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Editorial

The world is changing in an unprecedented way, and we have to respond. The war in Ukraine is not only threatening the people there: it will also affect people's lives and the economy in Europe for a long time. We are addressing a range of problems – from helping those affected by the conflict through providing financial, material, and military support to Ukraine to dealing with the effects of the sanctions imposed on Russia – and will continue to do so.

Currently, many employers are asking how they can make the situation easier for their Ukrainian employees. We have therefore prepared a set of practical recommendations you can follow if members of your staff have received a conscription order to the Ukrainian army. Almost 200,000 Ukrainians are long-term residents in the Czech Republic, so this affects many people here.

But the changes don't end there: the new Czech government is embarking on numerous tax and legal endeavours, while many tasks from the previous period are still waiting to be finished. A sort of revolution is also brewing in international taxation due to EU and OECD reforms. We therefore provide you with an overview of the tax amendments and legislative proposals currently in the pipeline, as you should be prepared for them.

I hope our Update will make it easier for you to navigate the rapidly changing international and local waters.

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Up-to-date information for Ukrainian citizens on entry and stay in Czech Republic

In response to the Russian invasion of Ukraine, the Department for Asylum and Migration Policy of the Ministry of Internal Affairs of the Czech Republic has issued instructions for all Ukrainian citizens affected by the situation. At the same time, the agenda of the department has expanded.

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Already the day after the beginning of the conflict in Ukraine, the Ministry of Internal Affairs issued a set of instructions to help Ukrainian citizens both already residing in the Czech Republic and seeking protection here be better informed about their obligations imposed on them by the Foreigners' Residence Act.

For Ukrainian citizens already residing in the Czech Republic with soon expiring visas that under normal circumstances cannot be extended (e.g. Schengen visa, short-term work visa, etc.), the Ministry of the Interior has issued a new type of long-term visa (a special long-term visa). Foreigners can apply for them directly at their point of contact. This visa allows citizens of Ukraine to continue to legally reside in the Czech Republic; yet, to perform their work, they must still obtain a work permit at the relevant regional branch of the Czech Labour Office. For more information about how the situation impacts labour relations with Ukrainian workers, read here.

Ukrainian citizens can now also enter the Czech Republic under a visa-free travel regime, with a valid biometric passport. Those who do not possess a biometric passport, have exhausted their visa-free stay, or do not have a (valid) passport have no guarantee of being able to legally cross the EU's external border. In such situations, the ministry strongly recommends having as many documents as possible to prove one's identity. The ministry also advises all those arriving in the Czech Republic not to apply for international protection in the standard way, but to use the special long-term visa designed specifically for the current situation. This visa should allow newly arriving Ukrainian citizens to apply for a work permit at the relevant regional branch of the Labour Office. Nonetheless, also for these cases it will be necessary to have reported vacancies to the Labour Office and to conclude employment contracts. Applications for work permits may be filed by foreigners themselves or through employers. However, there have been reports that Ukrainians may be given free access to our labour market.

Anybody who applied for long-term residence through an embassy of the Czech Republic in Ukraine before the escalation of the conflict can complete this process after their arrival in the Czech Republic within the above-mentioned visa-free travel. Applicants for a long-term visa currently must collect the permit from an embassy or consulate, and visa collection offices will be listed on the website of the Czech embassy and consular offices in Ukraine.

The ministry has also published special office hours at its offices handling residency matters relating to the situation in Ukraine, you can find them here.

Ukraine: Practical recommendations for Ukrainian workers and their employers

The armed conflict in Ukraine is the most serious event to hit Europe since World War II. Apart from the human rights dimension, it also affects the Czech labour market.


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Many employers doing business in the Czech Republic are now faced with two questions:

1. How to deal with the employment of Ukrainian employees who received a conscription order from Ukraine and decided to leave to fight for their country?
2. What should be done if a Ukrainian employee decides to stay in the Czech Republic?

As for the first question, the employer has several options:

- If the employee requests to terminate their employment, the employer may grant the request and terminate the employment by mutual agreement, which is possible even without giving reasons. This can be done as at an agreed-upon date (there is no notice period in this case). If the employment is terminated by mutual agreement without giving reasons, the employee is not entitled to statutory severance pay. However, nothing prevents the employer from providing them with any amount of contractual severance pay.
- The employee may give termination notice pursuant to Section 50(3) of the Labour Code, also without giving reasons. In this case, however, there is a standard, usually two-month, notice period.
- The employer and the employee may agree on unpaid leave for a period of absence. In this case, we recommend concluding such agreement in writing.
- On Friday, the Ministry of Labour and Social Affairs published the opinion that an absence from work due to receiving a conscription order may also be treated as an obstacle to work on the employee’s part pursuant to Section 199 of the Labour Code, where the employer must excuse the employee's absence from work for the duration of the obstacle. According to the ministry, the employee shall not be entitled to wages in this case.

In any case, employers must also keep in mind their obligations to the Czech Labour Office and/or to the relevant health insurance company and social security agency, i.e., they must report any terminations of employment to the labour office and continue to pay social security contributions and health insurance premiums during any unpaid leaves of absence or obstacles to work.

How to proceed if a Ukrainian employee decides to stay in the Czech Republic?

In our opinion, an employee receiving a conscription order from another state has no impact on the employment relationship from the employer's perspective. The employee is not even obliged to inform the employer of this. If they decide to continue working in the Czech Republic, nothing in Czech law will prevent them to do so. They should, of course, bear in mind the possible consequences under Ukrainian law. They must also make sure that they still have a valid work and residence permit.

Please note that Ukrainian workers and their family members are currently subject to more favourable conditions, both in terms of foreigners’ residence law and labour law: they can come to the CR solely on the basis of a valid biometric passport and insurance. According to the information published on the website of the Ministry of Internal Affairs, persons who do not have a biometric passport cannot be guaranteed that they will be allowed into our territory. Read more here.

Upcoming tax changes: an overview

The new government and chamber of deputies have begun another four-year legislative cycle in which they will try to push through their agenda. The implementation of several EU directives may bring about important changes, especially in direct taxes. Here is an overview of selected regulations and amendments in the pipeline.

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The substance of the new Accounting Act was already approved by the previous government. Work should continue on the wording of the individual sections of the new law, and of the laws to be affected by the new regulation. According to the legislative plan, the act could come into force in 2024. The following changes might be of interest to entrepreneurs:

- extended possibility to apply International Accounting Standards instead of Czech accounting regulations
- possibility to use a currency other than the Czech crown even when accounting under Czech accounting regulations
- higher emphasis on general accounting principles.

It will also be important how the changes will be reflected in the Income Tax Act. A rather significant simplification could occur if the new act allows for determining the tax base directly by adjusting the result of operations determined under International Accounting Standards or for paying the tax in the foreign currency in which the accounts are kept.

Value added tax

The Czech Republic has asked the European Commission to increase the limit for VAT registration from CZK 1 million to CZK 2 million. The Ministry of Finance has already sent the request and hopes that it will be granted in the first quarter of this year. Czech legislation will then be amended accordingly.

European Union and OECD

Last year, the Council of the EU adopted a **directive that establishes a new reporting obligation for platform operators (DAC 7)** and a **directive that introduces the obligation to disclose selected information on income tax** paid in individual EU member states. The Czech Republic should implement both directives with effect from 1 January 2023 and June 2024, respectively.

The European Commission is preparing several initiatives relating to direct taxes, such as the introduction of **a special tax allowance for equity financing** (debt-equity bias reduction allowance, DEBRA) or **the limitation of tax advantages** for companies without economic substance. However, the legislative process at EU level is only at an early stage.

During 2022, we can also expect developments in the reallocation of taxing rights for companies of corporate groups with a turnover of more than EUR 20 billion (Pillar 1) and the introduction of a global minimum effective tax of 15% for companies of corporate groups with a turnover of more than EUR 750 million (Pillar 2). The effective date has ambitiously been set for as early as 2023.

We already know the draft wording of the EU directive implementing **the global minimum effective tax** at EU level. However, it is not yet clear how the Czech Republic will proceed with the implementation and how it will use the possibilities provided by the directive. The original version anticipated that this tax would be calculated and collected for subsidiaries only at the level of the parent company. However, the draft directive as well as the OECD model rules now give countries the option to levy the minimum tax at the level of the jurisdiction in which the corporate group has subsidiaries. The nominal income tax rate in the Czech Republic is above 15%. There may be situations where the effective tax will be below 15% (because of income tax credits, R&D allowances, differences between the profit recognised under the International Accounting Standards, which are used to calculate the effective tax, and the Czech tax base). The approach to this issue may affect the obligations of foreign companies operating in the Czech Republic in future years.

The OECD has not yet finalised the Pillar 1 rules. It is unclear whether an EU directive will be prepared to unify implementation across the EU or whether the rules will be introduced through a multilateral instrument currently being drafted. However, these regulations will only affect companies in corporate groups with a turnover of over EUR 20 billion and profitability above 10% that sell goods or services in the Czech Republic regardless of whether they have a subsidiary or a permanent establishment here.

We will keep you informed of any new developments in this respect.

When does burden of proof lie with tax authority?

The tax authorities often put taxpayers in the position of having to prove the overall accuracy of the tax reported in their tax returns. The burden of proof is generally on the taxpayer, but in certain cases it can rest on the tax authority instead. To choose an appropriate procedural strategy for tax inspection, it is essential to correctly identify with whom the burden of proof lies.

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Three main areas where the burden of proof is reversed, i.e., where it is the tax administrator who must prove facts to assess an additional tax, have crystallised from relevant case law.

Transfer pricing

The tax administrator is obliged to determine and prove the specific price that complies with the arm's length principle. In practice, tax inspections focusing on related party transactions often do not go that far as to determine the price; instead, the tax administrator usually focuses on proving the content of the supply received and on the so-called bene⊠t test. Their position is easier here, as it is the taxpayer who must bear the burden of proof, while the tax authority only needs to challenge it. The taxpayers thus have to prove the substance of expenses (e.g., the justification and content of the service received) and demonstrate that they have been incurred for the purpose of generating, maintaining, and securing taxable income. This is particularly difficult for intangible services, such as management fees.

Abuse of right

If tax administrators challenge a transaction by arguing that its predominant (or sole) purpose was to obtain a tax advantage contrary to the purpose of law, they are obliged to prove that this was indeed the case. Taxpayers may present sound economic reasons In their defence, , but the primary burden of proof is on the tax administrators.

VAT fraud

One of the reasons why a VAT deduction is denied during tax inspections is proving a VAT fraud in the supply chain which the taxpayer should or could have known of based on certain indications. It is for the taxpayer to prove the substance and receipt of the supply (e.g., the provision of advertising services) and its use for the taxpayer's economic activity. However, it is for the tax authority to prove that tax fraud has been committed and document the indications leading to this. The tax authority cannot force the taxpayer to prove that they did not or could not have known about the fraud. The taxpayer can prove that they have taken sufficient measures not to accept the supply affected by a VAT fraud.

The question of how, when and what to prove is always crucial in tax inspections to be able choose an appropriate strategy. As can be seen from the individual instances when the tax authority bears the burden of proof, the distribution of the burden often changes during an inspection. It is important to recognise this turning point and adapt the procedural strategy accordingly.

Fourth call to TRANSPORT 2020+ programme

The Technology Agency of the Czech Republic is preparing the fourth call to participate in the TRANSPORT 2020+ programme aimed at supporting applied research, experimental development, and innovation in the transport segment.

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The call is to be announced on 6 April 2022, with applications for support open for submission from 7 April 2022 to 1 June 2022. The programme is also intended for large businesses. Total funds for allocation are not yet known, but the maximum aid amount per project has been set at EUR 50 million, with aid intensity of up to 80%. Support will be granted for operating costs.

A prerequisite for receiving support is the applicability of the project results in new approaches, technological processes and services leading to enhanced social and economic benefits in the transport sector. Applicants must also meet at least one of the following specific objectives:

- sustainable transport
- safe and resilient transport and transport infrastructure
- accessible and interoperable transport
- automation, digitisation, navigation, and satellite systems.

The programme focuses on the entire transport system and all types of transport, i.e., land, water, and air transport, including all types of means of transport and transport infrastructure.

Projects can start in January 2023 at the earliest but no later than in February 2023 and must be completed no later than December 2026 while not exceeding 48 months.

TA CR points out that the announcement of the call is conditional upon the end of the provisional budget period. We will keep you informed about further developments.

Home office rules? Legislative amendment back on table

Work from home has boomed during the COVID-19 pandemic, and many employees continue to use it. Yet, the Labour Code addresses work outside employer's workplace only marginally, and no amendment to the existing regulation has passed so far. This should change now: according to a recent statement by Minister of Labour and Social Affairs Marian Jurečka, the amendment is back in the game. And what is more: work-life balancing, to which working from home undoubtedly contributes, is now one of the priorities in the government's manifesto.

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Currently, work outside an employer's workplace is only mentioned in Section 317 of the Labour Code, concerning employees who do not work at the employer's workplace and schedule their own working hours. However, employees whose working hours at home are scheduled by their employer are not covered by the Labour Code or by any other law for that matter. Employers thus have to think hard whether and what regulations to follow in such cases. Application issues and uncertainty concern, e.g., OSH or the compensation of costs incurred by employees working from home.

The latest legislative proposal to regulate work from home primarily aimed to replace existing Section 317 of the Labour Code with new wording, was prepared by KDU-ČSL MPs in February 2021, but its debate ended with the end of the parliamentary term. However, since one of its proposers was current minister Jurečka, it is to be expected that the new governmental bill will follow similar lines. Below, we therefore present a summary of the main points of that last bill.
The amendment provided for three possible bases for work from home:

- Employee and employer may conclude an agreement of any form.
- The employee may request to work from home. The employer is obliged to grant permission for at least half the working time, unless the nature of the work means that it cannot be performed outside the workplace.
- The employer may order work from home on serious operational grounds and for as long as necessary. This point has provoked the most controversies. We also perceive the proposed regulation as problematic, as it, e.g., does not consider situations where the employee's performance of work from home is technically impossible.
- The amendment also set some new OSH rules and proposed to regulate the compensation for costs relating to work from home, allowing them to be set as a lump sum.

Notably, the amendment also reflected the requirement for a work-life balance: where employees do not schedule their working hours themselves, meaning that their working hours are scheduled by the employer, the employer cannot demand work to be performed from 8 p. m. to 6 a.m., on Saturdays, Sundays, and holidays (unless the nature of the work necessitates scheduling work also during these times). This 'right to be offline' reflects current trends in the European Union.

In view of the increased use of work from home, the adoption of a more detailed regulation is, in our opinion, a step in the right direction. The question remains, of course, what the final wording of the bill proposed by the current labour minister will be, and whether it will pass through the legislative process.

Harsh penalties for breach of employer's reporting obligation

Foreign employees are relatively commonplace for many Czech employers. We know from practice that employers often neglect some of their obligations, especially for foreign workers from the EU, and are then surprised when penalised by competent authorities following an inspection. In this article, we draw attention to some of these obligations.


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The employment of foreigners is mainly regulated by the Employment Act. For all employers, it stipulates a reporting obligation, i.e. a duty report the employment of a foreign worker to the relevant regional branch of the Czech Labour Office no later than on the commencement day of the employment. In addition to meeting this deadline it is necessary to provide the Labour Office with precisely defined data about the employee, the employer, and the required job position. The same applies to the termination of employment: the employer must report the termination of a foreigner's employment to the relevant regional branch of the Labour Office no later than 10 calendar days after the termination of employment.

In this context, however, there is yet another obligation often neglected by employers, i.e., to report any changes in the reported data (e.g., change in the address for the delivery of documents, change of surname, change in the period for which the foreigner has been permitted to reside or work here). In this case, the deadline for reporting is 10 calendar days from the time when the change occurred or when the employer became aware of it.

Reporting of the commencement and termination of employment is quite simple, done via printed forms designated for this purpose and published on the Ministry of Labour and Social Affairs' website. For reporting of changes, the situation is rather more complicated: the law does not stipulate in what form the employer should report them, there is no special form for reporting of changes, and in practice we often see that the approach applied by individual Labour Office branches is not uniform and often requires consultations on a case-by-case basis.

Obviously, the reporting obligation towards the Department of Asylum and Migration Policy of the Ministry of the Internal Affairs is not the only one a foreigner must comply with: it is also necessary to keep in mind the reporting obligation towards the Labour Office, which, for a change, rests with the employer. Please note also that the latter applies not only to foreigners from third countries, but also to EU citizens including Slovak nationals, where this is often neglected. In the event of failure to comply with the reporting obligation, a penalty of up to CZK 100,000 may be imposed on the employer under the Employment Act.

Legal

Discontinuation of enforcement proceedings without creditors having to cover costs

On 1 January 2022, an amendment to the Enforcement Procedure Code entered into force, aiming to resolve the problem of multiple executions and to modify the rights of the parties to the proceedings. However, the final effect of the new regulation is much greater: e.g., it changes the rules for off-setting the recovered performance, limits enforcement proceedings concerning movable items, and allows the discontinuation of low-value or futile enforcement proceedings. The possibility to discontinue futile enforcement proceedings may also be beneficial for creditors, as they would otherwise have to cover the costs of the enforcement proceedings should they file a petition to discontinue them.

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Under the new rules, enforcement proceedings may be discontinued if within the preceding six years the debts were not sufficiently settled to recover at least the costs of the enforcement proceedings, and if no immovable item is subject to the enforcement proceedings. The relevant bailiff shall then call on the creditor to indicate within 30 days whether they agree with the discontinuation of the enforcement proceedings. If the creditor agrees or if the 30-day period expires without any notification, the enforcement proceedings are discontinued. This makes the situation easier for the creditor: if enforcement proceedings are discontinued in this way, the costs of the futile enforcement proceedings are determined in the amount of the minimum remuneration and a lump-sum compensation of cash expenses, under a special legal regulation. These costs are then covered from the advance payment for the costs of enforcement proceedings. If the costs of the enforcement proceedings exceed the amount of the advance payment made, the bailiff's right to the costs of enforcement proceedings in excess of the amount of the advance payment ceases to exist.

If the creditor disagrees with the discontinuation of the enforcement proceedings, the bailiff shall call upon them to make an advance payment of CZK 500 within 30 days of receiving the bailiff's call to continue the enforcement proceedings. In exceptional cases, this creditor's obligation may be waived, in particular if their circumstances so warrant; this is also the case for enforcement proceedings concerning alimony for minors or compensation for damage caused to an injured party by an on-the-job accident or occupational disease. By depositing the advance payment or by its waiver, the deadline for conducting enforcement proceedings may be extended no more than twice, always by three years. This means that enforcement proceedings in which not even the costs of the enforcement proceedings are recovered should not last more than 12 years from the registration date of the enforcement proceedings. However, if partial performance sufficient to cover the costs of the enforcement proceedings is recovered, the six-year period shall start again from the beginning.

The above changes are not the only ones brought on by the amendment to the Enforcement Procedure Code. We will inform you further in the next editions of the Update.

ESG and new obligations for investment firms

From August 2022, investment firms, securities traders, and other financial service providers covered by MiFID II will be required to introduce more detailed information and questionnaires for investors when providing investment advice and portfolio management, in particular concerning investors' sustainability preferences. This will require financial service providers to obtain detailed information on all the financial instruments they offer and their sustainability.

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The new measures are part of the European Green Deal, the European Commission's initiative relating to sustainable development and efforts to transform the European economy into a greener, more resilient, and circular economy.

With effect from 22 August 2022, the Regulation regarding the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms requires investment firms to ensure that the financial instrument they recommend or are about to conclude as part of their portfolio management services is consistent with the investment objectives of the client concerned, including the client's risk tolerance and **sustainability preferences**, if any. This obligation must be considered when collecting information about clients or potential clients.

Sustainability preferences shall mean the client's or potential client's choice as to whether and to what extent **one or more of the following financial instruments** should be included in their investment:

- a financial instrument where the client or potential client determines that a minimum proportion shall be invested in environmentally sustainable investments as specified in Article 2(1) of Regulation (EU) 2020/852 of the European Parliament and of the Council (the Taxonomy Regulation)
- a financial instrument where the client or potential client determines that a minimum proportion shall be invested in sustainable investments as specified in Article 2(17) of Regulation (EU) 2019/2088 of the European Parliament and of the Council
- a financial instrument that considers the main adverse impacts on sustainability factors, i.e., instruments that consider and reduce the significant negative environmental, social and labour impacts caused by these investments.

In addition, investment firms will now be required to describe the types and range of financial instruments, including **any sustainability factors** that have been considered when selecting financial instruments. This information will enable investors to make informed decisions and reorient their investments towards more sustainable technologies and businesses. Detailed criteria for environmentally sustainable economic activities that must be met for investments to be classified as green and therefore sustainable are contained in Article 3 of the Taxonomy Regulation.

KPMG Legal monitors the development of the European regulation of sustainable activities, which will change in the light of technological advances, and will regularly reexamine the individual criteria. We are ready to assist our clients with the application of the Taxonomy Regulation and related regulations and with the implementation of systems meeting all requirements, including those imposed on them from 2 August 2022.

European Commission: progress in VAT system digitisation

In January this year, the European Commission launched a comment procedure to collect views on the digitisation of the VAT system in the member states, as it believes that the digitisation and automation in applying VAT across the EU will help achieve the objectives of the 2020 Action Plan.

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The comment procedure is open to taxpayers and academic professionals as well as interested members of the public. Comments can be submitted via a questionnaire on the European Commission's website until 15 April this year.
For most EU member states, value added tax is the largest revenue item in national budgets. According to the Commission, the system has become rigid?, unnecessarily complex, and prone to fraud. The digitisation and automation of the VAT system across the EU will help achieve the objectives of the 2020 Action Plan covering three major areas for development:

- digital submissions by taxpayers
- definition of rules for trading through digital platforms following DAC 7
- single VAT registration in the European Union.

These steps are aimed to reduce the administrative burden on taxpayers, reduce the cost of tax administration, and make the system less susceptible to tax fraud.

Over the last decades, the European Commission and the national governments have been working on improving the VAT system at both national and cross-border levels. However, where reporting is concerned, there is no single directive imposing the same procedures or control mechanisms for collecting VAT on all member states. Therefore, we are currently seeing a variety of practices relating to both reporting and data control or possible tax evasion. These include, e.g., the introduction of VAT ledger statements in the Czech Republic in 2016, the electronic exchange of information using the SAF-T file in Poland, Luxembourg, and Romania, and the obligation to issue only electronic invoices in B2G and B2B trade in Portugal.

Through the comment procedure, the Commission wants to get a clear view of how the European VAT system is perceived by professionals and businesses. It plans to reflect the results of this procedure in its decisions aimed at harmonising reporting and control mechanisms.

SAC on proving VAT exemption for supplies of goods to the EU

The Supreme Administrative Court has ruled on proving VAT-exempt supplies of goods to the EU to customers other than those declared in EC Sales List. It indicated that the incorrect identification of the EU customer of the goods does not necessarily mean that the VAT exemption should be denied.


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The Supreme Administrative Court (SAC) dealt with a situation (4 Afs 115/2021-45) in which the tax administrator assessed an additional output tax to a company (a Czech VAT payer) for supplies of rapeseed oil to another EU member state, namely Poland. The subject-matter of the dispute was not proving that rapeseed oil had actually been delivered from the Czech Republic to the neighbouring state, but the fact that the company did not bear the burden of proof in identifying its Polish customers. The company had provided the tax authority with CMR notes, customers' certificates of delivery and acceptance of goods, weighing notes, affidavits from the carriers, etc. However, according to the tax authority, the documents did not contain all the necessary information (e.g., the person taking over the goods, signatures, and dates).

The SAC referred to a recent judgment (C-154/20 Kemwater ProChemie) of the Court of Justice of the EU (CJEU) dealing with the denial of a VAT deduction where the actual supplier had not been identified. The CJEU pointed out that one of the conditions to claim the right to deduct VAT is that the supply recipient must prove, based on objective evidence, that the supplier acted in the capacity of a taxable person. To deny the claim on the ground that the actual supplier was not identified but is a taxable person would be contrary to the EU principle of tax neutrality.

The SAC followed a similar logic in the case of the Czech supplier of rapeseed oil: if the company supplied rapeseed oil to a customer other than the one identified in the EC Sales List, it cannot be denied the right to deduct VAT if it proves that the customer is a taxable person. If the tax authority denied the taxpayer's right nonetheless, this would constitute a breach of tax neutrality that is a fundamental prerequisite for the operation of the VAT system, the court held.

The SAC pointed out that by submitting weighing notes, the company had proven the delivery of rapeseed oil to refineries in Poland in excess of tens of tonnes, which means that the receipt of such quantities of oil could only have been carried out by a customer liable to tax. However, the tax authority had not examined this fact. The SAC therefore concluded that at that stage, not all relevant facts had been established to deny the company its right to deduct VAT. The company will therefore have to provide evidence again. However, the judgment suggests that the incorrect identification of an EU customer does not necessarily mean that the VAT exemption should be denied.

Case law

Duty to declare tax on one-time supplies paid in instalments

In Case C-324/20, the Court of Justice of the European Union addressed the question of when the duty to declare VAT occurs for one-time supplies paid for in instalments.

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In 2012, a German company acted as an intermediary in the sale of land for another entity and, for these services charged a remuneration of EUR 1 million plus VAT to be paid in five instalments of EUR 200,000 plus VAT. The company issued an invoice and paid the related VAT at the moment the particular instalment was due. However, the German tax authorities stated that the services were provided in their entirety in 2012 and the company should have therefore paid VAT on the entire mediation fee in that year.

Although the first-instance court agreed with the company, the CJEU sided with the tax authority's opinion that the transaction was carried out as a one-time supply in 2012 and was therefore subject to VAT on the entire amount in that year. The judgment derived from the interpretation of Article 64 of the VAT Directive, according to which a supply of a service that gives rise to successive invoices or successive payments shall be deemed to have been completed on the expiry of the periods to which those invoices or payments relate.

The CJEU pointed out that this provision only applies to supplies that are provided repeatedly during a certain period of time and to which specific partial payments can be allocated. It therefore cannot be applied to one-time supplies that are paid for in successive instalments since no supply can be attributed to each instalment, i.e., this only involves the spreading of the payment over several periods. Since the company provided its mediation services on a one-time basis upon the sale of the plots of land in 2012, the taxable supply took place and the duty to declare tax arose at the time the services were provided. It is not possible to postpone the payment of VAT until the moment the instalment is received.

Case law

CJEU: Fees for registration for medical procedures may be exempt from VAT

The Court of Justice of the European Union has ruled on whether consultations on the prescription of medical procedures can be regarded as activities closely related to the provision of medical and healthcare services that are exempt from VAT.

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Thermas, a spa operating company, invoiced its clients for spa registration fees without VAT. The Portuguese tax authority disagreed with the scheme and assessed additional output VAT. The subsequent dispute made its way to the CJEU.

In its judgment, the CJEU confirmed that traditional spa services prescribed by a doctor and having a therapeutic function qualify as medical care exempt from VAT.
According to the CJEU, the purpose of exempting the related supplies is to ensure that the provision of medical care does not become unaffordable due to the increased cost of providing that care to the final consumer. The activity of drawing up a personal file containing information on the client's state of health and the care prescribed may be closely related to medical care if it is an integral part of the planned provision of care, i.e., if the consultation by the doctor is necessary for the provision of such care.

If the registration is merely a possibility to purchase prescribed care or if the contents of the health file are not necessary for the provision of care, the exemption from VAT does not apply even if the prescribed care is not available without the payment of the registration.

The CJEU pointed out that when assessing whether to apply a VAT exemption, it is always necessary to check whether the medical service is provided by an establishment listed in the VAT Directive (i.e., a public or other entity of a comparable nature).

Dispute over obligation to remeasure advances at year-end

The Supreme Administrative Court addressed the question of whether a taxpayer is obliged to remeasure recognised advances for the purchase of fixed assets denominated in a foreign currency as at the balance sheet date. During a tax inspection, the tax administrator decided that this obligation applied and assessed additional tax on the unrecognised foreign exchange difference. However, the affected taxpayer disagreed with this procedure, and so did the administrative courts.

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Customers normally commit to provide suppliers with advances for the purchase of fixed assets (e.g., a production line) before the delivery of the fixed assets. The advance payment amount, usually stated in the currency the supplier uses for invoicing, is then used to reduce the purchase price after the fixed asset is delivered. This was also the situation encountered by the tax administrator in the case at issue. The tax administrator assumed that until the purchased asset was delivered, the advance paid was a regular foreign currency receivable between the customer and the supplier and, consequently, like any other receivables in foreign currency, was subject to revaluation at the end of the accounting period. Any revaluation gains must be taxed.

The taxpayer disagreed with this interpretation and appealed to the regional court, according to which the tax administrator's reasoning was contrary to the essence of providing advance payments. When a fixed asset is delivered, the advance payment is not returned to the customer but is credited against the purchase price of the asset. Thus, unlike other receivables, the advance payment amount does not increase the taxpayer's asset amount and, as a result, its periodic revaluation does not improve the presentation quality of the taxpayer's financial statements.

The tax administrator disagreed, and the dispute went all the way to the Supreme Administrative Court. In judgment 4 Afs 170/2021, the SAC drew attention to the purpose of keeping accounting records, which is to provide as true a picture as possible of the accounting entity's financial performance. The SAC also relied on the opinion of the National Accounting Council (I-43), concluding that accounting legislation provides for the obligation to remeasure receivables only where exchange rate movements affect their future value (i.e., exchange rate risks arise). In the case of an advance made in a foreign currency that will be set off against a purchase price paid in the same currency, no exchange rate risk arises. The SAC therefore disagreed with the tax authority's view and its expectation that the parties will breach their obligations and the advance will be refunded rather than assuming that both the customer and the supplier would want to complete the sale properly. If the tax authority wanted to apply this approach, it would first have to prove that the advance payment was unlikely to be offset (for example, upon withdrawal from the contract).

According to the SAC, it is not necessary to remeasure advances made in foreign currency for the purchase of fixed assets at the end of the accounting period unless there is a reasonable assumption that the assets will not be delivered and the advance will be refunded. For year-end closure activities, we recommend paying close attention and approaching the issue in the context of the specific situation.

In brief

News in Brief, March 2022

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


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DOMESTIC NEWS

- In [Financial Bulletin No. 4/2022]() you will find:
  - overview of the types of taxes and their parts on which personal tax accounts are kept by the authorities of the Czech Customs Administration as specified by Section 149(3) of Act No. 280/2009 Coll., the Tax Procedure Code, as amended
  - list of the registry parts of the bank accounts of the customs offices.
- According to the Supreme Audit Office, road tax collection is an administratively demanding process with low efficiency: the state collects four times less for one crown it spends, compared to other taxes. According to the financial administration, the low tax collection efficiency is not caused by its administrative complexity but mainly by in⊠ation and low tax rates. A road tax automation is currently being prepared within the new tax information system.
- The GFD has announced that the operation of the original tax information box (TIB) was discontinued on 28 February 2022. The service to view selected data will be available for a transitional period to allow sufficient time to log into a modernised tax information box (TIB Plus).
- The financial administration draws attention to the approaching deadline for submitting a notification of exempt income exceeding CZK 5 million to the relevant ⊠nancial authority.
- The Ministry of Finance has submitted for external comments a law that abolishes the electronic reporting of sales from 1 January 2023. Until 31 December 2022, the duty to report sales electronically is suspended by already approved amendments.
- Double taxation treaties with Kosovo and San Marino are awaiting to be discussed in the chamber of deputies and the senate.
- The deputies' chamber will also discuss amendments to the Excise Duty Act and the Value Added Tax Act implementing EU legislation on alcohol and alcoholic beverage taxes, and regulations relating to joint defence efforts under the EU's Common Security and Defence Policy.

FOREIGN NEWS

- The CJEU has ruled that the sanctions imposed by Spain for the failure to report assets held abroad are disproportionate, discriminatory, and restrict the free movement of capital since they may discourage Spanish tax residents from investing in other jurisdictions. For example, the Spanish tax authorities can assess additional tax liabilities without any time limits or impose fines for breaches of the obligation to report assets held abroad or for late filing of the relevant property-related returns of up to 150% of the value of the unreported assets. These fines are higher and disproportionate compared to those applicable in purely internal situations.
- The European Commission has published a revised version of its work programme for 2022. The most important legislative initiatives in the tax area include an amendment of the Tobacco Taxation Directive, a directive concerning the general arrangements for excise duty, a proposal to implement the OECD agreement to amend taxing rights within the EU (Pillar 1) and a proposal to introduce a debt equity bias

reduction allowance (DEBRA).

- The German Federal Ministry of Finance has issued a draft bill to implement tax relief measures for coping with the coronavirus crisis. Key tax measures include:
  - Fixed assets acquired in 2022 (currently only in 2020 and 2021) can be depreciated by up to two and a half times the depreciation on a straight-line basis but limited to 25%.
  - The option to carry-back losses shall be extended from one to two preceding taxable periods: a loss carry-back would thus be possible in both years directly preceding the year in which a loss was incurred.
  - The maximum amount of a loss carry-back has been increased from EUR 1 million to EUR 10 million for 2023 as well (currently only available for 2021 and 2022).
  - Deadlines for filing tax returns for the 2020, 2021, and 2022 taxable periods for which the filing deadline has not yet passed will be extended by up to four months.
- The OECD has published its proposals for the first rules for the reallocation of taxing rights of companies with a turnover exceeding EUR 20 billion and profitability of 10%. A full 25% of profits above this 10% threshold will now be allocated to countries where goods are sold or services consumed (Pillar 1). Under the proposals, all corporate group's income will be allocated using allocation mechanisms between the jurisdictions of sale or consumption in which such income will be subject to taxation. The proposals contain rules for determining the source of income in seven different areas (goods, components, services, intangible rights, real estate, government subsidies, and other revenue). The income to be taxed in the countries of consumption and the tax base will be determined based on the consolidated financial statements of the entire corporate group. Both documents take the form of a legislative proposal and are open to public comments.
- On 24 February 2022, the EU Council added the Bahamas, Belize, Bermuda, the British Virgin Islands, Israel, Montserrat, the Russian Federation, Tunisia, the Turks and Caicos Islands, and Vietnam to the list of countries whose tax systems are being monitored by the EU for their commitment to comply with EU standards (grey list). The Council made no changes to the list of non-cooperative jurisdictions.

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