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News in Brief, March 2023

Editorial

In this issue of the Tax and Legal Update, we follow the story of investment incentives, which has not been going too well recently – in the past year, the government approved only one investment incentive. The government will debate the long-prepared and discussed amendment to the Investment Incentives Act in March. It primarily aims at improving the unfortunate application approval process and to respond to the dissatisfaction of investors with its duration, foreseeability and results. The recipe for attracting the right investments does not have to be too complicated. Let's keep our fingers crossed that we will soon be able to start a new chapter in our approach to foreign investors.

Czech entities that hold participation interests in companies that are Russian tax residents should pay heed to the list of non-cooperative jurisdictions which has recently been updated and now includes the Russian Federation. This Tax and Legal Update issue brings to you a summary of the tax implications of this new addition to the blacklist.

This issue again includes practical tax process tips, as we are taking a look at how you can defend against regional courts' decisions in tax matters and how to proceed in submitting a cassation complaint. I believe that this issue will again provide you with a lot of useful information.



Viktor Dušek
Director
KPMG Legal

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Energy price capping: compensation subject to VAT?

In February, the government approved an amendment to the government decree on compensation paid to suppliers for the delivery of electricity and gas at fixed prices, which was supposed to clarify whether this compensation is subject to VAT. The legislative council proposed deleting this provision from the amendment.



Kateřina Klepalová
kklepalova@kpmg.cz



Marcela Kripnerová
mkripnerova@kpmg.cz

The draft decree contained a provision under which compensation was not to be considered a payment made in direct connection with the supply of electricity or gas, i.e., not to be deemed a payment for value added tax purposes and therefore not to be subject to VAT. However, both the legislative council and the Ministry of Finance opposed to this provision in the comment procedure. Their main issue was particularly that the government decree cannot implement any provisions of the VAT Act. In assessing whether the compensation is a consideration for the purposes of the VAT Act, the relevant provisions of the VAT Act must be applied.

In the approved wording of the amendment, the paragraph commenting on the provision of compensation from a VAT perspective was completely deleted; the amendment thus does not at all address the nature of this compensation.

However, contrary to the originally proposed wording, **the prevailing view is that this compensation is a payment for the supply of electricity made by a third party to a ▪nal customer**. Such an assessment then complicates the payment of VAT on the supply of electricity, where VAT should be paid not only on the amount paid by the customer (i.e., the maximum price) but also on the compensation received. At the same time, there may be situations where supplies of electricity by a trader will in some cases be in the standard VAT regime and in other cases in the reverse charge regime. We therefore recommend that compensation recipients consider the potential VAT implications on an individual basis.

The draft amendment to the government decree is currently awaiting publication in the Collection of Laws.

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Amendment to VAT Act 2024: reporting obligation for payment service providers

According to the upcoming amendment to the VAT Act, a new reporting obligation for payment service providers regarding payments abroad will apply from 1 January 2024. The draft amendment is currently awaiting its first reading in the chamber of deputies.



Tomáš Havel
thavel@kpmg.cz



Michaela Baumann
michaelabaumann@kpmg.cz

The draft amendment responds to changes in European legislation according to which the Central Electronic System of Payment (CESOP) information will be created. The new legislation obliges payment service providers to keep records of cross-border payments and their payees and to submit data from these records to the tax administrator. This obligation responds to the simplification being introduced to e-commerce and generally aims to strengthen compliance with VAT rules.

The obligation to keep records applies to **all payment service providers (most often banks) that provide their services in the Czech Republic**. Payment service means the non-cash transfer of funds from own and not-own sources in the form of payments by credit cards, collections, or standing orders. The decisive factor is that there is a transfer of funds. The obligation to record payments from abroad is activated when **a limit of 25 payments per calendar quarter for the same payee is exceeded**. The number of cross-border payments to the same payee shall be determined by the individual identifiers indicating the payee's state of establishment.

Payment service providers will not be obligated to collect any new information that would not normally be available to them: the notification shall include information such as the payment service provider's BIC, the payee's name, tax identification number (not necessarily the tax ID no. allocated for VAT purposes), IBAN or any similar identifier that unambiguously identifies the payee and their state of establishment, the payee’s address, and other cross-border payment details (date and time of the transaction, payment amount and currency, etc.).

The provider of the registered payment service shall submit the notification by the end of the month following the end of the calendar quarter even if the obligation to keep records has not arisen (the so-called zero report). The notification must always be submitted on the last day of the month including weekends or holidays. The submission may take the form of an electronic data message in a pre-determined structure.

The provider **must keep the relevant data electronically for three years from the end of the calendar year** in which the cross-border payment was made and must also provide the data on cross-border payments to the tax authority at any time upon request.

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Taxes

What will global minimum effective tax do to Czech companies?

The finalisation of the global minimum effective tax regulation is progressing at the OECD and EU levels in parallel. There is a general consensus on the introduction of a 15% tax. EU member states are obligated to adopt the relevant legislation as early as 2023, although its application may in some cases be postponed. The Czech implementing bill has not yet been published. The impact on Czech companies will undoubtedly be broader than is currently generally assumed.



Václav Baňka
vbanka@kpmg.cz



Marek Faltus
mfaltus@kpmg.cz

The global minimum tax will apply to companies that are part of a corporate group whose **consolidated turnover exceeds EUR 750 million (CZK 18 billion)**. If the effective tax rate determined (on a simplified basis) as the tax (current and deferred) reported by the group in a jurisdiction divided by the pre-tax profit determined under **International Accounting Standards for that jurisdiction is less than 15%**, the obligation to pay a top-up tax will arise.

The use of International Accounting Standards will therefore be decisive in the minimum effective tax calculation. The tax liability will include both current income tax payable in the jurisdiction and deferred tax. The effective tax may therefore differ significantly from the statutory tax rate (e.g., due to tax credits and allowances) and may also apply to companies that are not in low taxation jurisdictions, i.e., jurisdictions with a statutory rate above 15%.

The rules for calculating the effective tax and the top-up tax will be uniform for all jurisdictions. The state of the parent company will collect the top-up tax on behalf of the parent company's subsidiaries. However, even the state of the subsidiary will be able to opt to collect this tax. In such a case, the top-up tax paid by the subsidiary will be offset against the parent company's tax liability. It can be assumed that the Czech Republic will decide to collect any top-up tax arising at the Czech subsidiary level or impose the obligation on the subsidiaries to prove that no top-up tax has arisen. Otherwise, the top-up tax will be a revenue of the parent company's state budget even if it relates to the business activity of the Czech subsidiary.

From this perspective, Czech companies can be roughly divided into two categories:

- The first category includes **Czech companies that are at the top of the consolidated group of corporate groups reporting a turnover of over EUR 750 million**. These companies will have to examine the amount of effective tax for all jurisdictions in which they carry out their business activities.
- The second category includes **Czech subsidiaries that are part of a consolidated group with a turnover of over EUR 750 million**. These companies will have to examine the amount of effective tax at the level of the Czech Republic.
- In both cases, in addition to the occurrence of a potential top-up tax liability, this will entail the need to meet several obligations related to proving that a top-up liability has not arisen.

We will further discuss this topic in upcoming issues of the Tax and Legal Update.

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Taxes

Russia on the list on non-cooperative jurisdictions: tax implications for Czech companies

With effect from 21 February 2023, the Council of the EU extended the list of non-cooperative jurisdictions for tax purposes to include the British Virgin Islands, Costa Rica, the Marshall Islands, and Russia. For the first time, this may have wider tax implications, especially for Czech entities that hold a share in a company that is a Russian tax resident. We draw attention to two taxation issues that Czech companies may have to deal with in connection with Russia's inclusion on the blacklist.



Václav Baňka
vbanka@kpmg.cz



Michal Slavíček
mslavicek@kpmg.cz

The Council of the EU has previously ordered its member states to implement at least one of the proposed protective measures in their tax legislations against countries on the list of non-cooperative jurisdictions. These include, for example: the non-deductibility of expenses; tightening the rules for the taxation of a controlled foreign company if the controlled company is in a non-cooperative jurisdiction (CFC rules); applying withholding tax or restricting the exemption from income tax of dividends from abroad.

The current list of non-cooperative jurisdictions, which includes 16 countries, is published by the Ministry of Finance in the Financial Bulletin (available here). The list is revised twice a year by the Council of the EU. The reason for Russia's inclusion on the blacklist is that it has a harmful preferential tax regime for international holding companies and has not yet eliminated this problem.

CFC rules

As a protective measure, the Czech Republic has chosen the tightened rules for the taxation of controlled foreign companies (or simply subsidiaries). These CFC rules were implemented into the Income Tax Act in an amendment effective as of **1 January 2021**. All income (i.e., not only selected passive income as is the case of the standard CFC regime) of a Russian subsidiary (controlled foreign company) shall be included in the tax base of the Czech parent company (controlling company) and thus appropriately taxed in the Czech Republic.

The CFC rules will be relevant for Czech controlling companies that directly or indirectly hold **a stake exceeding 50% in a Russian company**.

The rule will have to be applied to all Russian controlled companies whose taxable period ends at any time **after 21 February 2023** (provided that Russia is still on the blacklist at the end of the controlled company's taxable period).

Please note that due to the inclusion of the jurisdictions on the list, it is no longer necessary to further examine whether a controlled company carries out a substantial economic activity or to perform the effective tax rate test

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for the controlled company. All income must be included in the tax base of the Czech controlling company even if the controlled company meets the criterion of performing a substantial economic activity or the effective tax rate test.

DAC 6

Czech companies should not overlook another obligation arising from Russia's inclusion on the blacklist: the reporting of cross-border arrangements reportable under DAC 6. This is one of the hallmarks defined by the law: if a Czech company generates tax deductible expenses vis-a-vis a Russian associated company (or any other associated company residing in a blacklisted jurisdiction), this transaction (arrangement) shall be reportable under DAC 6 (even without having to meet the main benefit test).

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News on tax obligations of transport service providers

The General Financial Directorate (GFD) has published Information summarising tax obligations in terms of VAT, personal income tax, and road tax for entities providing passenger transport through mobile applications (e.g. Uber, Bolt or Liftago). It is effective from 1 January 2023.



Filip Svoboda
fsvoboda@kpmg.cz



Eliška Hollasová
ehollasova@kpmg.cz



Kateřina Klímová
katerinaklimova@kpmg.cz

The new information replaces the GFD's information from 2017, introducing no conceptual changes but only responding to current legislative developments. Below we summarise the obligations from the perspective of individual taxes in their latest wording:

Value added tax

The provision of passenger transport arranged through a mobile application is considered an economic activity. The passenger transport provider is therefore a taxable person even if they do not have the relevant trade license. If the turnover from this activity reaches CZK 2 million in 12 calendar months, the provider must register for VAT.

In practice, the service consisting of access to a mobile application is most often provided by a person established outside the Czech Republic. If the service recipient (i.e., the passenger transport provider) is a VAT payer, they are obligated to declare output VAT on the services received from the EU or from a third country and at the same time may exercise their right to deduct input VAT if the statutory conditions have been met. However, if the provider is not registered for VAT as a payer, they are obligated to register as a person identified for tax; in this case, they will pay output VAT on the service received but will not be entitled to deduct input VAT.

Foreign operators of mobile applications should take this into account when issuing invoices for fees for the use of applications and invoice the service excluding VAT, as the place of supply of the service is in the Czech Republic and VAT shall be paid by the customer.

Personal income tax

For providers – natural persons, income from transport services represents income from a business activity. The provider may decide whether to claim expenses in their actual amount or as a fixed percentage. If they hold the relevant trade license, the lump sum expenses amount to 60% of their income. If they do not have a trade licence even though obliged to do so, they may claim lump-sum expenses of only up to 40% of their income. And if the

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provider fulfils the statutory conditions, they may opt for the lump-sum tax regime.

Road tax

From the 2022 taxable period, passenger cars and their trailers are not subject to road tax. Accordingly, entities providing passenger transport via mobile apps do not incur any road tax liability. We recommend that all providers follow the new GFD Information and that mobile app operators check whether they apply the correct VAT regime to app usage fees.

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Draft amendment to Investment Incentives Act to be discussed by government

In March, the government will discuss the long-prepared and debated amendment to the Investment Incentives Act including the relevant decree. We consider the main reasons for the upcoming change to be the poorly set up process of approving investment incentive applications after the 2019 amendment, especially investors' dissatisfaction with the length and results of the approval process at the government level. The amendment also responds to the changing needs of the Czech Republic and the European Union for energy savings and self-sufficiency in the supply of certain key components (e.g., microchips).



Jan Linhart
jlinhart@kpmg.cz



Eva Lenzová
elenzova@kpmg.cz

The amendment should **abolish the obligation to submit every application for investment incentives for consideration to the government**. For most projects, the assessment of applications will thus return to the Ministry of Industry and Trade and other relevant ministries. Mandatory approval by the government will remain only for strategic investment projects aiming to obtain support for the acquisition of fixed assets. The new rules should only apply to applications submitted after the amendment comes into effect.

Hand in hand with this change, the related government decree tightens the conditions for obtaining investment incentives, which will be discussed along with the above amendment. Most important is **the extension of the requirement for higher added value to all regions of the Czech Republic, with the exception of those where the share of unemployed persons is 7.5% or more** (currently only the Karviná district). In this way, disadvantaged regions will lose their advantage over more developed ones. At the same time, other sub-conditions for higher value added shall also be modified.

The amendment also **extends the range of products considered strategic**. This category will newly include products intended for the production or storage of energy from renewable sources, for improving energy efficiency or energy performance of buildings (e.g., heat pumps, photovoltaics, battery systems, insulation materials). Investments in the production of these products may obtain an incentive in the form of support for the acquisition of fixed assets for so-called strategic investment projects, without having to reach CZK 2 billion and create 250 jobs. Support may increase to up to 20% of eligible costs. Also, selected strategic investment projects do not have to meet the higher added value thresholds.

Further modifications to submitted proposals during the approval process are possible.

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Tips on how to prepare for aid inspections

Have you applied for subsidies under the OP EIC or are you now planning to apply for support under OP TAC? You may then be subject to an inspection of compliance with the subsidy conditions by one or more public institutions. The Ministry of Industry and Trade has published the most common mistakes encountered by inspections, and we have added our experience from practice. Incomplete project implementation documentation and incorrect keeping of separate accounting records of projects are two of the most common findings during these inspections.



Karin Stříbrská
kpmg@kpmg.cz



Silvie Beranová
kpmg@kpmg.cz



Ladislava Urbanová
lurbanova@kpmg.cz

In our experience, it is advisable to map out all conditions and rules of the subsidy programme already during the preparation of the project application and again during the implementation itself. Many mistakes can be avoided by simple preparations and the continuous collection of relevant documents during project implementation. Below are selected key areas we recommend focusing on.

Tender proceedings

When preparing tender documentation, it is advisable to avoid, e.g., references to specific brands and names so as **not to disadvantage other suppliers**. It is further advisable to specify the required parameters, e.g., stating minimums or maximums, or certain ranges. Assessment criteria should then be set to clarify exactly what will be assessed and in what units. Key is further to always proceed in accordance with the current and effective version of the Rules for the Selection of Suppliers while keeping in mind any possible conflicts of interest.

Accounting treatment and documentation

Do not forget the obligation to account for assets, revenues, and expenses related to the project using special sub-ledger accounts to clearly identify movements of subsidised assets and recognition of supported costs and received subsidies. In practice, we have encountered different approaches but ideally you should add the project's matching tag (e.g., Potential 1) directly into the accounting system so that **the subsidised items can be unambiguously marked and selected**.

Moreover, invoices and employment contracts of supported employees often lack a project number or variable symbol that would match relevant bank statements.

Request for payment

In ☒nancial settlement, different types of expenditures, i.e., capital vs. non-capital expenditures, or machinery vs.

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construction work, etc, are often confused. We also often encounter cases where non-eligible costs are reported among eligible ones: for example, many investments include an operator training item; this item cannot be included in eligible costs and must be deducted.

The translation of eligible costs from foreign currency and the payment of invoices after the project completion date are other areas where mistakes are often made.

Meeting deadlines for key milestones of the subsidised project is also essential, in particular when reporting changes to the project, most often involving changes in the structure of the acquired fixed assets or the total budget amount, etc. In such cases, it is important to communicate the extent of the changes and the impact on the project in a timely manner through a change request. In general, changes need to be communicated in advance before the set deadlines, which also applies to the formal administration of a change or payment request, etc.

Wages and insurance premiums

For projects with an obligation to complete the **Statement of Work - Payroll and Leave Schedule**, attention should be paid to the consistency of the reported values with payroll sheets, timesheets, employment contracts, and information approved in the business plan. A common inaccuracy is the listing of gross wages, including bonuses and vacation, or the incorrect recalculation of expenses considering part-time workers.

Complete documentation

During the implementation and sustainability of the project, it is also necessary to remember that the subsidy recipient must be able to provide **complete documentation both in the original and up-to-date version directly at the project implementation site**; i.e., documents such as employment and lease contracts, contracts for work including amendments, tender documentation, proposals from suppliers, delivery protocols, and other related materials depending on the programme type should be readily available. It is also very important to ensure that the documents in physical form are consistent with the electronic documents that the company has uploaded into the relevant system, e.g., MS2014+, etc.

The conditions and rules to be followed by subsidy recipients derive not only from the Decision on Granting the Subsidy, including its amendments and annexes, but also from the wording and annexes of the relevant subsidy call, related programme or programme period manuals, and rules for the selection of suppliers, etc. We recommend saving and keeping these documents at your disposal.

If you have an inspection pending or underway and need advice on a specific case or want to find your way around the relevant documents, please do not hesitate to contact us. We will be happy to arrange a mock inspection for you.

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Support research and development with subsidies under TREND programme

The Technology Agency of the Czech Republic (TA CR) has announced the preliminary parameters of the call to participate in the TREND programme to support industrial research and experimental development. This is the 10th call for proposals, this time implemented in the Technological Leaders sub-programme 1. According to preliminary information, the TA CR should announce the call on 5 April 2023.



Silvie Beranová
kpmg@kpmg.cz



Michelle Černíková
mcernikova@kpmg.cz

You can apply for support if you have previous experience in carrying out research and development (R&D) within your own capacity or by purchasing R&D services from research organisations but have not yet developed your own R&D activities. In practice, this means that support can be given to, e.g., the development of new areas of digitisation and their use in industry and services, projects supporting the distribution of products under the Industry 4.0 initiative, the use of new technologies in the automotive industry and other key sectors such as robotics, artificial and digital technologies, nanotechnologies, industrial biotechnologies, energy sectors, or projects aimed at applying the principles of a circular economy, etc. Each entity may submit only one project proposal within the 10th call for proposals under the **TREND programme**.

The TA CR has not yet determined the exact funds for allocation for this call. The maximum aid amount is **CZK 25 million** and the maximum aid intensity per project is **up to 70% of eligible costs**. Projects can be carried out either independently or in cooperation with other enterprises or research organisations. Eligible costs may include personnel costs (including scholarships), subcontracting, other direct costs, and indirect costs.

According to the published preliminary parameters, applications will be accepted **from 6 April to 24 May 2023**. The project implementation must begin between January and March 2024 and should take between 12 and 30 months. The latest date for project completion is **June 2026**.

The project must result in **one main deliverable**, which may be an industrial design, utility model, prototype, working sample, software, pilot operation, or proven technology. In combination with these deliverables, more specific methodologies or a patent will also be accepted.

More information and all conditions for project proposal submittance will be published by the TA CR once the call for proposals is announced.

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

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Tips and tricks

Supreme Administrative Court as last resort

The Supreme Administrative Court with which taxpayers may lodge cassation complaints is in principle the last resort for a substantive review of decisions of the Appellate Financial Directorate after a taxpayer's unsuccessful defence before the regional court. The Supreme Administrative Court is only supervised by the Constitutional Court, which views matters from a significantly different perspective.



Aneta Boukalová
kpmg@kpmg.cz



Daniel Baumann
danielbaumann@kpmg.cz

A cassation complaint is a remedy against the final and conclusive decision of a regional court in the administrative procedure and can only be filed on grounds provided for by law. These include, for example, unlawfulness consisting in the incorrect assessment of a legal issue by a regional court, the non-reviewability of a decision due to its incomprehensibility, or irregularity of court proceedings (mistrial). These grounds can, however, be claimed against any regional court decision, and cassation complaints can thus be lodged against almost all decisions of the regional court in tax-related disputes that uphold the ☒nancial administration and with which taxpayers therefore disagree.

A cassation complaint is filed directly with the Supreme Administrative Court but can also be filed with the regional court that issued the challenged decision. The time limit for filing the complaint is only **two weeks from the date of receipt of the regional court's decision**, which is very short, given that the taxpayer must be represented by a lawyer, with a few exceptions. It is not only for this reason that we recommend that the taxpayer be already represented by a lawyer in the proceedings before the regional court, as this removes having to deal with representation to lodge the cassation complaint in haste.

Unlike an action, a cassation complaint filed within the two-week deadline may have the form of a so-called blank complaint, i.e., only including the statutory essentials (identification of the parties involved, identification of the decision being challenged, etc.) without providing specific arguments for filing the complaint. The Supreme Administrative Court will then invite you to complete the complaint, for which it will set a one-month deadline. This can give you up to about two months to prepare your complaint.

Similarly to an action, the filing of a cassation complaint also involves **a court fee of CZK 5,000**. Just as in an action against a decision of the Appellate Financial Directorate, the court fee is not based on the amount in dispute, unlike in civil litigation. Another important difference in the cost of court proceedings compared to civil litigation is that in the event of an unsuccessful cassation complaint, the taxpayer is not obliged to pay the costs of the opposing party, i.e., the ☒nancial administration. This is also true vice versa: in the event of a successful cassation complaint, the taxpayer, or their legal representative, is awarded a fee in accordance with the lawyer's tariff, which for renowned law firms is not sufficient to cover the actual costs of legal representation.

In conclusion, it should be noted that the appeal is not intended only for taxpayers who disagree with the regional court's decision. **It may also be lodged by the ☒nancial administration** for the same reason. According to statistics,

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the financial administration filed **a total of 159 cassation complaints in 2021**. In the same year, the SAC decided on 95 cassation complaints filed by the ⊠nancial administration, of which only 58 were upheld. This is a dismal success rate in international comparison, for which the ⊠nancial administration is often rightly criticised.

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Rules for residence and work of foreigners face significant changes

The Act on the Residence of Foreigners in the Czech Republic, stipulating the conditions for the residence and employment of foreigners, has proven to be obsolete as it does not sufficiently reflect mainly the requirements of the international mobility of workers. The EU has adopted several new directives, most importantly the new blue card directive. To implement them, the Czech government has approved an amendment with several significant changes. The amendment has now been submitted to parliament.



Barbora Cvinerová
bcvinerova@kpmg.cz



Michal Mikovčík
mmikovcik@kpmg.cz

The most significant changes will affect **the EU blue cards**, which serve as combined residence and work permits for highly qualified employees. The EU's objective is to make the blue cards more attractive by strengthening the rights of their holders and simplifying their mobility within the EU. The amendment extends the definition of high qualification by making it possible to prove high qualification also by submitting proof of professional experience. An EU blue card will be issued for up to 3 years and its validity can be prolonged repeatedly. Foreigners who have held a blue card issued by another member state for more than 2 years will not be obliged to attach a qualification certificate to the application. For holders of blue cards, changes in employment will no longer be subject to prior approval by the Czech Ministry of the Interior. Instead, blue card holders will only be obliged to notify the ministry of a change in their employer or work position within 3 working days. Asylum seekers and subsidiary protection status holders will also be allowed to apply for this permit.

On the other hand, the draft amendment also **tightens some rules** – the validity of the EU blue card will be cancelled if its holder has been unemployed for more than 3 months (where the foreigner has held the EU blue card for less than two years) or 6 months, while the draft amendment stipulates several exceptions. It is necessary to note that the unemployment periods will be cumulated. An EU blue card will also become invalid should the authorities find out that the employee did not report a change in their employment within the statutory period or if their employer fails to meet the condition of being debt-free.

Changing conditions for relocation of families with adult children and for submission of criminal register extracts

The new wording of the Foreigners' Residence Act will not please families planning to **relocate** to the Czech Republic with children that are of age but still dependent on their parents. The current legal regulation lets such adult children apply for a long-term residence permit intended to reunify families. The new amendment should cancel this option, and children of age will thus have to apply for a residence permit with a different purpose and meet the conditions for its issue.

The amendment also **changes the rules for submitting extracts from the criminal registers** of a foreigner's previous country of residence. Under the current regulation, extracts from the criminal register were often just a facultative part of an application for visa and residence permit and the authorities could request it additionally in

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course of the proceedings. However, in practice it was necessary to submit the extract for almost every application. Reflecting this, the amendment thus introduces the obligation to submit a criminal extract with every application Exceptions to this obligation may be determined by the embassy where the foreigner submits the application - in particular in cases where the country in question does not issue this document.

A positive change is **the extension of the period** within which foreigners with an entry visa are obliged to come to the Ministry of the Interior for biometric data collection required for the purpose of issuing a residence permit from 3 days to 30 days from the date of arriving in the Czech Republic.

The amendment is very extensive, with changes affecting, e.g., **asylum, the status of stateless persons, applications for permanent residence as well as departure orders**. The draft amendment has been submitted for consideration to the chamber of deputies, and its final wording may change as it will be debated by the deputies.

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Any progress with VAT system digitisation?

The draft amendment to the VAT Directive which has already undergone the first public comment procedure, aims to digitise the value added tax system and establish a legal framework to level the business environment across EU member states.



Veronika Výborná
vvyborna@kpmg.cz



Lukáš Arazim
larazim@kpmg.cz

We already informed you about the European Commission's legislative intent the last year. As VAT is the largest revenue item in the national budgets of all EU member states, its harmonisation represents a major taxation issue for the European Commission ("EC") and the European Parliament ("EP"). While both institutions are aware of local tax regulation differences, they agree on the need to unify VAT reporting, proactively address the rapidly evolving digital platform economy, and enable uniform VAT registrations across the EU.

Harmonisation of digital VAT reporting

In 2014, VAT reporting in the Czech Republic was digitised based on an amendment to the VAT directive. Since that date, companies submit tax returns, VAT ledger statements, and other forms exclusively electronically. The EC confirms that member states have in this way succeeded in collecting approx. 3% more on VAT payments. Unfortunate, however, was leaving the digitisation competencies with the local tax administrators. As a result, various models have been implemented – e.g. electronic invoicing (Italy), real-time reporting (Hungary, Spain), reporting carried out using a standard ledger file for tax purposes – SAF-T (Lithuania, Poland, Portugal), or the VAT ledger statement (Bulgaria, Croatia, Czech Republic, Estonia, Latvia, Slovakia). Several other member states (France, Greece, Romania) have also announced new reporting requirements.

The aim of the current amendment to the VAT Directive is to unify the requirements on digital reporting in all member states and to introduce **a mandatory electronic invoicing scheme for cross-border supplies**. A common template should thus be introduced. The EC expects this template to significantly reduce the period for issuing the tax documents for intra-community supplies (from the current up to 45 days to two business days, or in near real time). At the same time, both the option to issue summary tax documents for a certain period would be cancelled, as would the duty to submit an EC Sales List, now by the EC considered a technological anachronism not appropriate for today's digital economy.

Application of VAT to web interfaces

Platform economy, i.e., the provision of services using web interfaces (electronic shops), should also undergo significant changes. The EC insists on the introduction of **a deemed (▪ctive) supplie**r as it argues that services such as short-term accommodation or passenger transport are not equally regulated for all operators in the member states and that current conditions distort the competitive business environment. The deemed supplier concept shall ensure that online platforms will be subject to VAT and will settle the tax if the supplier does not charge VAT. Certain steps to regulate the online platform market have already been taken. They result from the recently adopted **DAC 7 Directive**, implemented into Czech law on the turn of last year, with effect from **1 January 2023**.

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Unified registration for VAT in EU; extension of one-stop-shop regime

The implementation of the one-stop-shop regime (OSS) has resulted in increases in EU's tax revenues and a more effective fight against tax evasion. The option to register for VAT in one spot goes hand in hand with the extension of the one-stop-shop regime across member states. In this respect, the EC has also published its comments on the call-o stock regime, which should be restricted as at **31 December 2024**, making new relocations of inventories no longer possible. As from **31 December 2025** this regime will not be allowed at all.

According to the EC, the draft amendment to the VAT Directive is in line with the 2018 legislative proposal concerning the definitive VAT system, still under discussion by the European Council. It aims to replace the current 'transitional' system by treating supplies provided within the EU as domestic supplies. VAT will then be due in the destination member state at a rate stipulated by that member state. However, suppliers will charge and collect VAT in their home member state.

We will continue to watch the developments and will keep you informed on further steps in the digitisation of the EU's VAT system.

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Case law

What to watch out for when preparing documents to claim R&D allowance

Even though R&D-related legislation may appear unchanged, in 2023, tax administrators may no longer accept approaches applied in prior years. Last year's case law showed that project objectives, documentation, and evaluation should be as specific as possible.



Michaela Thelenová
mthelenova@kpmg.cz



Kateřina Horáčková
khorackova@kpmg.cz

In 2022, several court judgments, relating to various aspects of claiming R&D allowances were issued. Already now, we encounter tax administrators during tax inspections regarding R&D allowance who reflect this case law in the daily practice.

Project documentation essentials

The project documentation should not only have all the statutory requirements, but also the content of the individual requirements should be complete. Missing and/or only general information may lead the tax administrator to question the fulfilment of formal requirements. The most common error is stating only general objectives, without a specific objective being apparent, or including several separate contracts under one objective. Cases also appeared before courts where ☒rms and institutions only provided non-speci☒c information on the methods of interim review and assessment of the project, not stating clearly the content of the checks, who carries out the checks at what intervals, and how the results are recorded.

Proving a project's ongoing implementation and related documentation

When carrying out inspections, tax authorities require documentation proving the R&D project's continuous development. Key documents should include information on the activities carried out in the reporting period or changes in the project compared with original assumptions (a statutory requirement for announced R&D projects).

R&D cost calculation

Past judgements have mainly dealt with insufficient proof of R&D costs, both in terms of actual project solution and in terms of proving links to individual accounting entries. As regards wages and salaries, the taxpayer should be able to prove the extent and nature of activities reported in the timesheets, i.e., that employees really worked on the project in the reported extent and their concrete activities. From an accounting point of view, individual cost items must be linked with individual accounting records. If project costs are partially covered by a subsidy, only the cost items not covered by the subsidy can be claimed within an R&D allowance. For more information on this issue, you may refer to this August 2022 article.

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Case law

SAC on VAT deduction: Who can dispose of goods as their owner?

The Supreme Administrative Court has ruled on a case concerning the purchase and subsequent sale of goods that remained in the warehouse of a supplier who had been duly authorised to resell them. The merit of the dispute was whether the taxpayer had acquired the right to dispose of the goods as their owner for VAT purposes. The tax administration believed this was not the case, and denied the claimant's right to deduct VAT. The SAC confirmed the approach of the tax administration.



Martin Krapinec
mkrapinec@kpmg.cz



Petra Němcová
pnemcova@kpmg.cz

The taxpayer had purchased goods from a supplier who kept the goods in a warehouse under the supplier's control and who also ensured their further resale. The supplier's employees carried out the resale of the goods based on a power of attorney issued by the taxpayer, who subsequently received monthly reports on purchases and resales from the supplier.

The tax administrator denied the taxpayer's claim to VAT deduction, stating that they had not acquired the right to dispose of the goods as their owner. The SAC confirmed the tax administrator's approach. Referring to the principles adjudicated by the Court of Justice of the European Union (CJEU), the SAC emphasised that for **the transfer of the rights to dispose of goods as their owner, it is necessary that the owner can make decisions influencing the legal position of the goods**. If the owner does so through an agent, it is still necessary to prove that the owner can at least generally influence the agent's acts. A pre-condition is the owner knowing what the relevant goods are, having a real possibility to give instructions concerning the goods to the agent, and responding when the agent oversteps their powers. In the opposite case, the agent effectively disposes of the goods as their owner, deciding on the legal situation of the goods entirely of their own volition, even though they are formally acting on behalf of the represented party.

The court came to its conclusion as the taxpayer in fact had no discretion over the legal fate (sale) of the goods. The supplier's employees resold the goods relatively independently, while the taxpayer was informed only afterwards.

The SAC thus concluded that **the right to dispose of goods as their owner for VAT purposes is not transferred if the acquirer renounces the exercise of the essential rights of the owner, allowing them to decide the legal fate of the goods, in favour of the supplier**.

In such cases, the original supplier retains the right to dispose of the goods as their owner for VAT purposes.

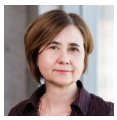
We recommend always closely reviewing more complicated business models that enable original owners to continue to dispose of goods as their own or where buyers do not decide on the resale of such goods.

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In brief

News in Brief, March 2023

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



Lenka Fialková
lfialkova@kpmg.cz



Václav Baňka
vbanka@kpmg.cz

DOMESTIC NEWS

- The Ministry of Finance has confirmed its intent to extend the possibility to claim aid provided to Ukraine for tax purposes in 2023 in the same extent as until now.
- The financial administration has updated its list of double taxation treaties.
- Financial Bulletin No. 3/2023 includes an announcement on an agreement between the government of the Czech Republic and the government of Hong Kong, a special administrative region of the People's Republic of China, on the avoidance of double taxation and the prevention of Fiscal Evasion with Respect to Income Taxes in relation to the multilateral convention to implement tax-treaty-related measures to prevent base erosion and profit shifting. The bulletin also includes a list of states on the EU list of non-cooperative jurisdictions for tax purposes as approved by the EU Council.
- The Ministry of Finance has announced that on 7 February 2023 an agreement between the Czech Republic and the Republic of Cameroon for the avoidance of double taxation and the prevention of Fiscal Evasion with Respect to Income Taxes was signed in Yaoundé.
- The chamber of deputies approved an amendment to Lex Ukraine, stipulating the rules for providing aid to Ukrainian refugees. The humanitarian benefit will now be linked to the subsistence minimum, can be applied for only on-line, and will be given only to those who need it. The amendment still needs to be approved by the senate and signed by the president. The solidarity contribution will remain unchanged until June 2023.
- The Ministry of Industry and Trade has published FAQs for self-employed persons and entrepreneurs concerning data mailboxes.
- The following announcements have been published in the Collection of International Treaties:
    - Announcement of the Ministry of Foreign Affairs on the Conclusion of an Agreement on Social Security between the Czech Republic and Mongolia and the Administrative Arrangement for the Implementation of the Agreement (10/2023 and 11/2023 of the Collection of International Treaties)
    - Announcement of the Ministry of Foreign Affairs on the Conclusion of an Agreement on Social Security between the Czech Republic and Bosnia and Herzegovina and the Administrative Arrangement for the Implementation of the Agreement (12/2023 and 13/2023 of the Collection of International Treaties).
- The following regulations have been published in the Collection of Laws:
    - Government Decree on the format and form templates for levies on surplus revenues (36/2023 Coll.) Decree amending Decree No. 424/2017 Coll., on Information Duties of some entities carrying out business activities on the capital market (54/2023 Coll.)
    - Decree amending Decree No. 346/2013 Coll., on Submitting Reports by Banks and Foreign Bank Branches to the Czech National Bank, as amended, and Decree No. 426/2013 Coll., on Submitting Reports by Savings and Credit Cooperatives to the Czech National Bank (55/2023 Coll.).

FOREIGN NEWS

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- The OECD/G20 Inclusive Framework for BEPS has published the comments it received on two Pillar 2 documents (minimum effective tax), namely on the draft tax return and disclosure proposal and the draft rules to provide tax certainty and resolve potential disputes. Like the EU, the OECD envisages the introduction of both pillars from 2024.

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

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