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May 2021

Editorial

While the lockdown for districts and municipalities has ended, work from home continues. Unfortunately, even after more than a year, we still do not have clear home office rules – which is why we will look into the pitfalls of working from home in this issue and the next one.

In our Tax and Legal Update, we have also included a new educational section titled Tax Tips and Tricks, and are opening it with a feature on tax inspections in the COVID era. We will be sharing with you our experience from tax disputes and bring to your attention some of the tax authorities' common practices.

Let's hope that May will bring warmer weather and that with higher vaccination rates, life will return to normal soon – perhaps with a new COVID passport, we may even start planning summer and autumn vacations. At last!

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Taxes

Amendment to VAT Act 2021: Goods from e-shops becoming more expensive?

From 1 July 2021, VAT will be collected on all import consignments regardless of their value. Thus, when purchasing goods from foreign e-shops, it will be necessary to consider, among other things, whether the product price includes or excludes VAT. Crucial is who will pay the VAT on imports – the seller or the buyer – and whether any simplification procedure will be applied to collect VAT.

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The harmonisation of conditions for EU and foreign businesses engaged in the sale of goods to end-customers has necessitated the cancellation of the exemption from import VAT on consignments of low value. In compliance with the 'E-Commerce VAT Amendment', this change shall enter into effect on 1 July 2021.

This means that customers will have to pay more attention to the conditions under which they purchase goods from e-shops selling foreign goods, in particular whether the price of goods given by the e-shop includes import VAT. Where the seller undertakes to pay VAT on import, they may choose to proceed under the One-Stop-Shop (OSS) scheme, namely the import OSS (IOSS). We already wrote about this in the April issue of the Tax and Legal Update. The payment of tax using this simplification procedure will only be possible for consignments costing up to EUR 150 and not liable to excise duty.

The seller shall register in the particular OSS module and obtain a tax registration number for import purposes. If the supplier is not established in the EU, they must arrange an intermediary. Upon the import of goods into the EU, the tax registration number is then submitted (usually through a carrier) to customs administration representatives. VAT on import is not paid at the customs office but declared and paid via VAT returns filed monthly through the IOSS.

In contrast, where the price of goods purchased on an e-shop is not all-inclusive, i.e. does not include import VAT, the end customer will be responsible for the payment of relevant VAT. For consignments costing up to EUR 150 and not subject to excise duty, it will also be possible to apply certain simplifications if the transport of goods is ensured by an entity holding a special permit for a special customs regime for the import of goods. The carrier will then collect the relevant VAT from the end customer who will be relieved of the standard customs procedure, i.e. will not have to go through customs clearance by themselves.

Sellers of goods from abroad should therefore consider all possible options and decide on the most appropriate and convenient collection of VAT on the import of goods for both themselves and their customers.

Taxes

Coordination Committee: Is compensation for unconsumed goods subject to VAT?

The Czech Chamber of Tax Advisors has come up with a proposal to unify the interpretation regarding the application of VAT in situations when the customer compensates the supplier for expenses incurred by the supplier for material unconsumed upon the termination of manufacturing. The paper submitted for discussion to the Coordination Committee of the Chamber of the Tax Advisors and the General Financial Directorate mainly derives from the judgment of the Court of Justice of the EU in case C-295/17 MEO.

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The Coordination Committee discussed three situations that may occur when the customer decides to terminate production: first, the customer compensates the producer for expenses for the acquisition of unconsumed materials; second, the customer compensates the supplier expenses for the liquidation of unconsumed materials; and third, the customer settles the differences between the cost of sold materials and the acquisition cost.

- Please find more detailed information about the MEO case in this article.

According to the GFD, for a supply to be liable to VAT, a direct link between the supply of goods/services and the consideration actually received for such a supply must exist. From the paper submitted for discussion, the GFD concluded that a legal arrangement for the delivery of goods exists between the customer and the supplier requiring a certain extent of stockpiling by the supplier. And if there is also a legal arrangement regulating the consequences of unconsumed materials, which is the case of the above paper in the GFD's opinion, the 'liquidation' of such materials may be carried out in form of a sale of unconsumed inventories and a financial compensation up to the acquisition cost of the inventories, or in form of the actual disposal of unconsumed materials. If the liquidation is performed in one of the two above methods, the GFD considers such a supply to be the provision of services for consideration.

In practice, compensations are often labelled as contractual penalties that are generally regarded as supplies not subject to VAT. However, considering the above, certain contractual penalties may be subject to Czech VAT. We recommend reviewing your contractual arrangements and assessing whether the above conclusions affect any of your realised or planned transactions.

Should you have any questions, please do not hesitate to contact us.

Subsidies

New EU rules on state aid

At the end of April, the European Commission adopted new rules on regional aid to enter into effect on 1 January 2022. The new rules bring significant changes, in particular for applicants for investment incentives, as they also concern the Czech Investment Incentives Act, under which investment incentives are provided.

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The applicability of the new rules is governed by the incentives' approval date rather than the application's filing date (as is the case under Czech law). Given the length of the approval process on the part of Czech state authorities, it is thus now high time to apply for investment incentives if applicants wish to obtain them under the existing rules.

The new rules will form part of the amended Regional Aid Guidelines (RAGs), which lay down a general framework and the rules of providing state aid within the European Union on which other European and local public aid rules are based. This means that based on these guidelines, the General Block Exemption Regulation (GBER) and subsequently the Czech Investment Incentives Act will be amended. The RAGs set out, inter alia, the criteria for defining the areas in which regional aid can be granted, and the aid intensity in individual areas. This will result in a change to the regional aid map for each member state. The new maps should apply from 1 January 2022 to 31 December 2027.

Under the currently valid RAGs, all regions of the Czech Republic (except for Prague) have been assigned an aid intensity of 25%. **From 1 January 2022, the aid intensity in individual regions will change as follows:**

- 40% – Karlovy Vary and Ústí nad Labem
- 30% – Liberec, Hradec Králové, Pardubice, Zlín, Moravia-Silesia and Olomouc
- 15% – Central Bohemia, Pilsen, South Bohemia, Vysočina and South Moravia
- 0% – Prague.

Another important change is the limit in support for investments to expand existing production. In the **Central Bohemian, Pilsen, South Bohemia, South Moravia and Vysočina regions, it will no longer be possible to support investments aimed at expanding existing productions or diversifying product portfolios**, except in cases where it would involve a completely new activity for the company in question. These forms of investment will still be supported in the remaining regions (except for Prague).

The rules under the new RAGs will apply to all investment projects where the decision to grant an investment incentive is issued after the end of 2021, i.e. also to projects where the application for an investment incentive is submitted during 2021, but the approval process is not completed by the end of 2021. As the approval process now takes much longer due to the projects' need for mandatory governmental approval (seven months are not uncommon), it is now high time to apply for an investment incentive if you wish to obtain it under the existing rules.

If, on the other hand, you feel that the new rules will be more advantageous for you, we recommend rescheduling and postponing the project (if commercially possible) and only filing the investment incentive application at the end of 2021. For the sake of completeness, please also note that the new rules should not affect already granted investment incentives.

We will be happy to help you assess the impact of the new rules on your project.

CZK 0.5 billion available from TRANSPORT 2020+

On 14 April 2020, the Technology Agency of the Czech Republic announced its third call to participate in the TRANSPORT 2020+ programme, aiming to provide support to businesses operating in applied research, experimental development and innovation within the transportation segment.

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Aid is also available for large businesses, with the maximum aid per project being CZK 50 million and aid intensity ranging from 25% to 65%. Funds for allocation total CZK 500 million; the addition of another CZK 350 million is still under negotiation. Eligible costs include, inter alia, operating expenses. Projects can be carried out in the territory of Prague. The project's implementation may not exceed 48 months.

Activities eligible for support include research and development projects whose outcomes have the potential to be further used in new approaches, technological procedures and services aiming to strengthen social and economic benefits within the transportation segment. The programme focuses on research involving the entire transport system and all types of transport, i.e. road, water, and air, and including all types of means of transport and transport infrastructure.

Project proposals must meet at least one of the specific goals set by the programme, which are as follows:

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

The research topic that is considered a priority for this call is transport digitalisation, in particular autonomous and smart mobility, ITS and cooperative ITS, digital and data infrastructure. However, it is not mandatory to subscribe to this topic.

Project proposals are to be submitted until 16 June 2021 using the ISTA information system. Another call is planned for 2022.

Tips and tricks

Initiation and termination of tax inspections after amendment to Tax Procedure Code

The Tax Procedure Code has been amended, with changes already effective since 1 January 2021. How has the amendment affected tax inspections, in particular their initiation and termination? One positive aspect is that it will definitely help digitalise the whole process and transfer it to the virtual world. Nonetheless, the absence of personal contact at the beginning and the end of a tax inspection has practical implications, not only regarding signing in to data boxes or problems with remote access. The following information about the recent changes to tax inspections will start our new regular section dedicated to tax procedures: we will comment on new and established procedures, provide advice, draw attention to practices followed by the tax authorities, and share our experience with tax litigation.

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From 1 January 2021, tax inspections are initiated by correspondence: the tax administrator issues a formal notification of the initiation of a tax inspection and delivers it (most often) to a data box. There are no more advance notices by email or phone nor is there any oral meeting during which an inspection is initiated. Taxpayers thus lose their chance to rectify the situation at the last minute and remove hidden skeletons in their imaginary tax closet. However, current practice shows that at least some tax authorities continue to advise taxpayers on the initiation of a tax inspection by phone before sending a formal notification to the data box. As before, the initiation of a tax inspection must be directly followed by actual inspection activities, as the tax administrator is obligated to initiate an inspection immediately. At that moment, the deadline for assessing tax is interrupted, and a new deadline starts to run. If the initiation were merely formal, the deadline would only be interrupted once the inspection activities actually commence.

Tax inspections are to be terminated by correspondence as well. This removes any possible discussion regarding inspection report findings: taxpayers no longer get to agree with the report's conclusions or refuse to sign the report. The former procedure, i.e. the personal discussion about the tax inspection report, is now replaced by the delivery of a notification of the termination of the tax inspection, with a tax inspection report forming an obligatory part. When assessing tax exclusively based on the result of a tax inspection, under the amendment, the moment a tax inspection is terminated may also be the moment a tax is assessed or additionally assessed. The notification on the tax inspection's termination may thus also include an (additional) payment order.

The financial administration expects the above changes to the initiation and termination of tax inspections to simplify the entire tax inspection process. Before the amendment’s adoption, the professional public drew attention to the fact that borderline situations have not been properly addressed and that many of them will have to be decided before the courts. In practice, the tax administration mainly gains the element of surprise, as taxpayers will no longer know in advance when an inspection will be initiated or terminated, thus losing their chance to respond at the last minute by filing supplementary tax returns or obtaining final means of evidence and arguments.

Detailed home-office regulation still not in sight

While with the COVID-19 pandemic working from home has been a hot labour-law topic for over a year, its detailed regulation in the Labour Code is still missing. This should change with the amendment to the Labour Code proposed by KDU-ČSL deputies. However, at the end of March, the government issued a negative opinion on the bill; thus, it is now questionable whether it will be passed at all. Until then, employers have no choice but to rely on regulating work from home by internal policy or by individual agreements with employees.

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According to the Labour Code, dependent work must be performed "for a wage, public sector pay or remuneration, at the employer's expense and responsibility, during working hours, and at the employer's workplace or other agreed-upon place". This means that if an employee is to work from home or a place other than the employer's workplace, this has to be agreed-upon between the employee and the employer; work from home cannot be ordered to employees, and at the same time, employees have no right to work from home. Detailed conditions may be regulated by internal policy.

Apart from the above premise, the Labour Code only contains one provision which governs situations where employees do not work at the employer's workplace and also schedule their own working hours. For this specific group of 'home workers', the Labour Code stipulates a few exceptions to the standard rules: they are not subject to the provisions on working hours, downtime or interruptions to work caused by adverse weather conditions; furthermore, they do not receive a wage or time off for overtime work, or time off, wage compensation or extra pay for work on holidays. With some exceptions, these employees also do not receive wage compensation for personal impediments to work.

However, if employees do not schedule their own working hours, the above exceptions do not apply to them. Such employees are then subject to all provisions of the Labour Code applicable to employees working at the employer's workplace. In this respect, an often neglected duty when working from home is the record-keeping of working hours: the employer shall always keep records of the employees' working hours and check that the employees observe periods of rest and breaks at work. Therefore, it should be agreed with the employees that they will provide the employer with the necessary cooperation to this end.

Another frequently discussed issue of working from home is occupational health and safety. The fact that work is carried out from home does not automatically free the employer from their responsibility to ensure that the employee's workplace is safe, or from their liability for on-the-job accidents. OHS issues should not be considered simply in terms of the safety of the employee's home workplace, but also in terms of providing the employer with the option to check the employee's home workplace and investigate any reported on-the-job accidents, as, if on-the-job accidents are not properly investigated, employers risk sanctions by the Labour Inspectorate. In extreme cases, the insurer may even refuse to pay insurance benefits, in whole or in part. Please also note that permission to enter the employee's residence must be agreed-upon, not just provided for by an internal policy.

As the home-office agenda is rather extensive and still very topical, in the next issue of the Tax and Legal Update we will look into some ‘true’ or ‘false’ statements regarding the employers’ duty to cover any extra costs, or the option to monitor employees working from home, including the limits that an employer should not cross.

Last year's development of competition law and its present impact — I

The Office for the Protection of Competition has published its annual report for 2020, which, inter alia, deals with legislative developments and decision-making practices in the field of competition law. This article summarises changes in competition legislation, and how they affect the present. A brief overview of the office's case law for the past year, including the relevant statistics, will be presented in the June issue of the Tax and Legal Update.

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Since last year, three amendments concerning competition law have been in the legislative process: the Competition Act, the Electronic Communications Act and the Public Procurement Act. Some of these have already entered into effect, some will do so soon.

Following the EU Directive, the amendment to the Competition Act proposes to strengthen the position of the Office for the Protection of Competition, making some concept more efficient in practice, such as the settlement procedure: it allows to reduce, by 20%, a penalty assessed to a competitor who has confessed to an involvement in a prohibited cartel, an abuse of a dominant position, or a merger contrary to law. Although the directive's implementation deadline expired on 4 February, the bill only goes to the first reading at the April session of the Chamber of Deputies.

At the same April session, a draft amendment to the Electronic Communications Act will also proceed to the second reading, allowing the office to access mobile phone traffic and location data, as is currently the case for law enforcement authorities. The purpose should be to detect the anti-competitive behaviour of competitors and conduct subsequent administrative proceedings against them. However, due to the controversy of this amendment, currently opposed by the majority of deputies (MPs), it is unlikely that the amendment will pass through the legislative process.

As for the changes to the Public Procurement Act that already have a binding effect, we must mention a new principle added to the principles of public procurement: that of socially responsible, environmentally friendly and innovative procurement. This principle, similarly as the transparency principle or non-discrimination principle, shall be respected throughout the entire procurement procedure, and, unlike the other principles, shall regulate also its content, not just the process. The principle should already be followed from 1 January 2021. Another amendment to the same act, with proposed effect from 1 July 2021, is still waiting in the deputies' chamber for its first reading. It is intended to reduce the administrative burden for contracting entities by abolishing the duty to send tender documentation to the office (it should suffice to publish it through a certified electronic tool), and to enhance protection against 'bid rigging' – cartel agreements concluded in connection with the procurement procedure (e.g. by introducing the duty to publish the contracting entity's written report in a machine-readable format, or to disclose in the report also information about the bidding prices of the participants in the procurement procedure).

In addition to the duties in the area of competition protection, from June 2021, contractors will also face duties relating to the new Act on the Registration of Beneficial Owners. Contractors (Czech legal entities) will have to register their beneficial owners in the relevant register. Should they fail to do so, the contracting authority will not be able to obtain the information about the selected contractor from the register, and thus will have to exclude the selected contractor from the procurement procedure. For foreign contractors, a similar requirement shall apply, with the difference that if the foreign contractor is unable to produce an extract from the foreign register of beneficial owners because no such register exists, they will be allowed to meet this requirement in another way.

Competition regulation have undergone changes also at the EU level, concerning both mandatory legislation and non-binding 'soft law'. To mention just some: there is the adoption of the Temporary Framework for state aid measures to support the economy in the current COVID-19 outbreak, or the extension of the validity of the General Block Exemption Regulation or the de minimis Regulation until the end of 2023.

Ban on dual food quality and other novelties in sales regulation

Effective 12 May 2021, the amendment to the Food and Tobacco Products Act responds to legislative changes at the EU level. In particular, it prohibits the marketing of dual-quality food and introduces stricter traceability of tobacco products. It also newly regulates the marketing and sale of so far not regulated tobacco-free nicotine pouches and explicitly classifies edible insects and products derived therefrom as food of animal origin. The introduction of quotas for a mandatory share of Czech-sourced groceries on the shelves of shops did not make it into the amendment.

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Prohibition of marketing dual-quality food

The amendment responds to the long-debated topic of dual food quality by prohibiting the marketing of food seemingly identical to that marketed in other EU member states, where the food marketed in the Czech Republic has significantly different composition or characteristics. Exceptions are allowed where differences are justified by reasonable and objective facts, and at the same time the food is marked with easy to access and sufficient information on the different composition or characteristics.

Stricter traceability of tobacco products

The amendment also tightens the rules for the traceability of tobacco products: retailers will now be obliged (as has been the case for manufacturers, importers and distributors) to keep records of any handling of units (individual packages) of tobacco products, from their receipt, through their internal movements, to their dispatching. A consolation for retailers is that they will not have to fulfil these duties at the place of the 'final' retail sale: for example, a retailer (a head office) will have to record the receipt of tobacco products and their subsequent dispatch to its individual establishments (outlets) where the tobacco product is physically handed over to the end consumer.

Tobacco-free nicotine pouches

Nicotine pouches are tobacco-free products for oral use that contain nicotine and are widely used by minors. They are an alternative to ‘snus’, a tobacco intended for oral use (often also in the form of pouches) which is popular especially in Sweden and whose marketing is prohibited in most EU countries, including the Czech Republic. The main difference is that tobacco-free nicotine pouches have not been so restricted yet.

Under the amendment, the manufacturer, importer, retailer and distributor of nicotine pouches will be obliged to ensure that these products meet the requirements for the composition, appearance, quality and characteristics stipulated by the Decree of the Ministry of Health, under similar conditions as those for e-cigarettes. Furthermore, the mentioned entities will have to inform the ministry, on a regular basis, on the nicotine pouches that they intend to launch on the EU/EEA market or import, and will have to collect information on the suspected adverse effects of these products on human health.

Tobacco-free nicotine pouches that do not comply with the amendment and that were produced or marketed before 12 May 2021 will only be allowed to be sold until the end of 2021.

Edible insects

The amendment responds to the fact that insect food is beginning to enter the EU market. It is currently not regulated at a national level and the competent authorities lack the power to control them. The amendment thus explicitly classifies edible insects and products from them as food of animal origin, and grants the State Veterinary Administration the authority to check the compliance with the law when marketing them or carrying out other activities involving them.

Finally, it should be noted that the original draft amendment also stipulated a mandatory share of Czech food on the shelves of shops (quotas): from 2028, Czech food was to account for as much as 73% of the goods in stores of 400 m2 or more. Due to widespread criticism, conflict with EU law, and the related threats of legal action by the European Commission, mandatory quotas were left out of the amendment upon the Senate’s proposal.

Consular fees payable by card at 76 more embassies

Since March of last year, the Ministry of Foreign Affairs of the CR has been testing a non-cash payments project at selected embassies. During the testing period, it was possible to pay consular fees at these embassies not only in cash, by bank transfers or cheque, but also by credit card. Now the ministry is significantly expanding this service.

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From 1 May 2021, 76 offices around the world have joined the embassies in London, Sydney, Brussels and Moscow that were included in the pilot project. The main objective was to cover all EU countries, which was achieved, except for the embassy in Nicosia, Cyprus. Card payment can also be used by applicants in e.g. Tel Aviv, Washington and Hanoi.

Among the fees that can be paid by card are those for issuing a new passport or a visa. The fees will be debited in crowns or in euros. If the fee is paid from a foreign exchange account, it will be debited at the current rate set by the bank with which the account is held.
This extension of services, long called-for by applicants, will contribute to greater comfort when paying fees, and will also be safer from an epidemic point of view, as cash payments pose an increased risk of infection.

According to the ministry, the introduction of card payment for fees is not the end of the improvements to the quality of consular services: in the coming months and years, the ministry plans to further extend the list of embassies and matters where card payment is possible, and even introduce possibility to pay fees online, for instance.

Country-by-Country Reporting data publicly available?

Country-by-Country Reporting (CbCR) is one of the pieces of the puzzle that provides a view of a multinational corporation's transfer prices. Rather than looking at individual entities, CbCR, fairly truthfully depicts how the group operates in individual countries, and shows several financial and tax indicators. So far, CbCR data have only been available to the tax administrators; now, they are to be publicly available, which is expected to increase social pressure to pay income tax in the countries where large multinational groups operate.

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CbCR reporting only applies to multinational groups with a consolidated turnover of over EUR 750 million, and comprises a duty to prepare and submit a country-by-country report containing financial and tax information. The report also includes a list of all companies within the group and their area of interest, which helps to provide a comprehensive view of the group's activities. However, this is currently only available to tax administrators.

Ever since CbCR reporting entered into effect on 25 May 2016, it has been debated whether the information contained in the country-by-country reports should be public domain. For a long time, greater transparency in the tax area has been on the agenda at the EU and global level, with the aim to prevent large multinational groups from transferring activities to countries with low taxation. As it turns out, stricter requirements for transparency affect the behaviour of large multinational groups, particularly in tax area.

Extending the CbCR to public Country-by-Country Reporting (pCbCR) would mean that multinational groups with consolidated turnover above a certain amount would have to disclose a wide range of financial information, including the amount of income tax paid in each state. This means that this information could be accessed not only by the financial administration, but also by professionals or the general public to see if there are outflows of profits to countries with low tax rates. On 25 February 2021, significant progress was made towards the introduction of pCbCR: a legislative pCbCR proposal was approved by the Council of the European Union for Competitiveness (COMPET), under whose competence pCbCR falls.

Although eight European Union member states (Luxembourg, Ireland, Sweden, Croatia, Cyprus, the Czech Republic, Hungary and Malta) disagreed with the proposal and expressed their opposition already in the first vote in 2019 (at that time, Austria and Slovenia had also disagreed), the proposal was approved, as the voting in COMPET only requires the approval by 15 of the 27 EU states, if they represent 65% of the European Union's population. This is fundamentally different from common voting on tax issues, and the voting system is also the main reason for the opposing states' (including the Czech Republic's) objections: decisions on tax issues, which, according to these states, also include pCbCR, should be within the competence of the Economic and Financial Affairs Council (ECOFIN), where the European finance ministers have to pass legislative proposals by unanimous vote. This is the crucial difference between ECOFIN and COMPET.

Despite some states' opposition, pCBCR was passed by COMPET. The next step is the approval of the proposed directive by the European Parliament. If this happens, the individual member states will have two years to implement the new directive in their national law. While it may seem that the time when pCbCR becomes a reality is still far away, large multinational groups should already be preparing for this alternative.

Case law

CJEU on fuel cards once again

The Court of Justice of the European Union (CJEU) denied the right to deduct VAT on fuel to a taxable person who provided fuel cards to transport companies; the CJEU thus confirmed the conclusions formulated in judgment C-235/18 Vega International.

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In judgment C-48/20 UAB 'P', the CJEU dealt with a situation where P., a company based in Lithuania, provided fuel cards to Lithuanian transport companies that allowed them to purchase fuel at petrol stations in Poland. P. considered the purchase of fuel from Polish petrol stations for its subsequent sale to Lithuanian transport companies via the fuel cards to be P's economic activity, where they themselves acquired the fuel and then resold it to the transport companies. Therefore, when purchasing fuel, P. claimed the right to deduct VAT, and subsequently, upon its delivery, paid output VAT.

The Polish tax administrator argued that P. did not purchase the fuel, as the transport companies were the actual customers. The tax administrator thus denied P. the right to deduct VAT on the acquired fuel. However, upon the delivery of the fuel, P. had stated the output VAT on the tax documents (invoices), and the tax administrator did not allow for their correction as, under Polish law, once a tax inspection has started, it is not possible to correct VAT improperly indicated in the invoices. The heart of the question referred to the CJEU for a preliminary ruling was whether such national legislation is compatible with the principles of proportionality and neutrality of VAT.

The CJEU noted that although member states may adopt measures to ensure the correct levying and collection of tax, these must not undermine the neutrality of VAT, which is a fundamental principle of the common system of VAT. The CJEU further noted that the refusal to allow the correction of fuel invoices improperly indicating output VAT would mean imposing a tax burden in breach of the principle of neutrality of VAT.

It follows from the judgment that the CJEU maintains its previous case law on fuel cards, in particular that there is no right to deduct VAT. However, the good news is that the CJEU has confirmed the possibility to correct issued tax documents (invoices). In response to these judgments, the General Financial Directorate is preparing to publish its own information to clarify their application in the Czech Republic.

Tax deductibility of interest on acquisition loans in intragroup restructuring

The Municipal Court in Prague agreed with the tax administrator challenging the tax-deductibility of interest on an acquisition loan in an 'intragroup' restructuring.

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The entire restructuring took place with a foreign group establishing a new Czech company ('A'), to which they provided an intragroup loan. A used the loan to finance the purchase of two operating Czech companies ('B' and 'C'), which, however, had already been owned by the same group. After the acquisition, B and C merged with A, with subsequent conversion to a limited partnership where A was the general partner. A thus effectively deducted interest on the acquisition loan from the tax base taken-over from the 'newly created' limited partnership.

The tax administrator assessed the transaction as artificially created (in terms of the abuse of right principle), arguing that its main purpose was to reduce the tax base of the companies in the Czech Republic. The Municipal Court in Prague agreed with the tax administrator's conclusions, the main arguments against the taxable person being as follows:

- The whole restructuring took place within a single group, with no transaction objectively increasing the value of the group (e.g. bringing new revenues beyond the tax advantage obtained or contributing to maintaining existing revenues).
- It was not proven how the general partner's activities differ from those of the limited partnership. Instead, they appeared to be identical, as the same persons were holding the offices of the relevant bodies; the general partner was therefore assessed as an entity established for the sole purpose of gaining a tax advantage, with no independent economic substance.
- The maturity of the acquisition loan was extended several times by new loans, to the end that only interest was effectively paid, not the principal amount. The limited partnership, which had been profitable before the restructuring, was thus burdened with a debt that did not and could not bring them any additional economic benefit.

The Municipal Court further added that the assessment of the case may have been different had the company in question invested the funds thus obtained for instance to purchase a company operating outside the group and thus constituting newly acquired assets from the group's perspective. The court also rejected the taxpayer's argument of a similarity to the OKD case; on the contrary, the court found certain similarities between the case under appeal and the CTP case.

The taxpayer, nevertheless, disagreed with the court's view and filed a cassation complaint with the Supreme Administrative Court. We thus have to wait and see whether the Supreme Administrative Court will draw new conclusions on the case or whether it will agree with the previous instances.

News in brief, May 2021

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

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DOMESTIC NEWS IN BRIEF

- The president has signed the extension of the payment of extraordinary allowances for employees in quarantine or isolation, the so-called self-isolation payments. Payments will thus be provided until the end of June 2021.
- The government has extended the Antivirus programme until the end of May 2021.
- Act No. 173/2021 Coll., increasing the carer's allowance to 80% of the daily assessment base from 1 March 2021, has been published in the Collection of Laws. Simultaneously, the scope of persons that may draw this type of allowance has been extended from 30 April 2021 to direct relatives (e.g. parents, grandparents) and collateral relatives (e.g. sisters or brothers of the child's mother or father).
- The Personal Data Protection Office has opined on a new duty imposed by the Ministry of Health's extraordinary measure on certain service providers (such as hairdressers). The duty involves the keeping of records of customers for the purposes of a potential epidemiologic enquiry. The office concluded that the introduction of this duty showed several deficiencies.
- The decision on the waiver of income tax on the grounds of an extraordinary event caused by the coronavirus outbreak has been published in the Ministry of Finance's Financial Bulletin No. 20/2021. The decision concerns conditions for the waiver of income tax upon the failure to meet the requirement for the necessary period of time of operation of assets acquired for professional education purposes.
- The GFD has issued its Information on Monetary Contributions for Employees' Meals, summarising the legislative basis for the provision of these contributions and providing answers to questions most often raised on this topic.
- In its third reading, the chamber of deputies has passed a draft amendment to the Act on State Social Aid (Print 1116), including the approval of the following motions to amend the Income Tax Act: cancellation of the tax bonus amount limit of CZK 5,025 monthly and an increase in the tax credit to CZK 22,315 a year (currently CZK 19,404) per second child, and to CZK 27,835 a year (currently CZK 24,204) per third and any other child. The new regulation shall already be applied for the 2021 taxable period. The bill is currently being discussed by the senate.
- The Ministry of Finance's Instruction-18 on the amount and calculation of default interest after the amendment to the Tax Procedure Code, in effect from 1 January 2021, has been published in Financial Bulletin No. 19/2021. The instruction amends the amount of the default interest rate, but not the manner in which the default interest is calculated, i.e. the rate amount may change during the entire period of default depending on changes to the Czech National Bank's repo rate.
- In 2014–2019, the financial administration carried out 2,182 inspections focusing on transfer pricing, resulting in an additionally assessed income tax of CZK 3.2 billion and an increase in the tax base of entities subject to inspection of CZK 39 billion. The results for 2020 will be added in May after their verification.
- The Ministry of Finance is planning to implement Intrastat reporting simplifications: data reporting will be simplified so as to obtain necessary information but not increase the administrative burden for entrepreneurs and customs administrations. The draft government decree is planned to enter into effect from 1 January 2022.

- In connection with the passed tax package, i.e. Act No. 609/2020 Coll. amending certain tax legislation and other laws, the Ministry of Industry and Trade as the provider of subsidy informs about the effects on eligible expenses (fixed assets / capital expenditures, operating expenses).
- The GFD draws attention to the possibility of applying for the waiver of default interest by businesses affected by the pandemic whose majority of income for the period from 1 June 2020 to 30 September 2020 was generated from one or more activities that were prohibited or curtailed from 22 October 2020 to 31 March 2021 by the government's emergency measure. The entities concerned may be granted a waiver of default interest on value added tax or the road tax prepayment if they report to the tax authority the fulfilment of the condition of generating more than half of their income from activities that were prohibited or curtailed.
- An amendment to the Act on Public Health Insurance Premiums has been published, postponing the deadline for filing statements of health insurance payments by self-employed persons for 2020 until 2 August 2021.

FOREIGN NEWS IN BRIEF

- The EC expressed its support to the ongoing work of the Organisation for Economic Cooperation and Development (OECD) aiming to introduce a global minimum effective level of taxation to tackle excessive tax competition and to limit profit shifting opportunities globally. Once agreement is reached at the OECD, this will be transposed into EU law. If no agreement is reached at the OECD, the Commission is committed to propose its own rules to ensure a minimum level of effective taxation.
- The EC has noted that a majority of stakeholders participating in the Green Deal public consultation argued that the existing EU ETS measures are not sufficient to reduce carbon leakage and achieve the EU's climate ambitions. The impact assessment will be finalised in spring 2021 and the results will be considered when drafting the CBAM (carbon boarder adjustment mechanism) proposal in June 2021.
- The OECD has released a report to the G20 finance ministers and central bank governors, outlining the state of play of the OECD's international tax agenda in key areas, which include:
  - coordination of tax and fiscal measures implemented by individual states as a result of the pandemic,
  - digital economy taxation (BEPS 2.0 project mainly involving the international taxation of digital economy and the minimum global tax, indirect taxes on online transactions and higher transparency in the taxation of crypto-assets), and
  - environment-related tax policy.
- The OECD has released the third peer review report on preventing treaty shopping. Based on the findings, a large majority of members are translating their commitments on treaty shopping into actions and are modifying their treaty network accordingly.

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