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Editorial

Unsurprisingly, this issue of Tax and Legal Update in large part deals with the consolidation package. One of the many measures proposed is a limit to the time test. Currently, when selling securities and shares in corporations, income is exempt from personal income tax if it does not exceed CZK 100,000 per year or if the securities have been held for more than 3 years and shares in corporations for more than 5 years. Now, the government proposes to limit the exemption to CZK 40 million.

An almost three-year-old idea thus comes back – proposed, as some will certainly remember, by former MP Mikuláš Ferjenčík. This time, the limit has doubled, and the bill is more elaborate in legislative and technical terms. It addresses the allocation of the acquisition cost to the income from the sale that is being taxed, and contains also a transitional provision according to which only the increase in value after 1 January 2024 will be effectively taxed, allowing to apply as a tax-deductible expense the market value of the securities and shares as at 31 December 2023 instead of their standard purchase price. In a tax inspection, sellers will have to support this market value with relevant documentation, therefore increased demand for expert appraisals is to be expected next year.

On the other hand, the proposal does not regulate situations where the original securities or shares have been contributed into another company or replaced by other securities or shares in a merger or another business combination. Such situations clearly happen in practice, and we can only hope that these issues will be clarified in the future stages of the legislative process.

Although, in the current political constellation, the bill is likely to be passed, the limitation of the time test gives rise to controversies, mainly because it targets Czech entrepreneurs who have built their companies over many years from their taxed income. Regarding modern Czech history, this is a strong argument. On the other hand, those in favour of limiting the time test argue that all advanced economies primarily concentrate on the taxation of income not at corporations but at the end of the chain: at the hands of their owners – individuals (natural persons). Any exemptions are exceptional and aimed at small portfolio investments rather than massive capital divestments.

I wish you a wonderful start of summer with temperatures rising in real life as well, not just in politics.

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Taxes

Consolidation package I: Overview of main changes in taxation

Major changes in tax and social security and health insurance premiums are to affect not just companies, but also employees and workers. The abolition or reduction of personal income tax reliefs is being prepared, as well as changes in statutory insurance premiums and employee benefits.

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Corporate income tax

Tax rate increase

For corporations, the most significant change will be a two-percentage point increase in the standard income tax rate **from 19% to 21%**. With this change, the government expects an annual increase in the state budget of CZK 22 billion by 2025.

Limitation of tax deductibility of selected costs

Regarding the deductibility of tax costs, the coalition proposes to:

- introduce a **CZK 2 million limit** for determining the input price of passenger cars for business purposes (i.e., any depreciation on the input price above CZK 2 million would be tax ineffective). For finance leases, the limitation will be applied to lessees by restricting the tax deductibility of lease payments, both in aggregate and for a single tax year.
- abolish the tax deductibility of non-sparkling wine as a gift up to **CZK 500**
- abolish the tax deduction of payments for **examinations** verifying the results of further education
- do away with the limitation on the deductibility of **employee meal expenses** and the tax non-deductibility of **meal vouchers** in excess of the statutory limit
- introduce the **extraordinary depreciation** for electric cars purchased between 1 January 2024 and 31 December 2028
- abolish the tax non-recognition of expenses for certain **employee benefits** provided as non-monetary benefits (e.g., contributions to cultural events, trips, sporting events, etc.) for which the amendment will abolish their exemption on the part of employees, including such benefits provided to their family members
- eliminate the tax non-recognition for expenses exceeding income in facilities meeting the needs of employees.

The tax deductibility of expenditures on the above benefits would become conditional on the right to the benefit being stated in the collective or employment agreement or in the employer's internal regulations.

Tax on gambling

The second tax rate for selected gambling operators is to be increased from the current **23% to 30%**.

Real estate tax

The coalition proposes the introduction of a state part of the real estate tax, which should correspond to the amount of the current tax before the application of **the local coefficient**. The tax would thus newly consist of a part that would be revenue of the state budget (state tax) and a part that would continue to be revenue of the municipal budget (local tax). Municipalities would retain the power to influence the collection of their part of the tax by applying a local coefficient to the local tax. The coefficient would be adjustable **from 0.5 to 5** (currently 1.1 to 5). In cases where the municipality has not applied and will not continue to apply the local coefficient, the amendment will effectively double the tax liability.

As most rates have not changed since 2010, it is also planned to introduce automatic indexation of the tax liability by applying an inflation coefficient. This is proposed to be 1 for 2024 and will then be based on the evolution of the consumer price index.

These measures should bring approximately CZK 9 billion to the state budget in the first year of the amendment's effectiveness. The amendment will be applicable for the calculation of the real estate tax for 2024 if the amendment comes into force by 1 January 2024 (the real estate tax is assessed based on facts as at the first day of the calendar year).

The amendment also includes a comprehensive modification of the coefficients by which municipalities can influence the proceeds from this tax and several other partial changes, e.g., in the definition of individual immovable property for tax purposes and the scope and exemption of land and buildings, which can significantly affect tax liabilities.

Value added tax

As part of the simplification of the VAT system, a major reform of VAT rates has been proposed: by merging the two current reduced VAT rates into one of 12%, we should soon have "only" two VAT rates of **12% and 21%**. This should result in a lower tax burden on basic goods such as food, housing and medical products. The government expects savings of CZK 6.3 billion for citizens in this area. The term 'affordable' housing has been newly proposed for social housing and shall remain at the reduced (now 12%) VAT rate.

At the same time, the government proposes to completely exempt the supply of books, both printed and electronic, from VAT. In this context, it will now be possible to request a binding assessment from the General Financial Directorate to confirm the exemption for specific supplies of books and similar services. Magazines and newspapers are to remain at the reduced 12% VAT rate.

According to the government, activities which in its opinion are without demonstrable social or health significance should be moved to the basic VAT rate, e.g. those which were included in the reduced rate due to the COVID-19 pandemic or EET, such as hairdressing services, shoe repairs, collection, and the transport and storage of municipal waste.

The possibility of deducting VAT on passenger cars will be limited to CZK 420,000, which corresponds to a tax base of CZK 2 million, not only for the purchase of such a car, but also including any subsequent technical assessment. The Ministry of Finance plans to further consult the European Commission on this change.

Excise taxes

The government proclaims the slogan Let's Raise Taxes on Vices and in line with this approach proposes to increase excise duties on tobacco and alcohol and taxes on gambling. According to estimates, this increase will bring over CZK 10 billion to the state budget.

What next?

We would like to remind you that the consolidation package in its current form is awaiting the incorporation of any changes from the comment procedure. According to preliminary information, once approved by the government, the relevant amendments should commence to be discussed in the chamber of deputies in June. In view of the public debate, it can be expected that the package will be amended. We will therefore continue to monitor the legislative process.

Updated on 3 July, 2023.

Consolidation package II: Changes to personal income tax and social security

Major changes in tax and social security and health insurance premiums are to affect not just companies, but also employees and workers. The abolition or reduction of personal income tax reliefs is being prepared, as well as changes in statutory insurance premiums and employee benefits.

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Extension of tax progression

- The threshold for applying the **23% tax rate** should decrease from four to three times the average monthly wage. At the current average wage level, this means that the annual tax base of up to CZK 1,451,664 will be taxed at a **15% tax rate,** and the part of the tax base exceeding this value will be taxed at a rate of 23% (the current annual threshold from which the higher tax rate applies is CZK 1,935,552).
- For income derived from agreements on work performance, the application of withholding tax pursuant to Section 6(4) of the ITA will not be linked to a fixed amount of **CZK 10,000**, as is the case now, but to the amount decisive for the participation of employees working on the basis of an agreement on work performance in sickness insurance, i.e. 25% of the average wage determined by the Act on Sickness Insurance.

Abolition of exemptions of non-cash benefits (and several others)

- Removal of the exemption of non-monetary benefits provided by the employer to the employee and/or their family members (e.g. provision of recreation, trips, the possibility to purchase goods and services from a medical facility, contribution to cultural and sporting events, contribution to printed books, etc.). This would mean that these non-monetary benefits would now be subject to taxation in the same way as wages and would therefore also be subject to social security and health insurance contributions.
- Abolition of the exemption for excess meal vouchers and introduction of the same exemption limit as for the so-called meal voucher lump sum. This would unify the taxation of meal allowances on the part of employees by limiting the exemption for all types of meals provided to 70% of the upper limit of the meal allowance for a 5-12 hour working trip, which currently amounts to CZK 107.10. In addition, a new condition should be introduced for the exemption of employee-side meal allowances, namely that the employee's presence at work during the shift or within one working day for employees without fixed hours (e.g., members of company bodies, etc.), should be at least 3 hours.
- Abolition of the exemption of the state contribution to building savings.
- Abolition of the separate exemption for foreign exchange gains on money exchanges. Taxpayers will now be able to apply an exemption on these foreign exchange gains up to the general limit for the exemption of other income (in aggregate up to CZK 50,000).

Abolition of personal tax deductions and discounts

The government proposes to:

- ·abolish the deduction of contributions to trade unions
- do away with the deduction for examinations verifying the results of further education
- have the spouse discount apply only to the other spouse living in a jointly managed household with the taxpayer and caring for a child under three years of age, if the annual gross income of the other spouse does not exceed **CZK 68,000**. The bill now explicitly defines what income will not be included in the above income limit.
- abolish **tax credits for students**
- eliminate the discounts for placing a child in a **pre-school institution**.

Restrictions on exemptions for sales of securities and shares

If the specified time test for the sale of securities (three years) or shares in companies (five years) is met, income up to **CZK 40,000,000** per taxpayer and per tax period will be newly exempt from tax, rather than the entire income as before. The taxable income will be determined proportionally according to the proportion of the total income exceeding CZK 40,000,000 to the total exempt income. Expenses related to non-exempt income, i.e., the purchase price of securities or shares, will be eligible for pro rata application to expenses. In the case of securities and business shares acquired before 31 December 2023, instead of applying the acquisition price of the share or share on a pro rata basis, the taxpayer may apply the market value of the share or share as determined on 31 December 2023 in accordance with the Act on Valuation of Property, plus related expenses (e.g., payments for trading on the market, etc.).

This approach is to ensure that only increases in the value of securities and shares that occur from **1 January 2024**, i.e., after the amendment comes into force, will be subject to income tax.

Taxpayers who transfer securities or shares before 31 January 2024 but receive income from the sale after that date (e.g., instalment sales) will also apply this procedure. These taxpayers will have the choice of applying either the market value determined on 31 December 2023, or the market value determined at the time of the transfer of the securities and shares for consideration to their costs.

General limits on exemption of other income

A general limit for the exemption of other income up to CZK 50,000 per year per taxpayer should be introduced. The limit will only apply to specified types of other income, including, e.g., income from casual activities, gifts or income from sweepstakes and gambling. The above limit will also include, e.g., exchange gains on the exchange of money from a foreign currency account, whose exemption is to be abolished by the amendment.

Reduction of non-cash income for employee vehicles

The amount of an employee's monthly non-cash income when using a vehicle for private and business purposes will be 0.25% of the purchase price for emission-free vehicles.

Donations to Ukraine

The amendment extends the validity of the measures related to the armed conflict in Ukraine and introduced by Act No. 128/2022 Coll. to the tax period of 2023. Thus, e.g. the 30% limits on gifts provided in connection with the armed conflict in Ukraine and exempt temporary accommodation provided by the employer will remain in force. According to an explanatory memorandum, the taxpaying employer will have to reimburse the taxpaying employee in the form of a correction of the individual affected months of the payroll register in accordance with Section 38i of the Income Tax Act. At the same time, this correction will also result in the reimbursement of social security and health insurance premiums, if paid.

Changes to social security

Employees

Reintroduction of sickness insurance

The government's recovery package reintroduces sickness insurance paid by the employee at the rate of 0.6% of the monthly assessment base (gross wages). Currently, sickness insurance is paid only by the employer. As of January 2024, the total social security contributions for the employee would thus increase to 7.1% (instead of 6.5%).

Changes to insurance contributions for work performance agreements

The amendment establishes two limits for the participation in sickness insurance of employees who work under an agreement or several agreements on work performance, namely:

- The first limit will be set for all agreements on the performance of work with one employer at 25% of the average wage (i.e., currently about CZK 10,080).
- The second limit (higher) will be set for the participation in the insurance when several agreements on work performance with several employers are combined, i.e., 40% of the average wage.

Once this limit is exceeded, the employer will have to pay social insurance contributions on behalf of the person working under a work performance agreement. The same limits should also apply to health insurance contributions, as the obligation to contribute is linked to participation in sickness insurance.

Self-employed persons

It is proposed to gradually increase the minimum assessment base for social insurance contributions for self-employed workers from the current 25% of the average wage to 40% of the average wage. All self-employed persons will be affected by an increase in the percentage threshold of the tax base for calculating the social security contributions from the current **50% to 55%** of the tax base.

The article was updated on 3 July 2023.

Implementation of minimum tax in Czech Republic: Who will be affected by top-up tax?

A bill published by the Ministry of Finance introduces a top-up tax for taxable periods starting from 31 December 2023. The top-up tax with a rate equal to the difference between 15% and the specifically calculated effective tax rate will apply to corporations and permanent establishments within groups with a turnover exceeding EUR 750 million. These entities will have to register, file top-up tax information returns and top-up tax returns, pay any tax due, and possibly fulfil other obligations.

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The bill implements the EU directive on global minimum tax.

Domestic top-up tax and top-up tax allocated under the EU regulation

The bill provides for both a top-up tax allocated under the EU regulation and a comparable national (domestic) top-up tax. The domestic top-up tax will have to be paid by Czech companies that are part of corporate groups qualifying for the top-up tax; the top-up tax allocated under the EU regulation will have to be paid by a Czech parent entity of corporate groups qualifying for the top-up tax on behalf of its subsidiaries in another member state. The obligation to pay the allocated top-up tax does not arise if the state of the subsidiaries decides to introduce and collect the domestic top-up tax determined under similar conditions.

Taxpayers and registration obligation

Payers of both top-up taxes will be Czech constituent entities as well as the main entity (headquarters) of a permanent establishment located in the Czech Republic of the qualifying corporate groups.

Taxpayers will have to **register within 15 days** after fulfilling the group membership condition (considering the group membership and the expected effectiveness of the law on 1 January 2024, this means by 15 January 2024). The Specialised Tax Authority will be responsible for the administration of the top-up tax regardless of the size of the constituent entity.

Top-up tax information return and top-up tax return, top-up tax due date

The top-up tax information return will serve as a notification of the taxpayer's participation in a specific group and a summary of the fulfilment of the taxpayer's obligations irrespective of whether the limit for the payment of the top-up tax itself was reached. The top-up tax information return for the domestic top-up tax shall be submitted **within 10 months of the end of the taxable period**; and the top-up tax return shall be filed within the same period. This deadline cannot be extended.

The top-up tax information return for the allocated top-up tax shall be filed **within 15 months of the end of the taxable period** (18 months for the first filing), and the top-up tax return will have to be filed within the same deadline. It will be sufficient for another constituent entity of the group to file the top-up tax information return in a state with which the Czech Republic has concluded an information exchange agreement.

The top-up tax will be payable within the deadline for filing the tax return. The bill also provides for the possibility of not filing a top-up tax return, in which case a tax of CZK 0 will be determined by fiction, and penalty for late tax assertion will not apply.

Limitation period – deadline for determining the top-up tax

The bill stipulates the deadline for determining the top-up tax, which is also the deadline for its payment, differently from the Tax Procedure Code. **The deadline is four years**, running from the top-up tax due date. The general rules on the interruption and suspension do not apply: the deadline shall only be suspended (not run) during court proceedings. An additional tax return for a lower tax can only be filed within a three-year deadline.

Safe harbours – exemptions from the obligation to calculate the top-up tax using standard rules

The bill follows the EU regulation in allowing the simplification or exemption from the obligation to calculate the top-up tax using standard rules. While permanent exemptions have not yet been precisely defined, temporary exemptions already have a legal framework in place and may lead to temporary relief from the envisaged extensive administrative obligations (see here).

The bill is currently undergoing its external comment procedure and may still be further amended.

Construction industry: changes to VAT from July

In connection with the amendment to the Construction Act, an amendment to the VAT Act changes the definition of family houses and apartment buildings, which will have a broader definition from 1 July 2023. Accordingly, the General Financial Directorate is currently updating its information on the application of the VAT Act to real property.

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Until now, real property definitions derived from the definitions set out in the cadastral regulations, but from the beginning of July, they will be **based on the new Construction Act**. The most important change is the definition of an apartment building and a single-family house, as the new definition no longer explicitly includes the condition of the building being designated for housing under the construction law.

This change will primarily impact the determination of the correct VAT rate for construction work on a completed building for housing and social housing or for the construction and delivery of a building for social housing. It will also affect the fulfilment of the conditions for exemption from VAT of the delivery or lease of real property.

Although this is only a change of terminology, certain related and controversial issues are currently being discussed by the professional public with the financial administration. For this reason, the GFD decided to update its information, aiming to incorporate not only the current amendment but also other developments that have occurred since the previous methodology was issued in 2016, in particular selected case law.

What will happen next?

The information update is still in a draft state and being discussed further. The most interesting topics include a change to the threshold for a 'substantial change', a summary of case law on the issue of leases and related services, and a refinement of the definition of single-family houses and apartment buildings.

Given the amendment's **expected effectiveness from 1 July 2023**, we expect that the final wording of the GFD's information will be issued before this date. We will keep you informed about any further developments.

Capping energy prices: tips and experience

Large enterprises with capped energy prices have completed their first evaluations and submitted their reports on the assessment of financial benefits. We summarise our experience with the Ministry of Industry and Trade's Agenda Information System (AIS MIT) and provide practical tips you may use in the upcoming July evaluation for the entire half of 2023

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The first reports on the assessment of excess financial benefits were submitted to the Ministry of Industry and Trade by large enterprises before 30 April 2023. If enterprises did not exceed the absolute public aid limit for category A-E and wished to remain in the capped energy price regime, they had to submit new declarations to their energy supplier for each commodity (electricity and gas).

In addition to the video guide for filling in the reports on the assessment of excess financial benefits for large enterprises in the AIS MIT published by the ministry in the second half of April, we offer the following practical knowledge and tips that can make your work with further evaluation and preparation of the report easier:

1. Reports in the **AIS MIT system copy the template specified in the government decree exactly**. Large enterprises will thus only fill in the final data for individual commodities and supply points. No template was published to facilitate the actual calculation for large enterprises. It is therefore necessary for enterprises to create a **source file** with the calculation themselves, e.g., in MS Excel, and have it available for any future inspection to demonstrate the calculation process.
2. In the report, the actually generated financial benefit is entered **separately for each supply point**.
3. However, **eligible costs for categories B to E** shall be calculated cumulatively for all supply points, and separately for electricity and for gas. Therefore, a large enterprise shall include all supply points in the calculation of the eligible costs for **each commodity**. Subsequently, in the AIS MIT system, the enterprise will only enter the calculated value of the average unit price of the commodity for all of 2023, the average unit price for 2021, and the value equal to **70% of the consumed commodity quantity for 2021**.
4. After reporting the aggregated data for electricity and gas together, most of the calculation indicators are **calculated automatically**. Large enterprises shall then only enter information about the selected category A-E, other received support, or the total payment of financial benefits for the previous period, etc.
5. After completing the report, it is necessary to **generate a pdf file** to be signed by the authorised representative. There are three options for signing the document: electronically directly in the AIS MIT system (in which case it is necessary to download the WebSigner application), electronically outside the AIS MIT, or manually and then upload a scan of the signed document in pdf back to the system.

What do large enterprises need to prepare for under the energy price capping regime

Enterprises that continue to apply the energy price capping regime will have to **reassess the financial benefit**

actually generated for the period from 1 January to 30 June 2023 and report it to the AIS MIT system by 31 July 2023. Please note that this obligation will also apply to large enterprises which are no longer registered in the capping regime but which purchased electricity or gas at capped prices until the end of April 2023. The obligation may also apply to those large enterprises that no longer purchased electricity or gas at capped prices for the months of April to June 2023 but generated financial benefits for the 1st quarter of this year, as the individual periods are always assessed from 1 January 2023 until the end of the relevant calendar quarter. We are currently verifying the validity of this obligation with the ministry.

Simultaneously, large enterprises that have not exceeded the maximum possible public aid limit and wish to remain in the energy price capping regime must resubmit declarations to their electricity and gas suppliers by 31 July 2023.

We will continue to monitor the developments of capped prices and available interpretations. We will be happy to support you in evaluating the financial benefits or completing the report should you be interested.

Tips and tricks

What interest to claim from tax administrator?

In the administration of taxes, situations may arise in which funds are withheld (whether legitimately or unlawfully) from taxpayers that would otherwise be available to them for their business activities. What types of interest can taxpayers claim from the tax administrator in such cases? Below we provide an overview of such situations

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The Tax Procedure Code regulates three types of interest paid by the tax administrator:

- interest on refundable overpayment
- interest on incorrectly assessed tax
- interest on tax deduction.

All such interest is subject to the basic rules according to which interest accrues automatically for each day when the conditions for its occurrence are met. Interest that does not exceed CZK 1,000 shall not be charged, and no obligation to pay it shall arise. Taxpayers may defend themselves against the tax administrator's procedure in connection with the charging and payment of interest by raising an objection.

Interest on a refundable overpayment serves to compensate the taxpayer where the tax administrator delays the refund, use, or transfer of a refundable overpayment. It arises on the day following the day on which the deadline for this transfer has expired, but not in cases when interest on a tax deduction arises for the taxpayer or when the tax administrator delays the payment of the interest itself (i.e., the Tax Procedure Code excludes interest on interest, seen especially in proceedings initiated before the last amendment to the Tax Procedure Code): when the interest charging period ends, the tax administrator credits the interest to the personal tax account and notifies the taxpayer. The interest thus does not automatically become a refundable overpayment, and if the taxpayer wishes to refund it, they must apply for it with the tax administrator. The interest amount is set at the same rate as the interest that would have fallen on the taxpayer in the event of default, currently corresponding to the **CNB repo rate plus 8%, i.e., 15% per annum**.

On the other hand, **interest on incorrectly assessed tax** serves as compensation to the taxpayer where the tax administrator has acted unlawfully or incorrectly towards the taxpayer, thus involving a greater misconduct on the part of the tax administrator than just delays. It is based on an unlawfully increased tax, an unlawfully reduced deduction or an unlawful or null securing order. But if the unlawfully assessed tax or tax deduction does not deviate from the tax assertion, the taxpayer is not entitled to this interest. Similarly, the taxpayer will not be entitled to this interest if new facts or evidence subsequently come to light, if the decision was made based on forged documents or a criminal act of the taxpayer, or when determining monetary performance under divided administration (such as fees set by the customs administration). The interest amount also corresponds to the default interest amount and is doubled for the duration of enforcement proceedings.

Interest on a tax deduction serves to compensate the taxpayer where the tax administrator has been examining its

excess deduction for an extended period. It arises from the day following the expiry of a period of 4 months from the filing of the tax assertion even if the tax administrator examines the tax deduction quite legitimately. The basis for calculating this interest is the tax deduction determined by the tax authority. However, it does not accrue while the tax administrator is waiting for the taxpayer to act, e.g., after they have been sent a call to remove deficiencies in the submission or asked to comment on the result of the previous finding. Unlike the previous types of interest, the interest on the tax deduction is set only at half the amount of default interest.

Delays by the tax administrator to pay or transfer funds to the taxpayer is not free of charge: legislation allows these funds to be appreciated. Interest accrues automatically by operation of law. However, we recommend that you review its amount and whether it was credited to your personal tax account. Given the current repo rate, individual interest rates can reach interesting levels.

Interest that falls on taxpayers has been discussed in previous articles.

Czechia introducing deposit for PET bottles and cans

The Ministry of the Environment is preparing an amendment to the Packaging Act introducing a deposit-refund system for metal and PET drink containers. What will the system look like in the Czech Republic?

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Deposits are nothing new in the Czech Republic: when buying certain types of drinks in glass bottles, **CZK 3** are added to the price and refunded once the empty bottle is returned. A similar principle is now to be introduced for drink containers made of plastic and metal. Producers and sellers will be obliged to charge a deposit on top of the price of the beverage; its amount should be set at **CZK 4 to 5**, uniform for all disposable drink containers. To get the deposit back, consumers will have to return undamaged drink containers, including the label, to a designated place.

Drink containers newly subject to deposit

The deposit will be charged for all soft drinks in plastic bottles or cans of 0.1 to 3 litres. Alcoholic beverages with an alcohol content of up to 15% will also be subject to the charge. Milk, dairy product and disposable glass packaging will be exempt; this means that standard wine bottles will not be burdened with a deposit.

Returning empties

According to the ministry's initial information, the take-back obligation should apply to **all shops** and petrol stations with an **area of more than 50 m²**. Online retailers will also have to accept their customers' empties. Small shops, kiosks, and municipalities may join the system on a voluntary basis. Especially for small shops, this will mean additional obligations, making it more difficult for them to sell plastic- and metal-packaged beverages. To compare: in Slovakia where deposits for PET bottles and cans were introduced over a year ago, the obligation to take-back the packaging only applies to shops with an area of more than **300 m²**.

Deposit system operator

The organisation and functioning of the deposit charging system will be ensured by an operator: an entity established by manufacturers that supply more than 80% of disposable drink containers to the market. The operator will oversee the setting up of the entire system, its administration, coordination, and financing.

Improved sorting of (plastic) waste

By charging a deposit for PET bottles and cans, the legislators aim to improve the sorting of these types of drink containers. According to EKO-KOM's data, in 2021 only 43% of the total volume of plastic waste was recycled, 32% was incinerated, and 15% was not sorted at all. As for aluminium from which cans are often made, the sorting was even worse: only 27% was recycled, meaning that 63% of aluminium was not sorted at all.

In 2029, 90% of this waste is to be taken-back. Sorting of drink containers separately from other plastic or metal waste will ensure a supply of input materials for recycling companies, and the packaging should thus return to the market as reusable recycled material.

Thanks to the deposit, it will be easier to meet targets for the mandatory content of recycled plastics in beverage containers, as set by the Packaging Act, according to which, **from 2025**, PET bottles with a capacity of up to 3 litres must contain at least 25% of recycled plastic.

According to the ministry's estimate, the deposit for PET bottles and cans should be charged **starting from 2025**. The draft amendment to the Packaging Act has not yet been published, so it is not certain what the final form the system will take.

What will the new whistleblowing law bring and why does it not protect anonymous whistleblowers?

The whistleblower protection bill has passed the senate and is now heading to the president. Its effective date is expected at the end of the summer. The bill implements the EU directive on the protection of persons who report breaches of law at the workplace (whistleblowers) and will bring new obligations for a wide range of obliged entities, including all employers of more than 50 employees. These entities will be obliged to establish an internal reporting system and ensure the protection of whistleblowers who use it.

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Reporting system and other obligations

The law remains silent on the form of the reporting system. This means that employers may choose how to ensure the receipt, assessment, and resolution of reports by their employees and other persons – such as trainees or job applicants, as these will also have the right to report law abuse in writing, orally, and even in person if requested. Employers will have to deal with the reports within statutory deadlines and ensure appropriate communication with the whistleblower and the protection of the reported information. The most common solution will probably be an internal reporting system provided in an **external supplier's software solution**.

To operate the reporting system, the obliged entity will have to **appoint a relevant person** who will be responsible for receiving the reports, notifying the reporting persons within the set deadlines of the receipt and resolution of their reports, and proposing resolutions. Our experience shows that numerous companies intend to appoint one of their employees as the relevant person; however, the bill also allows an external person to be the relevant person.

The bill requires whistleblowers to be protected against **retaliation**, i.e., against any act or omission following their report and relating to the whistleblower's work or other activity that may cause them harm. Retaliation may include the termination of employment, removal from a senior position, wage reduction or not granting a bonus, transfer to another job, etc.

Whistleblower protection and anonymity

The protection of whistleblowers, particularly anonymous ones, has been one of the most discussed and principal issues of the bill. Under the bill, anonymous whistleblowers are not protected from the beginning, but only after their identity becomes known to those who may expose them to retaliation. Foreign experience shows that in entities where an internal reporting system is in place, the most serious breaches of law are often reported anonymously. Excluding anonymous whistleblowers from protection may make them significantly less willing to

report.

A regulation and an opportunity

The introduction of internal reporting systems and the related protection of whistleblowers is often perceived as just a ‘ratting’ tool that places an unnecessary administrative burden and considerable risks on the obliged entity.

However, we believe that the implementation of a reporting system also contributes to employer protection. By giving employees the opportunity to report suspicious conduct, employers increase their awareness of what is happening in their companies, which fosters a transparent corporate culture. As a result, employers may respond to any misconduct in a timely, efficient and, most importantly, internal manner. As a bonus, they can avoid significant penalties and reputational damage. Ultimately, they may be able to prevent the loss of customers or, in the case of publicly traded companies, a significant decrease in their value.

General corporate loyalty principle in practice

Courts often deal with the issue of due managerial care. Persons and entities are obliged to act as a proper manager when managing a company's financial affairs. Less often, higher courts also deal with the principle of general corporate loyalty.

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This principle concerns the relationship between the members of a corporation, usually a limited liability company or a joint-stock company, requiring them to act in the interest of the corporation as a whole and not just their own or that of a certain group of members. The general corporate loyalty principle **emphasises acting in accordance with ethical standards, transparency, confidentiality, and the obligation to avoid conflicts of interest**. This is particularly important when deciding on suspected breaches of the duty to act in the company's best interests or abuses of a position of power for one's personal benefit or the benefit of a narrow group of persons.

In judgment 27 Cdo 2232/2022 of 9 May 2023, the Supreme Court dealt with a case where the majority shareholder abused his right by repeatedly appointing a person chosen by him (his son and then his wife) as the liquidator, thus influencing the course of the liquidation. As a result, the company continued its activities during the liquidation process in a manner that suited him. The minority shareholder perceived this as harmful to his interests. In this case, the court put the principle of a shareholder's general corporate loyalty towards the company above the majority shareholder's rights and deduced that the majority shareholder, "by the weight of his votes repeatedly promoted a person close to him to the office of the liquidator, with the aim to ensure that the liquidation would proceed slowly, or not at all, and the company would continue to "function" until his claims were settled." The SC further stated that the majority shareholder's conduct was contrary to the main purpose of the liquidation as expressed in the Civil Code and resulted in deliberate and unjustified delays in the liquidation. The court concluded that the majority shareholder's conduct could be perceived as a lack of loyalty.

The general corporate loyalty principle is important for each and every member or shareholder, as it involves the obligation to maintain loyalty to the company. Its breach may give rise to the obligation to compensate for the damage incurred and potentially lead to the exclusion from the company, e.g., if the member or shareholder damages the company's reputation or creates a negative image of its activities in public. Generally speaking, terminating one's participation in a corporation is not easy and the conditions for voluntary departure can be very complex. **Exclusion from the company** is the last resort and must be done correctly, as its consequences are grave.

Obligatory digital billing starting next year?

If the EU directive titled VAT in the Digital Age (ViDA) passes, taxpayers will have to cope with the digital reporting requirement. Member states then may impose an electronic invoicing obligation effective 1 January 2024.

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We recently reported here on developments in the digitisation of the VAT system in the European Union. The aim of the ViDA reform is to introduce **mandatory uniform electronic reporting** to the tax authorities in EU member states. The proposed changes will be divided into intra-community and local (i.e., at the level of individual EU member states) ones and will be launched in several phases.

At the intra-Community level, significant adjustments should take place **from January 2024**. All taxable persons will have to be able to issue and receive tax documents for cross-border transactions electronically. The documents must meet the requirements of the European standard EN 16931: they will need to be created in a machine-readable format, e.g.XML, UBL, PDF/A3, not just regular PDF. The requirements for the essential content of tax documents will also be extended to include e.g., the supplier's IBAN, due date and any information on the correction of the tax document. The change at the intra-Community level should also lead to the modification of summary tax documents.

If member states approve mandatory electronic invoicing at the local level, the implementation will remain within their discretion but tax documents will still be subject to the EN 16931 standard currently used for mandatory B2G (business to government) electronic invoicing. Similar systems are currently in place in, e.g., Italy, Spain, and Hungary.

From January 2024, member states may abolish the tax administration's obligation to authorise or verify in advance the issuing of electronic invoices by taxable persons at the national level. Electronic tax documents will no longer be subject to the recipient’s consent either. Electronic invoicing will thus become a standard part of the VAT Directive. Contrariwise, the use of 'paper' tax documents will only be possible if the member state allows them at the national level.
Important deadlines

Please note that the planned date of **1 January 2024** only concerns the laying down of the legal framework for the implementation of electronic invoicing, and the directive will only become fully effective **from 2028**, according to current estimates. Thus, in **the period from 1 January 2024 to 31 December 2027**, the member states will only be given the option to introduce mandatory electronic invoicing; should they decide not to do so, for that period they may continue to use the existing systems in place.

Please note also that where EU member states have adopted different systems for reporting and control of reported data (SAF-T, VAT ledger statements, e-ledgers, etc.), nothing should change at this level in the future, and the control mechanisms put in place by national tax authorities will remain unchanged until the time ViDA Directive is

implemented.

It is not yet known how the Czech Republic will approach the issue. We will continue to monitor developments in ViDA and keep you informed about the next steps in the digitisation of the VAT system in the EU.

Case law

SAC on received intra-group services

In judgment 10 Afs 93/2021–69, the Supreme Administrative Court (SAC) ruled on the tax deductibility of costs (expenses) incurred by a company for services provided by the group. In the tax administrator's opinion, the company failed to support what services were received from the group, who specifically provided them, and when. The court held that the company must prove that intra-group services were actually received in the claimed extent and that they brought benefits.

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The group provided services to the company in three areas: production-related advisory; assistance in refinancing of liabilities; and business support (IT, HR, management services, legal advice, etc.). The tax administrator denied the tax deductibility of the costs (expenses) on the grounds that the company did not sufficiently demonstrate that the services were in fact provided to it, and at what price.

As for the production advisory expenses, the Supreme Administrative Court **granted the company's objections**: the court held unreasonable the tax administrator's requirement that the company should have documented each individual production advice and quantified the related savings on which the supplier's fee had been calculated. In the court's opinion, it sufficed that the company had explained how the production advice affected the areas under review and what savings or production volume increases were achieved as a result.

As for services involving loan refinancing and support on the other hand, the SAC **agreed with the tax administrator**: in the court's opinion, the company failed to support the conditions of the drawdown, or the amount of the credit provided to the group companies. It also failed to prove that the portion of advisory fees allocated to it, calculated based on the proportion of the drawdown to the total credit granted to the group, was correct. Moreover, it was not even clear from the documents what the service specifically involved.

For business support services, the documents and other evidence submitted (witness statements, e-mails) were not sufficient either. **The company failed to support the actual content and the invoiced price for tens of millions of crowns**. According to the court, the tax administrator's request to provide more detailed information on the received supplies rather than just general statements on individual areas of cooperation was justified.

Claimed extent and benefit of intra-group services must be demonstrated

The SAC's conclusions show that the same rules generally apply to the tax deductibility of costs (expenses) for intra-group services and for services purchased from third parties. In particular, the company must demonstrate that it had actually received and benefited from the intra-group services to the extent claimed. At the same time, it must justify the price paid for the services; this is especially important when the total price is allocated among individual companies within the group using an allocation key.

In practice, we increasingly often see that companies do not have sufficient supporting documents to prove the

receipt of the services, their extent and benefit, not only regarding related parties.

Although the judgment gives some guidance as to the extent of documents that can be reasonably required, we expect that in similar cases, the tax administrators will require very detailed documentation of the services received, especially within the group.

Case law

CJEU on the VAT treatment of electricity supplies from charging stations

In its recent judgment, the Court of Justice of the European Union (CJEU) held that the charging of electric vehicles and the provision of related services constitute a complex transaction consisting of a supply of goods.

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The present case (judgment No. C-282/22) concerned the operation of recharging points for electric vehicles accessible to the public, providing customers with:

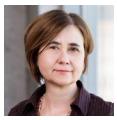
- access to a recharging device (including integration of the charger with the vehicle's operating system)
- the supply of electricity with suitably set parameters to the vehicle batteries
- necessary technical support to vehicle users
- a digital application allowing the user to reserve a connector, view the transaction history, and purchase e-wallet credits to pay for the recharging sessions.

The CJEU first stated that the supply of electricity to the battery of an electric vehicle is a supply of goods. Access to a suitable recharging device, technical support, and the provision of a digital application are themselves supplies of services. However, in the present case, they are ancillary supplies to the supply of electricity, serving as a means of better enjoying the supply of electricity to power an electric vehicle.

The CJEU therefore concluded that **the transfer of electricity constitutes a characteristic and predominant element of a single complex transaction which consists in the supply of goods** within the meaning of Article 14 (1) of Council Directive 2006/112/EC on the common system of value added tax.

News in brief, June 2023

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



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DOMESTIC NEWS

- An amendment (No. 152/2023) to the Construction Act and some related laws was published in the Collection of Laws.
- Communication on the Treaty between the Czech Republic and the Republic of Colombia on the avoidance of double taxation and prevention of tax evasion in the field of income taxes (Collection of International Treaties No. 39/2015) was published in Financial Bulletin No. 7/2023.
- The government approved an amendment to the Excise Duty Act restoring the excise duty rate on diesel fuel to the original rate of CZK 9.95 per litre, effective from the first day of the month following the promulgation.
- The amendment to the Investment Incentives Act has passed the first reading in the Chamber of Deputies. Among other things, it proposes to abolish the obligation of each investment incentive having to be approved by the government.

FOREIGN NEWS

- The EU finance ministers have agreed on further revising the directve on administrative cooperation in the field of taxation (DAC8). The amendment will introduce reporting obligations for crypto-asset service providers and crypto-asset operators. They will be required to report exchange transactions and transfers of reportable crypto-assets made by their customers. The amendment also covers other areas such as the exchange of binding assessments concerning natural persons or the limitation of the information obligation for intermediaries of cross-border arrangements who are bound by professional secrecy. For more information, please see here.
- Legislation for the Fit for 55 package was published in the Official Journal, which also includes Regulation 2023/956 of 10 May 2023 introducing a Carbon Border Adjustment Mechanism (CBAM).
- The European Commission published a proposal for a major reform of customs rules.
- On 28 June 2023 and 12 September 2023, respectively, the European Commission will discuss a common EU-wide system for withholding tax (FAST) and a common set of rules for EU companies to calculate their tax base (BEFIT).
- The G7 meeting endorsed the completion of work on Pillar 1 (changing the distribution of taxation rights in favour of market countries), with the understanding that the countries associated
- in the OECD Inclusive Framework could conclude the respective multilateral agreement by the end of July 2023.

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