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In brief

News in Brief, October 2024

Editorial

The Czech Republic has been hit by floods, devastating homes and businesses in a matter of moments. Damage assessments are not complete, but it will obviously require considerable resources and energy to get everything back on track. This issue of the Tax and Legal Update thus brings some insights on how to make the disaster easier to cope with. The Czech Financial Administration is offering citizens and businesses tax payment deferments, penalty waivers, and tax relief. These concern not just income tax, but also VAT. Special rules also apply to the VAT treatment of donations. It is also worth noting that municipalities can exempt flood-damaged real property from real estate tax for up to five years.

We also have other practical tips for you. Affected businesses can take advantage of several procedural options that will make it easier to meet their tax obligations. The government is also preparing further support for businesses, including a CZK 40 billion increase in the budget, which should help prevent worst-case scenarios.

The floods have hit us at a time when the entire EU must deal with a loss of its competitiveness. This is highlighted by former President of the European Central Bank Mario Draghi who in his report realistically points out, among other things, the negative effects of excessive bureaucracy. Paradoxically, despite this criticism, another flurry of regulations and obligations is approaching. There is, for instance, the EU Deforestation Regulation, which may impose a considerable administrative burden on some businesses. In this issue, it is covered in detail by Tomáš Kočař and Karolína Kubíčková. The new public country-by-country reporting for multinational companies also brings additional demands.

I bid you goodbye with at least one bit of positive news for our clients in Moravia: KPMG Legal has opened its offices in Brno, where local companies may take full advantage of the close cooperation between our lawyers and KPMG's tax, accounting, and other professionals. We will now be even closer to you.



Martin Hrdlík
Partner
KPMG Legal

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pCbCR: administrative burden or shift towards tax transparency?

Public country-by-country reporting is another of a range of obligations aimed at increasing transparency in the taxation of multinational companies and preventing profit shifting to countries with lower tax rates. Selected multinational companies are required to disclose key financial and tax information on a country-by-country basis.



Soňa Saidlová
ssaidlova@kpmg.cz



Michala Kopecká
mkopecka@kpmg.cz



Eliška Krejzová
ekrejzova@kpmg.cz

Compared to its predecessor non-public country-by-country reporting, public country-by-country reporting will apply to a larger number of Czech entities and bring higher sanctions. Czech entities should therefore pay increased attention to this obligation.

Public country-by-country reporting ("pCbCR"), introduced pursuant to EU Directive 2021/2101, imposes an obligation on selected entities to prepare and publish or only publish a report on income tax information. This obligation was implemented into Czech legislation by an amendment to the Accounting Act as early as in 2023 but applies to all periods beginning on or after 22 June 2024.

Who is subject to the new obligation?

The pCbCR obligation will apply to large multinational groups with consolidated revenues of more than EUR 750 million and standalone undertakings with a cross-border element whose net turnover exceeds CZK 19 billion. A standalone undertaking with a cross-border element is a company with a branch or permanent establishment abroad, i.e., a Czech company with a branch outside the Czech Republic or vice versa. In some cases, it is also necessary to monitor the net turnover of the Czech entity to determine whether and to what extent the new obligation applies to the entity. All criteria are always examined for two consecutive accounting periods.

Czech entities may be obliged not only to publish the report on income tax but also to prepare it. To determine the extent and manner of compliance with the new obligations, it is necessary to analyse the position of the entity within a corporate group or a standalone undertaking and monitor whether the defined financial criteria or their combination have been exceeded. For example, for a Czech permanent establishment of a foreign corporation, the net turnover threshold of CZK 200 million must be monitored. For the ultimate parent company of a multinational group, the consolidated revenue threshold to be watched lies at EUR 750 million.

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What information must be disclosed?

The law requires that basic information about individual entities of a standalone undertaking or a multinational group, as well as selected financial indicators such as revenues, profit or loss, current and deferred tax, assets, number of employees, etc., be publicly available. At present, no single form for compiling the country-by-country report has been prescribed, pending evaluation of the feedback requested by the European Commission. Eventually, a recommendation will be made on the content and format of the single form to be published.

However, entities have the option of preparing a report on income tax using the non-public country-by-country reporting template. Decree No. 306/2017 Coll. regulates the country-by-country report template and contains instructions for its completion. In such a case, however, the entity must declare that it has made use of this option.

The disclosure of certain information required by the pCbCR may, in certain cases, constitute the disclosure of valuable trade secrets. Therefore, the Czech Republic has adopted a protective clause which allows certain mandatory disclosures to be omitted for a maximum of five years, if such disclosure would cause significant harm and its omission seems justifiable.

Dates and deadlines

The obligation to prepare and publish a report on income tax will apply to accounting periods beginning after 22 June 2024. However, if the accounting period of the multinational group or the standalone undertaking is the same as the calendar year, the first period will be the year 2025 (provided that the set criteria were exceeded in both 2024 and 2025). The report must be published within 12 months of the end of the accounting period for which it has been prepared and must be available to the public for a period of five years.

Where to publish

The report on income tax must be published in the public register and on the entity's website. In specified cases, the obligation may also be fulfilled simply by providing a link to the public register on the entity's website.

Sanctions

If an entity fails to prepare a report on income tax or disclose it in accordance with the legislation, it may be fined up to 3% of its net assets, which for consolidating entities can amount to a substantial amount, as the 3% will be calculated on the consolidated net assets.

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Flood aid: overview of available tax relief

In response to the widespread flooding, the Czech Financial Administration and the Czech Social Security Administration have issued several notices for citizens and companies, offering tax payment deferment, penalty waivers, and tax relief. Read to find out how to proceed, what can be deferred or waived, and what the tax implications of making donations are.



Václav Baňka
vbanka@kpmg.cz



David Mlíkovský
dmlikovsky@kpmg.cz

Income tax

You may apply for:

- **Tax payment deferment:** if you fall behind on the payment of your tax due to the floods, you can apply for a deferment of the tax payment or for an instalment plan (spreading the tax into instalments). You can also apply retrospectively. The Financial Administration's web application can help you with this.
- **Adjustment of tax prepayments:** tax prepayments can be adjusted or waived in full upon request. Here too, the online form can be used.
- Waiver of interest and penalties: if you are late filing your tax return or paying your taxes, you can apply for a waiver of default interest, interest on the deferred tax amount, or penalties for the late filing of a tax return.

Relief for donors and donation recipients:

- **Tax base reduction:** up to 30% of donations made for charitable, health, environmental or humanitarian causes can be deducted from the tax base (the chamber of deputies is discussing an amendment that will increase this limit for 2024, 2025, and 2026).
- **Tax exemption:** monetary and in-kind donations received in connection with the floods are exempt from income tax. This applies to donations from public fundraisers as well as from individuals and companies.

Special regime for entrepreneurs

- Costs incurred as part of aid provided in kind (e.g., supply of building materials in connection with recovery after natural disasters) are considered deductible for income tax purposes.
- These costs cannot be simultaneously claimed as a reduction of the tax base on the basis of the provided donation.

VAT

You may apply for:

- As in the case of income tax, it is possible to apply for a deferment of the tax payment or spreading the tax into instalments, and for a waiver of interest and penalties for late payment of the tax and late submission of the tax return (also applies to VAT ledger statements).

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- By decision of the Minister of Finance, the penalty of CZK 1,000 for the late submission of a VAT ledger statement has been waived across the board; details and conditions have been published in Financial Bulletin 7/2024.

VAT treatment of donations

- Monetary donations made by a VAT payer, whether in cash or non-cash, are not subject to VAT and shall not be reported in the VAT return.
- For in-kind donations, it depends on whether the goods were acquired for economic activity:
    - If not, the VAT payer is not entitled to deduct VAT, the donation is not subject to VAT and shall not be reported in the VAT return.
    - If yes and the VAT payer claimed a VAT deduction, they must pay output tax on the donation.
- If the VAT payer provides services free of charge and claimed a VAT deduction, they must pay VAT on these services.

Real estate tax

- By issuing a generally binding decree or a measure of a general nature, municipalities can exempt flood-damaged real property from real estate tax for up to five years. The tax exemption can apply to both land and buildings. It must take effect before 31 March 2025.

Social security premiums

- The payers of social security premiums (employers, self-employed persons) from flood-affected areas may apply for a waiver of the penalty for non-payment of premiums due to the harshness of law with the relevant district social security administration.
- The application must include the grounds in which the applicant sees the harshness of the law, together with a supporting affidavit. Each application will be considered on an individual basis, and there is no legal entitlement to a waiver of the penalty.

For more information, please visit the website of the Financial Administration and the Social Security Administration or contact us.

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Taxes

Sale and exchange of crypto-assets: proposed exemption from personal income tax

The chamber of deputies is currently discussing a bill amending certain laws in connection with the implementation of EU regulations on the digitisation of the financial market and sustainability financing (Print 694). During the second reading, a proposal to amend the Income Tax Act was submitted, concerning the exemption of income from the transfer of crypto-assets for consideration from personal income tax. Any legislative and technical errors in the amendment could be corrected during its third reading. The amendment is planned to take effect on 1 January 2025.



Lenka Nováková
lnovakova@kpmg.cz



Petra Krykorková
pkrykorkova@kpmg.cz

The proposed exemption would apply to the transfer of crypto-assets that are currently liable to personal income tax as part of other income but not to crypto-assets that are part of the taxpayer's business assets. The exemption should follow similar principles as the exemption of income from the transfer of securities for consideration. The first principle is the income **threshold test**: to claim the exemption of income from the transfer of crypto-assets (other than electronic cash tokens) for consideration, the total gross income from such sales for the taxable period cannot exceed **CZK 100 thousand**. The second principle is the **time test**: income from the transfer of crypto-assets for consideration would be exempt from personal income tax if the crypto-assets had been held by the taxpayer for more than three years immediately before they were transferred for consideration, with the exemption limit of **CZK 40 million** of gross income for the taxable period (including also income from the transfer of securities and shares in corporations for consideration).

The proposed regulation brings several technical and interpretative ambiguities. The amending proposal does not provide any explanation on this exemption, giving no clues to clarify the legislator's intent and provide at least some indication as to why the exemption was granted and how to interpret the disputable parts of the draft amendment.

Definition of crypto-assets for the Income Tax Act purposes

The current wording of the Income Tax Act does not provide a definition of crypto-assets or electronic cash tokens; both are considered intangible movable assets. The bill on the digitisation of the financial market (Print 692) implements the EU Regulation on Markets in Crypto-Assets (MiCA Regulation), which defines the crypto-asset more narrowly than can be generally understood.'

The proposed amendment to the Income Tax Act neither introduces its own definition of crypto-assets or

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electronic cash tokens nor refers to any other law or source of EU law, such as the MiCA regulation. The interpretation of the term could thus be very broad.

No interruption of the time test for exemption in the event of a crypto-asset exchange by the issuer

The proposed provisions on this exemption largely adopt the wording used in the Income Tax Act for the exemption of income from the transfer of securities for consideration. In the case of securities, the law provides, among other things, that in an exchange of a security by the issuer for another security of the same aggregate nominal value, the period of holding the security is not interrupted for the purposes of the time test for exemption. The key fact is that the nominal values of the exchanged securities do not change, as the Supreme Administrative Court has ruled in several of its judgments.

According to the proposed wording of the exemption of income from the transfer of crypto-assets for consideration, the time test for exemption would not be interrupted when an issuer exchanges a crypto-asset for another crypto-asset, without any further limitation. Thus, unlike the limitation on the exchange of securities, in the case of crypto-assets, there could be (without interruption of the time test) an unlimited exchange of crypto-assets by the issuer regardless of the type or value of the exchanged crypto-asset.

Non-existent transitional provisions

Transitional provisions are generally intended to increase legal certainty and ensure the predictability, continuity, and stability of the legal environment. However, transitional provisions that would provide, e.g., that the new legislation would apply only to crypto-assets acquired by the taxpayer after the amendment takes effect (i.e., from 1 January 2025) are missing. And since there are no such transitional provisions, the new wording of the act should also apply to crypto-assets acquired before the effective date of the amendment.

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Tips and tricks

Procedural options for flood-affected taxpayers

All tax relief options contained in the Czech Financial Administration's notice in response to the recent flooding have been summarised in a recent article. In this issue, we thus focus on the procedural options open to taxpayers affected by this emergency.



Jana Fuksová
jfuksova@kpmg.cz



David Mlíkovský
dmlikovsky@kpmg.cz

Read here about the possible tax relief options provided by the Financial Administration in its notice.

Waiver of tax-related penalties and interest

The financial administration provides that it is possible to apply for a waiver of default interest, interest on the deferred tax amount, and penalties for late tax assertion. In general, the waiver of tax-related interest and penalties is governed by the General Financial Directorate's Instruction D-58. It provides an exhaustive list of justifiable grounds for waiving interest and penalties, including situations where the taxpayer has been affected by a natural disaster. In such a situation, the tax authority should waive the tax-related penalty and interest up to 100% provided that the other conditions for this waiver are met. In addition to the justifiable grounds, the tax administrator assesses, e.g., whether the taxpayer has met the deadline for filing the application or the deadline for paying the administrative fee, and evaluates the frequency of the taxpayer's previous breaches of their tax administration obligations.

We cover waivers in more detail in a series of articles focused on minimising tax penalties here.

The financial administration has also issued information on a blanket waiver of the CZK 1,000 penalty for the late submissions of a VAT ledger statement concerning VAT payers who have been affected by the floods or whose VAT ledger statement is prepared by a person affected by the floods. The waiver applies to payers whose submission deadline falls between 12 September and 31 October 2024. For the waiver to apply, they must file the VAT ledger statement by 25 November 2024 and notify the tax administrator of having been affected by an emergency within the same deadline. There is no prescribed form for the application, although it is possible to use the template available on the Financial Administration's website.

Further details have been published in Financial Bulletin 7/2024.

Tax payment deferment

If a taxpayer is in danger of defaulting on payment of tax prepayments and taxes, they may apply to the tax administrator for the deferment of their tax payment (i.e. postponing the tax's due date) or for an instalment schedule. The application's form or structure has not been prescribed by law and can be submitted on a form

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available on the financial administration's website. It is only possible to defer the payment of tax in cases provided for by law, e.g., where the payment of the tax would cause serious harm to the taxpayer following their extraordinary expenses due to floods.

During the deferment period, instead of default interest, interest on the deferred tax amount arises, amounting to half the default interest. It is possible to apply for a waiver of both interest rates, and the occurrence of a natural disaster is a reason for waiving 100% of the interest amount provided that other conditions are met.

You can read about other aspects of deferment here.

Determining tax prepayments otherwise

If you expect a change in your tax liability and that change is not reflected in the tax prepayments, you can apply to the tax authorities to set the prepayments at a different amount or to cancel them for the entire taxable period. This application, as well as the application for the deferment of the tax payment, can be submitted using the official prescribed form on the financial administration's website.

You can also apply for a change in tax prepayments retrospectively and the tax administrator will consider whether the grounds for your application are justifiable.

Extension of the deadline for filing tax returns

If you are hesitant about whether you will be able to prepare and submit your tax return within the statutory deadline, the tax administrator may extend the deadline by up to three months. An application to extend the deadline including justifiable grounds must be filed with your local tax authority before the statutory deadline for filing your tax return.

The extension of the deadline cannot be used for VAT returns or VAT ledger statements, as the VAT Act does not allow this.

If the current situation is causing you problems with the payment of your tax liability, which could give rise to default interest, or if it is complicating the filing of your tax assertion, we recommend you consider the above procedural options. We would also like to add that for persons affected by the current emergency, all procedures discussed above have been exempt from administrative fees.

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EU deforestation regulation to significantly affect imports and exports

The EU regulation introducing stricter rules for the import and export of coffee, palm oil, wood or rubber will start to apply on 30 December 2024. It is therefore high time for companies to prepare for the new obligations.



Tomáš Kočař
tkocar@kpmg.cz



Karolína Kubíčková
kkubickova@kpmg.cz

The new regulation aims to mitigate the effects of global deforestation and forest degradation caused by the expansion of agricultural land. It imposes a wide range of obligations on companies placing selected commodities or products on the EU market or exporting them from the EU, with implications for the entire supply chain.

What commodities and products are affected?

The regulation mainly applies to seven commodities that according to the EU are usually farmed or grown at the expense of forests: **cattle, cocoa, coffee, oil palm, rubber, soy, and wood**. It will also affect products containing, fed on or produced from these raw materials. In practice, this means that the regulation also applies to chocolate, coffee, tyres, rubber products, and clothing (e.g. rods, tubes, but also gloves), furniture, charcoal, packing cases, crates, boxes and similar wooden packaging, barrels, as well as glycerol or palmitic acid used in the manufacture of cosmetic products. This will affect companies in most industries, from the food and the automotive to the clothing industry.

Companies that place these relevant commodities or products on the EU market (e.g. import them from third countries or produce them in the EU and then sell them) or export them from the EU will have to comply with the below obligations. Many of them also apply to distributors and other traders.

What obligations does the regulation introduce and what information will need to be collected?

First, companies are called upon to exercise due diligence before importing or exporting relevant commodities or products. This includes the obligation to (i) collect sufficient information and documents proving that the relevant products did not cause deforestation and were produced in accordance with the legislation of the country of production; and (ii) take measures to assess and mitigate risks.

Companies must **collect and maintain**, among other things, the following information and evidence:

- **detailed descriptions** of the products, including from which relevant commodities or products they were produced
- **the geolocation** of all land where each commodity was produced (this applies to all commodities the final

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product contains or was made using)
- **the date and time range** of production
- conclusive and verifiable **information** that the commodities were produced in accordance with the legislation of the country of production and that their production does not cause deforestation

the name, address, and email of the entity that **supplied** the products.

Risk assessment and mitigation

Companies then must analyse the collected information and assess whether there is a risk that the products are non-compliant. The regulation sets out many criteria to be considered during risk assessment. If there is more than a negligible risk, companies must take measures to mitigate it (e.g., by carrying out an independent survey or audit, requiring additional information or documents). At the same time, policies, controls, and procedures must be put in place to effectively manage the identified risks (e.g. model risk management practices, internal controls, appointment of a compliance officer for non-SME entities). Large companies must annually review the due diligence system in place and report information on the relevant products and countries of production, the conclusions of the risk assessment, and the measures taken to mitigate any risks.

Before placing the products on the market or exporting them, compliance with the due diligence requirements shall be demonstrated by submitting a due diligence statement (containing most of the information) through the EU's information system. Failure to comply with this obligation means that the relevant products cannot be placed on the EU market or exported from the EU.

Sanctions

Companies failing to comply with these obligations **will not be allowed to import or export the relevant commodities or products** to or from the EU market. Non-compliance with the regulation is also punishable by a fine of at least **4% of the annual EU turnover**, **confiscation** of the products, confiscation of the revenues from trading in the products, temporary **exclusion** from public procurement, and temporary **prohibition** from placing relevant commodities and products on the EU market or exporting them from the EU market.

The regulation is in force and will be applicable from **30 December 2024**. Companies therefore have only a few months to adapt to the new requirements.

We will discuss the impact of this regulation at the breakfast discussion How will the deforestation regulation affect global supply chains? Join our experts on Tuesday, 22 October at 9 a.m.

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New rules for fleet insurance and its intermediaries

Responding to the judgment of the Court of Justice of the European Union (CJEU) in case C-633/20 TC Medical Air Ambulance Agency, which dealt with the interpretation of the term ‘insurance mediation,’ the Czech Chamber of Deputies is currently debating an amendment to the Act on Insurance and Reinsurance Distribution.



Jiří Stratil
jstratil@kpmg.cz



Kateřina Lesáková
klesakova@kpmg.cz

The CJEU ruled that the activities of policyholders who for remuneration offer participation in group insurance schemes entitling participants to claim insurance benefits must be regarded as insurance mediation. The current Czech legislation does not recognise this activity as insurance mediation, which the amendment is to change.

Insurance mediation as a policyholder’s activity must meet the criteria set out in the CJEU judgment. To be regarded as insurance mediation, the activity must fulfil three conditions simultaneously:

1. The policyholder intermediates fleet insurance in the course of their business, i.e. for remuneration (any economic benefit, monetary or non-monetary).
2. The insured person’s participation in the insurance scheme is voluntary and arises from an individual and active action by the insured and not automatically, e.g., solely based on their membership in a particular group.
3. The insured is entitled to insurance benefits. The right of the insured to claim insurance benefits under fleet insurance was also confirmed by the Constitutional Court in ruling No. IV ÚS 3009/17.

Often used in business, fleet insurance is a specific form of group insurance. In this model, a policyholder concludes an insurance contract with an insurance company and then lets third parties become insured under that contract. In practice, this is mostly the case of insurance mediation by a leasing company offering credit insurance, a car dealer providing insurance for the vehicles they sell, or a retailer offering extended warranty insurance or insurance against damage, destruction or theft for the goods they sell, as a policyholder.

The proposed amendment to the Act on Insurance and Reinsurance Distribution removes the provision that expressly excludes ‘offering the possibility to become insured’ from the definition of insurance mediation and introduces new requirements for the provision of fleet insurance. Policyholders who wish to continue to operate in this field will have to obtain a relevant licence in one of the categories regulated by the law (independent intermediary, tied agent, or ancillary insurance intermediary), meet professional qualification and education requirements, establish internal rules, and comply with enhanced information obligations towards the insured persons. They will also be obliged to archive documents and will be accountable for their actions and for the actions of the independent intermediaries they use. The new obligations also include liability for damage caused by the intermediary's failure to comply with the control rules, which is a significant change from the current practice.

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The impact of the amendment on the Czech insurance market will be noticeable as it places an increased administrative burden on entities offering fleet insurance, who will be put on equal footing with existing insurance intermediaries. With the introduction of the new requirements and regulations, costs associated with obtaining the relevant licence and fulfilling other obligations will increase, especially concerning compliance and CNB supervision. The amendment is expected to enter into effect on the first day of the seventh calendar month following its promulgation.

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Planned Slovak VAT innovations

The Slovak Ministry of Finance has prepared a draft amendment to the VAT Act. The amendment should enter into force on 1 January 2025 (some parts on 1 July 2025). The most important changes are summarised in this article.



Tomáš Havel
thavel@kpmg.cz



Katarína Sedláčková
ksedlackova@kpmg.cz



Lucia Balážová
lbalazova@kpmg.cz

Changes to VAT rates

The bill increases the standard VAT rate from the current 20% to **23%**. Some food, medicines, and textbooks will be moved from the 10% rate to a **newly created 5% rate**. For other food and electricity, a 19% rate will now apply. The change will also affect books, which are to be moved from the 10% rate to the basic 23% rate.

Claiming VAT deduction based on a document other than an invoice

Currently, Slovak VAT payers can only claim VAT deduction on the purchase of goods from another EU member state if they have an invoice from the supplier.

The amendment to the VAT Act introduces the possibility to claim VAT deduction even if the VAT payer does not have an invoice, as long as they are able to prove their right to deduct VAT with another credible document proving the actual purchase of goods and the amount of tax liability.

VAT registration

The amendment changes the period for which turnover is calculated, and the amount of the turnover. From 2025, the relevant period will be the calendar year, not 12 consecutive months as has been the case so far. If the turnover exceeds **EUR 50,000** during a calendar year, the company will become a VAT payer from 1 January of the following calendar year. If the turnover exceeds **EUR 62,500**, the company will become a VAT payer from the moment the turnover is exceeded. The deadline for filing for VAT registration has been reduced to 5 days, e.g., if the turnover exceeds EUR 50,000 during April, the VAT registration will have to be filed by 5 May. There will also be a change for companies not established in Slovakia: they will have to register for VAT only after a taxable supply with a place of supply in Slovakia has taken place. The deadline of five days applies to them as well.

The amendment will also bring the following changes:

- clarification of the concept of ‘investment property’ (reduction of the value for movable assets)
- abolition of the possibility to claim VAT deduction on the purchase of fuel up to the amount of expenses

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determined as percentage of income (under the Income Tax Act)
- introduction of a special regime for small businesses
- reducing the limit within which a simplified tax document can be issued (from EUR 1,000 to EUR 400)
- broadening the range of situations where an obligation to correct or adjust VAT deduction already claimed arises
- regulating the situation where the last day of the deadline falls on a Saturday, Sunday, or public holiday - the last day of the deadline shall be that day.

We will continue to monitor developments at our neighbours and will keep you informed of any new legislation.

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Forms of R&D support available in the Czech Republic

Research and development (R&D) are key factors for economic growth and competitiveness. In the Czech Republic, support for R&D is one of the objectives of its subsidy policy that aims to foster innovation and technological progress. Support is provided not only through direct subsidies but also in the form of tax allowances. In the article below we look at both these aspects and present selected subsidy programmes currently available.



Silvie Beranová
kpmg@kpmg.cz



Lukáš Otýpka
lotypka@kpmg.cz

For support provided as subsidies, it is now possible to obtain aid for R&D activities, e.g., under the Operational Programme Technology and Applications for Competitiveness. The **Applications programme** may be of particular interest for large enterprises, as it allows support for industrial research and experimental development projects. Two calls are currently expected to be announced under the Applications programme: Call II, to be announced on 12 December 2024, will specifically focus on software development, and Call III will support industrial research and experimental development on a more general level and is expected to be announced on 29 November 2024. Importantly, large enterprises collaborating with an SME on a project may also apply for support under this programme.

Support through subsidies is also available from the programmes of the Technology Agency of the Czech Republic (TA CR). The **THÉTA 2 programme** provides support for activities in applied research and innovation in the energy sector. As we reported on in more detail here, the second call to participate in this programme is currently underway. Furthermore, the third call to participate in the **TRANSPORT 2030** programme, providing support for R&D activities in transport, is expected to be announced at the turn of the first and the second quarter of 2025. Until now, the TREND programme has been one of the TA CR's most popular programmes, providing aid for research and development in general. However, the acceptance of applications for the last call under this programme closed on 14 August 2024.

In addition to subsidies, other important instruments for supporting R&D are **R&D allowances**. This instrument allows companies to deduct R&D costs from their tax base a second time in the tax calculation as a tax allowance, which can **significantly reduce their tax liability**. This means that companies investing in R&D can claim this allowance at 100% of their incurred R&D costs or, if R&D costs increase year on year, up to 110% of the incurred R&D costs. The allowance can be claimed in the current period or in the following three taxable periods. The allowance covers costs associated with research and development activities, such as researchers' salaries, costs of material, costs of selected services, and other direct costs.

Support for R&D is a key factor for the future growth of the economy and the competitiveness of the Czech Republic. The combination of direct subsidies and tax allowances provides companies with a range of options to finance their research and development activities.

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R&D subsidies in the energy sector

On 5 September 2024, the acceptance of applications started under the second call to participate in the THÉTA 2 programme managed by the Technology Agency of the Czech Republic. The programme offers support for applied research and innovation activities aimed at modernising the energy sector.



Silvie Beranová
kpmg@kpmg.cz



Lukáš Otýpka
lotypka@kpmg.cz

The call period runs until **23 October 2024**, and large companies may also apply for this type of support. The total funds for allocation are CZK 700 million and have been divided into three sub-programmes.

Sub-programme 1 - Research in Public Interest is intended for projects addressing the decarbonisation, decentralisation, digitisation, and democratisation of the energy sector from a public interest perspective. A maximum subsidy of CZK 15 mil can be obtained for one project.

Sub-programme 2 - Energy Technologies for Competitiveness can provide support for projects focusing on the preparation of technologies and solutions with rapid application in practice. Such projects should increase the competitiveness of the innovation sphere and at the same time contribute to the fulfilment of the climate, energy, and environmental objectives of the Czech Republic. No maximum subsidy amount per project has been set for this sub-programme.

Sub-programme 3 - Technologies to Ensure the Long-Term Sustainability of the Energy Sector targets comprehensive and long-term projects showing a lower degree of technological preparedness with respect to currently used technologies and solutions. Such projects are not expected to be quickly put into practice but are instead intended to contribute to major and breakthrough innovations in the medium to long run. As in the previous sub-programme, the maximum subsidy amount per project has not been set.

The maximum aid intensity for large enterprises is set at **25-65% of eligible expenses**, depending on whether the applicant is carrying out industrial research or experimental development or whether the project is carried out in effective cooperation with another relevant entity. The maximum duration of the project is 48 months for the first two sub-programmes, while for the third sub-programme, it is 80 months.

Projects can be started no earlier than May 2025 and no later than July 2025. The project outputs or results are expected to be put into practice. The project output must be, e.g., an industrial design, utility model, functional sample, prototype, patent, software, or pilot plant, etc. Projects can be carried out all over the Czech Republic, including Prague.

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Case law

Can subsidiaries deduct VAT on supplies received by parent?

The Supreme Administrative Court (SAC) recently dealt with a complaint by a subsidiary regarding the right to deduct input VAT on an invoice received. The transaction involved advisory services provided by a parent company's financial advisor. They were paid for by the subsidiary, which also claimed the deduction. The tax authorities challenged the right to deduct and after examining additional evidence rejected the claim.



Tomáš Havel
thavel@kpmg.cz



Lucia Balážová
lbalazova@kpmg.cz

The company was engaged in the production and sale of frozen products such as ice cream, popsicles, and dumplings.

In its VAT return, the company claimed input VAT deduction based on a tax document/invoice received on whose basis they also paid for the advisory services. The invoice did not specifically state the scope or subject matter of the received services, only a reference to a concluded advisory contract.

The tax administrator had doubts as to whether the company had actually received the supplies and whether they were used for its economic activity and therefore initiated a tax inspection. The company did not provide the tax administrator with the contract or any other relevant evidence showing that their claim to deduct VAT was justified. The company only submitted an email communication between them and the provider of the advisory services, showing that the latter was also the financial advisor to the parent company who had advised the parent company on the sale of the subsidiary.

The above evidence raised even more doubts on the part of the tax administrator who then issued an order to pay additional VAT plus a penalty. The company argued that they had proved that their claim to deduct VAT was justified by submitting the tax document. The company also argued that by carrying out the recommended sale of its assets to another VAT payer they proved that they had used the advisory service received for their economic activity.

The financial advisor provided a contract concluded between them and the parent company, along with an agreement to the contract concluded with the subsidiary. It was clear from the contract that the tax documents issued to the subsidiary concerned its transfer to a selected buyer. The company further stated that the taxable supply also included an in-depth analysis/due diligence of its assets, based on which they decided to sell their ice cream manufacturing technology. However, the contract to which the tax document referred did not show any connection between that sale and the advisory services.

The company thus failed to prove before the court that they had received the taxable supply and used it in their economic activity. Therefore, the Supreme Administrative Court upheld the tax administrator's conclusion

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denying the right to deduct VAT.

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Case law

VAT on sale of building land to related party

The Supreme Administrative Court (SAC) dealt with a dispute over the tax liability arising from the sale of land between a company and its sole owner and director/statutory representative. The company regarded the sale as an exempt transaction. The tax administrator disagreed, and as the land was a building plot and the sale was between related parties, determined the tax base at the arm's-length price and assessed additional VAT.



Veronika Výborná
vvyborna@kpmg.cz



Kateřina Zákostelská
kzakostelska@kpmg.cz

In the case, the company did not pay VAT on the sale of the land, as they considered the transaction to be exempt from tax under Section 56 of the Value Added Tax Act. According to this section, the supply of land not forming a functional unit with a building firmly attached to the ground nor being a building plot is exempt from tax. The VAT Act considers land on which a building firmly attached to the ground is to be or may be built a building plot.

Based on the evidence of the disposal of the land, the court concluded that it was a building plot and that the tax administrator was correct in assessing the tax. In addition to the conclusive evidence of the director's intention to use the land as a building plot (e.g., acts aimed at obtaining a building permit), engineering and utilities networks for new developments were being laid in the area surrounding the plot, which indicates the character of the area as building land. The tax authorities considered the municipality's zoning plan showing that the land was partly located in an area marked as residential and therefore developable to be an administrative act aimed at building. The company argued that the zoning plan did not provide for a specific building to be constructed. However, the courts concluded that the general possibility to develop the land under the zoning plan was sufficient to classify it as a building plot.

The company further argued that in their assessment of the land, the tax authorities had only considered the municipality's zoning plan and that all other circumstances leading to the designation of the land as a building plot had only occurred with a significant lapse of time after the sale of the land and should therefore be disregarded. Nonetheless, the tax authorities are obliged to base their decision on the facts as at the date of issuing an order to pay tax and, if an appeal is filed, as at the date of the decision on that appeal. Therefore, the tax administrator may consider all facts known on their decision's issuance date even if they are assessing the factual and legal situation as at the date of the transfer of the land.

The final piece of evidence against the company was the fact that the purchaser of the land was its sole owner and director, leaving no doubt that the seller knew of the intention to build a house on the land.

The fact that the land is a building plot also significantly increases its value, which is rightly subject to VAT. Siding with the tax administrator, the SAC confirmed this assessment.

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Case law

CJEU on possibility of refunding VAT incorrectly invoiced and paid

In its judgment, the Court of Justice of the European Union (CJEU) held that VAT invoiced and paid incorrectly/without justification can only be refunded to the supply recipient if the VAT cannot be recovered from the supplier.



Tomáš Havel
thavel@kpmg.cz



Victorie Kubínová
vkubinova@kpmg.cz

The supplier issued incorrect tax documents for the sale of goods, including German VAT, which they paid and the customer subsequently claimed. However, the tax authority found that the goods were in Italy at the time of the sale, therefore German VAT should not have been stated in the tax documents. On these grounds, the tax administrator denied the customer's claim to deduct VAT.

Insolvency proceedings were subsequently initiated against the supplier. The insolvency administrator corrected the tax documents relating to the supply of the goods so that they did not state the relevant amount of VAT. On that basis, the German tax administrator refunded the supplier the relevant VAT, which was then included in the assets in the insolvency proceedings. The customer therefore requested the German tax authorities to refund the incorrectly invoiced and paid VAT.

The CJEU clarified that the possibility for the purchaser or supply recipient to claim a refund of incorrectly invoiced and paid VAT directly from the tax administration is an exception and only permissible if it is impossible or excessively difficult to recover the VAT from the supplier or supply provider. This presupposes that the purchaser or supply recipient has exhausted all other possibilities to recover their claims.

In the present case, the supplier not yet registered in Italy had the option to register there for VAT purposes. Consequently, they could issue invoices including Italian VAT to the customer, enabling them to claim the VAT deduction in Italy. However, the insolvency administrator refused to issue tax documents containing Italian VAT.

According to the CJEU, in order not to bear the VAT, the customer could have brought civil action against the insolvency administrator in charge of the liquidation of the supplier, demanding them to issue an invoice containing Italian VAT. However, the customer did not do so.

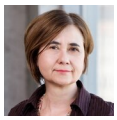
In conclusion, the CJEU stated that the customer cannot claim the refund of VAT directly from the tax authority if the tax authority has already refunded the VAT to the supplier. The fact that the supplier is in liquidation is not relevant in the present case.

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In brief

News in Brief, October 2024

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



Lenka Fialková
lfialkova@kpmg.cz



Václav Baňka
vbanka@kpmg.cz

DOMESTIC NEWS

- The Ministry of Finance is reminding drivers that according to the Act on Motor Third Party Liability Insurance, including the accompanying law, which came into effect on 1 April 2024, green cards for proving motor third party liability insurance in the territory of the Czech Republic have been abolished as of 1 October 2024 and replaced by online insurance registration. This will make checks possible in the Czech Republic without having to stop vehicles. Green cards will still be required for travel abroad.
- An amendment to the Act on Insolvency and Methods of its Resolution (No. 252/2024 Coll.) has been published in the Collection of Laws to make the debt discharge process more efficient and increase creditor protection. The changes include, e.g., extending the period for repeated debt discharge from 10 to 12 years and mandatory cooperation between credit providers and employers. The amendment became effective on 1 October 2024.
- Another amendment to the AML Act (253/2008 Coll.) has been published in the Collection of Laws, with effective date of 30 December 2024. The changes concern in particular providers of services related to virtual assets, which have now been classified as financial institutions. It also introduces the obligation to identify clients represented by lawyers and notaries, and other obligations to strengthen the supervision by the Financial Analytical Office.
- The government's regulation on the coefficient for calculating the minimum wage in 2025 and 2026 seeks to ensure that the minimum wage better reflects economic conditions and average wage growth. The regulation has been published under No. 285/2024 Coll.
- The Ministry of Labour and Social Affairs has published Notice 286/2024 Coll., announcing the minimum wage, the lowest levels of the guaranteed salary, and the range of extra pay for working in a difficult work environment for 2025. The minimum wage will be CZK 20,800.

FOREIGN NEWS

- The OECD has published a Model Competent Authority Agreement (MCAA) for applying the simplified approach for calculating Amount B under Pillar 1. This practical tool is designed to be particularly beneficial for developing countries. It will allow them to use simplified approaches to set market prices for baseline marketing and distribution activities provided in their territory. The aim is to increase certainty for tax administrations and taxpayers and reduce potential disputes.
- For more information, see the summary of changes in direct taxes in the EU and internationally prepared by the KPMG EU Tax Center, including information on legislative developments regarding Pillar 2 (Finland, Germany, Sweden, Switzerland, and the UK).

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www.kpmg.cz
Tel.: +420 222 123 111

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