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News in Brief, April 2024

Editorial

The closely watched amending proposals submitted by deputies to correct some of the inaccuracies introduced by the consolidation package did not make it onto the chamber's agenda before Easter. We will thus have to wait for their further discussion. On the other hand, the planned changes to the employment of foreigners from third countries, due to come into force in July, have become clearer and are expected to have a significant impact on the Czech labour market.

The shortage of workers has already become an evergreen of the Czech environment. An educated and qualified workforce is crucial for the success and competitiveness of any company, and meeting the demand for well trained and skilled professionals will be a major challenge not only in the upcoming years, but most likely for decades.

This remains true even as the Czech labour market is starting to show the first signs of cooling, while Germany, the backbone of the Czech economy, has started to cautiously lay off people. As a recent KPMG analysis has shown, one of the problems is that our neighbour is failing to recruit skilled people from third countries - partly due to a complex and inflexible system. It is thus worthwhile to pay attention to the amendment to the Employment Act which modifies the processes for reporting job vacancies and testing the labour market. We discuss the new rules with our experts in Audiodanovky.

I trust that this newsletter will give you useful answers to the questions on your mind. We will be also happy to discuss any areas of concern with you in person. We are here for you.

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Details of 2025 amendment to VAT Act - Part II

Below, we continue with an overview of the most important changes brought by the draft amendment to the Value Added Tax Act, this time focusing on the construction sector, in particular on changes in definitions, alterations in conditions for the exemption of real property supplies, and the abolition of the concept of internally produced fixed assets and related changes in claiming VAT deductions.

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Definition of buildings designated for housing purposes

The amendment clarifies the definitions of buildings for housing and social housing purposes. The new VAT Act will no longer refer to the Construction Act but directly to the information entered in the **real estate register**, which will now have to be used when assessing specific real property. The same applies to buildings intended for social housing. For them, the method of calculating the floor area will change and be determined by a decree of the Ministry of Finance.

Internally produced fixed assets

The concept of internally produced fixed assets where taxpayers claimed full VAT deduction during construction and reduced it only at the time the fixed assets were put into use has been abolished by the amendment. A VAT payer who self-manufactures fixed assets (or carries out technical improvement to these assets by their own activity) while purchasing goods and services for this purpose shall reduce the VAT deduction on these received supplies already at the time of claiming the VAT deduction.

In this context, the amendment introduces further changes. Where the taxpayer applies one of the coefficients to claim VAT deduction in a proportionate or reduced amount when acquiring fixed assets over a longer period of time (e.g., construction lasting more than one year), it will be necessary to adjust that coefficient to the coefficient applicable in the year in which the fixed assets are put into use. The sum total of input tax on the individual taxable supplies comprising the given fixed assets shall then be used to subsequently adjust the VAT deduction.

Supply of real property exempt from VAT

The amendment abolishes the **five-year time test** for VAT exemption of the supply of selected real property. Only the first supply after the completion of a construction or its substantial change, before the end of the second year after completion, will be taxed. Each subsequent supply will be exempt from VAT while the possibility of taxation remains in application.

The amendment to the VAT Act also provides **a new definition of a 'substantial change'**, which slightly differs from its definition in the GFD's Information on Application of VAT Act on Real Property. A change that seeks to modify

the use or conditions of occupancy of a building shall be considered substantial if the price after the change increases by 30% compared to the price of the selected real property before the change (the current threshold is 50% of the ascertained price or reference value). If this condition is not met, the taxpayer may decide that the change is substantial in the case of an addition of at least one storey or an extension of the floor area by more than 50%.

Other selected changes related to real property

It will be newly stipulated directly in the VAT Act that if as a result of construction or assembly work, the purpose of a building which is a building for housing or social housing changes, and the character of the building changes so that it can no longer be considered a building for (social) housing, the standard VAT rate shall apply to that work.

The right to deduct VAT when registering for VAT will also change: under the amendment, it will be possible to claim a deduction even if the fixed assets being acquired are only put into use after the person has become a VAT payer. In the case of company conversions, it will also be possible to claim a deduction on supplies received by a person who was not a VAT payer on the day preceding the date of registration (for the period to which the registration date falls).

We shall continue to monitor the legislative process of the amendment to the VAT Act. The comment procedure has just ended, and the Ministry of Finance as the proposer is processing the submitted comments.

Tips and tricks

Tax administration principles: responsiveness and decency in tax proceedings

Following the principle of responsiveness and decency, tax administrators should try to accommodate persons involved in tax administration. At the same time, both parties to the proceedings should avoid any impoliteness or indecency. Is this principle a 'mere' reflection of administrative etiquette, or can compliance with this principle also bring tangible benefits to taxpayers?

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Although tax administrators may dispute facts asserted by taxpayers in tax proceedings, even a heated exchange of arguments should keep within the limits of polite language and formal communication. The situation may not be easy for either party, as there are usually considerable financial resources at stake, but both should respond to each other's arguments in a factual and respectful manner, and not try to lecture or belittle the other party or their arguments.

If the above principle is adhered to, the tax administrator will be more likely to accommodate taxpayers during tax proceedings and will avoid burdening them with excessive bureaucracy or prolonging the duration of individual administrative acts.

What if the tax administrator does not comply?

If you feel that the tax administrator is acting contrary to the principle of responsiveness and decency, you can file a complaint against their behaviour under the Tax Procedure Code. The tax administrator will investigate the facts set out in the complaint and decide within 60 days of the complaint being filed whether it is justified and, if necessary, seek redress.

We would like to point out that such a complaint cannot be held against you, i.e., the tax administrator should not take it into account when deciding on other matters even if it is found to be unjustified.

Polite and helpful behaviour also benefits taxpayers

However, it is not only the tax administrator who should follow this principle. Polite and forthcoming communication with the tax administrator will also pay off for you. Your manner of communication can play a very tangible role in the tax administrator's decision to, e.g., waive tax-related penalties and interest. There is no entitlement to such waivers, and it is therefore entirely within the tax administrator’s discretion whether to grant them.

Hence, if you apply for a waiver of a penalty, the tax administrator will consider your cooperation in the proceedings leading to the assessment of an additional tax when determining the extent of the waiver. If the tax administrator does not find other reasons to reduce the waived penalty, you may be granted a waiver of up to 75% of the penalty solely on the grounds of your cooperation and good behaviour.

Therefore, please communicate with your tax administrator in a friendly and polite manner. In our experience, it usually pays off, and not just financially.

Legal

Employment of foreigners from third countries to undergo further changes

Effective 1 July 2024, the Employment Act will undergo significant changes which will affect foreigners from countries outside the European Union without free access to the labour market. Specifically, processes relating to the reporting of job vacancies and the testing of the labour market will be amended.

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Labour market test

Employers planning to fill a job position with a foreigner without free access to the labour market are first required to report the vacancy to the relevant regional branch of the Labour Office of the Czech Republic. The job position then undergoes a 'labour market test'. The aim of this procedure is to determine whether the position could be filled by a citizen of the Czech Republic or the EU or a foreigner from a non-EU country with free access to the labour market. The test usually takes between 10 and 30 days, during which applicants without free access to the labour market cannot apply for the position.

On 1 July 2023, the labour market test was abolished for jobs to be filled by blue card holders – i.e., highly qualified foreigners. For jobs to be filled by regular employment card holders, the labour market test has remained in force, while, in view of the current situation on the labour market, labour offices have been authorised to shorten the test to a minimum of 10 days. However, it is still not possible for foreigners without free access to the labour market to immediately apply for these jobs and submit their residence applications.

In response to the current situation, the Ministry of Labour and Social Affairs is now further relaxing the rules for the labour market test and the vacancy notification process. As of July this year and depending on the current situation on the labour market, the labour market test may be waived for positions to be filled with employment card holders.

Register of vacancies

Other changes introduced by the amendment will affect the keeping of records of job vacancies. Labour offices will remove job vacancies from their register after six months from the date of the notification. The exception will be jobs for which a procedure for issuing a residence permit is underway at the time. In addition, labour offices will be authorised to remove from their register jobs for which the employer fails to provide the necessary cooperation to the office.

Wider scope of persons with free access to the labour market

The list of exemptions from the obligation to have a work permit or a residence permit will be changed significantly. These exemptions are listed in a provision of the Employment Act, to which a new category will now

be added: nationals of countries whose listing will be determined by a governmental regulation. In effect, nationals of selected countries will thus be granted free access to the labour market, and the rules for their employment will then be essentially like those for EU citizens.

Notification of posting of workers from another EU member state to the Czech Republic

A new provision of the Employment Act will regulate the procedure for notifying the authorities of the posting of an employee of an employer established in another EU state to the Czech Republic for the purpose of providing services. The provision specifies the form and the data that the employer must report. The notification shall now be sent to the State Labour Inspectorate rather than to the Labour Office. An important novelty is the obligation to provide the labour inspectorate with documents in Czech or Slovak proving the existence of an employment relationship between the worker and their employer.

Legal

Changes in employment of persons with disabilities underway

The Ministry of Labour and Social Affairs has submitted a legislative proposal for changes concerning the employment of persons with disabilities. The amendment to the Employment Act contains new conditions for the payment of an allowance to support the employment of persons with disabilities, and also technical specifications making the regulation clearer.

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Allowance for people with disabilities

One of the fundamental changes proposed is the abolition of the allowance provided to employers for the employment of disabled persons on the sheltered labour market. Currently, an employer can receive up to CZK 6,000 for actually incurred wage and insurance expenses for these employees. The ministry justifies the abolition of the allowance mainly by arguing that such (potential) expenses are already covered by the 5% discount from social insurance if the affected employees work part-time. Such workers will nonetheless still be included in the calculation of the mandatory share of employees with disabilities for the purposes of recognising the employer as an employer on the sheltered labour market.

Increase in allowance to support employment of people with disabilities

The amendment also introduces a cap on the maximum amount of the increase in the allowance for an employer's other operating costs incurred in connection with the employment of such persons. These include in particular the costs of providing an assistant, transport, or adaptations to the premises. The reason for this is that the practical experience of the ministry shows that employers often try to get the maximum increase even if it does not correspond to the funds spent. Therefore, the maximum amount will be set at 0.8 times the quarterly amount of the wage allowance.

The proposed legislation also specifies other costs eligible for the increase in the allowance. In the past, individual labour offices have treated the costs differently because of the absence of a specification of such costs. Under the amendment, only extra costs on top of costs of employing non-disabled workers will be considered as costs for adapting the premises. Also, costs for transport or assistance incurred between entities related by property will not be eligible.

Debt-free status

Changes will also to be made to the debt-free condition that employers must meet to be eligible for the allowance to support the employment of persons with disabilities. Under current legislation, employers are only considered

debt-free if their arrears on tax and statutory insurance did not exceed CZK 10 thousand and if they settle them by the 15th day of the calendar month following the calendar quarter for which the allowance is claimed, or within five working days of becoming aware of the arrears on the basis of a notification from the labour office.

The amendment should **remove the CZK 10 thousand limit**; the condition of being debt-free will thus be met as long as the employer pays the arrears in full, regardless of their amount. At the same time, the amendment proposes to extend the period within which an employer must pay the arrears.

The draft amendment to the Employment Act is currently undergoing an inter-ministerial comment procedure. The effective date is proposed for **1 January 2025**.

Major amendment to Code of Administrative Justice – evolution or revolution?

After more than twenty years, the Code of Administrative Justice is about to undergo a significant amendment to reflect the decision-making practice of the Supreme Administrative Court (SAC), and to overcome or eliminate the shortcomings of previous inconsistent legislative amendments. According to the legislators, proceedings before administrative courts should be more efficient and economical. However, the question remains whether this will not be to the detriment of the protection of the subjective public rights of natural and legal persons.

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Reimbursement of costs of proceedings to administrative authorities

Currently, administrative authorities are not entitled to compensation for their costs of proceedings before administrative courts if they win the case: according to the current case law, the state (executing public administration) has a sufficient apparatus and personnel to participate in the court proceedings, and thus does not incur costs beyond what is common in the normal course of their activities. This should now change: referring to the principle of equality of all parties to proceedings, the amendment proposes that if a case is lost, the plaintiff (legal or natural person) will have to reimburse the administrative authority for the costs of the proceedings. Submitting the decisions of administrative authorities (e.g., the Appellate Financial Directorate in tax cases) for judicial review could thus become rather costly should one fail to succeed in the proceedings.

Limited review by the SAC

Currently, if the plaintiff is unsuccessful in the proceedings before a regional court, they can lodge a cassation complaint with the Supreme Administrative Court. Depending on the cassation objections, the SAC will examine the case from both factual and legal perspectives. The amendment proposes to limit the scope of cassation objections to legal objections only. This may be particularly problematic in tax disputes, where regional courts often uphold the unlawful conduct of tax authorities (e.g., when taking evidence). The SAC then challenges this, stating that the facts of the case were ascertained unlawfully, and returns the case to the regional court (or directly to the tax authority) for further proceedings, where the opinion of the SAC is binding. Under the amendment, this would no longer be possible, as the SAC would not be able to review the regional courts' judgments in terms of facts of the case and would have to look for errors solely in the legal assessment of the case. The grounds for the inadmissibility of a cassation complaint are also to be extended.

Electronisation of justice

Proceedings before an administrative court are typically initiated by an action filed by a party to the proceedings. Under the current legislation, this must be done in paper or electronic form with an electronic signature. If the participant makes a submission lacking their electronic signature, they must also deliver it to the court in documentary form, otherwise it will be disregarded. This is now to change - the amendment proposes that both forms of making a submission should be treated equally. Thus, if a party makes a submission, e.g., by email and does not attach an electronic signature, the court shall ask them to provide it. Also, persons who have a data mailbox will be obliged to act through that data mailbox in court proceedings.

What next?

The legislator's aim is to shorten and streamline court proceedings. As proposed, the amendment may indeed strengthen the position of the administrative authorities to the detriment of natural and legal persons. This would, among other things, have a serious impact on tax disputes in which the taxpayers (natural or legal persons) often find justice only in proceedings before the Supreme Administrative Court. The amendment is still at the very beginning of the legislative process and the proposed regulation may yet undergo substantial changes. Given its major impact, we will keep you informed about its developments.

Non-performing loans – regulation of credit purchasers and servicers

Following the EU directive, a new law on the non-performing loan market was passed, regulating the credit trading and servicing sector. Collection agencies will be required to obtain a licence and will be subject to supervision by the Czech National Bank. The act also affects persons who purchase credits, usually for the purpose of their recovery: these will not have to have a special licence but will have to comply with a number of obligations. The act will enter into force on 1 May 2024.

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The act will only apply to the trading in and the servicing of non-performing loans, i.e., non-performing BNPLs, financial borrowings, credits, and similar financial services if granted by a bank, credit union or foreign bank operating in the EU. Importantly, the act will neither apply to loans and credits granted by non-bank consumer credit providers nor to the administration of non-performing loans by investment fund managers, attorneys, notaries, or bailiffs within the course of providing their services.

Whether a loan is non-performing will be assessed at the time of its transfer. In most cases, this will be a situation when the loan is more than 90 days past due and the non-performing loan servicer considers the borrower unlikely to repay the loan obligations in full without the non-performing loan servicer having to proceed to realise the loan security (collateral).

Non-performing loan servicers will have to obtain **a license from the Czech National Bank**. The servicing includes not only the recovery of the outstanding debt, but also renegotiating the obligation, attending to a debtor's complaints and claims, or informing the debtor of changes in the interest rates. For some entities, their existing licence will suffice: these will be, as a rule, banks, credit unions, but also non-bank consumer credit providers. In the licensing procedure, the applicant will have to demonstrate the professional qualification of the persons in the company's management and their integrity (no criminal record) in the area of lending, the transparency and the origin of funds, and a corporate governance system in place.

The transitional period for carrying out credit servicing activity expires on 29 June 2024. However, if an entity applies for a licence within that deadline, they may continue to operate even after its expiry until the final decision on granting their licence is issued.

In addition to servicers of non-performing loans, the act will also affect traders in non-performing loans. If they want to service non-performing loans, i.e., primarily recover them, they will either have to be licensed or conclude a contract with a licensed non-performing loan servicer.

The act also sets out the information obligations of credit purchasers and credit providers. Under the act,

information on offered and transferred non-performing loans and on concluded contracts for servicing of non-performing loans will have to be reported to the Czech National Bank.

Electromobility support now available

On 18 March 2024, the National Development Bank in cooperation with the Ministry of Industry and Trade started accepting applications for support in Call I - Electromobility Guarantee announced under the National Recovery Plan.

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Applications for support can be submitted **until 30 September 2025**. The call is also open to large enterprises. Support is available for the purchase of zero-emission vehicles (battery and hydrogen electric) and for the acquisition of non-public charging stations, but not for the acquisition of hybrid vehicles. Specifically, support is available for vehicles of categories M1 (passenger cars), N1 and N2 (trucks up to 4,25 t). The purchase price of a zero-emission passenger vehicle can be up to a maximum of **CZK 1.5 million excl. VAT**. The maximum financial contribution per passenger vehicle is CZK 200 thousand; the maximum financial contribution per charging station ranges from CZK 50 thousand to CZK 150 thousand depending on the type and output of the station.

Aid is provided in the form of a bank guarantee for a commercial loan combined with a financial contribution. A precondition for obtaining the financial contribution is the purchase of a vehicle via a loan secured by a guarantee under the call. The total aid, i.e., a loan guarantee along with a financial contribution, must not exceed the de minimis limit. Guarantees are granted up to 70% of the guaranteed loan. For the purchase of one zero-emission passenger car, the loan must be at least CZK 300 thousand and at most CZK 1.5 million. The minimum term of the loan is 12 months, and the guarantee may not exceed five years.

Funds for allocation amount to CZK 1.95 billion, of which CZK 1.65 billion is intended for the acquisition of zero-emission vehicles and CZK 300 million for any charging infrastructure. The vehicle to be purchased must meet the definition of a new means of transport (must be delivered within six months from the date of first entry into operation and have less than six thousand kilometres on the clock). It is also possible to purchase a fleet of vehicles within one project. The number of charging stations must not exceed the number of vehicles being acquired. The project must be implemented by 31 December 2025.

Applications for photovoltaic power plant subsidies now accepted

Since 1 March 2024, it has been possible to apply for support for the installation of photovoltaic power plants (PV plants) under the RES+ No. 1/2024 - Photovoltaic Power Plants 10 kW - 5 MW for Self-Consumption call announced under the Modernisation Fund administered by the State Environmental Fund of the Czech Republic (SEF).

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Applications for support will be accepted **until 31 October 2024**. Funds for allocation amount to CZK 3 billion (of which CZK 0.5 billion shall preferentially be allocated for the Karlovy Vary, Moravian-Silesian and Ústí nad Labem regions). Support is available to existing or future holders of a licence for electricity production without any company size limitation. The licence will only be processed once the PV plant is completed and in operation. The licence will be granted by the Energy Regulatory Office, and its processing should not represent a major administrative hurdle.

Support can be obtained for the installation of PV power plants with a capacity from 50 kWp (in Prague from 10 kWp, but only by municipalities, regions, state enterprises, etc.) up to 5 MWp with primary self-consumption of the generated electricity. At the same time, support can also be obtained for battery storage systems and electrolysers. The reserved capacity of a PV plant may amount to a maximum of 30% of the installed capacity for PV plants with a capacity of up to 1 MWp and a maximum of 20% of the installed capacity for PV plants with a capacity of more than 1 MWp.

The maximum aid amount is limited to **30% of eligible costs** and is dependent on the installed capacity of the PV plant. To calculate the aid amount, an interactive tool disclosed on the SEF's website may be used. Under the updated wording of the call, eligible costs may also include costs incurred after the date the call was announced.

Other documents must also be submitted along with applications for support, such as a building permit with legal force on the date of submission of the application for support. For this reason, it is essential to start working on the project as soon as possible. The processing of a contract for the connection of the PV plant to the grid or a contract to conclude a future contract for the connection to the grid may also be time-consuming.

Projects must be implemented within three years from the date of the decision on granting the subsidy and can be carried out throughout the Czech Republic.

If you are interested, we will be happy to help you prepare your application.

Case law

New case law on interest on loans against taxpayers

At the beginning of 2024, the Supreme Administrative Court (SAC) issued two judgments concerning interest income and expense on loans from a corporate income tax perspective. In the first judgment, the SAC addressed the tax deductibility of costs incurred as a result of contractual increase in interest rates. The second judgment concerned the accounting for and taxation of interest income on a loan after the due date of the relevant debt.

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Case 4 Afs 119/2022 - 47 concerned the financing of the construction of a solar power plant, which the given company had secured both with a bank loan and with loans from investors. Due to deteriorating financial indicators, to pay out the remaining part of the loan, the bank required the company to increase its minimum own resources. The company claimed that these funds could only be obtained from investors who had thus asked for an increase in the interest rate on their loans to 19% instead of the original 6% p.a. The increase in interest rates had been confirmed by concluding amendments to the original loan agreements.

However, the tax authority assessed additional income tax on the difference between the interest calculated at the increased interest rate and at the original interest rate. In their view, the company had not proved that these were costs incurred to generate, secure, and maintain taxable income. The tax authority found that at the beginning of the project, the investors had undertaken in a letter of comfort to provide the company with the necessary financing to carry out the project even if the relevant costs increased. In the opinion of the tax authority, the bank's additional requirement for increased financing from own resources represented precisely the aforementioned increase in project costs, which were to be financed by the investors without any further conditions.

After the company did not succeed in its appeal against the payment order at the regional court, the case was brought before the Supreme Administrative Court. The SAC agreed with the regional court's conclusions that it was not necessary to conclude amendments to the original loan agreements with the investors, as the company did not receive any additional funds under these amendments. The company had a right to the additional funds under the letter of comfort previously concluded with the investors. The SAC therefore concluded that the increase in the interest rate in this case merely increased the income of the creditors, and did not contribute in any way to generating, securing, and maintaining the taxable income of the company.

The SAC’s judgment in case 2 Afs 79/2023-62 concerned several situations where the tax administrator assessed additional income tax on a company due to its incorrect accounting. The SAC addressed the question of up to what time the company should have accounted for interest income on the loan, as the company stopped accounting for the interest on the loan at the time of the loan's maturity, arguing that it found the debt uncollectible and therefore

covered it by a 100% accounting adjustment.

The SAC upheld the regional court's decision and the tax administrator's view that interest arising from commercial relations (i.e., on loans) is to be accounted for until the principal is repaid regardless of whether the business partner pays interest. The interest income accounted for then represents taxable income, which in this case the company lacked. The SAC found the company's argument that the debt was uncollectible unproven and pointed out that for that reason, it did not address the issue of charging interest on uncollectible receivables. According to the court, the company's subjective decision to record an accounting adjustment to the receivable cannot be considered as evidence of uncollectibility. Not providing any evidence of termination of the relationship with the debtor or of a unilateral waiver of the right to the receivable was also held against the company. It was also found that the company entered into a debt acknowledgement agreement with the contractual partner two years later.

Case law

Fraudulently issued invoices: who pays VAT?

The Court of Justice of the European Union (CJEU) commented on who is considered a person liable to pay tax for invoices fraudulently issued by a company's employee.

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An employee fraudulently issued tax documents (invoices) without the consent or knowledge of the company that employed her. The invoices indicated VAT which related to transactions that were actually carried out but with entities other than those stated in the invoices. The invoices were not recorded in the company's accounts and the corresponding VAT was not paid by the company to the state budget or reported in its tax returns.

The CJEU clarified that an issuer of an invoice is obliged to pay the VAT entered in the invoice even in the absence of an actual taxable transaction and irrespective of any fault if there is a risk of loss of tax revenue. In the present case, the employee was found to have issued the invoices for fraudulent purposes: the VAT was invoiced falsely to enable the recipients of those invoices to fraudulently obtain the right to deduct that VAT.

According to the CJEU, the company **failed to exercise the due diligence** required to prevent the issuance of the fraudulent invoices. The employee was in charge of invoicing and could, among other things, issue VAT invoices outside the company's electronic invoicing system, and without having to obtain specific consent from her employer. In such a situation, the employee's fraudulent conduct can be attributed to the employer, and the employer must therefore be considered the person who entered the VAT in the invoices.

The duty of care under Article 203 of the **VAT Directive** is owed by an employer to their employee, in particular where that employee is authorised to issue invoices stating VAT in the name and on behalf of their employer.

In its conclusion, the CJEU held that the employee who had issued false VAT invoices using the identity of their employer as a taxable person without that employer's knowledge or consent would have been considered the person who had entered the VAT had the company exercised the due diligence reasonably required to monitor the conduct of that employee.

Case law

CJEU confirms its position on supply of goods to specific recipient

In a recent case submitted by Czech courts, the CJEU commented on an intra-community supply of goods to a specific recipient (C 676/22 B2 Energy). According to the CJEU, a VAT exemption could not be granted because the goods were not delivered to a recipient with the status of a taxable person in another member state. The CJEU thus confirmed its opinion previously expressed in C 154/20 Kemwater ProChemie.

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The Czech tax administrator refused to grant a taxpayer an exemption for intra-community supply. They did not dispute that the goods were actually delivered from one member state to another - the taxpayer had provided robust documentation supporting that. The reason for not granting an exemption was that the taxpayer had failed to prove that the goods had been supplied to the person named on the tax documents, or to a person registered for VAT in another member state (Poland).

In an earlier judgment in the Kemwater ProChemie case, the CJEU held that if the identity of the supplier is not established, the conditions for claiming a VAT deduction are met if the tax authorities have the necessary information to verify that the supplier had the status of a VAT payer.

In the present case, a Czech court referred a preliminary question to the CJEU: can the tax administrator deny an exemption if the supplier fails to prove that the recipient indicated in the tax documents acted as a taxable person, and even though the tax administrator has data available to verify that the actual recipient in another member state did indeed have that status?

The CJEU summarised the substantive legal conditions for granting an exemption:

1. The goods must be physically delivered from one member state to another.
2. The purchaser must act as a taxable person (which does not mean that the goods must be delivered to the specific recipient indicated in the tax document).

The CJEU concluded that the right to an exemption can be denied only where the supplier failed to prove that they have supplied the goods to a recipient with taxable-person status in another member state and where in the light of the facts and information provided by the supplier it cannot be ascertained whether the recipient had such status.

However, the question remains whether this judgment will have any practical application after the implementation of the Quick Fixes: the 2020 amendment added a condition for the exemption of an intra-community supply of goods, requiring the supplier to obtain the VAT number of the buyer from another member state and to report this number correctly in the EC sales list.

In brief

News in Brief, April 2024

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

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DOMESTIC NEWS

- The following regulations were published in the Collection of Laws in March:
  - Decree No. 50/2024 Coll., amending Decree No. 358/2013 Coll., on the provision of data from the real estate register
  - Decree No. 51/2024 Coll., amending Decree No. 245/2016 Coll., implementing certain provisions of the Customs Act
  - Government Regulation No. 55/2024 Coll., on the inadmissibility of applications for a residence permit in the Czech Republic submitted at embassies by third-country citizens
  - Government Regulation No. 63/2024 Coll., on certain details of the provision of accommodation and related services to persons granted temporary protection
  - Notice of the Ministry of Labour and Social Affairs No. 37/2024 Coll., on the relevant amount for determining the total amount of wage claims paid to one employee under Act No. 118/2000 Coll., on the protection of employees in the event of the employer’s insolvency
  - Government Regulation No. 70/2024 Coll., on the maximum amount of allowance to support the employment of persons with disabilities in the sheltered labour market
- The government has approved the creation of a digital regulatory sandbox to support fast-growing companies such as start-ups and spin-offs in financial innovation and decentralised technologies. To be launched by CzechInvest by the middle of this year, the sandbox will provide support ranging from consulting through legal advice to the technical testing of innovative products.
- At the ECOFIN Council in March, a joint meeting was held with EU ministers responsible for employment and social policy (EPSCO Council) on the importance of social investment for increasing EU competitiveness. The finance ministers also took note of the European Commission's evaluation report on the implementation of the Recovery and Resilience Facility (RRF) between 2021 and 2023. EUR 224 billion has already been allocated to EU member states through the National Recovery Plans, while the Czech Republic has so far drawn around EUR 2 billion.
- It will only be possible to buy stamps, exchange damaged unused stamps for new ones, and return undamaged stamps until the end of this year and only at selected branches of Česká pošta, where a fee will be charged for the service according to the current price list.
- From 1 April 2024, the new Motor Third Party Liability Insurance Act (30/2024) and Decree 69/2024 Coll. are effective. The new regulation responds to the EU directive. Green cards for proving third party liability insurance in the Czech Republic have been abolished and replaced by online insurance registrations. Checks will thus be possible without stopping vehicles, but for trips abroad, the green card will still be necessary or appropriate to avoid any complications. Registration operations for changes in the road vehicle register will also be simplified. The permanent move to an online data exchange system and the related abolition of the green card for national purposes will take place after a six-month transition period, i.e., from 1 October 2024.
- The Ministry of Industry and Trade is looking for ways to involve artificial intelligence in the processing of trade licenses and thus facilitate communication between licensed traders and the state. Last year, the

ministry launched a new Licensed Trade Portal at https://www.rzp.cz/, which significantly expands the existing trade licensing register services for the public.
- The government has submitted an amendment to the Energy Act, which aims to regulate the rules of the electricity market and at the same time better protect customers. It also provides a new regulation of accumulation, i.e., the storage of surplus electricity, the flexibility of the grid, and aggregation. Consumers will be able to better manage their consumption.
- The government has submitted a bill on lobbying to the chamber of deputies. It also includes a bill setting out transparent rules for lobbying and its place within the legislative and other decision-making processes. The aim is to reduce undesirable phenomena such as corruption, conflicts of interest, and clientelism.
- In mid-March, the government approved an amendment to the Labour Code that introduces a mechanism for indexing the minimum wage. The Ministry of Labour and Social Affairs will announce the minimum wage for each calendar year by 30 September of the previous year. The minimum wage amount will be derived from legislative parameters. The government also approved a draft regulation on the maximum amount of the allowance to support the employment of persons with disabilities on the sheltered labour market. The current amount of CZK 14,200 will be increased by CZK 1,500 from April 2024.
- The Ministry of Finance has submitted for comments a draft amendment to the Act on International Cooperation in Tax Administration. The draft implements Council Directive (EU) 2023/2226 of 17 October 2023 (DAC 8). It introduces a new type of automatic exchange of information reported by service providers related to crypto assets and other measures strengthening international cooperation instruments, such as the inclusion of e-money in the exchange of information reported by financial institutions.
- The Ministry of Finance has submitted for comments a draft amendment to the act amending certain laws in connection with the establishment and operation of the European Single Access Point (ESAP). The draft implements Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a single European access point to publicly available information on financial services, capital markets and sustainability.

FOREIGN NEWS

- The OECD Secretary-General's Tax Report to the G20 Finance Ministers and Central Bank Governors, published on 29 February 2024 in connection with the introduction of the global minimum tax (Pillar 1), highlights that before the end of 2024, 60% of multinational enterprises (MNEs) falling under this framework will be covered by the Income Inclusion Rule (IIR). With the activation of the Undertaxed Payments Rule (UTPR) in 2025, coverage will extend to 90% of MNEs falling under this framework. For Pillar 1, the report further notes that it is still expected that a multilateral convention will be signed by the end of June 2024.
- The European Parliament had adopted its opinion on the European Commission's proposal for a directive on faster and safer refunds of excess withholding tax (FASTER). The Parliament proposes the following changes: extending the deadline for issuing an electronic tax residence certificate from two to three days, reducing the deadline for registering financial intermediaries in national registers from three to two months, and making it mandatory for financial intermediaries to verify the risks of misuse of electronic tax residence certificates in investment schemes.

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