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News in Brief, May 2025

Editorial

Welcome to the May issue of the Tax and Legal Update, bringing you the latest tax and legal news. Nonetheless, we sometimes prefer to share some information in person with you, as we did at the recent Transfer Pricing Forum. Its attendance was record-breaking, with nearly 100 external participants. Representing the tax administration, Ludmila Klimešová reassured us at the conference's very beginning that unlike abroad, where every major corporate group undergoes a tax inspection almost by operation of law, in the Czech Republic, tax inspections are carried out only at selected entities. From the participants' reactions, I could see that they would take away several other inspiring insights both from the discussion on the setup of financial transactions within a corporate group and from the presented case law.

I thus recommend that you look closely at this issue's case law section, featuring several still ongoing matches in front of the courts that confirm the trends that we are increasingly often encountering. And, among other things, this issue of the Update will also explain why it is crucial to distinguish between the formal and factual commencement of a tax inspection.

May is also the month when to pay property tax. The tax authorities have already sent out requests for payment via post or data boxes. So now is the perfect time to do a little stock-take and check your corporate and personal obligations before the much-discussed increase in this tax.

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Taxes

New decree on calculating floor area for VAT purposes

The Ministry of Finance presented a draft of a new decree on the method of calculating floor area for VAT purposes. The decree responds to changes in legislation pertaining to real estate and construction, about to enter into force on 1 July 2025.

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As part of the 2024 consolidation package, some provisions of the VAT Act concerning real estate and construction/buildings have also been changed and will start to apply **from 1 July 2025**.

As for the method of calculating the floor area for VAT purposes, the act now refers to a decree of the Ministry of Finance. The decree will replace the GFD's information on the application of the VAT Act to immovable property after January 2016.

Situations where it is necessary to determine the floor area for VAT purposes:

1. Definition of a building for social housing
2. Correct determination of the VAT rate and tax base pursuant to Section 49(5) of the VAT Act
3. Assessment of the possibility of applying taxation to lease of immovable property

How floor area shall be calculated under the draft decree

The floor area shall be determined as the sum of floor areas of individual rooms and spaces within the perimeter structure of the building (the decree provides precise definitions of the terms room, space, and attic). For spaces, a perpendicular projection of a non-existent wall where the floor ends shall be used. The square area at a height of 1.2 m above floor level shall be included in the calculation: this should be borne in mind especially for attics or cellars, but also other rooms or spaces with a sloping ceiling. The determined floor area in m2 of each individual room or space shall then be mathematically rounded to two decimal places.

In the explanatory memorandum to the decree, the ministry also states what shall be counted as floor area and what not.

Room/space	Does it count as a floor area?
Balcony	No
Atrium	No (unless it meets the definition)
Arcade	No

Room/space	Does it count as a floor area?
Passage	No
Cellar	Yes
Underground garage	Yes
Doorstep	No
Open porch	No
Loggia	No
Staircase	No
Boiler room	No (unless part of a family house)
Engine room	No (unless part of a family house)
Elevator shaft	No (unless part of a family house)
Technical room	No (unless part of a family house)
Attic	Yes
Loft	Yes (1.2 m above floor level)
Built-in closet	Yes
Bathtub	Yes
Stove	Yes
Area under the staircase	Yes (unless it meets the definition of a room – not bricked/solid)
Columns and pillars inside the room	Yes
Columns and pillars – part of walls	No

Changes after 1 July 2025

The calculation of the floor area will now be unified and regulated by the VAT Act, or, more precisely the decree to which the act refers.

In practice, the main change is that the floor area will not include the area underneath any vertical load-bearing and non-load-bearing structures inside the living area, such as walls, chimneys and similar vertical structures.

Tips and tricks

Recovering VAT on bad debts in 2025

Effective from 1 January 2025, the amendment to the VAT Act introduced, among other things, changes concerning the correction of the tax base for bad debts. Let’s look at the changes in more detail.

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The first positive change is the shortening of the period after which in certain cases the tax base can be corrected. Specifically, for claims registered in enforcement proceedings, this period has now been reduced from the previous two years to one year after the first enforcement order has been issued. Also, for insolvency and enforcement proceedings that take longer, the tax base can be corrected after three years (rather than the original five years) after the end of the taxable period in which the original taxable supply took place.

The amendment also extends the scope of unrecoverable claims to those that have not been registered in insolvency or enforcement proceedings but have become unrecoverable due to the debtor's apparent lack of assets. In such cases, it is up to the creditor to prove the debtor's insolvency and defend the correction of the tax base before the tax administrator. A subtle change with a relatively significant impact is the abolition of the condition that the debtor must be a VAT payer. Even the creditor does not have to be a VAT payer at the time of the correction of the tax base (provided, of course, that they were a VAT payer at the time of the original transaction). The time limit for correcting the tax base remains unchanged (i.e. 3 years from the original transaction, not running during enforcement, insolvency or similar proceedings).

The most discussed change is the introduction of the possibility to correct the tax base for **"small claims"**. The creditor may make a correction to the tax base in the amount of the unreceived consideration if the following conditions are met:

1. The claim does not exceed CZK 10,000 including VAT, on individual basis.
2. The claim is at least 6 months overdue.
3. The creditor has requested the debtor to pay the claim, in writing, at least twice, and is able to prove this.
4. For a calendar year, the aggregate of claims against one debtor for which the creditor has applied the tax base correction does not exceed CZK 20,000 including VAT.

While the amendment has somewhat relaxed the rules concerning bad debts for creditors, it has brought some stricter measures for debtors. From the new year, debtors must keep records of received tax documents that they did not pay and that are overdue. If a received tax document is not paid (even partially) by the last day of the 6th calendar month following the month in which the tax document became due, the debtor will have to reduce the VAT deduction claimed (in proportion to the unpaid amount).

Let's illustrate this on an incoming invoice with a due date of 14 January 2025 that has not been paid by 31 July 2025. The debtor who has claimed a VAT deduction on the invoice shall make a correction to the deduction claimed

in their regular VAT return for the July 2025 taxable period on line 40 or 41, with a minus. If it is subsequently paid (fully or in part), the debtor may increase the deduction again, in the same manner – in the taxable period in which the subsequent (partial) settlement took place. Please note that this provision only applies to debtors. Creditors, on the other hand, do not have the right to correct the taxable amount solely based on an unpaid claim (exception for 'small claims').

Finally, please note that the General Financial Directorate has promised to update the 2019 information on bad debts but has so far not issued such an update. Based on the GFD's general information on the amendment to the VAT Act of 1 January 2025, we believe that all mentioned changes apply to transactions made after 1 January 2025. To supplies made before that date, the legislation in force at the time of the original supply should apply.

We will continue to monitor the situation and keep you informed of any developments.

Legal

Lawyers to verify electronic signatures

A new decree allowing lawyers (attorneys-at-law) to verify electronically signed documents should soon enter into force. This novelty will make life easier for (not only) entrepreneurs in business dealings.

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The decree supplements the amendment to the Act on Legal Profession of July 2022, which introduced the possibility for a lawyer to make a declaration of authenticity of a signature also on an electronically signed document. However, until now no implementing regulation stipulated in more detail how the authentication should be performed and recorded or any related technical issues. This possibility therefore remained unused in practice.

Under the decree, a lawyer can verify:

1. qualified and guaranteed electronic signatures (e.g. PostSignum, DocuSign) - in this case the lawyer shall check that the integrity of the document to which the signature is attached has not been violated (however, they do not have to check the certificate's trustworthiness or expiry)
2. simple electronic signatures (e.g. scans of a signature) if such a signature is visible directly in the document.

Requirements for electronic documents

The document on which the signature will be legalised can have a maximum size of 50 MB and must be in PDF/A format, a special type of PDF designed for the archiving of documents ensuring that the content of the document (including fonts, attachments, etc.) remains unchanged even after years. For the more modern PDF/A-3 version, which allows additional files to be added to the document, it is required that any attachments be in a format permitted for archiving documents under the decree on the filing service. At the same time, the document must not contain any malicious code that could compromise the lawyer's information systems or software.

Lawyers' procedure for legalisation

When verifying the electronic signature, lawyer shall attach to the document a clause declaring the authenticity of the signature, while the declaration shall also include an imprint of the document with the signature being legalised. The lawyer shall then affix their qualified electronic signature and qualified electronic time stamp to the document. The document with the declaration clause will then be forwarded to the client via a data box or data storage facility where the client can collect it.

The decree is to enter into force on **1 July 2025**. Starting this summer, lawyers should thus be able to verify electronic signatures; this should mainly bring time, administrative, and financial savings for entrepreneurs.

Legal

Increase in limits for small-scale public contracts and other significant changes in procurement

On 3 April 2025, an amendment to the Public Procurement Act entered into force increasing the limits for small-scale public procurement and bringing other significant changes that will affect "public tenders".

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The limits had not been adjusted since the Public Procurement Act entered into force in 2016, so their increase is a welcome change. The new limit for supplies and services is **CZK 3 million**, whereas previously it was CZK 2 million. For construction work, the limit has been increased to **CZK 9 million** compared to the previous CZK 6 million.

A seemingly insignificant change is that the Public Procurement Act now explicitly refers to directly applicable EU legislation. In practice, this will mean that the contracting authority shall also be obliged to select suppliers under EU rules, such as the Foreign Subsidies Regulation. This entails the supplier's notification obligation regarding foreign financial aid (subsidies) if the estimated value of the contract or framework agreement, excluding VAT, exceeds the threshold of EUR 250 million or if the tenderer (including its holding companies, subsidiaries or main subcontractors) has received a foreign subsidy from a third country exceeding EUR 4 million in total. Such notifications shall be made to the contracting authority, who then must forward them to the European Commission.

Equally important, if a supplier fails to report foreign subsidies or fails to comply with other obligations set out in the Foreign Subsidies Regulation, the contracting authority may exclude the supplier from the tender.

Following the wording of the Foreign Subsidies Regulation, some changes also concern preliminary reviews and in-depth investigations of foreign subsidies reported to the European Commission. Contracting authorities are obliged to inform tenderers of the initiation and completion of in-depth investigations by the European Commission, as the EC has up to 110 working days to close an in-depth investigation, which may significantly prolong the entire process. In this context, the tendering period has also been extended and now includes the period required for the preliminary review or in-depth investigation of reported foreign subsidies. Additionally, tendering suppliers now may withdraw from the procedure during the EC's in-depth investigation. Other changes include, for example, an increase in the limit for the obligation to publish contracts on the contracting authority's profile **from CZK 500,000** (excluding VAT) **to CZK 1 million** (excluding VAT).

While the amendment introduces new obligations, it mainly simplifies the administration for small-scale contracts below the new limit. For these contracts, contracting authorities may now follow their internal rules.

The amendment has been effective from **3 April 2025**, and the increased limits apply to proceedings commencing after that date. The changes to the limits will also apply to modifications of existing contracts, allowing that contracts that fall under the new limits be treated according to the contracting authority's internal rules.

Legal

Packaging Regulation brings stricter rules

The new Packaging and Packaging Waste Regulation is to fundamentally change how manufacturers package their products, and how consumers sort, return, and recycle packaging. It presents stricter restrictions on single-use plastics, stipulates that all packaging must be recyclable, and introduces mandatory deposit and return for PET bottles and cans.

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The regulation is the EU's response to the ever-increasing volume of packaging waste and the need to strengthen the circular economy. It aims to minimise packaging waste and reduce the use of plastic packaging as well as increase the reuse and recycling of packaging. The regulation unifies the legal regulation of packaging, which has until now been provided by EU directives and national legislation.

Restrictions on single-use plastics: From 2030, some single-use plastic packaging will be banned: for instance, for packaged fruit and vegetables up to 1.5 kg, food and drinks consumed in restaurants, single portions of condiments, as well as small cosmetic, hygiene, and toiletry products used in hotels. The very lightweight plastic bags for unwrapped food which shops often use for bakery products or produce will also disappear.

Recyclability and recycled content: For all packaging placed on the market from 2030, the Packaging Regulation will require it to have been designed as recyclable, as packaging as such is not covered by the Ecodesign Regulation. Furthermore, plastic packaging becomes subject to mandatory and gradually increasing quotas of the proportion of recycled material used in its production.

Minimising packaging size: By 2030, packaging manufacturers or importers must ensure that packaging has been designed to keep its weight and volume to the minimum necessary to ensure functionality. The regulation bans packaging that serves solely to increase the perceived volume of the product. Packaging must therefore not contain features such as double walls, false bottoms and extra layers, which should also partly eliminate the new 'shrinkflation' trend practiced by some retailers.

Mandatory deposits and returns: The regulation requires member states to introduce a deposit and return system for at least 90% (by weight) of PET bottles and cans by 2029. Although member states may apply for an exemption if they sort at least 80% (by weight) of the packaging concerned, this is rather unlikely to happen in the Czech Republic, in view of the deposit and return bill currently being debated by the chamber of deputies (although with a slim chance of being passed before the autumn elections), and the state of the deposit and return system for empty packaging in the Czech Republic.

Impact of the regulation on the Czech Republic

The regulation will have a significant impact on domestic packaging legislation, which has so far responded toindividual directives and set out obligations for entities placing packaging on the market or into circulation. In fact, the regulation will largely replace the current Packaging Act due to its priority of application. Moreover, the

legislators will have to bring domestic legislation in line with the new regulation.

The Packaging Regulation is already in force and will apply from August 2026. Packaging manufacturers, suppliers and purchasers must adapt their production processes and the way they label their packaging or sell their products to other businesses or end consumers. Starting next year, failure to do so could lead to strict penalties, including a ban on being able to place products on the market.

EU amends regulation on additional customs duties on US imports

The EU authorities have published in the Official Journal an amendment to the Regulation on additional customs duties on the imports of certain products originating in the United States of America. This is in response to the excessively high administrative costs of collecting the customs duties, as these are economically negligible.

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Regulation (EU) 2025/783 of the European Parliament and of the Council aims to adjust the additional customs duties on the imports of certain products from the United States. It amends previous Regulation 2018/196, which was adopted in response to the United States' Continued Dumping and Subsidy Offset Act being incompatible with the World Trade Organisation (WTO) agreements. The United States have been unable to bring their legislation into line with these agreements, hence the European Union imposed additional duties at **4.3 per cent** on the imports of the products concerned.

In accordance with the WTO's authorisation to suspend the application of tariff concessions to the US, the Commission is to adjust the scope of these suspensions annually, according to the level of benefit elimination or impairment that the United States' Continued Dumping and Subsidy Offset Act caused to the EU. In recent years, according to statistical data, the benefit elimination level has fallen to almost zero. The collection of additional import duties would thus be virtually trade-neutral while unreasonably administratively demanding, therefore the rate of the additional customs duty was set by the 2024 regulation at zero percent.

The regulation introduces a new **de minimis threshold of $30,000** below which the Commission does not need to adjust the scope of duty suspensions, as their impact is economically negligible. The threshold applies to the amounts related to anti-dumping and subsidy-offsetting customs duties paid on imports from the EU under the now repealed United States' Continued Dumping and Subsidy Offset Act.

The European authorities are taking this step to reduce the administrative burden and use the capacity more appropriately. The changes to the legislation entered into force upon publication in the Official Journal of the EU on **22 April 2025**.

Travellers to US facing increased border controls

President Donald Trump's January executive orders signalled that US immigration policy and its approach to arriving foreigners will tighten. The practical consequences have not been long in coming. Travellers must prepare for more thorough checks on arrival in the United States.

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Foreign nationals entering the US now face increased scrutiny from US immigration and customs authorities. There has also been a significant increase in the number of cases where US Customs and Border Protection (CBP) has detained selected travellers and searched their electronic devices, also checking their social media activity. This trend responds to President Trump's executive order of 20 January 2025, which to better protect the border directs federal authorities to more rigorously screen aliens seeking to enter the US. The order also mentions a possible ban on entry for citizens of countries where US authorities deem the security screening of citizens to be inadequate.

The change in the approach to border checks applies to all travellers to the US, including those from countries that have visa-free contact with the US and who are travelling under ESTA, valid visa holders, and permanent residents. In fact, CBP officials have very broad authority in conducting these checks - including seizing and searching any electronic devices that the travellers may carry with them. If objectionable content is identified or if the foreigner fails to comply with the request to surrender the device, CPB have the authority to deny their entry or even temporarily detain the foreigner until they are allowed to return to the country from which they arrived. If this happens, there are no legal means of overturning the authorities' decision.

Denial of entry to the US may also have negative consequences for future travel or visa applications. For business travel, problems at entry checks may also affect the reputation of the employer with US authorities.

We therefore recommend considering the number of devices that travellers bring with them, assessing the data that these devices contain, and taking a cautious approach to the employee's or employer's social media activity.

Increasing competitiveness of EU companies: faster depreciation and tax breaks

The European Commission has recently presented its Clean Industrial Deal, a new initiative aiming to boost competitiveness of EU businesses and promote decarbonisation. Under the initiative, a new state aid framework is to be established allowing EU member states to support investments in clean technologies through new tax relief schemes.

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The initiative presents a comprehensive roadmap to developing competitive and decarbonised industries in the EU. The aim is to increase sustainable and resilient manufacturing in Europe, with a particular focus on energy-intensive industries and the promotion of clean technologies. These are seen as a key factor for industrial transformation, competitiveness, and decarbonisation.

The initiative foresees the creation of a new state aid framework that would allow EU member states to encourage investments in clean technologies through **shorter depreciation periods** for key **technologies** and **new tax reliefs**.

Corporate tax policy is key to achieving these objectives. **Shorter depreciation periods** will allow businesses to faster cover the high initial cost of investments in critical technologies facilitating the transition to a low-carbon economy. The new framework would also allow member states to introduce **tax relief schemes** for companies operating in sectors that are strategic for green transformation, which should lead to increased investment in green technologies. A recommendation to introduce new tax relief schemes is expected in the second quarter of this year.

As part of the initiative, the European Commission has also presented other planned measures, such as ensuring affordable energy for industry, better access to critical raw materials and resources, and forging new trade and investment partnerships with a focus on sustainability.

The EC is expected to adopt a new state aid framework by June 2025, building on the current Temporary Crisis and Transition Framework and allowing separate support schemes for specific technologies such as wind and solar, and for the production of other clean technologies such as batteries and renewable technologies.

Subsidies for research and innovation infrastructure

The Ministry of Industry and Trade has announced a second call in the Infrastructure Services programme under the Operational Programme Technology and Applications for Competitiveness. The call is aimed at supporting the development of research and innovation (R&I) infrastructure of Czech businesses.

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Applications for support will be accepted from 5 May 2025 to 17 October 2025 and applicants can be businesses of all sizes, including large enterprises. The funds for allocation have been set at CZK 1.6 billion, with CZK 1 billion for transition regions (Central Bohemia, South-West, South-East) and CZK 0.6 billion for less developed regions (North-West, North-East, Moravia-Silesia and Central Moravia). Two activities can be supported: the extension of premises and modernisation of open R&I infrastructure and the provision of services to innovative enterprises (small and medium-sized).

Extension of premises and modernisation of open R&I infrastructure

Within this activity, it is possible to support investments in fixed assets such as research equipment, technology, buildings, land, as well as investments in intangible assets or project documentation costs. The aid intensity is set at 25-50% of eligible expenses, depending on whether the enterprise will extend or build research infrastructure or testing and experimentation infrastructure. The maximum amount of subsidy has been limited to CZK 150 million. Crucially, it must be an open R&I infrastructure, with at least 30% of its annual capacity allocated to small and medium-sized enterprises (SMEs).

Along with the grant application, the applicant must also provide an analysis of absorption capacity and demonstrate SMEs' needs. At the same time, the R&I infrastructure must be linked to at least one research organisation.

Provision of services to innovative enterprises - SMEs

The aim of this activity is to provide incubated and other innovative SMEs with specialised consultancy services. The support is meant mainly for operating expenses, e.g. personnel expenses, purchase of specialised external services, cost of raw materials and investment in tangible and intangible fixed assets up to a maximum of CZK 5 million. The aid intensity is 75% of eligible expenses, with the maximum subsidy amount limited to CZK 30 million.

Only one project can be submitted for each activity, which must be implemented in the Czech Republic outside

Prague and completed by 31 December 2028 at the latest.

If you are interested, we will be happy to check what support possibilities your project may have under this programme.

Case law

Disguised tax inspection: SAC on the point of time of its actual commencement

The initiation of a tax inspection does not always have to be connected with a formal notification by the tax administrator, as legislation assumes. In its recent judgment, the Supreme Administrative Court (SAC) noted that a tax inspection has already been initiated once the tax administrator starts verifying facts decisive for the correct determination of tax, even in the context of their fact-finding activity.

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The correct determination of the point of time of tax inspection's initiation is crucial in tax proceedings. Although traditionally associated with a formal notification by the tax administrator, in practice, we increasingly often see situations where acts taken within the tax administrator's fact-finding activity that precede the formal initiation of a tax inspection exceed the legal limits and fulfil the characteristics of a factual implementation of the tax inspection. Notably, a tax administrator's fact-finding activity is intended solely to gather evidence and information about the taxpayer; on the other hand, a tax inspection is the tax administrator's procedure to verify the facts.

The initiation of a tax inspection has significant legal consequences, as it affects the running of the period of time for assessing tax, which commences (again) from the moment of initiation of the tax inspection, irrespective of whether the tax inspection was initiated formally (by notification) or just factually by the tax administrator's activity. The taxpayer may not even be aware of a tax inspection being factually conducted and is only informed of this once the tax inspection is formally initiated.

When calculating the period of time for assessing tax, the tax administrator takes as a starting point the time of the formal notification of the commencement of the tax inspection. However, this may make it significantly longer compared to if calculated starting from the factual commencement of the tax inspection. The distinction between the formal and actual commencement of a tax inspection is thus not a mere formalistic nuance. It may have an impact on the tax administrator's ability to assess tax at the end of the tax inspection, or even to carry out a formally initiated tax inspection at all: if the formal initiation of a tax inspection only follows a considerable time after the actual commencement, this 'second' tax inspection may even be regarded as a repeated inspection, which, however, a tax administrator may only initiate under certain circumstances.

Recent case law: the line between fact-finding activities and a factual tax inspection

The Supreme Administrative Court has recently dealt with the excess of powers in the context of fact-finding activities, i.e. the factual commencement of a tax inspection and its impact on the tax assessment, in judgment No. 6 Afs 169/2023-32 of 10 April 2025. The taxpayer argued that the tax was assessed after the end of the period for assessing tax, as that period had started to run (again) already at the time of the factual commencement of the

inspection, within the fact-finding activity.

The SAC noted that the content of the fact-finding activity is the gathering of information and mapping of the terrain, without the possibility of evaluating the information or verifying it as evidence. Once the tax administrator starts verifying and ascertaining the tax base or other circumstances decisive for the correct determination of the tax, they are already in the tax inspection phase, with all its consequences for the running of the period of time for assessing tax. The SAC also held that in the case at hand, gathering information for the purpose of responding to an international request for information by a foreign tax authority does not constitute the initiation of a tax inspection; however, the subsequent international request for information addressed to the foreign tax authority aimed at obtaining more details on the facts established in the previous step must already be regarded as a factual initiation of a tax inspection. For the above reasons, the Supreme Administrative Court upheld the taxpayer's appeal, annulled the judgment of the Regional Court in Prague, returned the case to it for further proceedings.

Practical implications: impact on limitation periods and tax assessment

It follows from the conclusions of the Supreme Administrative Court that once the tax administrator exceeds the statutory scope of the fact-finding activity, they factually initiate a tax inspection. This point of time is decisive for the running of the (limitation) period for assessing the tax, irrespective of whether a formal notification of the tax inspection is subsequently made. Practice shows that such situations are not at all exceptional, especially with the increasing frequency of informal communication between taxpayers and tax administrators. In tax litigations, we have repeatedly come across cases where the tax administrator de facto initiated a tax inspection prior to its formal notification, which resulted in the tax being assessed unlawfully at the end of the tax inspection.

If you believe that something like that may have happened to you, please do not hesitate to contact us. We will be happy to assess the situation and suggest the most appropriate procedural defence.

Case law

SAC confirms right to interest on wrongly assessed customs duties

In its recent judgment, the Supreme Administrative Court (SAC) has reconsidered its existing case law and granted a taxpayer the right to interest on wrongly assessed customs duty. The SAC emphasised that this right is guaranteed by EU law and that national legislation cannot simply rule it out.

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The case concerned a company for whom a customs debt was assessed in 2016. Subsequently, the appellate authority reversed the decision, and the customs administrator returned the amount without any interest on late payment under the Tax Procedure Code, as the Customs Act expressly excludes the application of the provisions on interest on incorrectly assessed tax. This approach had been previously confirmed by the Supreme Administrative Court (SAC) in judgment *No 4 Afs 219/2022-68*.

The turnaround in the interpretation came with the judgement of the Court of Justice of the EU (CJEU) in the Gräfendorfer case - a landmark decision stating that EU law not only gives an individual the right to the reimbursement of any amount collected from them in breach of EU law, but also the right to interest compensating them for their limited ability to use the funds. This judgment was followed by the Constitutional Court which, in judgement *No. I. ÚS 2293/23* declared the earlier decision of the Supreme Administrative Court unconstitutional.

Based on these conclusions, the Supreme Administrative Court has reconsidered its previous interpretation and in its current judgment explicitly stated that **the application of the Tax Procedure Code cannot be simply ruled out where it concerns a refund of wrongly assessed customs duties**. The decisive factor is the reason why the refund was made - if customs duty was assessed in breach of EU law, the taxpayer shall be entitled to appropriate interest already in the tax proceedings. In this respect, the SAC also held that the application of the Act on Liability for Damage Caused in the Exercise of Public Authority is not appropriate in such cases, as it is intended to compensate for damage, not to pay interest. Also, its application involves a considerable legal uncertainty, procedural complexity and burden of proof. In the SAC's view, such a procedure does not meet the requirements of EU law for effective and fair legal protection.

The judgment significantly strengthens the legal protection of taxpayers who in similar cases may demand interest directly under the Tax Procedure Code. At the same time, it clearly confirms the obligation of national authorities to ensure the full and effective application of EU law also in the customs area.

Case law

SAC on tax deductibility of provisions for repairs of tangible assets

In its recent judgment, the Supreme Administrative Court dealt with the creation of provisions for repairs of tangible assets under the Reserves Act. The key issue was the (non-) fulfilment of the condition that provisions may only be created for individual tangible assets.

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The tax administrator held that the taxpayer had breached the condition for the creation of provisions for repairs of tangible assets by not creating them individually for each asset but cumulatively for several assets. Specifically, the taxpayer created three provisions, each linked to repairs of several asset items recorded separately (e.g. roads, fences, and tennis courts). When inspecting the budgets, the tax administrator also found that provisions had also been created for repairs of assets recorded on other inventory cards other than those to which the individual provisions had been allocated.

The taxpayer argued that the tax administrator was too formalistic in demanding that one provision be allocated to one asset item, and that the regional court wrongly confused the legal condition for the creation of provisions with their recording in documents, which only took place after the creation of the provisions in question. However, the Supreme Administrative Court (SAC), before whom the case (*7 Afs 79/2024 - 44*) eventually appeared, held that provision inventory cards were not documents which are only created after the creation of provisions. In fact, it is the proper recording of the provision in the accounting, including the inventory cards, whereby the provisions are actually created.

The Supreme Administrative Court therefore upheld the regional court's decision that provisions must be properly recorded in a company's accounting and created for each asset separately. The SAC thus rejected the taxpayer's argument of formalism as well as other arguments, such as the tax administrator's failure to take evidence and witness testimonies. Indeed, such evidence could not have changed the fact that the provisions had not been properly and lawfully created. The SAC also found no fault with the tax administrator's procedure in assessing additional tax.

The judgment yet again underlines the importance of proper accounting and compliance with statutory requirements in the creation of provisions. It is essential that companies pay attention to detail and ensure that their accounting procedures are in line with applicable regulations.

Case law

CJEU: Assessment of conditions for dividend exemption on subsidiary's part

The Court of Justice of the EU ruled in a dispute (C-228/24) between a Lithuanian company and the tax authorities regarding the application of the abuse of rights concept under Directive 2011/96/EU on the taxation of parent companies and subsidiaries (P/S Directive).

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In the case at hand, the tax administrator assessed tax for a Lithuanian parent company on dividends received from its UK-based subsidiary in 2018 and 2019. The Lithuanian tax authority believed that the subsidiary was a non-genuine arrangement and denied the benefits of the P/S Directive, arguing that in the years in question, the subsidiary did not have human resources in the United Kingdom corresponding to its scope of business, nor did it have its own business premises or tangible assets.

The CJEU held that the benefits of the P/S Directive can be denied at the level of the parent company in the situation under review if all the elements constituting an abuse of rights have been fulfilled.

In this respect, the CJEU further held that it is not possible to only consider the situation at the time when the dividend was paid if there were real economic reasons for the existence of the subsidiary before that date. The CJEU also held that the fact that a subsidiary is a conduit company is not in itself sufficient to conclude that a tax advantage was obtained contrary to the P/S Directive (and that therefore the abuse of rights concept may be applied). The tax advantage cannot be interpreted solely as an advantage resulting from the P/S Directive, but the overall tax benefits of the set-up must be assessed.

The CJEU subsequently left it up to the local court to determine whether there had indeed been an abuse of rights in the present case.

The judgment is particularly interesting because it does not examine the economic substance on the part of the parent company, as is usual, but on the part of the subsidiary. The judgment thus confirms the current trend in which tax authorities focus on the human and material resources of companies and their economic substance.

What is also positive about it is the confirmation that to apply the abuse of tax law doctrine, the tax administrator must identify the tax advantage obtained and consider the historical reasons for setting up the structure in question. Merely stating that a company does not have economic substance at the time of the dividend payment is not sufficient.

Case law

CJEU Advocate General: transfer pricing and VAT treatment

In his opinion (C-726/23), Advocate General Jean Richard de la Tour stated that remuneration for intra-group services calculated using the transactional net margin method as recommended by the OECD should be regarded as consideration for services rendered and is therefore subject to VAT.

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Romanian SC Arcomet Towercranes SRL buys cranes and sells or rents them to its customers. Its Belgium-based parent company, Arcomet Service NV Belgique, finds suppliers for its subsidiaries and negotiates contractual terms with these suppliers. Purchase and rental contracts are concluded directly by the subsidiary with its suppliers and customers.

Based on a transfer pricing study, an operating margin was set between the parent company and its subsidiaries ranging from 0.71% to 2.74%. Should a subsidiary deviate from that margin, one of the parties would issue an equalisation invoice.

Between 2011 and 2013, the Romanian subsidiary generated higher profits. Therefore, the parent company issued equalisation invoices, which the Romanian company reported as the receipt of services from another member state under the reverse charge mechanism. The Romanian tax administration assessed the situation to the effect that the subsidiary had failed to prove that the services were linked to its economic activity. It thus had to pay output VAT, but was denied the right to deduct VAT.

According to the Advocate General, transfer pricing payments must be assessed on an individual basis. However, in the present case it was clear from the wording of the contract that the parent company was providing the subsidiary with supplies, as it assumed most of the commercial responsibilities, such as strategy and planning, negotiating (framework) contracts with third-party suppliers, and others. At the same time, the remuneration for the supplies was set.

According to the Advocate General, in the present case there was a direct link between the supplied services and the consideration, as the amount of the remuneration for the supplies provided by the parent company was set from the time of the conclusion of that contract, and the conditions of the remuneration were determined by precise criteria and as such were not random. The subsidiary issuing an equalisation invoice in the event of a margin lower than the set range cannot call that conclusion into question.

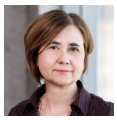
The Advocate General thus concluded that the price settlement was subject to VAT. According to the Advocate General, to prove the right to deduct VAT on the price adjustment received, the tax administration may also require evidence other than tax documents, in accordance with the principle of proportionality.

The Advocate General only opined on intra-EU transactions. Should the CJEU accept the proposed conclusions, the VAT treatment of price adjustments within the EU will be partially clarified. However, please note that even the previous case law does not clarify the impact of a price/transfer pricing adjustment for imports of goods.

In brief

News in Brief, May 2025

Last month's tax and legal news in one or two sentences.



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Domestic Briefs

- The financial administration has issued information explaining the rules for setting the CZK 50,000 exemption limit for winnings, introduced from 2024. For lotteries and raffles, the limit shall be set separately for each prize, and the amount shall be subject to a 15% withholding tax applied directly by the payer of tax; for non-cash winnings, the grossing-up shall be applied when calculating the amount of the withholding tax. For other games, the taxpayer (the winner) first determines the annual difference between the total deposits and winnings, separately for each type of game for the year; if this difference exceeds CZK 50,000, the winner must tax the entire income in their tax return.

- The chamber of deputies has started debating the bill on single monthly employer reporting (in Czech Jednotné měsíční hlášení zaměstnavatelů or JMHZ) and related laws.

- The chamber of deputies has approved a bill amending certain laws in the field of tax administration and the competence of the Customs Administration of the Czech Republic, Act No. 16/1993 Coll., on Road Tax, as amended, and Act No. 69/2010 Coll., on the ownership of Prague-Ruzyně Airport. Its focus is the reform of the customs administration, although the bill also contains an amendment to the Tax Procedure Code unrelated to customs issues.

- In April, the following notices and decrees were published in the Collection of Laws, among others:
    - Communication of the Ministry of Foreign Affairs on the negotiation of the Treaty between the Czech Republic and Montenegro on the avoidance of double taxation in the field of income taxes and on the prevention of tax evasion and tax avoidance (No. 94/2025). The treaty is effective as of 30 January 2025.
    - Communication of the Ministry of Labour and Social Affairs No. 96/2025 Coll. on the average gross annual wage in the Czech Republic for 2024 for the purposes of issuing blue cards pursuant to Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic.
    - Decree No. 118/2025 Coll., amending Decree No. 350/2021 Coll., on the implementation of certain provisions of the Act on Childcare Services in Children's Groups.
    - Amendment No. 119/2025 Coll., to the Czech Television Act and the Czech Radio Act. The amendment increases the licence fees with effect from 1 May. It brings two main changes for companies, abolishing the obligation for companies to pay fees for each device capable of reception and introducing lump-sum payments according to the number of employees.
    - Amendment to the Labour Code enters into force on 1 June under No. 120/2025.
    - Government Decree No. 122/2025 Coll. amending Government Decree No. 590/2006 Coll. establishing the scope and extent of other important personal obstacles to work.

International Briefs

- Council Directive (EU) 2025/872 of 14 April 2025 amending Directive 2011/16/EU on administrative cooperation in the field of taxation has been published in the EU Official Journal. The new directive (DAC6) provides for the framework for the exchange of top-up tax information returns and introduces a uniform format for this return. Member states should implement it by 31 December 2025.

- The OECD has published an updated central register of Pillar 2 top-up taxes. Guernsey and Spain have now been granted the qualifying jurisdiction status for the Income Inclusion Rule (IIR) and Domestic Minimum Top-Up Tax (DMTT). These jurisdictions also qualify as safe harbours under the Qualified DMTT (QDMTT).

- The OECD has published an update of the Investment Tax Incentives Database 2024, which provides an overview of 667 tax incentives in 70 economies around the world. The most common form of incentive is a tax exemption, followed by tax deductions (usually at the tax base level) and reduced tax rates. Tax credits are used less frequently, and only one of the 48 tax credits is refundable (refundability allows direct cash benefits when firms are unable to fully utilise tax benefits, for instance due to losses).

- The VAT Expert Group has discussed the main aspects of the modernisation of the VAT system in the EU and the challenges related to the implementation of the VAT in Digital Age (ViDA) Directive. It also presented a study containing recommendations for streamlining the current VAT framework and adapting it to future market needs. The group also discussed the impact of ViDA implementation on tourism, the provision of financial services and other services subject to special rules. Regarding the platform economy and single VAT registration, working papers were presented, including a proposed timetable. An amendment to the IOSS scheme to ensure the correct use and verification of IOSS identification numbers on importation was also discussed.

- The KPMG EU Tax Centre regularly monitors changes in direct taxes in the EU and internationally. For a complete overview of the latest news and the possibility to subscribe, please click here.

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