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Editorial

There is growing talk about the need to strengthen the defence industry, also as a result of the unpredictable behaviour of the current US administration. To a large extent, the defence industry is also becoming an industry requiring solid legal skills. It is no longer enough to simply build technology, but it is increasingly important to fulfil all compliance obligations. Due to the growing complexity of applicable regulations, what used to be of marginal interest to manufacturers is now as important as their technological skills.

One recent regulatory example among many is the new ammunition law, which came into force at the beginning of the year and is now separate from the Firearms and Ammunition Act. Licensed companies are facing stricter requirements for internal processes such as the electronic records of ammunition and its movement, transport reporting and security obligations, increased safety and storage standards, and employee training. Some of these obligations must be met as early as June this year.

The February issue of the Tax and Legal Update brings you more than just a "to do" list. We also discuss when a creditor can refuse debt repayment by a third party, the latest developments in global minimum tax (Pillar 2), and two long-awaited notices from the General Financial Directorate regarding the amendment to the VAT Act.



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Taxes

GFD's long-awaited information on application of VAT to immovable assets

The General Financial Directorate (GFD) has published information on the application of VAT to immovable assets from 1 July 2025. The methodology responds to last year's extensive amendment to the VAT Act and describes the key changes to the previous legislation from a practical viewpoint.



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The biggest impact of the legislation effective from 1 July 2025 lies in new tax exemption rules upon the sale of real estate and in the classification of land as building land.

The VAT Act now distinguishes between the first supply of selected real estate and its subsequent supply. The selected real estate is defined as a structure permanently attached to the land and a plot of land that forms a functional unit with this structure. The GFD's information specifies in more detail the parameters of structures permanently attached to the land (including their dismantling and relocation) and also covers increasingly popular mobile homes.

Attention is drawn to the functional unit the purpose of which is to respect the indivisibility of the building and the land adjacent to it, or the land that serves to operate the building, fulfil its function or is used together with it. As an example of a functional unit the GFD's information provides a situation where the owner of the land sells the land to the owner of the building located on that land, or a situation where a tripartite agreement results in the transfer of the building and the land from different entities to a single buyer. From a VAT perspective, the tax treatment of the sale of such land is the same as the tax treatment of the sale of the relevant building with which it forms a functional unit. Conversely, where the land and the building have the same owner, the concept of principal and ancillary supply is applied as a primary rule, rather than assessing whether the parameters of a functional unit have been met.

The first supply of the selected real estate effected within 23 months of its completion or substantial change is taxable. Any subsequent transfer is exempt from VAT regardless of the time interval. The same applies to substantial changes to the building. Conversely, until the selected immovable asset is considered completed, each individual supply is taxable, not just the first supply.

When selling land, it is essential to first correctly determine whether the land forms a functional unit with a building, which may not be obvious in some cases. The GFD's information refers to a situation where the foundations for a future building are located on a plot of land. Here, the stage to which the building is constructed will be assessed, e.g., a mere foundation slab is not considered a structure firmly attached to the land for VAT purposes. A special case is the sale of land with a building intended for demolition where a number of other factors must be considered.

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As before, the supply of land (not forming a functional unit with a building) is exempt from VAT, with the exception of the supply of building land.

The law now explicitly states that building land is considered to be land that can be built on based on zoning documentation or building authority's decision of the (buildable land) and land on which (or in the vicinity of which) work is being carried out with a view to construction – e.g., utility network connections or access roads are being built (land designated for building). It is therefore by no means limited to land with a building permit: it is sufficient that there is a realistic intention to build, supported by steps taken with the authorities or actual work.

However, the GFD's information further confirms that unlike the legislation in force until 30 June 2025, the decisive factor for assessing land is its nature at the time of supply. The mere submission of a proposal to amend the zoning plan is not decisive from a VAT treatment perspective.

Given the scope of the GFD's information and the importance of this issue, we will also address this topic in the next issue of the Tax and Legal Update.

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Taxes

GFD's information on claiming VAT deductions

In connection with the amendment to the VAT Act, at the turn of the year the General Financial Directorate (GFD) issued its Information on Changes in Claiming VAT Deductions from 1 January 2025, which explains how to claim partial VAT deductions and summarises other changes to VAT deductions.



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In the first section of its information, the GFD clarifies interpretation ambiguities concerning transactions carried out under the cross-border scheme for small businesses that are exempt from VAT without the right to deduct. The GFD confirms that where the payer is registered for this scheme in the EU and uses the received taxable supplies partly for these purposes, attention must be paid to the reduction of the right to deduct. At the same time, supplies made under this scheme are included in the calculation of the reduction coefficient.

The GFD's information also deals with changes to the acquisition of selected passenger cars, the deadline for claiming VAT deductions, the right to a VAT deduction when registering as a VAT payer and, lastly, the requirement for more detailed information on fixed assets kept in the records for VAT purposes. The information briefly summarises these changes and, in some cases, illustrates them with examples.

However, the most significant changes concern claiming the right to a VAT deduction in a partial amount (i.e. when used for mixed purposes) when acquiring a fixed asset and any adjustments/settlements of the deduction in the year a particular asset is put into use (if put into use on 1 January 2025 or later). These changes are discussed in more detail below. The GFD's information also provides several examples. For the sake of completeness, we point out that adjustments to the right to deduct in the years following the year in which an asset is put into use are subject to different rules and are not covered by this information (as there have been no substantive changes in this area under the amendment).

A. Right to a VAT deduction in a proportionate amount (i.e. use for both economic and non-economic activities)

The amendment differentiates the rules for adjusting the VAT deduction claimed using a qualified estimate, depending on whether the received supply becomes part of fixed assets. The adjustment is generally made in the VAT return for the last taxable period of the year of acquisition (putting the asset into use) based on the actual proportion of use (economic *vs* non-economic activities).

If the supply becomes part of fixed assets, the payer is always obliged to make an adjustment of the deduction in the year the asset is put into use regardless of whether it is a reduction or an increase in the right to deduct or how

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much the qualified estimate differs from the actual use. For fixed assets, the previously applied tolerance limit of ten percentage points in the year of acquisition of the asset has been abolished by the amendment.

For other supplies, the rules for adjusting the claimed deduction remain unchanged: no adjustment is made if the qualified estimate does not differ from the actual use by more than ten percentage points. Further, making an adjustment that increases the deduction is only the payer's right, not an obligation.

B. Right to a VAT deduction in a reduced amount (i.e. use for VAT-exempt supplies without the right to VAT deduction in combination with supplies with the right to VAT deduction)

For the right to a VAT deduction in a reduced amount, in the VAT return for the last taxable period it is necessary to perform a settlement based on the settlement coefficient for the year in which the asset was put into use. As summarised briefly in the GFD's information, this settlement is still subject to the same rules: adjustments are mandatory for both increases and decreases in VAT deductions, with no tolerance limit.

C. Abolition of specific category of internally produced fixed assets

The amendment abolishes the concept of internally produced fixed assets (i.e., the initial claiming of the right to a full VAT deduction upon acquisition, followed by the fiction of self-delivery and the claiming of the right to a partial VAT deduction based on the manner in which the asset is used). The aim of this change is to unify the right to a VAT deduction for all received supplies that become part of a single fixed asset (or for consideration paid for them). This base level (i.e. the right to deduct ratio in the year of acquisition) is then used in subsequent years for the purposes of adjusting the claimed deduction.

Since the acquisition of internally produced assets often takes several years, the new regulation becomes gradually effective under the transitional provisions, and the method of applying VAT depends on the date the asset is put into use:

a) The new rules will apply only to assets whose acquisition began on or after 1 January 2025.

b) Where internally produced fixed assets began to be acquired earlier than 1 January 2025 and were put into use in the course of 2025, the regulation in effect until 31 December 2024 will apply (i.e. the right to full deduction, self-delivery, the right to partial deduction according to actual use).

c) Where internally produced fixed assets began to be acquired earlier than 1 January 2025 and will be put into use in 2026 or later, payers may choose which legal regulation to apply, i.e. whether to proceed according to options a) or b).

As regards the new rules under option a), during the acquisition of internally produced fixed assets taxpayers shall claim the right to a partial deduction (i.e. a deduction in a reduced or proportionate amount or a combination of both) according to the standard rules. In the year in which the relevant asset is put into use, an adjustment or settlement of all deductions claimed in the past (whether full – claimed before 2025, or partial – claimed from 2025 onwards) needs to be made in the VAT return for the last taxable period. The claimed deduction will thus be "levelled" to the same adjustment or settlement coefficient (or a combination of both) in the year the asset is put into use.

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Ukrainian employees in 2026: special long-term residence and new rules for occupational health examinations

Similar to last year, the government will invoke the application of Lex Ukraine and launch a process allowing temporary protection holders to register for special long-term residence. Furthermore, from 1 January 2026, new conditions for occupational health examinations for selected foreigners (including Ukrainians) apply.



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Special long-term residence is a concept that the Czech Republic introduced for the first time last year. It allows temporary protection holders to transition to a longer-term residence status, which brings them security and stability with the prospect of obtaining permanent residence in the future. However, its conditions are quite strict, especially in terms of financial self-sufficiency, so not all temporary protection holders will be able to obtain this permit.

Persons able to gain this residence status can count on all its benefits, i.e. validity extended for five years, free access to the Czech labour market and the possibility of further transition to selected residence titles.

Last year, applicants in the transition process undertook the first step, i.e. the expression of interest, from 1 to 30 April via the Ministry of the Interior's information portal for foreigners. From May to August, the Ministry of the Interior evaluated the submitted notifications and then informed applicants whether they had met the conditions. If they had, they could register for a residence permit via the same portal from 1 September until the end of 2025.

If they had not met the conditions, they were informed of this fact and were no longer able to re-register for this type of residence permit. Subsequent steps in the transition process followed the standard process for issuing residence permits, i.e. the collection of biometric data and the actual issuance of the card. Approximately 16,000 people obtained special long-term residence permits in this way.

This year, the system for issuing special long-term residence permits will be very similar. According to the draft government regulation, the only difference should be that the actual registrations for the issuance of the residence permit itself will not take place until October 2026. The Ministry of the Interior thus wants to gain more time to evaluate the initial expressions of interest.

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Changes in occupational health examinations, not only for Ukrainians

Employers should also take note of changes to the rules for initial occupational health examinations.

From 1 January 2026, job applicants from high-risk countries will be required to undergo a tuberculosis examination (chest X-ray), regardless of the risk category of the work they will be performing. One of these countries is Ukraine, others include the Philippines, China, Indonesia and most African countries, i.e. countries where the annual incidence of tuberculosis exceeds 40 cases per 100,000 inhabitants. Already employed workers do not need to undergo this examination.

According to a statement from the Ministry of Health, this obligation does not apply to foreigners who reside in the Czech Republic on a long-term basis. However, the implementing decree does not specify this term in more detail. Many foreigners visit their home countries, and therefore the risk of infection cannot be ruled out. Employers are thus advised to have applicants undergo the examination, especially if they recently returned from a longer stay in their home country, as it is still unclear how the supervisory authorities will interpret this obligation and failure to comply with the rules on occupational health examinations may result in sanctions.

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Ammunition has its own law. What should licensed companies not underestimate?

A new law on ammunition came into effect at the beginning of the year. In addition to the legal definition of ammunition, the new regulation introduces a number of changes in compliance, internal processes, security, and record keeping. Some of the new obligations must be fulfilled within six months of the law coming into effect. We summarise the key changes that companies should be aware of.



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End of paper documents and ascent of digitisation

Physical documents, such as ammunition cards and ammunition licences, have been replaced this year by electronic records in the Central Firearms Register. The decisive factor is therefore the existence of authorisation in this register. Communication with administrative authorities takes place primarily electronically.

Watch out for deadlines

Holders of ammunition licences must fulfil the following obligations within six months of the law coming into effect:

1. register employees with ammunition permits in the central register
2. make an inventory of ammunition
3. submit to the police their internal rules for handling ammunition drawn up in accordance with the requirements of the new law.

Holders of ammunition handling cards will be required to provide a new medical certificate upon request by the police.

Stricter internal processes and clear rules

Another fundamental change is that ammunition licence holders are now required to develop and regularly update internal regulations and compliance programmes that reflect the new requirements of the law. These requirements include, in particular, electronic records of ammunition and its movement, transport reporting and security obligations, increased safety and storage standards, and employee training at least once a year, including electronic records of completed training. The law also sets out a clear framework for enforcing these obligations.

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Impact on transfer pricing

The new law may also affect the setting of transfer prices for intra-group transactions. If companies' expenses increase in connection with the new obligations, or if the distribution of responsibilities and risks between companies involved in these transactions change, it is advisable to check whether these changes are correctly reflected in transfer prices and whether the related documentation has been updated. This will enable companies to avoid ambiguities during tax inspections.

We recommend that companies operating in the ammunition industry review and update their internal processes in a timely manner to ensure compliance with the new legislation. Failure to develop internal rules in accordance with legal requirements or to keep records of regular employee training may result in fines of up to CZK 500,000. Serious deficiencies in an entity’s records of ammunition and its movement may, in extreme cases, even result in a ban on activities.

Serious breaches of obligations may lead not only to administrative sanctions, but also to criminal liability that may affect both the company and the members of its statutory bodies. Properly designed compliance programmes can influence the court's decision on the proportionality of the penalty or even lead to exemption from criminal liability. In addition to public-law sanctions, it is also necessary to consider the possible private-law liability of statutory bodies for breaches of their duty to act with due care.

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Pillar 2: latest OECD and EU developments

The OECD has issued a new package of measures (the Side-by-Side Package) containing five safe harbours that should simplify the global minimum tax rules. It is named after the safe harbour that will ensure the parallel functioning of the global minimum tax and the US tax system (or the tax systems of other countries if they meet the required conditions).



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The new safe harbours will be available for use from 2026 or later, depending on local implementation.

Below, we briefly summarise the individual safe harbours from the new Side-by-Side Package (which also includes other simplifications) and upcoming legislative developments with regard to the published Commission Notice.

Simplified Effective Tax Rate (ETR) Safe Harbour

A new permanent safe harbour is being introduced to simplify the calculation of the jurisdictional effective tax rate. The calculation will be based on the ratio of an entity's tax liability (including deferred tax) to its profit in the financial statements for consolidation (if the jurisdiction has decided to use these statements to determine the domestic top-up tax, which is the case of the Czech Republic). Both tax and profit will be adjusted for several fixed or optional items.

If the effective tax rate calculated in this way in a jurisdiction exceeds 15 percent, the top-up tax in relation to that jurisdiction will be considered zero. Unlike the temporary safe harbour based on country-by-country reporting, the new safe harbour rules can be suspended and resumed again in subsequent years. This safe harbour will be applicable for the first time for reporting periods beginning on 1 January 2027, or possibly a year earlier (depending on local implementation).

Extension of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour

The transitional CbCR Safe Harbour (a safe harbour based on certain conditions such as the routine profits, de minimis and the effective tax rate tests) will also be available for reporting periods beginning after 31 December 2026. For example, for the 2027 calendar year, it will be possible to choose between a transitional safe harbour based on an effective rate of more than 17 percent determined on the basis of a country-by-country report, or a permanent safe harbour of a simplified effective tax rate of more than 15 percent determined on the basis of financial statements for consolidation (see above).

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Substance-Based Tax Incentive Safe Harbour

This new safe harbour will allow the value of the substance-based tax incentive to be added to the value of the taxes included in the calculation of the effective tax rate for a given jurisdiction. However, this must be a generally available tax incentive whose amount is calculated based on expenses incurred or the value of tangible fixed assets produced in the jurisdiction. Each country will therefore have to assess whether the tax incentive meets the safe harbour's conditions.

From the perspective of Czech tax incentives, it will be necessary to assess, in particular, research and development allowances and tax credits under investment incentives, both in terms of their calculation and their availability to all entities. According to the definition of tax incentives, it can be expected that the Czech research and development allowance could qualify as a substance-based incentive, which would have a positive impact on the resulting effective tax rate for Czech companies applying research and development allowances.

However, the value of the annual tax incentive that can be taken into account when calculating the effective tax is limited to 5.5 percent of wage costs or depreciation of tangible fixed assets in a given period in a given jurisdiction, or 1 percent of the residual value of tangible fixed assets if the group makes a decision for a five-year period for that jurisdiction.

This safe harbour will be available for the first time for the reporting period beginning on 1 January 2026.

Side-by-Side (SbS) Safe Harbour

This safe harbour will prevent the application of GloBE rules (the application of both the Income Inclusion Rule and the Undertaxed Profits Rule) to all constituent entities of a group if the ultimate parent entity is from a jurisdiction that imposes minimum tax requirements on both domestic and foreign income and at the same time provides foreign tax credit for qualifying domestic minimum top-up taxes (qualifying SbS regime).

According to the OECD's Central Record, only the US tax system currently qualifies as such a tax regime. The OECD will also assess other tax systems. This safe harbour does not apply to qualifying domestic top-up taxes that are levied on constituent entities under the rules of the countries in which the individual constituent entities are located. It will be applicable for periods beginning on or after 1 January 2026.

Ultimate Parent Entity (UPE) Safe Harbour

This safe harbour will replace the existing Transitional Undertaxed Profits Rule Safe Harbour and protect the jurisdictional profits of ultimate parent entities not implementing the Income Inclusion Rule from being taxed by other constituent entities in the group under the Undertaxed Profit Rule.

Unlike the Side-by-Side Safe Harbour, however, the Ultimate Parent Entity Safe Harbour will not protect the profits of foreign subsidiaries or permanent establishments. Like the Side-by-Side Safe Harbour, it will not apply to qualifying domestic top-up taxes imposed on constituent entities under the rules of the countries in which the individual constituent entities are located. As with the Side-by-Side Safe Harbour, the OECD will assess existing tax regimes by the end of the first half of 2026. Currently, no jurisdiction is listed in the OECD's Central Record as eligible for this safe harbour. It will be applicable for periods beginning on or after 1 January 2026.

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Further legislative developments

Immediately after the publication of the package, the European Commission issued a notice confirming that the use of these safe harbours will be in line with the Global Minimum Tax Directive. It can be expected that the package will also be implemented into the legislation of individual states.

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Subsidies to purchase electric trucks

The State Environmental Fund has announced a call for proposals under the Modernisation Fund (ModF – TRANSCom No. 2/2025), in which road freight transport operators can obtain subsidies for the purchase of electric trucks. The call reflects the current trend towards the decarbonisation of transport and the reduction of environmental impacts.



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Applications for subsidies can be submitted from 2 February to 30 November 2026. The support is intended for the purchase of new electric trucks in N2 and N3 categories, including the option to install charging stations (a maximum of one charging station for every two vehicles purchased). The condition is that a new electric vehicle replaces an existing diesel-powered truck. Business entities registered in the Czech Republic that operate road freight transport can apply for this type of subsidy.

The funds for allocation are CZK 960 million, with 80 percent of the funds primarily earmarked for N3 category vehicles. The aid intensity for large enterprises is set at 30 percent of eligible expenses (the aid intensity for small and medium-sized enterprises is higher). Eligible expenses represent the difference between the price of the vehicle being purchased and the price of a reference (conventional) vehicle, which is fixed. At the same time, the maximum price of a newly purchased vehicle is set for the calculation of the maximum amount of support.

For example, the maximum price for a newly purchased N3 category vehicle is CZK 7.25 million, while the price for a reference vehicle with a diesel engine in the same category is CZK 2.75 million. The subsidy for a large enterprise would thus be CZK 1.35 million (i.e. 30 percent of the difference, which is CZK 4.5 million). For charging stations, the amount of support is limited to CZK 50,000 per station.

Projects must be implemented no later than three years after the decision to grant support is signed.

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Subsidies

TACR's 13th call under TREND: changes to its sub-programme

The Technology Agency of the Czech Republic (TACR) has announced the preliminary parameters of the 13th call in the TREND programme. Instead of the previously promised call in sub-programme 1, a call will now be announced in sub-programme 2.



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TACR first announced the preparation of the call at the end of September 2025 but then postponed its announcement to 2026 to comply with the draft state budget. This call is now being prepared, but in a different sub-programme.

Applications for subsidies can be submitted from 26 February to 15 April 2026. The TREND programme focuses on industrial research and experimental development projects, with sub-programme 2 designed to help kick-start research and development activities in companies that have no experience with research and development. Therefore, only companies that have received a maximum of CZK 1 million in research and development support (including tax allowances) in the last five years may apply for this type of support.

The funds for allocation are expected to amount to CZK 200 million, with the maximum subsidy limited to CZK 15 million. For large enterprises, the aid intensity generally ranges from 25 to 65 percent of eligible expenses, depending on whether the project focuses on industrial research or experimental development and whether it is carried out in effective cooperation with a research organisation or a small/medium-sized enterprise. Selected operating costs are eligible for support.

An enterprise may submit a maximum of one project proposal. The project duration may not exceed 48 months. The project may start no earlier than January 2027 and must be completed no later than 31 December 2030. The project output must be an industrial design, utility model, prototype, functional sample, software, pilot plant or proven technology. The project can be implemented anywhere in the Czech Republic.

If you are interested, we will be happy to help you prepare your application for this type of subsidy.

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Case law

Supreme Court: bank transfer as evidence of debtor's consent to debt repayment by third party

Under certain conditions, a third party may also settle (repay) a debt on a debtor’s behalf. The Supreme Court has dealt with the question of when a creditor may refuse such settlement. Refusal to accept repayment from a third party may have a serious negative impact on the creditor's assets.



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Under the Civil Code, a creditor must accept debt repayment from a third party if the debtor agrees. They cannot refuse this repayment. Only if the debtor does not agree (consent) to the repayment of the debt by a third party can the creditor decide whether to accept this repayment from a third party.

The Supreme Court dealt with the issue of the form of consent to the repayment of a debt and clarified the conditions under which a creditor may refuse payment from a third party on behalf of a debtor. It emphasised that the debtor's consent does not have to be in writing, as implied consent is also sufficient. For example, if a debtor provides a third party with payment details for a bank transfer (account number, variable symbol, etc.) and the repayment is credited to the creditor's account in the agreed manner, the creditor cannot refuse the repayment. In such a situation, according to the court, there is no doubt that the debtor has given their consent.

The creditor may refuse repayment only if it is clear from all the circumstances that the debtor has not given consent. If this is not the case, consent is presumed. Although legal doctrine has thus far tended to assume that a third party must prove the debtor's consent, the Supreme Court has concluded that a creditor must accept repayment even in situations where it cannot verify the existence of consent with certainty.

Without the debtor's consent, the creditor is otherwise obliged to accept repayment if a third party guarantees or otherwise secures the debt. Typically, this will be a guarantor or pledgor.

Recommendation

Creditors should only refuse repayment from a third party if they have clear evidence that their debtor has not consented to the settlement of the debt by the third party. If the creditor returns the repayment without having specific evidence of the debtor's disagreement, they expose themselves to the risk of the debt already being settled by the third party's payment. Any return of the repayment could thus be considered unjust enrichment on the part of the third party. This can lead to unnecessary disputes and even to the creditor's claim becoming statute-barred.

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Case law

SAC on investments made based on parent company's decision

The Supreme Administrative Court (SAC) has ruled on a case in which a company with a limited functional and risk profile suffered a loss due to a change in its production portfolio. The SAC confirmed the tax administrator's conclusions that the contract manufacturer's costs of starting production should be included in the consideration paid by the principal for contract manufacturing.



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In connection with a change in its production portfolio, a taxpayer (a company in a group) reported a loss that was not compensated by the parent company. In subsequent years, it supplied its production to other customers within the group. The company then became subject to a separate tax inspection resulting in an assessment of additional operating profit and additional tax, which the company did not contest.

According to the SAC, there was no dispute between the parties to the proceedings that the taxpayer was a contract manufacturer. It was also proven that, based on a strategic decision by the parent company, the taxpayer had spent funds on building new production facilities, for which the parent company did not compensate it in any way.

The regional court ruled in favour of the taxpayer in the first instance, arguing that this was a matter of the common business management, referring to the Mayer & Cie. CZ case law (10 Afs 162/2021-50). In that particular case, the court did not identify a change of the production portfolio as a controlled transaction; however, the case involved a company that, thanks to a shareholder's decision to change the production portfolio and subsequently dispose of inventories, avoided bankruptcy. The Appellate Financial Directorate filed a cassation complaint against the court's decision.

The SAC rejected the regional court's argument, stating that while the Mayer & Cie. CZ case involved a rational and economic procedure for a subsidiary without any profit for the parent company, in the case under review, the parent company or group profited from its decision regarding the investment.

How the financial administration thinks about transfer pricing

This example illustrates the Appellate Financial Directorate's position on transfer pricing, which is evident in particular from the following: *"...internationally recognised rules governing relations between related entities must be understood independently of the rules of corporate law"* and *"...the assessment of commercial and financial relations between related entities does not serve to prevent tax evasion but rather to distribute the jointly generated profits of the group in the same way as they would have been achieved under comparable conditions in independent transactions of a business entity."*

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This clearly shows the approach taken by the financial administration with respect to transfer pricing: it does not always accept a formalised contractual arrangement as evidence and tends to simplify matters, often disregarding the legal requirement for comparability of transactions, contractual relationships, and price fairness, and instead focusing on the simple requirement of allocating profits to the Czech taxpayers.

In the given case, the SAC then defined the subject matter of the particular contractual relationship as *"the establishment of automotive component production for the group"*, while in the SAC's view, consideration for this (or rather the coverage of costs incurred in this respect) was missing. The SAC then suggested several possible solutions by referring to Article 2.91 of the OECD Guidelines.

We recommend that companies in the position of contract manufacturers consider this court decision when planning their investments and making related transfer pricing arrangements. In view of the frequent argument by the tax authorities that a loss-making company is subject to a 'parent company's order', with the parent company then bearing the consequences of the negative situation, we generally recommend that even full-fledged companies pay increased attention to documenting the economic justification for any significant investments they make.

You can read about the Supreme Administrative Court's previous rulings concerning parent company orders (7 Afs 358/2021-34, 10 Afs 162/2021-50) here.

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Case law

EU General Court on application of simplification measure to triangular transaction in four-party supply chain

The judgment of the General Court of the EU in the MS Ključarovci case (T-646/24) provides a more precise interpretation of the conditions for applying the simplification for triangular transactions under Article 141 of the VAT Directive. The subject of the dispute was whether the existence of four entities in the supply chain automatically precludes the application of this scheme if the supply of goods is carried out within a single cross-border transport between two member states.



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The case concerned a Slovenian company acting as an intermediary in the supply of seed oil press cakes from a German supplier to a Danish company. The latter then supplied the goods to its customer within the Kingdom of Denmark, with the supply taking place in a single transport directly from Germany to Denmark.

The Slovenian tax authorities concluded that due to the existence of another person in the chain, more than two successive supplies had been made and therefore the simplification measure could not be applied. It therefore imposed additional VAT on MS Ključarovci. The dispute was then brought before the General Court on the basis of preliminary questions from the Slovenian court.

In its judgment, the General Court emphasised the purpose of Article 141 of the VAT Directive, which is to simplify administrative obligations and prevent multiple VAT registrations in different member states. The key question was whether the condition in Article 141(c) could be met even if the goods were not delivered directly to the person for whom the subsequent supply was made, but to their customer.

According to the General Court, two successive sales of the same goods that is transported directly from the first supplier to the final customer constitute a single transport of goods. The Court concluded that the directive does not require the person to whom the subsequent delivery is made to physically hold or take physical possession of the goods. The goods may also be delivered in a single transport to that person's customer to whom the goods are subsequently sold.

The decisive factor is that the transport takes place from one member state to another member state and that the final customer is a taxable person identified for VAT purposes in the state of transport destination. The existence of a fourth entity in the supply chain does not in itself preclude the application of the simplification.

In conclusion, the General Court recalled that the simplification for triangular transactions cannot be applied in

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cases of abuse of law or involvement in tax fraud. However, the mere fact that the intermediary is aware of the direct delivery of goods to the final customer is not sufficient to exclude this scheme. The national authorities may refuse its application only if it is proven that the person concerned knew or should have known that they were participating in transactions involving VAT fraud.

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Case law

CJEU's advocate general on VAT treatment of transfer pricing adjustments

VAT implications of transfer pricing adjustments depend on what the adjustment concerns and how it is carried out, according to the opinion (C-603/24) of Advocate General of the CJEU, Juliane Kokott.



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Acting as a distributor, Stellantis Portugal, S.A. purchased vehicles and spare parts from its related manufacturing companies. It then sold them to independent dealers who in turn sold them to end customers. In cases of manufacturing defects, customers contacted the dealers who then invoiced Stellantis Portugal, S.A. for the repairs, which therefore bore the cost of warranty repairs.

Based on the reported costs of distributing vehicles and spare parts and repairing vehicles (including operating costs), manufacturers subsequently adjusted the prices at which they sold the vehicles to the company. This adjustment was made based on a transfer pricing arrangement agreed between them to ensure that the company achieved a planned operating profit. The manufacturers adjusted the sales price of the vehicles and issued the company either a credit or debit note. The Portuguese tax authority considered this transfer pricing adjustment to be a consideration for a service provided by the company to the manufacturer and subject to VAT in Portugal.

According to the advocate general, the fact that the company bears the costs of repairing the goods it sells and that these costs are considered when determining the price of the goods purchased does not mean that it provides a service to a third party. Also, there is no contract that could justify the conclusion that the company provided a service to the manufacturer. Moreover, if its distribution costs or repair costs were lower, the company would have to pay the manufacturer for the service it provided, which would be unrealistic.

In the advocate general's opinion, the case in question instead concerns a subsequent adjustment of the price for the vehicles supplied that was still uncertain at the time the agreement was concluded and that could change upwards or downwards. It is therefore not necessary to artificially create fictitious services beyond the scope of the deliveries made, especially if those services could lead to negative prices.

The advocate general formulated the following conclusions:

- Where the profit adjustment is made through a separate provision of services for consideration that are not merely fictitious, this constitutes a taxable supply of services.
- Where the profit adjustment is made by the tax authorities for the purpose of the proper allocation of profits, this is, in principle, irrelevant for VAT purposes.
- If, as in the case in question, the profit adjustment is made through a purchase price that is applicable to

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a specific supply of goods and has been agreed as variable precisely for this purpose, this constitutes a change to the taxable amount of the original supply, not the provision of a separate service.

We will continue to monitor this case and provide an update as soon as the CJEU rules on the matter.

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Case law

CJEU: airlines must refund ticket prices including agent's commission

Airlines' options to avoid paying compensation to passengers are becoming even more limited. A recent CJEU ruling states that if a flight purchased through an agent authorised to sell tickets for a given airline is cancelled, passengers may claim a refund of the ticket price including the agent's commission.



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The case concerned several passengers who purchased tickets for a return flight with KLM from Vienna to Lima through the booking portal of online travel agency Opodo. After the flights were cancelled, KLM refunded them only the amount corresponding to the ticket price after deducting approximately EUR 95, which Opodo charged as an agency commission.

The passengers then assigned their rights to a consumer organisation and sought a refund of the full ticket price, including the commission. They argued that it was an integral part of the ticket price paid by the passengers. KLM, on the other hand, defended itself by arguing that it was not aware of the amount of the commission and was therefore not obliged to refund it.

The Austrian Supreme Court referred the matter to the CJEU, which had previously ruled that if a ticket is sold through an agent, the commission should be included in the refund if the airline was aware of it. An exception would only apply if the commission was set without the airline's knowledge.

In this subsequent judgment, however, the CJEU clarified that if an airline has agreed to allow an agent to sell tickets on its behalf and for its account, it can be assumed that it is aware of the common practice of charging commission. This commission is an integral part of the ticket price and is therefore considered approved by the airline. It is not necessary for the airline to know the exact amount of the commission. Otherwise, the protection of passengers guaranteed by EU legislation would be reduced and the attractiveness of purchasing tickets through various agents would be diminished at the same time.

As a result, while the options of airlines to not pay compensation to passengers are becoming more limited, their options to claim compensation for damages (recourse) corresponding to the commission paid to agents are expanding accordingly.

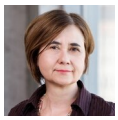
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News in Brief, February 2026

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



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DOMESTIC NEWS

- Instruction No. GFD-D-71 on delivery to data boxes of natural persons and Instruction No. GFD-D-74 on changing the location of files within the tax authority have been published in Financial Bulletin No. 1/2026.
- Instruction No. GFD-D-75 on the determination of uniform exchange rates for the 2025 taxable period has been published in Financial Bulletin No. 2/2026.
- Based on a European Commission regulation, the Czech Statistical Office has updated the Classification of Economic Activities (CZ-NACE) code list and has reflected the changes (effective from 1 January 2025) in the Register of Economic Entities with effect 1 January 2026. In connection with this change, the Financial Administration advises users that when filling in information on economic activity in their tax returns and other communications with the Financial Administration of the Czech Republic, it is necessary to use only NACE codes according to the new (current) classification, even in cases where the submission relates to the period before 1 January 2026.
- The Financial Administration has issued its Information *on Mandatory Contributions to Retirement Savings Products.* Entitled to a mandatory contribution are employees who perform work classified in the third category for selected factors of working conditions, which are vibration, cold stress, heat stress, or overall physical stress if it is stress during dynamic physical work performed by large muscle groups. The regional health authority decides whether a person performs work classified in the third category of risk with respect to the specified factors.
- According to the information from the Financial Administration, the new 15-year period for postponing taxation of income from employee stock option plans will apply to all employee stock option plans, including those agreed before 1 January 2026.

FOREIGN NEWS

- On 31 December 2025, the transposition deadline expired for Council Directive (EU) 2025/872 (DAC9) on administrative cooperation, which establishes a framework for the exchange of information between EU member states on top-up tax under Pillar 2. Its aim is to enable corporate groups to submit only one information return within the EU, which will then be shared between the states that have transposed this directive into national law. According to available information, the following states had transposed DAC 9 by the end of 2025: Austria, Croatia, Denmark, Finland, Germany, Ireland, Italy, Hungary, Luxembourg, the Netherlands, Slovakia, and Slovenia. On the other hand, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, France, Greece, Lithuania, Malta, Poland, Portugal, Romania, Spain and Sweden have not yet

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transposed the directive into their national law.

- There are now 25 countries on the OECD list of states that have signed a multilateral agreement on the automatic exchange of information under the GloBE rules (GIR MCAA, Pillar 2). Slovenia and Gibraltar joined on 14 January 2026. The agreement will ensure the submission of a single information return and subsequent exchange of information also in relation to non-EU countries.

- At a joint summit of 27 January 2026, the European Union and India announced that they had completed negotiations on a free trade agreement (FTA) that eliminates or reduces tariffs in many sectors and also addresses non-tariff barriers through cooperation in the field of regulation, transparency, simplified customs procedures, and the removal of other barriers to mutual trade and cooperation. Double taxation treaties concluded by individual member states will remain in force. The agreement will enter into effect after the finalisation of the already prepared text and ratification of the agreement by both parties. More information on the agreement can be found here.

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