises to increase the predictability of increases in the minimum wage and to eliminate annual negotiations. The **minimum wage** could be roughly between 45-50% of the average gross monthly wage in the national economy; i.e., for 2024 this would be approximately CZK 20 to 22 thousand. However, we will not see this change until 2025 at the earliest.

The ministry is also considering **abolishing the guaranteed wage concept**: in their opinion, the minimum wage should be adequate protection against low pay. However, the bill also allows for the preservation of the guaranteed wage; in which case, however, its maximum value would be reduced from two times the minimum wage to 1.6 times the minimum wage.

The amendment should also **abolish the obligation to draw up vacation schedules**, as the ministry considers this a mere formality that unnecessarily increases the administrative burden on employers, also as starting from the new year, this obligation would also apply to employees working under agreements outside employment, for whom planning vacations a year in advance is even more difficult. Employers will thus only be obliged to give employees at least a 14-day written notice of the intended period of their vacations.

The process of concluding **collective agreements** where more than one trade union organisation is active at an employer is also to change. Currently, if the trade unions do not agree on the content of the collective agreement, the employer may not conclude a collective agreement with any of these organisations. Thus, any trade union organisation, regardless of its size or the number of employees it represents, can block collective bargaining. The amendment therefore introduces a special procedure whereby the employer may conclude a collective agreement with one or more trade unions that have the largest number of members employed by the employer. This procedure may then be blocked by a written statement of the simple majority of all employees, in which they can also indicate their preferred trade union organisation. The employer would then be entitled to conclude a collective agreement only with the trade union that has been indicated this way by the same (above-half) number of

employees. This measure should substantially streamline collective bargaining at the company level.

The last change is the introduction of the **liability of entrepreneurs in the construction sector** for the wages of their subcontractors' employees. The construction entrepreneur will be liable to the extent of the subcontractors' share in the contractual performance for this entrepreneur, up to the amount of the minimum wage. A labour agency shall also be considered a subcontractor if it has temporarily assigned its employees to the entrepreneur. Construction workers will thus be able to claim their wages from both their employer and the construction entrepreneur.

Notification obligations for parties to mergers and procurement procedures

Until recently, EU state aid rules regulated only subsidies granted by EU member states. Subsidies from third countries were not regulated, which gave their recipients an advantage over other operators on the EU market. This is now to be prevented by an EU regulation which as of 12 October 2023 requires companies that are involved in business concentrations or public procurement procedures in the EU to report foreign subsidies received in excess of set limits.

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The new obligation is introduced by Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market; procedural issues such as notifications, calculation of time limits or investigations are further regulated by Commission Implementing Regulation 2023/1441 on detailed rules for the conduct of proceedings by the Commission. The regulation already entered into force on **12 July 2023**, as we reported earlier this year, but the obligation to notify on a proposed concentration or the receipt of foreign financial contributions in the context of a public procurement procedure only started to apply on 12 October 2023.

A foreign subsidy is a situation where an undertaking operating in the EU market receives directly or indirectly (e.g., through a parent company) a financial contribution from a third country, conferring a certain advantage. This may include, e.g., interest-free loans, unlimited guarantees for the undertaking's debts and liabilities, tax breaks, grants, debt forgiveness, etc.

Under the regulation, a notification obligation arises in two situations:

- **Concentrations** - where one of the merging parties/the undertaking being acquired/joint venture is established in the EU and has a turnover of at least EUR 500 million and the parties to the concentration have received an aggregate foreign subsidy of more than EUR 50 million over the last three years. In such cases, the Commission must be notified of the concentration prior to its implementation.
- **Participation in public procurement procedures** - where the estimated value of the public contract or framework agreement is at least EUR 250 million excluding VAT and the aggregate foreign subsidy of the participant (including its subsidiaries and holding companies, main subcontractors and suppliers participating in the same bid) amounts to at least EUR 4 million over the last three years. In such cases, the notification shall be addressed to the contracting authority, which shall then forward it to the Commission for approval.

The Commission may also initiate an investigation ex officio without prior notification if it suspects that foreign subsidies have been granted to undertakings in the last three years. It may also request to be notified of concentrations or procurement procedures below the above thresholds.

Importantly, the Commission's positive decision is a prerequisite for the implementation of a concentration or the

award of a contract. Therefore, when participating in major concentrations or public tenders, individual companies must carefully assess whether they are not subject to this new notification obligation. If they fail to comply, not only can the concentration or the award of a public contract not take place, but the companies also **face fines of up to 10% of their total turnover**.

Consumer credit: new obligations for providers and new rights for consumers

In October, the EU directive on credit agreements for consumers entered into force, replacing the previous directive from 2008. The need for new consumer credit legislation arose due to rapid technological developments and the ongoing digitisation of financial services.

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New technologies and innovative practices have brought new forms of consumer credits, such as deferred payments and crowdfunding services. The new regulation should also raise the standard of consumer protection, by regulating advertising, and by introducing an information obligation for creditors and rules on the assessment of a consumer's creditworthiness by creditors.

The directive applies only to certain consumer credit agreements and **crowdfunding services**. However, compared to the previous directive, its scope is significantly wider, as it will also apply to consumer credits of less than EUR 200, lease contracts with an option to buy goods or services, overdraft facilities, and interest-free loans with no fees or loans with a maturity of up to three months with negligible fees (deferred payments).

The new directive also sets out more detailed **requirements for assessing a consumer's creditworthiness**. In particular, creditors should make such an assessment considering a consumer's interest, all necessary and reasonable information on the consumer's income and expenditure and, where appropriate, the consumer's other financial and economic circumstances. The assessment must result in the conclusion that the obligations under the credit agreement (or the crowdfunding services agreement) are likely to be met in the manner envisaged by the agreement. The directive also introduces a consumer's right to request human intervention and an explanation from the creditor whenever the creditworthiness assessment involves automated processing.

The directive also explicitly **prohibits certain types of services**. These are tying practices (i.e., the selling of a credit agreement in a package with other distinct financial products or services), any unsolicited granting of credit, and any inferred agreements: creditors thus may not imply that the consumer has consented to entering into a credit agreement or to purchasing any additional services presented by means of pre-set options.

The directive also deals with **financial awareness**, as it obligates EU member states to promote measures to encourage consumer education in responsible borrowing and debt management. The directive also introduces new leniency measures, whereby EU member states should require creditors to apply certain measures before proceeding with debt recovery – e.g., extending the repayment period, changing the type of loan, or reducing the interest rate.

Once we know the specific form of the national law transposing the directive, we will inform you about the new

rules. The directive sets the deadline for national implementation for November 2026.

Digitisation of Schengen visas receives green light

On 13 November 2023, the Council of the EU adopted rules for the digitisation of processes related to the issuing of short-stay or Schengen visas. What changes will this bring?

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Single VAP platform

The EU is fully aware of the need to bring the Schengen visa agenda into the digital environment. At present, applications for these visas are still processed using paper documents, and paper visa stickers are affixed to travel documents.

The Schengen visa digitisation project should change this situation fundamentally. Applications will be submitted online, via user access to a new visa application portal (VAP). Applicants will be able to manage their application, pay visa fees, and receive their final visa in the app. Should they not be able to access the internet or encounter any other major obstacles, they will still be able to submit paper applications.

Online application not without exception

Today, with a few exceptions, applicants are required to appear in person to submit their application, either at the embassy of the country to which they are going or at the relevant visa centre. Only in rare cases is it possible to apply by mail or courier.

After the introduction of the VAP and its online applications, a personal visit will only be required for first-time applicants and for those who have new travel documents or whose uploaded biometric data are older than 5 years.

E-visa

The VAP platform will also ensure that the visas themselves are issued as digital visas in form of 2-D barcodes with cryptographic signatures. This code should contain both a photograph of the applicant, and precisely defined information about their person, travel document, and travel history. The e-visa should reduce the security risks associated with forgery, as well as simplify the whole process and make it cheaper. The online platform should also work if foreigners plan to visit more than one EU country. In such cases, the country responsible for the decision will have to be identified.

Next steps

The regulation containing the new rules for the digitisation of Schengen visas will enter into force on the 20th day after its publication in the Bulletin of the European Union. The rules will apply to all Schengen countries and other EU member states.

In the meantime, eu-LISA, an agency responsible for the whole digitisation process, will test the new procedures. The digitisation of visas should then be **operational from 2026**. From **2031**, all visa applications, including their submissions and decision-making procedures, should be processed digitally.

The above-outlined process should primarily facilitate travel within the Schengen zone and reduce administrative costs associated with the EU's visa policy.

Development of administrative practice in VAT treatment of fuel cards

The application of VAT on fuel cards has been a highly scrutinised topic. Fuel cards are often used by vehicle operators for refuelling. In September this year, the VAT Committee issued new guidance after re-visiting the EU Court of Justice's ruling in the Vega International case. The Czech tax administration is expected to follow up on this guidance early next year and issue its own information on the subject.

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The most common business model applied to the sale of fuel using fuel cards is the buy/sell model: when refuelling, the vehicle operator purchases fuel from the service station operator on behalf and for the account of the fuel card provider. There are three parties involved in the transaction - the service station operator, the card issuer, and the vehicle operator. The fuel is physically withdrawn directly by the vehicle operator from the service station operator.

The VAT Committee has confirmed that the activities of fuel card issuers can generally be considered financial services exempt from VAT. However, if the model has been structured correctly, fuel card issuers can act as both buyers and sellers of fuel. The guidance specifically sets out the conditions under which refuelling is treated as two related supplies of goods (fuel) - the petrol station operator makes a supply to the fuel card issuer, and the fuel card issuer makes a supply to the vehicle operator, i.e., a situation de facto similar to current administrative practice in the Czech Republic. These are the **following basic conditions**:

- The legal ownership of the fuel is transferred to the fuel card issuer.
- The fuel supplies to the fuel card issuer and the vehicle operator are the same.
- There is a written contract between the fuel card issuer and the fuel card holder.

We will monitor the extent to which the Czech tax administration implements the VAT Committee's guidance. The tax administration has promised that if administrative practice changed, it would nonetheless allow the current practice to continue for some time.

New developments in investment incentive legislation

The senate has approved an amendment to the Investment Incentives Act that should simplify and speed up the investment incentive approval process. A related government decree that changes the permissible level of public aid in the regions of cohesion in the Czech Republic from 2024 was published in the Collection of Laws at the end of November. We provide details below.

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The biggest change concerning the approval of applications for investment incentives is that after four years they will return into the competence of the Ministry of Industry and Trade (MIT). In cooperation with other ministries, the ministry will assess compliance with the conditions and obligations set out in the act and other legislation and issue decisions accordingly. At least for some instances, this should eliminate the biggest weakness of the current system of investment incentives, i.e., the need for government approval of each project, leading to delays in approval and the unpredictability of the whole process for investors.

Even after this amendment, the government will remain responsible for approving strategic investment projects for which part of the investment incentives is drawn in the form of cash grants. At the same time, the amendment will allow the approval of large projects above EUR 110 million to be subject to different EU regulations than has been the case so far. This will make it possible to use special rules, e.g., to support key investments important for the transformation of the EU economy within the framework of the Investment Incentives Act.

The amendment is now awaiting presidential approval and will take effect on the fifteenth day after its publication in the Collection of Laws.

In connection with this year's changes to the EU rules, **the government decree on the permissible level of public aid in the regions of cohesion** has been updated. Reacting to inflation, the threshold for notifying projects to the European Commission has been increased from the current EUR 100 million to **EUR 110 million**. Similarly, the threshold for large investment projects has been increased from the current EUR 50 million to **EUR 55 million**.

Another important change is the introduction of a maximum public aid amount linked to the cohesion region and the aid intensity applicable to that region.

Thus, projects whose investments exceed the threshold of EUR 110 million and the maximum public aid amount set by the government decree for the relevant cohesion region will be subject to individual approval by the European Commission.

The government decree will be effective from 1 January 2024.

Subsidies

Support for digitisation available until mid-February

Small and medium-sized enterprises can apply for support for digitalisation within the Call I Digital Enterprise - Technology 4.0 programme announced under the Operational Programme Technology and Applications for Competitiveness.

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The call aims to support the enhancement of digital excellence and accelerate the digital transformation of enterprises by supporting investments in line with Industry 4.0 principles. Applications for support can be submitted until **15 February 2024**.

Total eligible costs are limited to CZK 50 million per project. The public aid intensity for medium-sized enterprises ranges from 30% to 50% depending on the region in which the project takes place. The highest support is available in the North-West region, while the lowest support is available in the Central Bohemian, South-West and South-East regions. A medium-sized enterprise can therefore receive a subsidy of up to **CZK 25 million**.

Support can be received for costs incurred for tangible fixed assets, intangible fixed assets, and services. In practice, it is therefore possible to support the acquisition of new machinery, technological equipment and facilities, software solutions, and IT infrastructure.

Projects can be implemented throughout the Czech Republic except Prague. The applicant may submit only one application for support.

Case law

SAC comments on VAT deduction on anti-radar and GPS logbooks

The Supreme Administrative Court upheld the tax administrator's opinion and disallowed the VAT deduction on the purchase of anti-radar equipment, as it was not used for economic activity and did not protect the taxpayer's property. The SAC also refused to accept a deduction for a GPS logbook, as the taxpayer had not submitted the logbook to the tax administrator on the grounds of personal data protection.

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When purchasing anti-radar equipment, the taxpayer was assured by the vendor that the product was a standard tax-deductible expenditure for customers. This argument did not hold before the tax authorities. On the contrary, the tax authorities found that the device had been used to avoid liability for potential infringements of road traffic rules. The taxpayer and their employees are generally obliged to comply with road traffic rules. And if they do so, any anti-radar equipment is useless. Therefore, the tax authority did not recognise the entitlement to VAT deduction, and the Supreme Administrative Court upheld this approach.

The taxpayer did not submit their GPS logbook to the tax administrator, claiming the protection of their employees' personal data. The tax administrator in response stated that it was possible to partly anonymise the data and submit only data pertaining to business trips. The tax administrator also reiterated their confidentiality obligation. Because of the failure to submit the electronic logbook, the claim for deduction was rejected.

SAC's opinion on the settlement of objections

In the judgment in question, we also draw attention to the SAC's comments on the settlement of the appeal objections. The SAC referred to its previous case law according to which merely repeating the appeal objections in the administrative action substantially reduces the plaintiff's chances of success. According to the SAC, public authorities are not obliged to deal with every single objection raised by a party to the proceeding. As a rule, **it is sufficient if at least the basic objections are settled**. This means that it is also possible to respond to an objection by presenting a different, convincingly justified opinion in the statement of grounds of the decision, thus ensuring that the opinion is sufficiently supported.

Case law

SAC: transfer of technical improvement after lease end regarded as service from VAT perspective

The Supreme Administrative Court (SAC) ruled on the question whether the transfer of technical improvements (carried out by a lessee at their own expense) to the lessor for compensation at the termination of the lease constitutes a service from the point of view of VAT. The Supreme Administrative Court also considered whether the reverse charge applies to the supply.

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A taxpayer concluded a lease for non-residential premises as a lessee and, under the agreement, was allowed to revitalise the premises at their own expense and subsequently depreciate this technical improvement. The parties to the lease contract agreed that at the termination of the lease, the costs incurred for the technical improvement would be settled and the price would be set in the amount of the residual value for tax purposes.

Upon the termination of the lease, the taxpayer issued tax documents in the amount of the tax residual value of the technical improvement and applied the reverse charge as they assessed the supply as the provision of construction and assembly work to the lessor. However, the General Financial Directorate subsequently assessed that the transaction was not subject to the reverse charge mechanism.

The main key to the dispute was the assessment of **whether the transfer of the technical improvement to the lessor should be viewed as a service received by the lessee when carrying out the technical improvement** (i.e., construction and installation work).

The SAC reiterated that the reverse charge mechanism must be interpreted restrictively. The construction and installation works were ‘consumed’ once the lessee received them for themselves and used them for their economic activity. At the end of the lease, the lessee did not provide construction and installation work to the lessor, but handed the leased object back to the lessor, including the technical improvements the lessee had made to it. The transfer of the technical improvement for consideration by the lessee to the lessor does not fit the ordinary meaning of the term 'provision of construction and installation work' as classified under production codes CZ-CPA 41-43. At the same time, the supply meets the definition of the provision of services set out in the VAT Act.

The SAC thus agreed with the tax administrator and dismissed the taxpayer's cassation complaint. The SAC thus implicitly rejected the application of the legal fiction contained in the VAT Act, according to which the reverse charge shall be applied to a taxable supply if the supplier and the customer (both VAT payers) reasonably believe that the supply is subject to the reverse charge and both apply this mechanism.

In view of the conclusions of this judgment, we recommend that VAT payers carefully **consider the possible use of the legal fiction for supplies where they are unsure of the correct VAT treatment.** The question remains whether this case law would also apply to situations where technical improvement is transferred during the lease term or where the technical improvement is transferred by the lessee free of charge.

Case law

CJEU on gifts provided with magazine subscription

The Court of Justice of the European Union has ruled in the case of a Portuguese publisher that gifts provided with a magazine subscription constitute an ancillary supply accompanying the main supply. The gift must thus follow the tax treatment of the magazine subscription.

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In a campaign to increase sales, Portuguese publisher Deco Proteste - Editores offered new subscribers a gift in form of a tablet or smartphone. Their price did not exceed the limit for gifts of small value. New customers thus received a gift with the magazine after paying their first monthly subscription and could then cancel their subscription immediately and keep the gift.

Deco Proteste - Editores considered the gifts to be gratuitous supplies in the form of the provision of gifts of small value that do not constitute the supply of goods for consideration. However, the Portuguese tax authorities disagreed and after a tax inspection assessed additional tax on the gifts' purchase price and included late payment interest and penalties.

The Portuguese tax administration referred a preliminary question to the CJEU whether the gratuitous supply of a tablet or smartphone is to be regarded for VAT purposes as a gratuitous supply, a part of a single supply for consideration, or a part of a commercial package consisting of a main and ancillary supply.

In its decision, the CJEU recalls that in general, **every transaction must be regarded as distinct and independent**.

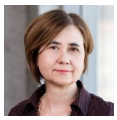
Where a transaction comprises several elements, it is necessary to determine whether the individual elements constitute independent supplies or whether they form a single complex supply. A single supply is where several partial supplies are so closely linked that they form, objectively, a single, indivisible supply which it would be artificial to split. In a single supply, it can be determined which of the supplies is ancillary to the principal supply. According to the CJEU, it is also necessary to consider the characteristic elements of a transaction from the perspective of the average consumer: in particular, the purpose for which the consumer acquired the supply, and the value of each supply. It follows from previous case law that a supply must be regarded as ancillary if it does not constitute for an average consumer an end in itself but a means of to obtaining the principal supply at the most advantageous terms.

According to the CJEU, the facts of the case do not show a close enough **link between the magazine subscription and the gift**, and therefore the two supplies cannot be regarded as indivisible. However, the gift constitutes an incentive to purchase a subscription and therefore has no independent purpose from the point of view of the average consumer. In addition, according to Deco Proteste - Editores, the gift allows subscribers to better enjoy the principal service (e.g., they have access to the magazine's digital version).

Therefore, according to the CJEU, the gift provided upon subscription to a magazine is an ancillary supply to the principal supply, which is the magazine subscription. The gift provided will therefore share the tax treatment of the magazine subscription.

News in Brief, December 2023

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



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DOMESTIC NEWS

- The president has signed an act amending certain laws in connection with the consolidation of public budgets, which is just waiting to be published in the Collection of Laws. We informed you about the consolidation package in the November issue of Tax and Legal Update.
- The GFD has published information material on the amendment to the Real Estate Tax Act adopted as part of the consolidation package. The material contains an overview of the changes related to the obligation to file a tax return for the 2024 taxable period as well as answers to some other questions.
- The senate has passed the top-up tax bill (global minimum tax). The bill is awaiting the signature of the president and publication in the Collection of Laws. The law is proposed to become effective on 31 December 2023.
- The senate has approved a draft amendment to the VAT Act, which introduces an obligation for payment service providers to report selected information to the Central Electronic System of Payment Information (CESOP) with effect from 1 January 2024.
- The chamber of deputies has approved an amendment to the Energy Act and some other laws related to the development of community energy. The accompanying amendment to the VAT Act includes, among other things, a new definition of the date of taxable supply for energy commodities, water and electronic services.
- The GFD has published its Information on VAT returns, VAT ledger statements, and VIES summary reports for 2024.
- The MIT has prepared a Call for Support of Electromobility. CZK 1.95 billion has been earmarked for entrepreneurs.
- Decree No.341/2023 Coll. establishes the meal allowance rates applicable for 2024 abroad. Rates are being increased for 22 countries, including Croatia, Hungary, Cyprus (EUR 45), Norway and Sweden (EUR 65), and Spain (EUR 50). The rates for Slovakia (EUR 35), France (EUR 50), Germany and Austria (EUR 45) remain the same as in 2023.
- The Ministry of Justice has submitted to the government a draft amendment to the Act on the Legal Profession. The draft contains changes covering several key areas, such as strengthening the digitisation of processes related to practicing law; extending protection against the provision of legal services by persons who are not legally authorised to do so or who carry out this activity illegally; and regulating the verification of the client's electronic signature (eLegalisation) including attorneys' access to certain necessary client data from selected public administration information systems. The amendment should enter into effect on 1 July 2024, with the exception of the provisions on eLegalisation coming into effect on 1 January 2025.
- The Ministry of Justice has sent a draft law on experts, expert offices, and expert institutes to the inter-ministerial comment procedure. Among the proposed innovations are, e.g., the abolition of the time limitation of the validity of the authorisation to perform expert activities by experts - natural persons registered in the list of experts and interpreters; the extension of the validity of the expert authorisation of expert offices and expert institutes obtained under the previous legislation by 3 years, i.e., until 31 December 2028; the partial relaxation of the conditions for the performance of expert activities in the form of expert offices and expert institutes. The amendment is to enter into effect on 1 January 2025.

FOREIGN NEWS

- The Economic and Financial Affairs Council of the EU (ECOFIN) has approved the member states' statement and the accompanying European Commission's statement reaffirming their political support for the first and second pillars of the OECD's international tax reform. They also confirm the compatibility of the safe harbour rules and the administrative guidelines agreed under the OECD/G20 Inclusive Framework.
- EC Regulation No. 2023/2468 of 8 November 2023 has been published in the Official Journal of the EU, transposing into EU law the amendment to International Accounting Standard 12 (of 23 May 2023) on top-up taxes introduced under Pillar 2 of the OECD's international tax reform. This amendment includes a temporary exemption from accounting for deferred taxes arising from the implementation of the OECD Pillar 2 model rules and introduces targeted disclosures in the financial statements of selected entities. All EU listed companies will be bound by the amendment to IAS 12. We reported on the forthcoming amendments to Czech accounting regulations based on the amendment to IAS 12 here.

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