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In brief

News in Brief, June 2024

Editorial

In the popular Tips and Tricks section, which has so far focused on the pitfalls of the Tax Procedure Code, you will now also find our experts' practical advice and experience from various fields, focusing on the topics causing the greatest difficulties in practice. And since the title of the section also promises tricks, we will try to pull the occasional rabbit out of the hat. It won't be as entertaining as the Bob and Bobek mascots of the ice hockey world championships, but our goal is similar to theirs - we want to help you succeed in your business.

The amendment to the Tax Procedure Code will introduce fundamental changes. One of the positive ones is the possibility to waive up to 100% of a penalty, a significant improvement from the current 75%. Please note that the obligation to pay the penalty before it can be waived remains unchanged. Another new feature is the introduction of the fiction of delivery, which may, however, bring with it some complications.

A major amendment to the Code of Administrative Justice aims to improve the functioning of the administrative justice system. The original proposal of the Ministry of Justice contained several problematic points, such as the plaintiff's obligation to reimburse the costs of the proceedings to the administrative authority in case of a loss. In this article we summarise how the shortcomings have been dealt with.

Czech tax legislation is undergoing significant changes and keeping up with them is not at all easy. It is necessary to stay on the move. As we take this literally, we are organising a KPMG Night of Records running show on Thursday 20 June at Prague's Děkanka. Races among professional and amateur runners will be accompanied by live music, circus entertainment for children and adults and great refreshments. I sincerely hope to meet you there.



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Amendment to Income Tax Act responding to new Accounting Act

The Ministry of Finance has published a draft amendment to the Income Tax Act, responding to the new draft Accounting Act. The proposed effective date of 1 January 2025 and other parts of the amendment may change during the legislative process. Selected changes are summarised below.



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Changes to asset and debt valuation

Assets, debts and receivables are defined for tax purposes, based on their accounting treatment. The autonomous concept of the ‘tax value of an asset’ has been newly defined and represents the maximum amount that can be claimed as an expense for the purposes of the Income Tax Act either in the current taxable period or in subsequent taxable periods (depending on the type of asset). The term 'technical improvement' is replaced by 'additional improvement', which will be the case if its amount exceeds the greater of **CZK 100,000** or **10%** of the asset value. Amounts above **CZK 10 million** should always be regarded as an additional improvement of an asset. Similarly, the tax value of a debt and the tax value of a receivable are defined for tax purposes. The tax value of a receivable will be affected by its repayment and the creation of adjustments, while these will be created independently of the accounting.

Simplified tax depreciation

A significant simplification of the system of depreciation for tax purposes is being proposed. Depreciation groups will be abolished, and the tax value of an asset will be decisive for defining the asset being depreciated and its depreciation period. The threshold for tax depreciation will be increased to CZK 100,000 and three basic tax depreciation periods will be introduced, with a minimum period over which the asset can be depreciated as follows:

- **60 months** for all movable and immovable assets with a value up to CZK 2,000,000
- **360 months** for other immovable assets, and
- **180 months** for goodwill.

Tax depreciation will now be applied on a monthly basis. The straight-line and declining-balance depreciation methods will be abolished, as will the option to suspend tax depreciation. For improvements to assets, the depreciation period will be extended.

Application of international accounting standards

Profit or loss under international accounting standards can be used as a basis for determining the tax base. However, IFRS profit or loss will need to be adjusted for permanent differences from Czech accounting, and transactions that were accounted for on a balance sheet basis under IFRS but would have been accounted for on

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a profit and loss basis under Czech accounting standards will also have to be reflected in the tax base. When switching from the Czech accounting tax base to the IFRS tax base, differences in the tax value of assets and debts under each accounting system will need to be identified and reflected in the tax base over a 10-year period.

Determining the tax base of foreign taxpayers

Foreign corporate taxpayers (including those with a permanent establishment in the Czech Republic) will not be considered an accounting entity and therefore not obliged to keep accounting records under the Accounting Act. Those who have a permanent establishment in the Czech Republic (except for one established based on concluding contracts) will keep accounts only to the extent necessary to determine the tax base and the tax amount on the basis of the so-called accrual principle in relation to that establishment (i.e. based on Czech or international accounting regulations, or based on the foreign taxpayer's accounting). Foreign taxpayers with permanent establishments established based on their continued presence (provision of services, construction and assembly projects) or on concluded contracts, and those who have income from other sources (e.g. sale of securities, real estate) can follow this procedure voluntarily.

A new concept of finance leases

For finance leases, taxpayers with an accrual tax base (accounting under the Czech Accounting Act or the international accounting standards) mainly follow the accounting rules and only deviate from them in specific instances. Under the new accounting regulation, finance leases will be treated similarly to international accounting standards, i.e., an asset is created on the part of the lessee, in the form of a right of use with a subsequent purchase. This right-of-use asset will be tax deductible by the user if statutory conditions are met.

New definition of the taxable period for legal entities

The taxable period for corporate income tax will now be fully linked to the accounting period and may therefore in some cases be determined by calendar weeks. If the taxpayer is not an accounting entity under the Accounting Act, the taxable period will be the calendar year. Exceptions will be selected foreign taxpayers with limited income from sources in the Czech Republic who will have the option to choose if they keep accounts abroad and their accounting period does not correspond to the calendar year.

Special scheme for taxpayers with accounting records kept in euros

Taxpayers whose accounting currency is the euro will be able to report their tax base and the tax itself in their tax return directly in euros without having to convert it into Czech crowns (this obligation will remain for other foreign currencies if they are functional currencies) and will also be able to pay it in euros.

Transitional provisions

The amendment contains special transitional provisions under which the rules for the tax value of an asset, the determination of tax depreciation periods, and the rules for finance leases will also apply to assets acquired before the amendment entered into effect.

Other selected changes

For social security contributions and contractual fines and penalties, the tax treatment linked to their payment is being abolished, and their accounting recognition shall be decisive.

The new regulation in the Reserves Act abolishes the obligation to recognise a tax-deductible adjustment or

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provisions; these shall be created independently of the accounting.

The situations where changes in fair values shall be included in the tax base are extended to include:

- the part of the valuation of a receivable or bill of exchange/promissory note equal to the interest for the taxable period, and
- a remeasurement to market value where the taxpayer follows IAS 40, IAS 41, and IFRS.

More detailed information on the latest draft of the new Accounting Act can be found here and on the accompanying law containing the amendment to the Income Tax Act here.

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Amendment to VAT Act 2025 in detail – Part III

We present a continuation of the overview of the most important changes contained in the draft amendment to the Value Added Tax Act. As we have already informed our readers, the amendment has gone through the comment procedure, and a version for the government debate has been published. In this article, we focus mainly on corrections to the tax base for bad debts.



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To harmonise domestic legislation with the EU VAT Directive and to implement the influence of the CJEU case law, changes were proposed concerning the correction to the tax base for bad debts. Above all, the conditions that a taxpayer must meet to make a correction have been softened. However, the principles remain the same. The list of cases where a correction to the tax base can be made is being extended to reflect relevant case law.

Softening the conditions for correcting the tax base

As for the mentioned softening of conditions and time tests, these apply, e.g., to (debtors subject to) enforcement or insolvency proceedings. Among other things, the required time from issuing the first enforcement order in the proceedings is being reduced to one year. As regards insolvency, the condition that the debtor must be in insolvency proceedings will no longer apply, and it will no longer be required to have the outstanding claim registered within the deadline set by the court.

Extending the possibilities to prove bad debts

Furthermore, following the case law, there are more ways to prove the irrecoverability of debts. According to the CJEU, the creditor cannot be restricted from making a correction for an irrecoverable debt. For this reason, it will now be possible to correct the tax base for 'small' debts **up to CZK 10,000**, under the condition that the debtor has been asked to pay at least twice, and that the total value of the recorded debts against the debtor does not exceed **CZK 20,000**.

New definition of debtor

The possibility of correcting the tax base for 'small' debts is particularly interesting in the context of another change: the definition of the debtor. It now includes any person who has received a taxable supply for which they owe consideration. It is therefore irrelevant whether the person is a taxable person, a payer, or a non-payer. It will now be possible to correct the tax base for bad debts even for B2C transactions.

Another novelty is that corrections should be possible even if the creditor is no longer registered for VAT. It shall be sufficient that they fulfilled the condition that they were VAT payer at the time of the original transaction. These

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corrections shall then be made retrospectively in the last tax return that the creditor was obliged to submit.

Changes to corrective tax documents

The last changes to be mentioned concern corrective tax documents. If the payer was not obliged to issue a tax document for the original transaction, they shall not be obliged to issue a corrective tax document either (e.g., when supplying goods to a non-taxable person). The due date of the receivable shall be entered in the corrective tax documents as a new mandatory entry.

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Senate passes Amendment to Investment Companies and Investment Funds (ICIF) Act

On 29 May 2024, the senate approved an amendment to the Act on Investment Companies and Investment Funds (ICIF) and related laws including changes to some parts of the consolidation package, in the wording as passed by the chamber of deputies. In September last year, we covered the five most important changes contained in the ICIF bill, such as the regulation of SICAVs or how some forms of investment funds would be more attractive. Debating the bill in the chamber, the deputies also approved three amending proposals. The resulting amendment will enter into effect on 1 July 2024.



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Changes to the ICIF Act

A summary of the changes can be found here.

Deadline for filing auditor's reports for unlicensed managers

Under Section 15 of the ICIF Act, unlicensed managers will be allowed to collect funds from **up to 20 investors** not meeting the minimum investment threshold of **EUR 125,000**. To not circumvent the law, the amendment requires an auditor's assurance if an unlicensed manager collects funds from **more than 20 investors**. The auditor shall review whether the abovementioned requirement for the exemption has been complied with – i.e., whether only 20 or fewer investors did not meet the minimum investment threshold. The deadline shall be the same as for other managers: within six months from the end of the previous calendar year (regardless of the unlicensed managers' accounting period).

Obligatory deletion of an unlicensed manager from the CNB list

The amendment explicitly introduces the CNB's obligation to delete unlicensed managers from its list if they have been banned from carrying out their activity by a public authority.

Same scope of obligations for administrators and managers

The amendment explicitly stipulates that managers may offer investments in the fund they manage without being

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authorised to do so by the administrator, provided that they perform this activity with professional care. Requirements imposed on administrators and managers offering investments are being eased, as they will also only be required to perform their activities with professional care. The amendment abolishes the obligation to comply with rules similar to those applicable to securities traders dealing with customers, i.e., rules concerning the provision of an investment service and the reception and transmission of orders in the area of investment instruments.

Technical amendment to the consolidation package

The changes intended to remove certain inaccuracies introduced by the consolidation package are summarised here. These include, e.g., partial changes of the taxation of employee benefits, adjustments concerning the use of a functional currency, a new regulation of statutory insurance premiums for employee shares and options, and new rules on statutory insurance premiums upon agreements to complete a job.

Impact on the taxation of investment funds

An overview of the key changes and their impact on the application of the lower **5% income tax rate** for investment funds and sub-funds can be found here.

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Amendment to the Tax Procedure Code: more questions than answers

In accordance with the government's legislative work plan for 2024, the expected amendment to certain laws concerning tax administration is coming. Among them is the Tax Procedure Code, which regulates the procedure of tax administrators and the rights and obligations of taxpayers. The amendment introduces changes in many areas, including the delivery of notifications, proving/taking evidence, waiver of penalties, and lifting of statute of limitations. The draft has now been closed for comments.



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Waiver of penalty

One of the changes introduced by the amendment at first glance seems positive. Under the new rules, the tax administrator could waive **up to 100% of a penalty** (compared to 75% to date). Currently, even taxpayers who voluntarily file an inadmissible tax return after discovering irregularities in their earlier tax return even before the tax is assessed by default, are obliged to pay the penalty. The legislators have recognised that this is unnecessarily harsh on taxpayers and propose to give the tax administrator the option to waive penalties altogether. However, this does not change the taxpayers' obligation to first pay the penalty before it is waived.

Fiction of being notified

In practice, informal communication with the tax administrator is not unusual. The amendment now introduces a novelty in this area – the fiction of being notified. If a tax administrator informally (e.g., by email) notifies a taxpayer of something, the tenth working day from the sending will be considered the day when the taxpayer became notified of the fact; it will not matter that the taxpayer did not check their email at all and did not actually read the tax administrators' notification. However, due to the unreliability of the public data network, the mere sending of an email cannot guarantee that the document will actually reach the addressee, or that it will reach them in time – as has been consistently adjudicated by the Constitutional Court as well. Moreover, the deadlines relating to the notification will also start to run at the moment of the fiction. This could create a very confusing situation for taxpayers.

Taking of evidence

The amendment proposes evidence to be taken even before the tax administrator formally initiates proceedings. This means that the tax administrator will be able to process and evaluate the information they obtain even while they are still only verifying whether there are grounds for initiating the proceedings. The legislators explicitly declare in the explanatory memorandum that this will not affect the taxpayers' right to be informed of the results

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of evidence taking, e.g. by inspecting the file. Nevertheless, one could argue that doctrine of the distribution of the burden of proof between the tax administrator and the taxpayer could be undermined, and the principle of immediacy of evidence taking and the taxpayers' right to comment on the evidence taken could be breached.

Information obligation

Currently, the tax administrator may request information from other public administration bodies or from individuals and legal persons who process other data necessary for tax administration. Under the amended wording, the tax administrator may request information from individuals/legal persons who process other data needed for tax administration. The slight change in one word actually means a widening of the information obligation: the tax administrator could thus also access information which is not strictly indispensable but which they consider useful or suitable. This would result in a very broad definition of what information the tax administrator may request from persons, and it is questionable whether this is not contrary to the fundamental principles of tax administration (in particular the principles of proportionality and economy).

Other changes

The forthcoming amendment is extensive and will affect many provisions of the Tax Procedure Code, including the anchoring of a possibility of mass waivers or deferments of tax in response to COVID-19 pandemics, changes to the tax enforcement procedure, transfers of tax liabilities upon the termination of a trust, and many others. More than a hundred other laws, including e.g., the Criminal Procedure Code, are also likely to be affected by the changes to some extent.

The amendment is now at the beginning of the legislative process. For most of the provisions, the proposed effective date is **1 July 2025**.

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Double taxation treaty with Belarus partially suspended

The Ministry of Finance has announced that the implementation of a part of the Treaty with Belarus shall be suspended in the period from 1 June 2024 to 31 December 2026.



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Belarus has informed the Czech Ministry of Foreign Affairs that it will no longer implement Articles 10, 11 and 13 of the Treaty on the Avoidance of Double Taxation between the Czech Republic and Belarus for the period between 1 June 2024 and 31 December 2026. The mentioned articles concern the taxation of dividends, interest, and income from the disposal of property. The Ministry of Foreign Affairs has announced this fact in the Collection of Laws under No. 115/2024 Coll.

Following the Belarusian approach, the Czech Ministry of Finance announced in the Financial Bulletin No. 4/2024 that the Czech Republic shall also not apply Articles 10, 11, and 13 of the Treaty in the period in question.

The ministry further stated that as a result of the suspension of Articles 10, 11, and 13 of the Treaty, the situation where one of the parties would be obliged to exclude double taxation cannot arise. Therefore, Article 23 shall not apply either. Similarly, the dispute settlement procedures under Article 25 will not be applicable.

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Tips and tricks

VAT perspective on various options of providing company cars to employees

Providing company cars to employees for their private use is an increasingly common benefit. What are the VAT implications for employers when providing car to employees free of charge? Does the situation change if the cars are provided to employees for a consideration? And what is likely to change in the future?



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Providing cars free of charge

From a VAT perspective, there is the question of the employer's entitlement to deduct input VAT, both upon the purchase of the car and upon purchases of fuel and other operating expenses. If the employer provides the car to the employee free of charge and is aware that the car will also be used for private purposes, the entitlement to deduct VAT upon its purchase should be reduced by a pro rata coefficient. For the first year, this may be determined by **a qualified estimate**. The same applies to fuel and other operating expenses. In the last tax return of the calendar year, the coefficient shall then be adjusted if the estimate differs from the actual ratio of business to private travel by **more than 10 percentage points**. If the employee pays for their own fuel for private journeys, the employer may deduct VAT on fuel in full.

Providing cars for consideration

If the car is provided to the employee for consideration, the situation will be different as it involves a taxable supply provided by the employer, and the company shall pay VAT on the consideration received from the employee. In this case, the car is used exclusively for an economic activity – i.e., either the company's own business, or its rental activity – and the company will thus avoid reducing the VAT deduction by a pro rata coefficient. Another advantage of this approach is a lower administrative burden. From a VAT perspective, it is not necessary to use the arm's length price to determine the amount of the rent for the employee, as employees are not considered related parties. However, the agreed-upon price must have a rational basis and be economically justifiable.

Future developments

The amendment to the VAT Act currently under discussion at one point included the proposal that an employee should be regarded as a party related vis-à-vis their employer, effective from **1 January 2025**. It would then be necessary to pay an arm's length price (market price) for renting the car; and it would be also advisable to calculate whether it is worthwhile for the employer to pay VAT on the arm's length price, or to reduce their right to deduct input VAT by a pro rata coefficient when providing the cars to employees free of charge.

However, this proposal sparked an extensive discussion among the professional public and is currently no longer part of the bill.

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The income tax perspective on this benefit will be discussed in the next article.

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Major amendment to Code of Administrative Justice

The Code of Administrative Justice is about to undergo a significant amendment to improve the efficiency and functioning of the administrative justice system. The initial draft of the Ministry of Justice contained major shortcomings that could make the position of individuals and legal persons as parties to proceedings more difficult. This was brought to the attention of the ministry during the comment procedure, and it thus had to modify the wording of the amendment. The bill will now be discussed in a government session.



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Reimbursement of costs to the administrative authority

One of the most significant shortcomings of the amendment was that if the plaintiff (individual or legal person) lost, they would have to cover the costs of the proceedings of the administrative authority. This could significantly increase the plaintiffs' costs, discourage them from bringing any action and, in principle, limit their access to the courts. In line with our criticism in the previous article, the Chamber of Tax Advisors explained in its comments that parties to the proceedings should not be forced to reimburse the costs to administrative authorities, as these are financed by the state and have resources and people to litigate. The ministry largely accepted the comments raised by several parties to this effect and changed the wording of the amendment so that the administrative authorities would only be entitled to the reimbursement of reasonably incurred out-of-pocket expenses according to Decree No. 254/2015 Coll., i.e., CZK 300 per act.

Limited review by the SAC

The original wording of the amendment significantly restricted access to the Supreme Administrative Court (SAC) by limiting the scope of cassation objections to legal objections only. However, the administrative justice system is specific in that regional administrative courts are the first independent institutions to assess the lawfulness of administrative authorities' decisions. In tax disputes, it often happens that regional courts uphold tax authorities' unlawful conduct, and the SAC then reprimands the regional courts, and reverses their decisions. Neither the administrative authorities nor the regional courts are infallible in establishing the facts. The ministry has recognised this, and it will therefore remain possible to file a cassation complaint with the SAC on factual grounds. However, the alleged deficiencies must affect the lawfulness of the decision.

The proposed extension of the grounds for inadmissibility of a cassation complaint according to which a cassation complaint would be admissible only if it significantly exceeded the complainant's own interests, did fortunately not pass. Thus, the SAC will not be able to reject cassation complaints outright but will still have to deal with them on their merits.

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Consumers get right to have defective goods repaired

The European Parliament has adopted a directive on common rules promoting the repair of goods, which introduces the consumer's right to repair. The new regulation aims to encourage consumers to have products repaired and thus extend their useful life.



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The directive responds to the excessive generation of waste and CO2 emissions due to the premature discarding of consumer goods in the EU, as consumers and businesses often prefer to have defective goods replaced rather than having them repaired, whether for reasons of time, money, or the poor availability of spare parts.

The new rules stipulate that if a defect of the purchased goods becomes apparent **during the period for exercising rights under from defective performance** (liability period – usually two years), the seller will be obliged to offer the consumer the repair of the item if it is cheaper than its replacement. If the goods are repaired within this period, the period for exercising rights from defective performance will be extended by an extra year, which will give the consumer a further incentive to repair.

After this period, the rules for repair will vary **depending on the type of goods**. For goods whose repair is technically feasible, in particular household appliances such as telephones, washing machines, vacuum cleaners, etc., consumers will be able to seek their repair from the manufacturer. The latter will be obliged to carry out the repair at a reasonable price and within a reasonable time. If a product is not covered by the repair obligation, the manufacturer will have to inform the consumer. The manufacturer will not be entitled to refuse a product's repair for purely economic reasons (e.g., the cost of spare parts) or because a previous repair was carried out by another repairer or by the consumer. They will only be able to refuse if a repair is not factually or legally possible.

The directive should also put an end to components that some manufacturers place in their goods to shorten their life. The directive explicitly prohibits manufacturers from using contractual clauses or hardware or software solutions that would make repairs difficult. In addition, manufacturers will have to provide spare parts and tools for repairs, at a reasonable price.

There are also plans to establish a European online repair platform with links to national online platforms that member states will have to set up, containing information on repairers or sellers of refurbished goods. Consumers will thus be able to easily search the offers by goods, location of the repair shop, and conditions/times of repairs to find the nearest repair shop that matches their preferences.

The directive is pending approval by the EU Council and will be published in the Official Journal of the EU. Member states will have **24 months** to transpose it into their national laws.

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Financial services: changes to distance contracts

The European Union is modernising and simplifying the legal framework for financial services contracted with consumers at a distance. In response to technological developments, the new directive of November 2023 repeals the original sectoral directive of 2002 and moves the regulation of financial services contracts concluded at a distance to the Consumer Rights Directive (CRD). This will tighten the legal framework, as EU member states will no longer be able to derogate from the regulation unless explicitly allowed so by the directive.



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Affected type of contracts

The new legal regulation will apply to consumers concluding distance contracts for financial services that do not fall under any EU sectoral legislation or are explicitly excluded from its scope. These, e.g., include reverse mortgages, which are exempted from the Mortgage Directive, certain savings and deposit products, and credit crowdfunding.

Rules taken over from the repealed directive

A large part of the provisions of the original 2002 directive are being transferred to the C**onsumer Rights Directive (CRD)**, in a modified version. These mainly concern the rules on pre-contractual information, including new obligations such as a reminder of the possibility to withdraw from the contract if the information has been provided less than one day before the contract has become binding. A new feature is the possibility of layering contractual terms and conditions, whereby the key information must be provided in the first layer, and details in subsequent layers (to be viewed upon clicking). In addition, the rules for withdrawing from the contract or modification of payments for services actually rendered before withdrawing from the contract have been taken over.

New obligations for distance financial services

Financial services contracted at a distance shall be subject to further rules in addition to selected existing CRD rules. Consumers will have the right to have the proposed financial services contracts properly explained to them before concluding them and may request human intervention when communicating with an online tool (e.g., a chatbot) after the conclusion of the contract. They will also be protected from 'dark patterns' – manipulative online interfaces that significantly impair consumers' ability to make informed decisions and their ability to assess the impact of a service on their financial situation. A crucial new obligation is that a withdrawal function must be available directly on the website or app, so that withdrawing from the contract shall be as easy as entering in the contract.

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Effective date

The directive was published in the Official Journal of the EU on 28 November 2023. It must be transposed into national law s within two years of its effective date and will enter into force six months after the transposition deadline, i.e., no later than **19 June 2026**.

The new legislation will not only mean new rights for consumers but also new obligations for service providers.

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What's in the revised ViDA proposal?

On 8 May 2024, the European Commission published an updated proposal for the VAT in the Digital Age (ViDA) package, to be discussed at the June ECOFIN meeting with the aim to reach an agreement during the Belgian Presidency of the EU Council. The reform focuses on three main areas: changing the rules for digital platforms, introducing a single VAT registration, and a new unified digital reporting system.



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Changes to digital platform rules

From **1 July 2027**, the proposal requires digital platforms that mediate short-term rentals and transport of persons to be regarded as 'deemed providers' of these services where the actual providers of the services do not provide their VAT identification number (i.e., where they act as VAT non-payers). This move is intended to increase transparency and shift the responsibility for tax collection to the platforms. The updated version also adds certain exemptions and allows member states to exclude short-term rentals and road passenger transport from this rule where these services are provided by small enterprises (SMEs).

Single VAT registration

The OSS scheme allowing businesses to register in one member state and declare VAT throughout the EU will be extended. From **1 July 2027**, it will cover transfers of own goods between member states, sales of goods with installation or assembly, sales on board of ships, aircrafts, and trains, and sales of energy. However, the updated version of the proposal excludes from the extended OSS regime sales of goods and services covered by special regimes (e.g., sales of second-hand goods and sales of works of art). The original proposal, which included the implementation of IOSS, has been withdrawn and will be included in the **2028** customs amendment.

Electronic invoicing and digital reporting

From **1 July 2030**, e-invoicing and unified digital reporting will be mandatory for all cross-border transactions within the EU. Member states will also be able to introduce mandatory e-invoicing for domestic transactions. This system is intended to simplify and speed up the VAT reporting process. The updated version of the proposal extends the deadline for issuing e-invoices to **10 days** from the date of the taxable supply, up from the original **2 days** in the previous proposal.

Businesses in the EU should start preparing their accounting systems for these changes to ensure compliance with the new requirements. More detailed information can be found here.

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New withholding tax rules

The Council of the EU has approved new rules on the application of withholding tax on dividends and interest (the FASTER Directive), but their effectiveness has been postponed until 2030.



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The Council of the EU has approved new procedures for collecting and refunding withholding tax. These apply to payments of interest and dividends on publicly traded securities where the domestic withholding tax rate differs from the tax rate to which the foreign investor is entitled under a relevant double taxation treaty. The new rules should introduce a unified and efficient system of applying withholding tax on income from investments in capital markets. The directive introduces an automated system for issuing digital tax residence certificates, usually within 14 days of filing the application, and the obligation of member states to apply at least one of the fast-track procedures for applying the correct amount of withholding tax. **The fast-track procedures are**:

- the application of the correct (lower) tax rate at the time the dividend/interest is paid (relief at source), or
- a quick refund of overpaid withholding tax within a set time limit.

The new rules will also apply to indirect investments made through collective investment funds. The rules also include registration and information obligations for financial intermediaries (banks, investment platforms) vis-à-vis financial administrations. Member states with comprehensive relief at source systems and low market capitalisation of publicly traded securities should be able to choose whether to apply these procedures.

As the Czech Republic already allows for the application of the lower withholding tax rate at source, and the market capitalisation of publicly traded securities is not very significant here, we will probably only be affected by the obligation to introduce a system for issuing digital tax residence certificates. Other requirements of the directive (such as the introduction of fast-track procedures for the application of withholding tax or the introduction of a register of investment intermediaries and their information obligation) would not necessarily apply to the Czech Republic. This has already been provisionally confirmed by the Ministry of Finance in its press release.

The adoption of this directive is thus likely to be of particular benefit to Czech entities investing in securities issued in other EU countries.

The Directive on Faster and Safer Relief of Excess Withholding Taxes (FASTER) will be published in the Official Journal of the EU once the legislative process is complete. Member states will have to implement it in their legislations by the end of **2028**, with effect from **2030**.

More information can be found here.

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Pillar 2: Registration obligations in Belgium and UK

Work on the introduction of a global minimum tax under Pillar 2 is gaining momentum. In this context, we bring to your attention new registration obligations in Belgium and the UK.



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Belgian authorities have introduced an obligation to register for a minimum tax for all multinational groups (with consolidated group revenue exceeding **EUR 750 million**) that have an ultimate parent, parent or another member entity in Belgium, including permanent establishments. This obligation applies to taxable periods beginning on or after **1 January 2024**.

The registration form contains detailed information about the group, including information from the consolidated financial statements, such as currency, period and accounting standard. A description of the ownership structure is also an important part of the form. Registration is not yet possible, but the system is expected to be available soon. The deadline for registration will generally be 45 days from the date when the registration system becomes available. The registration obligation in Belgium results from the obligation to make tax prepayments already in the first period in which the tax will be applied. More detailed information can be found here.

Practical guidance on registration requirements has also been issued by UK authorities. The registration obligation applies to any multinational group subject to the global minimum tax, with at least one entity in the UK. Registration will be compulsory even if no UK top-up tax liability arises. Unlike Belgium where registration is required already during 2024, in the UK the deadline for registration has been set at six months from the end of the first accounting period that began after 31 December 2023. For more details, click here.

The registration obligation for minimum tax under Pillar 2 is not a rule, and, e.g., the Czech Republic has not introduced any such obligation.

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Subsidies for energy saving measures

On 10 May 2024, the Ministry of Industry and Trade announced the second call under the Energy Savings Programme (OP TAC). The call supports activities consisting in energy savings in enterprises, including the reduction of energy consumption of real property. It is also intended for large enterprises.



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Applications will be accepted from 24 May 2024 to 31 October 2025. The funds for allocation under the call amount to CZK 5 billion; this may be topped-up if there is an excess of quality projects. **The following activities are eligible for support under the call**:

- **Reducing the energy consumption of business buildings** in combination with e.g., heating or cooling from renewable sources, installation of equipment for energy storage, building digitisations, investments in green roofs, etc.
- **Energy management measures** other than renovations of buildings - e.g., use of renewable energy sources and highly efficient combined heat and power (CHP) generation from solid biomass, biogas and biomethane, modernisation of electricity, heat, cooling and compressed air distribution systems, use of waste energy, and reduction of energy intensity or increase of energy efficiency of production and technological processes.

The calculation of eligible costs in particular includes costs incurred for tangible and intangible fixed assets, engineering, energy assessment, project documentation and the organisation of tenders. The amount of eligible costs is limited to **CZK 2 billion**.

The maximum amount of the subsidy is EUR 30 million. The aid intensity depends on the size of the enterprise applying for support, the region in which the project is to be implemented, and the specific activities to be supported by the grant. For large enterprises, the aid intensity varies between 30% and 60% of eligible costs, depending on the above criteria.

It is also possible to provide support for costs of energy assessments, project documentation, and the organisation of de minimis tenders. At the same time, the call allows to apply for support for the implementation of the project, in which case the aid intensity is set at 50% of eligible costs (but within the de minimis support limits).

Projects can be implemented throughout the Czech Republic except Prague and must be physically completed by 31 October 2026. There is no limit to the number of applications for support per applicant.

If you are interested in applying for this type of support, we will be happy to check whether your activities comply with the terms of the call.

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Subsidies

Another call for support for photovoltaics announced

Since 15 May 2024, it has been possible to submit applications for subsidies under the RES+ Call No. 2/2024 – Photovoltaic power plants with a capacity of more than 1 MWp, within the Modernisation Fund.



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Support can be obtained for stand-alone photovoltaic power plant (PV) projects with one transmission point to the distribution or transmission system (DS/TS), or for combined PV projects consisting of several sub-projects with more than one transmission point to the DS/TS. Along with the PV plant itself, battery storage systems and electrolysers can also be supported. The call is open until **10 September 2024**.

The funds for allocation under the call amount to CZK 4 billion. Support can be applied for by existing or future holders of licenses to operate business in energy sectors (the license is to be granted by the Energy Regulatory Office and obtaining it should not pose a major administrative obstacle). The aid intensity is limited to 30% of eligible costs. To calculate the subsidy amount, the Interactive Subsidy Calculation Tool published on the website of the State Environmental Fund of the Czech Republic can be used.

The project must be completed **within 5 years** from the date of the decision on granting the support and can be implemented throughout the Czech Republic including Prague. Applications for support shall be submitted through the AIS system of the State Environmental Fund of the Czech Republic. Along with the application, it is necessary to submit, among other things, a contract on the connection of the generating plant to the distribution system or a contract on a future contract on the connection. We therefore recommend that you start preparing the application as soon as possible. If you are interested, we will be happy to help.

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Case law

CJEU: free-of-charge supply of heat subject to VAT

The Court of Justice of the EU (CJEU) has ruled that the supply of heat free of charge is subject to VAT whether or not the recipient uses it to carry out economic activities. To determine the taxable amount, the cost price must include both direct and indirect costs whether or not they have been subject to input tax.



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A German biomass power and heat generation company supplies electricity to its customers through the grid. The production of electricity also generates heat, which is partly consumed in the production process and partly supplied to other companies, free of charge. The company did not regard such gratuitous supply as a gift subject to VAT. Neither the German tax authority nor the appellate authority agreed with this approach.

The company argued that the unconsumed heat would otherwise be wasted by releasing it into the air, and that the companies receiving the heat use it for their economic activities – drying wood and heating their asparagus fields.

Following the submission of preliminary questions by Germany, the CJEU held that a gratuitous supply of goods for which the taxpayer had claimed a VAT deduction is taxable regardless of the tax status of the recipient. It is irrelevant whether the recipient uses such a supply for purposes that entitle them to deduct VAT. If such a condition existed, according to the CJEU, the donor would have to make difficult enquiries to verify the recipient's use of the supply. Therefore, according to the CJEU, the free-of-charge supply of waste heat shall be treated as a supply of goods for consideration, and is subject to VAT.

Cost price should be as close as possible to the purchase price

Another point of the dispute was the determination of the taxable amount. In the tax authority's opinion, it should be set in the amount of the total allocated production costs. The CJEU reiterated that the taxable amount is the purchase price or the price of similar goods. If that price cannot be determined, the taxable amount may be determined in the amount of the costs incurred. The preliminary question raised was whether the cost price must also include indirect costs (e.g., financing costs) and whether only costs subject to input VAT must be included in the calculation of that price.

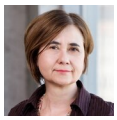
The CJEU concluded that the cost price should reflect all relevant facts resulting from a detailed assessment of the factors affecting the price. According to the court, it does not follow from the directive that the cost price should be based only on direct costs or only on costs that were subject to tax on input. On the contrary: the price should also include indirect costs to be as close as possible to the purchase price.

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In brief

News in Brief, June 2024

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



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DOMESTIC NEWS

- The Senate has approved an amendment to the Act on Conversions of Commercial Companies and Cooperatives and other related laws, including an amendment to the Income Tax Act.Decree No. 17/2024 Coll., on the establishment of electronic communication for the fulfilment of employers' information obligations when employing employees from abroad, has been published in the Collection of Laws. It specifies the format, content and structure of the data message for fulfilling the employer's information obligation when employing foreigners.
- Government Regulation No. 134/2024 Coll., amending Government Regulation No. 5/2023 Coll., on compensation provided for the supply of electricity and gas at set prices, has been published in the Collection of Laws.
- Decree No. 138/2024 Coll. amending Decree No. 359/2020 Coll., on electricity metering, has been published in the Collection of Laws.
- On 13 May 2024, a double taxation treaty with the United Arab Emirates entered into force.
- As regards withholding taxes, it will start to apply to income paid or credited on or after 1 January 2025. As regards other income taxes, it will apply to income for each tax year beginning on or after 1 January 2025.
- On its website, the Ministry of Finance has published an updated overview the Czech Republic's treaties on the avoidance of double taxation in the field of income and property taxes in force as of 29 May 2024.
- The government has approved a proposed amendment to the Children's Groups Act prepared by the Ministry of Labour and Social Affairs. The amendment simplifies the rules for the operation of children's groups and the administration of the state contribution and introduces neighbourhood' children's groups. The amendment also stipulates the obligation of municipalities to ensure conditions for the educational care of a child in a children's group from the date of their third birthday to 1 September following their third birthday if they were not admitted to their catchment area pre-school facility.
- The Ministry of Justice has prepared a new electronic manual for the authentication of documents for abroad. The manual provides clear information on the certification of documents by apostille or super-legalisation, certification of translations, and the possibility of exemption from certification.
- EU leaders have formally adopted the final wording of the Artificial Intelligence (AI) Regulation.
- The regulation will be published in the Official Journal of the EU in about two weeks. The first rules will start to apply at the end of this year.

FOREIGN NEWS

- Following the European Commission's finalisation of the FASTER Directive on the harmonisation of procedures for withholding tax on income from investment in capital markets, the main points on the EU's agenda include: the analysis of the functionality of a part of the Directive on Administrative Cooperation (DAC); continued support to the EU Council in promoting the proposed Unshell Directive (introducing EU-

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wide minimum substance requirements for companies), the drafting of implementing and delegated acts within the Carbon Border Adjustment Mechanism (CBAM) including the accreditation of verifiers and the resolution of tax implications of cross-border teleworking and the free movement of workers within the single market.

- The OECD has published a consolidated version of the Commentary to the Global Anti-Base Erosion Model Rules (GloBE) and an updated set of examples.
- Several countries are continuing or finalising the work on amendments to their legislation implementing the minimum tax directive (Belgium, Denmark). Poland has prepared the first draft of the bill to implement the Pillar 2 rules with effect from the end of 2024, including the possibility of early application for the whole of 2024.
- The European Commission has formally invited Poland, Portugal, Spain, Cyprus, Lithuania, and Latvia to complete the implementation of the Minimum Tax Directive.
- The Slovak Ministry of Finance has issued guidelines governing the content of transfer pricing documentation for 2023.

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