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# Tax & Legal

Taxes

Tips and tricks

Legal

Subsidies

Case law

In brief

January 2024

# Editorial

A New Year's hangover can take several forms. For some, it is associated with the aftermath of New Year's Eve and usually subsides the following day. Adding to this (or instead of, take your pick) advisers get a legislative hangover: in our neck of the woods, the end of the year is associated with pushing all possible and impossible regulations through the approval process so that they can take effect on January 1.

Last year was no exception, also as regards these legislative battles. There are, for instance, regulations where it is clear already before they even enter into effect that further amendments will be needed to bring the new rules within acceptable limits. You may have guessed that I am referring to the new regulation of agreements on work outside employment; although in this case, the most controversial part is not due to enter into effect until 1 July 2024, so there is hopefully still some time to fix things. Or there are the delays in approval, meaning that an important regulation will not be effective on 1 January but at a later date, as happened, for example, with the amendment to the Act on Investment Incentives. In addition, there are numerous regulations that will require some time before the interpretations of their important parts are settled: for example, the area of employee benefits in the consolidation package.

There is clearly a lot of news; however, nothing has changed regarding our New Year's legislative hangover. This is one of the few certainties of the turn of the year, at least for advisers and all entrepreneurs. We would probably get nervous if it were any other way. On second thought, it would be nice to have a quiet start to the new year, for once. Well, maybe next year....

To all, a happy and successful 2024.

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Taxes

# Changes in VAT from 2024

On 1 January 2024, the consolidation package came into effect. It also includes an amendment to the VAT Act, introducing two major changes to VAT: the consolidation of two reduced rates of 15% and 10% into one 12% rate (reclassification of some items between tax rates) and the limitation of the right to deduct VAT on the purchase of luxury vehicles. Supplies of books and related services are now exempt from VAT with a right to deduct VAT.


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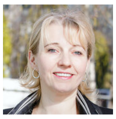

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The most discussed items regarding their VAT rates have been **beverages and medical devices**. Non-alcoholic beverages are now subject to a 21% rate, with the exception of selected beverages and tap water subject to a reduced 12% rate. The selected beverages are milk, liquid milk products, and plant-based alternatives to these products (or flavoured versions of these beverages if they retain the essential character of milk/plant-based alternatives to milk).

The category of **medical devices** to which the reduced 12% rate applies was expanded to include medical devices (according to the relevant EU regulations) intended for single use and falling under the defined codes of the customs nomenclature.

Items that were **reclassified** from one of the original reduced rates to the basic rate include bicycle repair services, household cleaning services, draft beer, hairdressing services, textile and shoe repair services, firewood, cut flowers, municipal waste collection and transportation and related services, services of authors and performers, and scheduled air mass transportation.

In case of doubt, it is possible to file a request for a binding assessment with the financial administration regarding both the tax rate determination and the correct application of the VAT exemption for the supply of books and related services.

The new amendment to the VAT Act **limits the VAT deduction for the acquisition of M1** category passenger cars to CZK 420,000 per a selected car carried as a fixed asset in a taxpayer's books (corresponding to a purchase price of CZK 2 million). This maximum amount must also be reduced proportionally where the selected vehicle is acquired for purposes that give rise to a proportional right to VAT deduction. The limitation should not apply to lease companies acquiring vehicles for the purpose of their subsequent delivery via finance lease arrangements.

The above limit shall also apply to any technical improvements to vehicles. Consequently, the maximum VAT deduction amount shall be examined for both the purchase and any technical improvement to the vehicle. This means that if a taxpayer carries out a technical improvement to a vehicle with an input tax of CZK 150,000 while a VAT deduction of CZK 300,000 was claimed upon the acquisition (purchase) of the vehicle, only another CZK 120,000 (up to the limit of CZK 420,000) can be claimed for the technical improvement.

Under the transitional provisions, the limitation of the right to deduct will not apply to vehicles for which an advance payment in the amount equivalent to common practice was made and taxed by the end of 2023. This also applies to technical improvements carried out on these vehicles.

Finally, we remind **payment service providers** of their new obligations arising from 1 January 2024. This involves reporting data to the Central Electronic System for Payment Information (CESOP) on a quarterly basis. The reporting obligation is triggered once a payment service provider arranges more than 25 foreign payments for the same payee in a calendar quarter.

In conclusion, please note that on 31 December 2023, an amendment to the Energy Act was published in the Collection of Laws, introducing a change in the determination of **the date of taxable supply** for the delivery of selected energy commodities from 1 January 2024. For supplies of electricity, gas, heat or cold or the provision of related services, the date of taxable supply shall now be the date on which a billing document is issued and shall occur at the latest on the date of expiry of the time limit for the provision of such billing under the Energy Act or on the date the actual consumption is established (where the Energy Act does not stipulate the obligation to provide such billing). The date of taxable supply for water supplies shall be the date on which actual consumption is established. For electronic communication services, it shall be the date on which the extent of the provided services is established.

# Real estate tax turning from small to big

The consolidation package introduces a significant amendment to the Real Estate Tax Act. After more than a decade, tax rates have increased by approximately 80%. Many partial changes intended to intensify the collection of this tax have also been approved. The deadline for filing real estate tax returns this year is 31 January 2024. Below, we acquaint you with the amended law so that you may evaluate whether you are required to file a real estate tax return for 2024.

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In the media, only the state part of the tax had long been discussed, omitting the technical parts of the amendment to the Real Estate Tax Act. While the state part of the tax was eventually excluded from the amendment, the technical changes passed the approval process, but the first comprehensive information on them was not published by the financial administration until December 2023. The document entitled "Brief description of significant changes for 2024" is 47 pages long.

It will not be easy for taxpayers to quickly **assess whether an obligation to file a tax return for 2024 arises for them** or whether it will be sufficient to wait until the tax administrator informs them of the new tax liability before the May tax payment deadline. Please note that a **penalty** for late tax assertion is set based on the full tax liability amount, except for when the taxpayer files a tax return after the deadline but without having received a call from the tax authority - in this case, no penalty arises. However, if the tax liability is higher, the tax authority will always charge **interest on late payment**.

For those engaged in business activities, t**he change in the definition of a paved area** is important, as it is also an example of a change giving rise to the obligation to file a tax return. The existence of a paved area is no longer limited to land registered in the real estate register as "other area" or "built-up area and courtyard". As of 1 January 2024, a paved area is understood to be a plot of land or part thereof used for business activities or included in business assets in an entrepreneur's books, whose surface is covered by a construction under the Construction Act without a vertical supporting structure, including sidings, pools or tank areas unless these are taxable constructions.

Business and non-business persons that have been granted a final permit for a future taxable construction should pay attention to **the new definition of building land**, which arises in the area covered by the future taxable construction, even on a plot of land with another existing taxable construction. In the wording of the law until 31 December 2023, the existence of another taxable construction on a given plot of land ruled out the formation of a building plot. This change will entail the obligation to file a tax return.

The amendment also increases the number of cases in which the taxpayer is a user, lessee, or usufructuary lessee of real estate that is, e.g., managed by the State Land Office or the Office for State Representation in Property Matters. If the user, lessee, or usufructuary lessee becomes a new taxpayer, they will be obliged to file a tax return.

Non-business natural persons in particular should familiarise themselves with the changes to the taxation of **family recreation buildings and garages**. These constructions are now strictly linked to the type of use registered in the real estate register regardless of their actual use. If these had been taxed differently until now, it will be necessary to file a tax return.

**Waste management entrepreneurs** will have to cope with the abolition of most of the tax exemptions they have enjoyed so far. If the tax administrator has up-to-date information from the last real estate tax return (in particular on the existence of paved areas and building land), any changes will be taken into account automatically. Otherwise, taxpayers must file a tax return and declare the necessary information for correct taxation.

Taxpayers will not have to file real estate tax returns simply because of a change in the local coefficient. The recalculation of their tax liability will be carried out by the **tax administrators**.

In **2025**, it will be necessary to become acquainted with the other 16 approved changes with postponed effectiveness. 2025 will also be the first taxable period when the amount of tax may be affected by the inflation coefficient (for 2024, it has been explicitly set at 1).

# Changes in employee income taxation in 2024

Changes in the taxation of employee income for 2024 mainly stem from the amendment to the Income Tax Act approved as part of the consolidation package. A summary of the most important ones is presented below.


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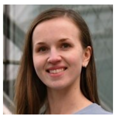
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**Tax rate**

The income threshold for applying the **23% tax rate** has been reduced to 36 times the average wage on an annual basis (CZK 1,582,812) and three times the average wage on a monthly basis (CZK 131,901). A 15% rate will continue to apply to income below this threshold.

**Tax exemption of leisure related benefits**

Non-financial benefits provided to employees for their leisure activities (e.g., culture, sports, medical devices, books) are now exempt only up to half of the average annual wage, which is **CZK 21,983.50** for 2024. Non-financial benefits above this limit are subject to tax and insurance contributions.

This limit does not apply to the non-financial income of employees and their family members from participation in an occasional sporting or cultural event organised by the employer if, given the nature of the event, it is customary for the employer to organise such events and that its form and scope are appropriate.

**Meals for employees in non-financial form**

For employees, the tax treatment of meal allowances provided both in financial and non-financial form has been unified: both forms are equally exempt from tax in aggregate up to 70% of the upper limit of the meal allowance that can be granted to employees for domestic business trips lasting between 5 and 12 hours. For 2024, an allowance of **CZK 116.20** is thus exempt from tax. The exemption is conditional on the employee having worked at least 3 hours per shift, or at least 3 hours per calendar day for employees without set shifts (e.g., members of corporate bodies), and, simultaneously, no entitlement to a meal allowance having arisen to the employee as part of the travel allowance during their business trip. However, the employee shall be entitled to an additional tax-exempt allowance (in the same amount) if their shift including breaks in accordance with the Labour Code exceeds 11 hours in total (11 hours per calendar day for employees without set shifts).

According to the interpretation of the law, minor refreshments provided to employees for consumption at the workplace shall not be included in the limit for tax-exempt allowances.

**Tax credits and items deductible from the tax base**

Individuals will no longer be able to claim in their 2024 tax return or year-end settlement:

- membership fees paid to trade unions and fees paid for exams verifying the results of further education as

items deductible from the tax base
- a tax credit for placing a child into pre-school facilities
- a tax credit for being a student (which can also no longer be claimed within the monthly payroll).

The tax credit for a dependent spouse will only be available from 2024 if the spouse has an income of up to **CZK 68,000** per year and is also caring for a child under the age of three living in a jointly managed household.

**Vehicles provided for employee's business and private use**

An employee's taxable income is reduced where the employee is provided with an emission-free company vehicle for business and private purposes. The monthly taxable income is therefore determined as follows:

- 1% of the input cost of a vehicle
- 0.5% of the input cost of a low-emission vehicle
- 0.25% of the input cost of a zero-emission vehicle.

**Lump-sum compensation for teleworking**

The tax-exempt lump-sum compensation of expenses related to remote work (home office) which employers can provide in accordance with the Labour Code will be reduced from CZK 4.60 to **CZK 4.50** per hour from January 2024.

**Increase in the maximum annual assessment base**

Unlike the reduction of the income threshold for applying the progressive tax rate, the maximum assessment base for social security contributions remains at 48 times the average wage, i.e., **CZK 2,110,416** for 2024. Above this income, no social security contributions are payable by employees and employers.

**Minimum wage increase**

From January 2024, the minimum wage has increased from CZK 17,300 to **CZK 18,900.** Consequently, the minimum monthly assessment base for the payment of health insurance contributions for employees and the income threshold for the entitlement to a tax bonus for a child have also increased. The minimum guaranteed hourly wage has been increased to CZK 112.50.

**Introduction of employee contribution to sickness insurance**

Employees now contribute 0.6% of their assessment base to the sickness insurance scheme, resulting in an increase in their total social security and health insurance contributions from 11% to **11.6%**.

**Employer and employee contributions to private insurance products**

Employers and individuals may contribute to two new tax-efficient insurance products – a long-term investment product and long-term care insurance.
If the conditions of the law are met, contributions to the following schemes will be tax-efficient:

- supplementary pension insurance with state contribution, additional pension savings and pension insurance
- private life insurance
- long-term investment product
- long-term care insurance.

On the employee's part, the total of the employer's contributions to all products not exceeding CZK 50,000 per year remains exempt from tax. Contributions paid during the year by individuals for specified products can be claimed in their tax return or year-end tax settlement in the total amount of **CZK 48,000** per year.

**Change in taxable moment for employee stock option plans**

This income will now only be taxed at the time of sale/transfer of a share in a business corporation or of a transferable option by the employee.

Employees are now required to inform their employer of the transfer of a share or an option before the end of the calendar month in which the transfer took place so that employers can make relevant monthly payments.

However, the change affecting the point of time of taxation has not yet been reflected in laws regulating payments of social security and health insurance premiums.

**Changes to travel allowance amounts**

The rate of the minimum basic compensation for the use of a road motor vehicle during a business trip at the request of the employer has been increased. Meal allowances for domestic and some foreign business trips have also been increased.

The wording of the relevant decree can be found here. Decree No. 341/2023 Coll. sets the basic rates of foreign meal allowances for 2024 - available here.

# How to tax employee benefits from 1 January 2024?

The General Financial Directorate has issued its Methodological Guidance on the Taxation of Benefits and Other Types of Performance Provided by Employers to Employees from 1 January 2024 in connection with the amendment to the Income Tax Act included in the consolidation package. This is an extensive and complex document for taxpayers that may in practice raise further questions. In our article, we comment on the most important areas.


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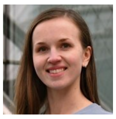
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**Meals for employees**

The methodological guidance specifies the conditions under which small refreshments provided at the workplace as well as meals provided as part of work-related breakfasts, lunches or dinners are not subject to tax for the employee.

In a similar manner, the methodological guidance specifies the forms of providing meals (financial or non-financial, or meals at an entity’s own catering facility) whose total the employer must track to determine the exempt income amount on the part of the employee.

**Corporate sports facilities and courses**

The methodological guidance specifically addresses the topic of gyms, exercise equipment, and similar sports equipment that is freely available to employees at the workplace. It determines when the use of exercise equipment is regarded as the use to achieve better work performance, which is not subject to tax, and vice versa, when it is regarded as the use of a sports facility, which should be included in the tax exemption limit for defined leisure-related benefits (culture, sports, medical devices, printed books...). It also provides that, e.g., lessons, courses or services that fully substitute for commercial services must be included in the tax-exempt benefit limit.

The guidance also lists the conditions under which non-financial income derived by employees from participation in sports and cultural events organised by the employer is not subject to tax.

**How to measure an employee's non-financial income?**

A complex issue for many employers will be the determination of the amount of the employee's non-financial income where a non-financial benefit has been produced internally using the employer's own activities (a benefit that may or may not also be provided to third parties) or the amount of non-financial benefits affected by various discounts obtained by the employer from providers of services or goods. The guidance offers several options for determining the amount, depending on the specific situation. It also provides various options and examples that may complicate the choice.

**Benefit cards and the moment in which non-financial income arises**

When does an employee's non-financial income arise in the case of various benefit accounts currently offered by different benefit scheme operators?

The methodological guidance only notes that the moment of provision of the benefit depends primarily on the legal setting of the relationship of the parties concerned - not only between the employer and the benefit scheme operator but also with the final benefit providers.

It can also be assumed that the tax authorities will increase their oversight of non-standard transactions where employees were granted benefit points just before the end of 2023 to avoid the new rules.

**Assessing the deductibility of costs incurred for employee benefits by employers**

Again, rather general principles are described in the methodological guidance in the chapter dealing with the tax deductibility of costs incurred by employers for employee benefits and meals.

The guidance specifically mentions, e.g., the new taxation on the part of employees (and tax deductibility on the part of employers) for above-limit leisure-related benefits used by employees; the limitation of the deductibility of costs by the amount of income for facilities designed to satisfy employees' needs; or the newly established possibility of full tax deductibility of costs related to contributions to employee meals.

The methodological guidance concludes with a table summarising the tax treatment of selected benefits and other types of performance by both employees and employers.

A link to the methodological guidance can be found here.

# Income from stock option plans: discrepancy between time of taxation and time of premium payment

The act amending certain laws in connection with the development of the financial market and the promotion of old-age security entered into effect on 1 January 2024. One of the amended laws was the Income Tax Act, which now regulates the taxable moment for income from employee share and option plans. Unfortunately, the laws governing social security and health insurance premiums have not been adapted accordingly.

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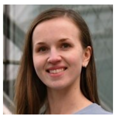

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The amendment to the Income Tax Act explicitly defines the point of time when this non-financial income is to be taxed on the employee's part. (We informed you about the changes in the November issue of Tax and Legal Update). While the taxable moment has mostly been shifted to the future (postponed), the change has not been reflected in Czech insurance laws, and the payments of social security and health insurance premium remain regulated in the old way (i.e., e.g., when shares are allocated to an employee). The point of time of taxation thus differs from the point of time of premium payment.

The new rules apply to income flowing to employees from the acquisition of an interest/share or a transferable option in a business corporation that is their employer or its parent, subsidiary or affiliated corporation. S**tarting from 1 January 2024, such income will be taxed at the time when:**

- the employee ceases to carry out employment for the employer, its parent, subsidiary or capital-related person or its legal successor
- the employer enters into liquidation
- the employee or employer ceases to be a Czech tax resident
- the share or option is transferred
- the option is exercised
- a share exchange occurs in which the total nominal value of the employee's shares changes; no later than 10 years after the acquisition of the share or option.

According to information from the Ministry of Finance, the term 'employer' includes not only legal but also beneficial employers within the meaning of the Income Tax Act. Thus, **for foreign employees** posted to work in the Czech Republic for a Czech beneficial employer, the point of time of taxation of income from employee stock/option plans may occur, e.g., upon the termination of their posting.

Unfortunately, the legal regulation postponing the point of time of taxation of income from employee share and option plans has not been analogously reflected in laws governing the payments of social security and health insurance premium in the Czech Republic. Thus, if social security and health insurance premiums on income from stock/option plans are to be paid to the Czech Republic, the different definition in the insurance laws and in the Income Tax Act **results in a discrepancy between the time of taxation and the time when the duty to pay the premiums arises**.

**As from a legal point of view**, a benefit is provided when the interest/share is transferred to the employee or when a non-transferable option is exercised, the condition under the insurance laws of the taxable income from employment being ‘accounted for’ to the employee is fulfilled at that time, and the social security and health insurance premiums due in the Czech Republic should be paid that month. No account is taken of the fact that under the amendment to the Income Tax Act the point of time of taxation of the income from employment may not have yet occurred (and will only occur sometime in the future).

The Ministry of Finance confirmed this conclusion on its website. At the same time, they informed that the changes to postpone the payment of insurance premiums until the taxable moment have already been initiated by the Ministry of Labour and Social Affairs together with the Ministry of Health. They should thus be adopted within the next amendment to the insurance laws.

Taxes

# Update on Czech and global top-up taxes

At the end of 2023, the law on top-up taxes for large multinational and national groups implementing the EU directive on global minimum tax entered into force. From taxable periods beginning after 31 December 2023, companies and permanent establishments of groups with consolidated revenues exceeding EUR 750 million shall be subject to new taxes at a rate equal to the difference between the 15% rate and the specifically calculated effective tax rate of the group in the Czech Republic.

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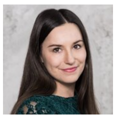

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The act introduces two entirely new taxes that have their own rules different from those of the income tax, have a global overlap, and are calculated at the level of the entire group in the jurisdiction. For more information, see the article here.

**News from the Czech Republic**

Last December, the expert community discussed whether the transitional safe harbour rule based on the information contained in the country-by-country report (CbCR) could be applied for the purposes of the national (Czech) top-up tax. In this respect, the Ministry of Finance informally stated that the safe harbour rule should transitionally apply to the Czech top-up tax, i.e., that the Czech top-up tax will be zero as a result. Therefore, the original information that this safe harbour can only be used for the purposes of the income inclusion rule should not apply.

**Global news**

In December 2023, the OECD published further administrative rules on the application of top-up taxes, and the European Commission published a document with answers to frequently asked questions. Below is a summary of the key points from these documents.

**OECD administrative guidance**

The third part of the administrative guidance (the first part was issued in February 2023, the second part in July 2023) contains further additions and revisions to the Commentary to the Model Rules of February 2022. The document primarily clarifies the application of the transitional safe harbour rule. It also contains additional guidance on the following:

- adjustments to the amounts in the qualified financial statements relating to purchase price adjustments
- more detailed comments on the transitional CbCR safe harbour, including the definition of qualified financial statements, the determination of a simplified effective tax rate, and the introduction of new anti-avoidance rules
- clarification of the definition of consolidated revenues for the purposes of determining the €750 million threshold, and addressing the mismatch between the taxable periods of the ultimate parent and the constituent entities or between taxable periods of individual constituent entities
- allocation of CFC taxes where the group is not required to calculate the effective tax rate in a given jurisdiction

- reporting deadlines for groups with a short taxable period
- simplified calculation of safe harbour rules for non-material constituent entities.

More detailed information can be found here. Our comments on the first part of the administrative guidance are available here and on the second part here.

**European Commission's answers to frequently asked questions**

The European Commission's document contains an overview of frequently asked questions and answers concerning the interpretation and transposition of the EU directive introducing Pillar 2 (global minimum tax) rules. It contains six questions on the general application of the directive, and 87 questions on the individual articles of the directive. An overview of the most common questions and answers is available here.

The European Commission has stated on its website that this document represents the result of the commission service deliberations and should therefore not be interpreted as binding upon the European Commission or the individual EU member states.

# Principles of tax administration: speed and economy

The principles of tax administration are not just abstract boundaries, but a basis for a whole range of very concrete benefits for taxpayers that are good to keep in mind when the tax authorities come knocking.


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We wrote about the principles in general here; and in the December issue of Tax and Legal Update, we looked into the basic principles of tax administration: the principle of legality, the principle of legal licence, and the principle of self-restraint and proportionality. In this article, we shed some light on the principle of speed and economy (cost-effectiveness) of tax administration.

**The principle of speed**

The smooth running of the proceedings without unnecessary delays is undoubtedly in the interest of all parties involved in tax administration. By delays in proceedings or procedures we mean unreasonable and unjustified inaction. However, this cannot be judged solely by the length of the proceedings: the specifics of each individual case must be considered.

To protect against the tax administrator's inaction, the Tax Procedure Code provides several sanctions. In some cases, the tax administrator's inaction may result in a very positive outcome for the taxpayer: for instance, if the tax administrator fails to decide on a request for an extension of a time limit, it may be deemed that the time limit has been met. Also, if the tax authority fails to decide on an appeal against an order to secure tax within a set deadline, the order becomes ineffective. You can actively defend yourself against inaction by lodging a motion for protection against inaction with the nearest superior tax authority. The Tax Procedure Code also provides for situations where the tax authority withholds funds that should have been returned: in such a case, the tax administrator is obliged to pay interest to the taxpayer.

Although this principle applies mainly to tax administrators, bear in mind that inaction by taxpayers is also associated with a number of adverse consequences.

**The principle of economy**

This principle is based on the principle of proportionality and applies to the entire tax administration. It means that the tax administrator should proceed so that the taxpayers, third parties, and the tax administrator do not incur unnecessary costs.

The principle of (procedural) economy is manifested, for example, by the tax administrator not requiring from taxpayers data and information that can be obtained from other public authorities. Another manifestation of this principle are joint acts, whereby the tax administrator can, e.g., conduct a tax inspection for several taxable periods or recover arrears from various tax proceedings at once. However, this approach has its limits and should serve to eliminate any unnecessary burden on the parties concerned and not to make the authorities' work easier. Should a taxpayer believe that their rights have been infringed upon by a joint act, they may defend themselves by an appeal or before administrative courts.

# Paying with stamps soon to end

Apart from the much-discussed tax changes, the consolidation package has also brought one less mentioned but nonetheless significant innovation: the abolition of the payment of fees by stamps. How to prepare for this, and what to do with any unused stamps?

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Stamps are used to pay administrative or court fees. They are issued in nominal values of CZK 1 to CZK 1,000 and distinguishable by colour. Since 1 January 2024, they are being phased out due to their obsolescence and distribution cost.

**Continued sale of stamps**

Although from the beginning of this year, new stamps are no longer being put into circulation, stamps from previous years are still being sold – at post offices, courts and other points of sale. This means that you can still buy them and pay administrative or court fees with them. This transitional period will last until the end of 2024.

From the beginning of 2025, it will no longer be possible to buy stamps or pay administrative or court fees with them.

**Unused stamps**

In the course of 2024, you can return unused stamps and get a refund. A list of authorised branches for returning the stamps has been published on the Czech Post website. The redeeming fee for stamps is 5% of their nominal value. Their redemption must be requested in writing, and proof of identity must be presented at the branch. The stamps must not be damaged in any way and must consist of both parts. As of 1 January 2025, stamps will cease to be tokens of value. Having no real value, it will therefore no longer be possible to exchange them for money.

**How to pay fees without stamps?**

From 2025, administrative and court fees will only be paid in cash or by bank transfer to the relevant authority's or court's account. Even now, these methods of payment are in effect the only ones possible for payments above CZK 5,000.

# Changes to illegal work definition and agency work conditions

From 1 January 2024, an amendment to the Employment Act will enter into effect, introducing changes in employment and rules for employment agencies. One of the most discussed changes is a new definition of illegal work (a last-minute reintroduction of provisions originally omitted from the government's proposal), which was widely criticised by the professional community due to its controversy.


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**Change in the definition of illegal work**

Prior to the amendment's effective date, the labour inspection officers inspecting illegal work had to assess whether the dependent work was being performed outside employment for a prolonged period of time. In practice, however, it was often very difficult for the inspection officers to prove that a particular worker had performed dependent work at the workplace also on days other than the actual inspection day. The amendment thus aims to make it easier for the inspection authorities to detect the rather widespread illegal Svarc system (whereby dependent work is concealed as work performed by independent providers – sole traders).

The amendment explicitly stipulates that the parameter of consistency, i.e., the length of the work performance, will no longer be decisive for the conclusion that the work is illegal. However, this goes against the existing case law of the Supreme Administrative Court, according to which the employer's superiority and the employee's subordination cannot exist without the consistency (i.e., long-term nature) of the work performance. Yet, inspection authorities will still be obliged to assess and prove the existence of superiority and subordination as one of the basic features of dependent work. Since the consistency of work performance has been one of the main stumbling blocks of inspections by the labour inspectorate, it is not yet clear how illegal work inspections will be carried out; the effect on this practice will certainly be significant. The sanctions for illegal work will also be stricter: it will now be possible to impose a ban of activity for up to two years for this offence.

**New obligations and changes in rules for employment agencies**

The law will also have a major impact on employment agencies, with the stated aim to make them more efficient and to increase the protection for agency workers. Among the significant changes is the obligation to prove that natural persons or professional guarantors of legal entities have acquired their professional experience (of at least 20 hours per week) within the ten years immediately preceding the application for the permit.

Furthermore, employment agencies will be obliged to pay an additional security **deposit**, increased from CZK 500,000 to **CZK 1,000,000**, within three months of the law's effective date.

**The process of granting the permit to mediate employment** has also been changed. The condition for granting the permit now is that the applicant, apart from being debt-free, has not in the last three years committed an offence for which the permit could be revoked.

In contrast, the regulation will be more lenient as regards the reasons for which the authorities are obliged to withdraw the permit: under the current wording of the law, this situation de facto arises for any violation of the Employment Act; under the new rules, the authorities will assess whether it is appropriate to withdraw the permit, considering the seriousness of the agency's misconduct.

There is also a new obligation for employment agencies to provide regular data on the number of employees assigned to each entity and sector in which the work is carried out.

Finally, **the issuing and withdrawing of employment mediation permits has been transferred** from the Directorate General of the Labour Office to the Ministry of Labour and Social Affairs.

The prohibition of employment agencies to conclude contracts with employees for a period defined by the duration of the employee's temporary assignment to the user has been omitted from the final wording of the act, as well as the limitation of the temporary assignment of an agency employee to the user to a period of three years.

The amendment thus introduces some measures aiming primarily to improve the functioning of the labour market and increase the protection of assigned employees. However, only practice will show how the legislators' intention will be fulfilled.

# Abolition of additional agreed overtime and other labour-law changes in the healthcare sector

The beginning of the year brought new conditions for health professionals. The amendment to the Labour Code mainly responds to widespread protests by healthcare workers against the recent extension of overtime work in their sector, and to other demands loudly voiced by healthcare trade unions and hospital associations. The amendment thus abolishes the regulation of additional agreed overtime, which had only been in force for a few months, and introduces further changes in the working hours and rest periods for healthcare employees.


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A fundamental change, put through as a result of strike threats, is the abolition of the (re)introduction of additional agreed overtime work for health professionals. From 1 October last year, the Labour Code allowed health professionals to work up to 16 or even 20 hours of overtime per week, upon individual agreements. Now, healthcare workers are again subject to the same legislation as other employees.

**Longer working hours and special rules for continuous operation**

The amendment also introduces the possibility of **longer working hours** and related special rules for longer shifts for healthcare workers in continuous operation at providers of inpatient care or ambulance services. In these cases, working hours may be up to 24 hours over 26 consecutive hours. The 26-hour cycle was chosen with regard to the employer's legal obligation to provide employees with a break for meals and rest. To apply this procedure, the parties must enter into a written agreement for a maximum of 52 consecutive weeks. This agreement may be terminated with an immediate effect by the employee or the employer within 12 weeks of its conclusion or by notice at any time without having to give a reason. The employer shall inform the respective labour inspectorate of the conclusion of such agreement and is obliged to keep an up-to-date list of all employees with whom such agreements have been concluded.

If, as a result of such a longer shift, the employee is not provided with even **a shortened continuous daily rest** (i.e. 8 hours in 24 hours), the employer must, at the end of that shift, provide the employee with the unprovided continuous daily rest (i.e. 11 hours minus the number of hours provided) plus the standard (unreduced) continuous daily rest (11 hours); this means a rest period of at least 22 hours after the end of a 24-hour shift. This rest cannot be further reduced, nor can it be considered a continuous weekly rest.

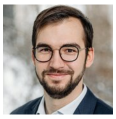
Under the new rules, it is also possible to agree with a healthcare employee on **reducing the amount of their continuous weekly rest**. The amendment introduces the possibility of averaging the minimum continuous weekly rest within a settlement period of up to 4 consecutive weeks, in the total amount of at least 140 hours. However, this change is to be abolished on 1 July 2024.

**Only practice will tell**

The adopted changes aim to ensure working conditions in the healthcare sector that will allow for a better work-life balance for healthcare employees and at the same time improve accessibility of healthcare services. However, only practice will show their real impact.

# Changes in rules for granting de minimis aid from 1 January 2024

Last year saw the end of two important state aid regulations: the general regulation on small-scale aid (de minimis regulation) and the regulation on small-scale aid to providers of services of general economic interest (SGEI de minimis regulation). Both were replaced by new European Commission regulations with effect from 1 January 2024.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The most significant change is **an increase in the maximum limit of de minimis aid**. From this year, member states can grant de minimis aid of up to **EUR 300,000** to businesses, compared to the previous EUR 200,000. The de minimis aid limit for SGEI providers (e.g., providers of social, transport or waste management services) has also been increased to **EUR 750,000** from the previous EUR 500,000. The increase in the de minimis aid ceiling aims to take account of inflation over the period since the previous regulations entered into force.

Another major change has been made to the method of **calculating the three-year period** for which the de minimis limit is set: when calculating the three-year period, the three years preceding the date of granting the aid shall now be taken as a basis, not the current and two previous one-year accounting periods (fiscal years), as was previously the case.

The de minimis regulation also introduces **a new obligation for member states, as they now must ensure the establishment of a central register of de minimis aid**. Unlike under the previous regulation, which left it within the discretion of member states whether to use a central register, member states are now obliged to ensure that such a central register is established. The Czech Republic already uses a central register of small-scale (de minimis) aid, so this obligation is not new. However, the regulation has brought some new requirements, so adjustments will have to be made to the central register in the near future, including related legislative changes.

Both regulations are effective as of **1 January 2024** and are to be in force until **31 December 2030**; however, because of the transitional provisions, de minimis aid under the previous regulation versions can still be granted until 30 June 2024. The Czech Republic has already started work on amending the legislation and the central register, so that the new versions of the regulations may be applied as soon as possible.

# Overview of OP TAC calls for 2024

Under the Operational Programme Technology and Applications for Competitiveness, this year we can look forward to new calls in popular subsidy programmes such as Energy Savings, Applications, and Potential. Here is an overview of the calls for large enterprises according to the current schedule (eligible applicants for each call will be specified after its announcement).

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| Call title | Funds for allocation | Planned start of receipt of applications | Planned closure of receipt of applications |
|---|---|---|---|
| **Applications - Call II.** | **CZK 3 billion** | **1Q/2024** | **2Q/2024** |
| **Energy Savings – Call II.** | **CZK 5 billion** | **1Q/2024** | **to be specified** |
| Renewable Energy Sources - Wind Power Plants - Call II. | CZK 2 billion | 1Q/2024 | to be specified |
| **Potential - Call II.** | **CZK 1 billion** | **2Q/2024** | **3Q/2024** |
| Renewable Energy Sources - Biomass - Call I. | CZK 0.5 billion | 3Q/2024 | to be specified |
| **Infrastructure Services - Call II.** | **CZK 1 billion** | **3Q/2024** | **1Q/2025** |
| Energy Infrastructure - Power to Gas - Call I. | CZK 1 billion | 4Q/2024 | to be specified |
| **Sustainable Water Management - Call II.** | **to be specified** | **4Q/2024** | **to be specified** |

The call under **the Applications programme** offers support for industrial research and experimental development. Large enterprises with more than 3,000 employees within their corporate groups may also apply for support but only on the condition of their effective cooperation with an SME.

**The Energy Savings Programme** will support various energy-saving measures, such as reducing the energy consumption of buildings, using renewable energy sources, modernising electricity, gas, heat and cold distribution systems, using waste energy, reducing the energy consumption of production and technological processes, etc.

Support for the deployment of infrastructure for research, development, and innovation activities will be available under **the Potential programme**. Call I was only intended for large enterprises meeting the definition of a mid-cap company (a company with up to 3,000 employees within the corporate group), but the announced call currently does not contain any restrictions for large enterprises.

The call under **the Infrastructure Services programme** targets the establishment and development of research and innovation infrastructure. Another interesting call is the one under the Sustainable Water Management programme that will support measures leading to the reduction of water consumption in enterprises. You can read more about this programme in the October 2023 Tax and Legal Update.

All projects under the above-mentioned calls can be carried out in the whole territory of the Czech Republic except Prague.

We will keep you informed about further developments.

# Subsidies for installation of photovoltaics now available

Under the auspices of the State Environmental Fund of the Czech Republic, the Ministry of the Environment announced the long-awaited calls to apply for support of photovoltaic power plants from the Modernisation Fund. Two calls have been prepared for business entities including large enterprises.

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**RES+ No. 1/2024 call**

The call intends to provide support for the installation of photovoltaic power plants (PV plants) with a capacity from 50 kWp (in Prague from 10 kWp) up to 5 MWp. The generated electricity **should be consumed by the entity applying for the support**. Applications for support will be accepted from **1 March 2024** to **31 October 2024**. Funds for allocation amount to CZK 3 billion, of which CZK 0.5 billion will preferentially be allocated for projects implemented in the Karlovy Vary, Moravian-Silesian, and Ústí nad Labem regions. Projects must be carried out within three years from the issuance date of the decision to grant the subsidy.

**RES+ No. 2/2024 call**

The second call focuses on the installation of PV plants with a capacity of more than 1 MWp. Here, the generated electricity does not have to be consumed by the entity applying for the support. In addition to stand-alone PV projects with a single point of connection to the distribution/transmission grid, it will also be possible to support bundled PV projects involving several sub-projects with multiple connection points. Applications for support will be accepted from **15 May 2024** to **10 September 2024**. Funds for allocation amount to CZK 4 billion. Projects must be implemented within five years from the grant decision's issuance date.

**Both calls** are open to existing and future holders of electricity generation licences. In general, aid intensity has been limited to 50% of eligible costs. The calls also limit the maximum subsidy amount to **30% of eligible costs** in accordance with Article 41 GBER. In addition to the installation of the PV plant itself, support will also be granted for battery storage systems and electrolysers. Projects can be implemented throughout the entire territory of the Czech Republic.

# Obtain support to buy electric cars and charging stations

The Ministry of Industry and Trade together with the National Development Bank have prepared a call to participate in the first programme entitled Electromobility Guarantee within the National Recovery Plan.


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This call may help enterprises receive support for the acquisition of emission-free vehicles, namely conventional electric vehicles and hydrogen-powered vehicles. Specifically, this includes new cars and trucks up to 4.25 tonnes, while the purchase price of passenger cars must not exceed CZK 1.5 million excluding VAT. It will also be possible to receive support for the acquisition of non-public charging stations for a company's own use. The call is intended for small, medium-sized, and **large enterprises** and aims to increase the share of alternative fuel vehicles and at the same time support the construction of charging stations.

Applications for support will be accepted starting at the beginning of this year until **30 September 2025**. Funds for allocation amount to **CZK 1.95 billion**, of which CZK 1.65 billion will be for the acquisition of emission-free vehicles. The support will take the form of a bank guarantee for a commercial loan and a financial contribution per vehicle, with **the contribution not exceeding the guaranteed loan amount**. The financial contribution will be granted under a de minimis regime.

Applicants will be able to obtain a guarantee of up to 70% of the loan value, with a maximum guarantee period of 5 years and a minimum loan maturity period of 12 months.

**The guaranteed loan shall be limited as follows:**

- CZK 300 thousand up to CZK 1.5 million per one passenger car
- CZK 300 thousand to CZK 2.5 million per one truck
- up to CZK 400 thousand per charging station depending on its type.

**The financial contribution shall be limited as follows:**

- CZK 200 thousand per one passenger car
- CZK 300 thousand per for one truck
- CZK 150 thousand per one charging station.

It is possible to purchase a fleet of vehicles under one project (while respecting the de minimis limit). The number of charging stations must not exceed the number of vehicles being acquired.

Case law

# May tax administrators use traffic camera information on vehicle movements?

Following the Constitutional Court's intervention, the Supreme Administrative Court (SAC) again assessed whether an administrator may for the purposes of specific tax proceedings request records on the movement of a vehicle from the Police of the Czech Republic. The SAC had first concluded that the tax administrator's procedure had been acceptable. However, the Constitutional Court disagreed and overturned the SAC's decision. The second time around, the SAC then also concluded that the tax administrator did not have the right to use police camera footage against the taxpayer.

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A dispute arose between a taxpayer and a tax administrator over the right to deduct VAT on a purchased car. The tax administrator challenged the vehicle being used for business purposes as claimed by the taxpayer: the tax administrator's doubts were raised by an inaccurate logbook, which, furthermore, did not match up with the records of the vehicle's movements obtained by the tax administrator from the Police of the Czech Republic. The taxpayer, however, argued that the tax administrator was not allowed to request information from traffic cameras from the Czech Police and use it in the tax proceedings.

Initially, in the proceedings before the administrative court, the taxpayer was unsuccessful with this argumentation (we reported on the outcome of the court proceedings before the SAC here.) The turnaround came when the taxpayer filed a constitutional complaint against the SAC's judgment. The Constitutional Court upheld the complaint: according to the Constitutional Court, the SAC should have dealt with the question of whether the police were allowed to provide data on vehicle movements to tax administrators at their request. If so, according to the Constitutional Court, the SAC should have further assessed whether, in the given case, the state's interest in the correct assessment of tax (VAT deduction) outweighed the infringement on the taxpayer's fundamental rights, in particular the right to privacy and informational self-determination.

Although, according to the SAC, it is legally possible for the Police of the Czech Republic to provide tax administrators with data on the movement of vehicles, in the case at hand the tax administrator should not have requested them, as this was not necessary for the correct assessment of the tax. The fulfilment of the 'necessity' criterion is required by the Tax Procedure Code (in conjunction with the Police Act), which governs the exchange of information between the tax administration authorities and the Police of the Czech Republic. Since in the given case, the tax authorities could have challenged the right to deduct VAT in a less invasive way, they did not fulfil the 'necessity' criterion. The SAC thus annulled the tax administrator's decision. In the subsequent proceedings, the tax administrator will no longer be able to use the records of the movement of the taxpayer's vehicle.

Case law

# SAC on interpretation of double tax treaties

When interpreting the text of an international treaty, it is necessary to follow primarily the general rules of interpretation, i.e., use linguistic, systematic, and teleological methods. The commentaries on the OECD Model Tax Convention can only be used in a complementary manner to remove ambiguities.

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In December judgment 10 Afs 27/2023, the Supreme Administrative Court (SAC) dealt with the principles of interpretation of double tax treaties.

The subject of the dispute between the taxpayer and the tax administrator was whether a Korean company's income from the lease of an unmanned aircraft to a Czech company fell under Article 8 (profits from air and sea transport) or under Article 12 (royalties) of the treaty between the Czech Republic and South Korea. Should the former apply, the income would be taxed only in South Korea; should the latter apply, it might also be taxed in the Czech Republic by applying withholding tax on rental income.

The taxpayer believed that the income in question fell under Article 8, referring to an interpretation using the updated commentaries on the OECD Model Tax Convention on Income and on Capital. The tax administrator took a different view under which the text of the treaty at issue was sufficiently clear to apply Article 12, and there was no need to take into account the Model Tax Convention and its commentaries.

**The SAC agreed with the tax administrator, stating in particular the following:**

- When interpreting an international treaty, it is primarily necessary to take as a basis the general interpretation rules (i.e., use the linguistic, systematic, and teleological methods) and the text of the international treaty.
- Complementary means of interpretation (such as the commentaries on the OECD Model Tax Convention) can only be used to remove ambiguities.
- When using the commentaries on the OECD Model Tax Convention as an interpretation tool, the wording of the commentaries as applicable at the time of entering into the respective double tax treaty shall be given preference.
- Later commentaries may be applied as long as they do not contradict the original commentaries and merely clarify or elaborate on the original commentaries.
- Notably, the SAC in its argumentation referred to foreign judgments and the standpoints of foreign courts on the issue.

The judgment thus provides further guidance on the interpretation of double tax treaties and the application of the commentaries on the OECD Model Tax Convention.

# CJEU on application of tax rate for selected beverages

The VAT Directive does not prevent member states from applying a reduced rate to selected goods and services. One of the possible criteria for classifying goods into reduced rates is the customs nomenclature. Member states may use other classifications at their discretion; however, the products classified into different categories according to the chosen criteria must be different.

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In the light of judgments C-499/16 AZ and C-406/20 Phantasialand, the Court of Justice of the European Union (CJEU) dealt with the application of different VAT rates to the sale of beverages that are very similar at first sight. A Polish café operator applied a second reduced rate of VAT (5%) to the sale of hot chocolate made from milk and chocolate ingredients; the tax administrator, however, challenged this.

The tax administrator argued that a hot drink prepared for a customer upon their order is not the same supply as a drink sold in a retail outlet, to which the second reduced rate applies. The tax administrator thus argued that the drink in a café shall be subject to the 8% rate. The café operator appealed the decision on the grounds that the classification of beverages in annexes to the Polish VAT Act was unclear.

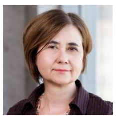
The CJEU pointed out that the VAT Directive does not prevent member states from applying reduced tax rates to selected goods and services. The customs nomenclature is one of the possible criteria for classifying goods into reduced rate categories. Member states may also use another classification at their discretion; however, products classified into different categories according to the chosen criteria must be different in the eyes of the average consumer. In the dispute at hand, the café operator argued that the drink sold in the café was fully interchangeable with a drink sold in a retail outlet and could therefore be classified under the Polish goods nomenclature in the category to which the second reduced rate of 5% applied.

The Court of Justice of the EU held that it was for the referring court to assess whether the beverages were interchangeable, i.e., had similar characteristics, main ingredients, consistency and appearance.

The court should also assess whether the two beverages satisfy **the same consumer needs** and whether the differences between them affect the average consumer's decision-making. The fact that the composition of a hot beverage intended for immediate consumption can be directly influenced by the customer, whereas the composition of a ready-to-drink beverage sold in a retail outlet is predetermined and the beverage is not intended for immediate consumption, may have a decisive influence on the customer's decision. Such consumer reasoning is sufficient to treat the beverages as not exactly the same and therefore subject to different VAT rates. Such treatment of the products does not violate the principle of fiscal neutrality.

# News in Brief, January 2024

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



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**DOMESTIC NEWS**

- An amendment to the Investment Incentives Act was published in the Collection of Laws on 29 December 2023 and will take effect on 13 January 2024. The biggest change concerns the approval of applications for investment incentives, which will once again return to the competence of the Ministry of Industry and Trade. The government will remain responsible for approving strategic investment projects. Details of the amendment and other legislative changes relating to investment incentives can be found here.
- Most of the provisions of the act amending certain laws in connection with the development of the financial market and the promotion of old-age security came into effect on 1 January 2024. The act also includes an amendment to the Income Tax Act providing for the unification of tax support for old-age savings (including a newly introduced long-term investment product), a new regulation of the taxation of employee shares, and a simplification of proving research and development allowances. Details can be found in this issue, here and here and here.
- A decree amending certain decrees implementing the Accounting Act in connection with the keeping of accounts in a currency other than the Czech currency, the top-up tax, and the definition of net turnover was published in the Collection of Laws on 29 December 2023. More information can be found here and here.
- The act on the top-up tax for large multinational corporate groups and large domestic corporate groups was published in the Collection of Laws on 29 December 2023. We reported on new developments in this area in more detail in this issue of the Tax and Legal Update.
- An amendment to the Value Added Tax Act published in the Collection of Laws on 29 December 2023 with effect from 1 January 2024 introduces a reporting obligation for payment service providers.
- A decree setting the amount of a lump-sum compensation for teleworking for 2024 and a decree changing the basic compensation rate for the use of road motor vehicles and meal allowances and determining the average fuel prices for the purpose of providing travel allowances for 2024 were published in the Collection of Laws on 29 December 2023.
- An amendment to the Energy Act containing new rules for community energy was published in the Collection of Laws on 31 December 2023. It also contains a partial amendment to the VAT Act regulating the provision of certain related taxable supplies with effect from 1 January 2024.
- On 21 December 2023, the Banking Board of the CNB reduced interest rates by 0.25 percentage points. Default interest shall be 15% (repo rate increased by 8 percentage points) for defaults arising from 1 July 2022 to 31 December 2023. For defaults arising after 1 January 2024, the repo rate shall be 6.75%, the default interest 14.75%.
- In December and January, the Ministry of Finance published several issues of the Financial Bulletin with the following content:
    - GFD Instruction-D-63 Determination of uniform exchange rates for the 2023 taxable period pursuant to Section 38 of Act No. 586/1992 Coll, on Income Taxes, as amended until 31 December 2023
    - notice on the treaty between the Czech Republic and the United Mexican States for the avoidance of double taxation and the prevention of tax evasion in the field of income and property taxes in

    connection with the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS
  - notice on the treaty between the Czech Republic and the Republic of Armenia for the avoidance of double taxation and the prevention of tax evasion in the field of income and property taxes in connection with the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS
  - tax deadlines (tax calendar) for 2024
  - changes to the Czech Accounting Standards for entities maintaining accounting records according to Decree No. 500/2002 Coll., 501/2002 Coll., 502/2002 Coll. and 504/2002 Coll. as of 1 January 2024
  - correct payment of tax to the customs authority
  - overview of types of taxes and parts thereof for which the tax authorities maintain personal tax accounts, to whose respective bank accounts payments from taxable entities are received (information obligation of the Ministry of Finance pursuant to Section 149(3) of Act No. 280/2009 Coll., the Tax Procedure Code, as amended)
  - correct payment of tax to the tax authority in 2024, including appendices.
- The Ministry of Industry and Trade has resolved the comments raised on an amendment to the Energy Act entitled LEX RES III and has submitted it to the government’s legislative council for approval. This amendment focuses on the modernisation of the electricity sector and includes major changes for electricity storage, aggregation, and flexibility. The amendment will also better protect customers.
- The concept of taxpayers' cash offices has been abolished effective from 1 January 2024. The rights and obligations that had been until now fulfilled by the taxpayer's cash offices has thus been transferred to their founders who will fulfil their obligations for the 2024 taxable period in their own name and with their own tax identification numbers. This measure will increase the effectiveness of oversight over tax compliance and reduce the unnecessary administrative burden for both taxpayers and tax authorities.
- An amendment to the Valuation Decree has been published in the Collection of Laws, and the Ministry of Finance published a land price map effective from 1 January 2024.

**FOREIGN NEWS**

- The European Commission has announced that five countries (Slovakia, Lithuania, Latvia, Estonia, Malta) have decided to postpone the application of the EU directive on minimum global tax on the grounds that there are no more than twelve ultimate parent entities of groups covered by the directive.
- The OECD Inclusive Framework envisages the completion of a multilateral agreement on Pillar 1 (reallocation of taxing rights to market countries) in March 2024 and its signing by the member states by the end of June 2024.

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