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Editorial

The tax and legal areas are changing as quickly as this month’s capricious weather. Many innovations that were supposed to simplify things for businesses appear to be complicating them further, at least at first glance. In our Update, we thus like to give space to answers to the questions that can make your life easier.

In the April issue, we write about the end of the ambiguity in the VAT treatment of compensation for supplies of electricity and gas at capped prices. According to the Ministry of Finance's recently released opinion, the compensation is a consideration received from a third party, and electricity and gas suppliers must therefore pay VAT.

But that's not all the news about capped energy prices. In March, the government approved several changes that should not escape the attention of large enterprises. Apart from changes in local legislation, there have been interesting developments at the EU level, with many things becoming clearer, one being the question as to which undertakings are subject to the threshold for drawing public aid. I am happy to say that we have good news in this respect, too. For more, read the Subsidies section.

Finally, we also have news from the labour law area, so very popular with our readers. Just so that you know, we will also be happy to discuss labour law issues with you in person at our breakfast for clients on 18 April 2023, devoted to the amendment to the Labour Code. We will be happy to meet you there.



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Windfall tax: practical information on application

The financial administration has published answers to questions about the windfall tax, which is to be applied from 2023 to 2025. Below we summarise the most important conclusions.



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Taxpayers and general enquiries

The origination of tax liability is assessed separately for each taxable period. The basic condition is generating relevant income of at least **CZK 50 million** for taxable periods that at least partially fall within the windfall tax's period of application. For instance, if a taxpayer's fiscal year is 1 April 2022 to 31 March 2023 and the basic condition has been met, they shall file a windfall tax return for the period; however, the tax base shall be constructed only for the proportional part that falls within the period of windfall tax application, i.e., from 1 January 2023 to 31 March 2023.

To define the group of taxpayers with windfall profits, the total relevant income shall be calculated for all members of the group, including where the parent company is located abroad. Relevant income will include income of the Czech company (except for foreign income that may be taxed abroad under an international tax treaty) and income of the foreign company taxed in the Czech Republic (note: a corporate group is viewed as a group with windfall profits if the total relevant income for windfall tax purposes of taxpayers who are part of the group reached at least **CZK 2 billion** for the first reported accounting period ended after 1 January 2021).

The financial administration's information further states that:

- Windfall tax is not subject to a special registration procedure.
- Relevant income does not include income from gas storage and re-billing of energies by lessors to lessees.
- A windfall tax return shall be filed within the same deadlines as an income tax return even if the taxpayer declares a zero tax liability.
- Windfall tax is not a tax-deductible expense, and it is not possible to apply discounts against it that the taxpayer has not used for corporate income tax purposes.

Windfall profits tax base

When calculating average adjusted comparative tax bases, the taxpayer shall determine the comparative tax base for each taxable period that began on or after 1 January 2018 and ended on 31 December 2021. The comparative tax base shall be further increased by the absolute value of 20% of that tax base, to arrive at an adjusted comparative base for the relevant period (e.g., a loss of CZK 800 thousand will be reduced to CZK 640 thousand for the purposes of the calculation). From these adjusted comparative tax bases, the arithmetic average shall be then calculated.

Where the comparative tax base is determined for a period with a length different than that of the tax base being

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compared, it shall be recalculated pro rata as if it had been determined for a period of the same length as that of the tax base being compared. The document contains a practical example of how to approach the calculation.

If the conditions for transferring average adjusted comparative tax bases within a group are met, it is possible to:

- make transfers from one payer to multiple payers of windfall tax within the group;
- make transfers to one payer from multiple payers of windfall tax within the group.
- The notification of transferring the average adjusted comparative tax bases shall be submitted by the representative taxpayer via a form integrated into the EPO application.

Binding assessment

The subject of a binding assessment (submitted to the Specialised Tax Authority) is whether the taxpayer is part of a corporate group with windfall profits together with another taxpayer in a certain taxable period. **A fee of CZK 10,000** per a binding assessment covers an assessment of each one relationship between a pair of taxpayers, meaning that the number of fees depends on the number of facts being assessed, not on the number of applications.

Windfall tax prepayments

Windfall tax is paid in prepayments, and the same provisions that govern income tax prepayments shall apply, i.e., prepayments are based on the last known tax liability.

Only the prepayments for the first period, i.e., from 1 January 2023 to the last day of the deadline for filing the first tax return (e.g., 1 July 2024 for taxpayers with a calendar year taxable period), are regulated separately. In the first prepayment period, prepayments shall be based on the amount stated by the taxpayer in the fictitious tax notice for 2022. The first prepayment due date shall be **15 September 2023**; however, prepayments whose maturity was postponed to 15 September 2023 from 15 March 2023 and 15 June 2023 shall also be due on this date.

In a separate document, the financial administration has published the answers of the Czech Statistical Office to its questions regarding the classification of selected activities for the purposes of windfall tax.

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Taxes

Supply of energies at capped prices: clarification of VAT treatment

Compensation for the supply of electricity and gas at capped prices constitutes a consideration received from a third party, on which the electricity or gas suppliers must pay VAT. The Ministry of Finance expressed this opinion following the amendment to the government decree on compensation provided for the supply of electricity and gas at set prices.



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In a March 2023 article, we reported on the interpretation unclarities regarding the compensation. The Ministry of Finance has now clarified this issue, stating that the compensation received shall increase the tax base. If the customer of electricity or gas is the end consumer, meaning that the original supply was carried out in the standard VAT regime, the energy supplier is obliged to pay output VAT on the total amount of the compensation received. However, they do not have to issue corrective tax documents stating the increased tax base to individual customers.

If the original energy supply was subject to the reverse charge regime, the energy supplier should quantify the specific part of the compensation relating to a specific customer and issue a corrective tax document to that customer under the reverse charge regime. However, if the energy supplier pays the output VAT on the full amount of the compensation received as if the original supply was in the standard VAT regime and does not issue a corrective tax document, the financial administration will not challenge such an approach.

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Teleworking between Czech Republic and Germany or Austria: changes in insurance system

The Czech Republic has concluded framework agreements with Germany and Austria concerning persons working remotely in the other country, i.e., teleworking. Both agreements are effective from 1 March 2023 and respond to current trends in working from home from abroad. The agreements increase the maximum scope of work for which an employee teleworking from another state can remain in the employer state's insurance system.



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According to general EU coordination rules, a Czech employer's employee working from home in another EU/EEA member state is subject to the Czech insurance system if the scope of their work in the country of residence does not exceed the maximum limit of **25% of their total working hours or remuneration**. Otherwise, such an employee shall be subject to the insurance regulations of the state of residence. For example, if an employee living in Germany works from home for a Czech employer for more than 25% of their working hours, they are subject to German insurance regulations. The Czech employer should thus verify their obligations in Germany (e.g., to register and to pay social security and health insurance premiums under German regulations into the German insurance scheme). According to the newly concluded framework agreements, it will be possible to apply a limit of up to **40% of working hours** to keep an employee in the Czech insurance system.

What conditions need to be met?

The framework agreements apply to employees who work remotely (usually from home) for a Czech employer in Germany and Austria (or vice versa). The condition is that the employee has only one employer, that the work performed remotely has the same character as the work performed at the employer's registered office and is carried out through information technology. Thanks to these agreements, employees can remain in their employer's national insurance scheme if they work from home for up to **40% of their working hours** and work the rest in the employer's country (i.e., not in other countries).

How to apply for an exemption?

The employee must apply to remain in their employer's insurance scheme. If they fulfil the conditions of the framework agreement, they will be granted an exemption from the general EU coordination rules. Exemption applications shall be submitted with the relevant institution of the member state to whose regulations the employee concerned wishes to be subject. For the Czech Republic, this is the Czech Social Security Administration (CSSA). It will be possible to apply for an exemption for a period of up to two years into the future, even repeatedly.

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If the employee carries out more than 40% of their work in the state of their residence, they are not covered by the framework agreements. However, they still have the right to apply for a general exemption under Article 16(1) of the EU regulation. However, there is no legal entitlement to such an exemption and the appropriate authorities of all member states concerned must agree to it.

An EU-wide agreement in preparation

Based on information available to us, similar agreements with other neighbouring countries (e.g., Slovakia and Poland) are not yet planned, as a framework agreement is being negotiated for all EU member states, allowing teleworking up to a maximum limit of 49.9%. The agreement is expected to enter into force on **1 July 2023**.

Finally, please note that if a Czech company decides to allow its employee to work more from home from Austria or Germany (using the above agreements), it is always necessary to examine the related tax obligations that could arise for the Czech company in the given country (e.g., the obligation to keep payroll records, the risk of creating a permanent establishment, etc.).

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Changing obligations of accommodation providers

The General Financial Directorate has issued updated information on the tax assessment of the obligations of accommodation service providers. The information responds to legislative changes in effect from January 2023 concerning value added tax, personal income tax and real estate tax.



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Value added tax

In light of judgements by the European Court of Justice, the financial administration has expressed its opinion on **the difference between an accommodation service and the lease of immovable property**:

In a lease arrangement, the landlord transfers to the tenant for consideration for a negotiated period the right to use the property as if they were the owner, as well as the right to exclude any other person from the exercise of such a right. A lease is a rather passive activity dependent on the mere passage of time, even though the time or the lease period is not in itself a decisive criterion as to whether it is an accommodation service or lease. According to the financial administration, crucial is what is objectively offered as part of the performance, regardless of how the parties involved qualify the arrangement. Services that are mediated through internet platforms in most cases meet the characteristics of accommodation services according to the 55 CZ-CPA classification code.

The financial administration points out that economic activity is any activity performed for the purpose of a regular income. It is completely irrelevant whether the result is profit or loss or whether the person who operates the accommodation service owns the necessary trade license. Thus, a person supplying accommodation through internet platforms must be regarded as a taxable person supplying services subject to VAT.

As regards the place of supply and the person liable to declare tax, the question may be more complex: services providing the use of an online platform (i.e., electronic services) can be provided to both taxable and non-taxable persons. Thus, under certain circumstances, the obligation to declare tax may arise both to the accommodation provider (intermediation fee) and indirectly to the guest staying (fee for using the internet platform). It is therefore necessary to examine who in effect the recipient of such services is as well as the nature of the service. If the service recipient is a VAT payer, the obligation to declare tax is on this person. If the recipient is a taxable person who is not registered as a VAT payer, such a person becomes a person identified for VAT on the date of receipt of the service. Only where the recipient is a non-taxable person will the intermediary platform itself pay the tax on the service on that person's behalf.

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Personal income tax

The financial administration highlights that from the personal income tax perspective it is essential whether the provision of accommodation meets the characteristics of business activity (i.e., independent performance of gainful activity on one's own account and liability as a trade or in a similar manner with the intention of doing so consistently for profit). If this is the case, the income is then subject to tax as income from independent activity. If the accommodation provider does not claim expenses in their actual amount, they may **claim expenses in as a percentage of income: 60% or 40%**, depending on whether they hold the relevant trade licence. If a natural person meets the conditions laid down by the Income Tax Act, they may also enter the lump-sum tax regime and tax this income by a lump-sum tax rate.

If accommodation services are provided by a legal entity, income from accommodation services should be declared in their corporate income tax return.

Accommodation service providers should not forget about related obligations that may arise, e.g., under the Income Tax Act, the Accounting Act, or insurance laws. This may include, e.g., the obligation to keep accounts, tax records, records of income or records of receivables if they claim expenses as a percentage of income, the obligation to register for personal income tax and health and social insurance contributions as a self-employed person, etc.

Real estate tax

The GFD's information also includes new information regarding real estate tax. If accommodation services are provided in an immovable property, the property will be subject to the relevant real estate tax rate set for business activity (CZK 10 per m2 of built-up or floor area). A taxable unit/building is considered to be used for business even if unoccupied on 1 January of the taxable period

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Capping energy prices for large enterprises in April: another amendment and first-time assessment of financial benefits

With effect from 1 April 2023, the fourth amendment to the government decree on the determination of electricity and gas prices in an extraordinary market situation and on the determination of the related maximum permissible customer's financial benefit was published in the Collection of Laws. At the beginning of March, the European Commission also approved a new Temporary Crisis and Transition Framework, specifying the limits of public aid. If you already signed up for the capping of energy prices during the first quarter of this year, then you will have to make the relevant assessment in April and file a report on the assessment of excess financial benefits for the first quarter.



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The amendment to the decree introduces several changes:

1. Large enterprises in categories C, D or E will have to meet the condition of adjusted EBITDA, which for 2023 may not be higher than 70% of the value for 2021. Where EBITDA was negative in 2021, a large enterprise may not report a positive EBITDA balance in 2023.
2. The template of the report on the assessment of excess financial benefits was modified (Annex No. 13).
3. If a large enterprise is part of a group of enterprises, only one member of the group may complete and submit the information in Part B of the report on its behalf, upon agreement. Other members shall file their reports only on their own behalf.
4. Large enterprises shall submit the reports in electronic form through the Ministry of Industry and Trade's information system. We do not currently know the final form of the report in the information system, but it should be prepared and launched in the system by 20 April 2023.

In addition to changes in local legislation, changes at the EU level must also be considered. In the new **Temporary Crisis and Transition Framework**, the European Commission clarifies the undertakings for whom the public aid thresholds shall be monitored. This is good news for large enterprises, as public aid will only be assessed per an undertaking and a member state; however, for the purposes of the Framework, an undertaking does not mean only a single large enterprise but the entire corporate group where a group of related enterprises is concerned.

Report on the assessment of financial benefit

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Large enterprises that signed up for the capping of energy prices during the first quarter have until **25 April 2023** to assess the financial benefits obtained for that quarter. If a large enterprise chooses the category of financial benefit B to E, it will also have to calculate eligible costs and, where appropriate, fulfil other conditions. Subsequently, it will have to prepare a report on the assessment of excess financial benefits, which must be submitted through the Ministry of Industry and Trade's information system **from 20 to 30 April 2023**. According to the amendment to the decree, large enterprises that were in the capping regime in the first quarter of the year but did not purchase electricity or gas at the set/capped price will not have to submit the report.

If a large enterprise exceeds the threshold for individual categories in the first quarter and thus obtains an excess financial benefit, it will be obliged to pay it back to the state by **30 June 2023**. The relevant bank account has not yet been published by the ministry.

Next steps to draw the benefits of price capping

If a large enterprise wants to continue to apply capped energy prices, it must resubmit the declaration to its supplier according to Annex No. 10 (for electricity) or Annex No. 11 (for gas) by **30 April 2023**. We recommend filing the declaration even if you are not currently benefiting from capped prices.

Should you be interested, we will be happy to discuss the capping of energy prices with you and assist you with the calculation of eligible costs and the preparation of inputs for the report.

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Tips and tricks

What are other defence options in tax proceedings?

In previous articles, we described the standard way to defend against the tax administrator's decisions the taxpayer did not agree with. Czech law also offers other ways to remedy a tax administrator’s incorrect decisions. In the Tax Procedure Code, these are extraordinary legal remedies, i.e., reopening of proceedings and review proceedings. Moreover, against a final decision of the Supreme Administrative Court (SAC), a constitutional complaint can be filed.



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Reopening of proceedings

Tax proceedings may be reopened at the taxpayer’s request or at the tax administrator’s initiative. In both cases, the tax administrator may reopen the proceedings only for reasons defined by law. These are mainly situations where, after a final and conclusive decision, new facts come to light or evidence emerges that the taxpayer could not have objectively submitted earlier. The tax administrator will also allow the reopening of proceedings if the original decision depended on the assessment of the preliminary question under the Tax Procedure Code, which was subsequently decided otherwise. Another reason for reopening can be the tax administrator deciding based on falsified evidence, or the issuance of a decision having been accompanied by the commission of a crime by the taxpayer (threat or bribe) or an official.

Review proceedings

Review proceedings are meant to change a decision issued by the tax administrator contrary to the law. These involve cases where tax administrators based their decision on legal opinions that were proven to be incorrect, e.g., when the SAC started to hold a different opinion in its new case law. The review proceedings may be conducted regardless of whether they are for or against the taxpayer. Thus, the outcome of the proceedings may not always be more favourable for the taxpayer than the original decision.

What both proceedings have in common is that they involve two stages: first, the tax administrator decides whether it is justified to reopen or review the proceedings, and only then the actual review takes place and the final decision about a tax liability is issued, taking into account the reasons that led to the reopening or review of the proceedings.

Constitutional complaint

It is also possible to challenge the final decision of the Supreme Administrative Court in cases where the taxpayer believes that the court has not considered their constitutionally protected rights. A constitutional complaint must be filed on behalf of the taxpayer by a lawyer within two months of the delivery of the SAC's judgment.

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A constitutional complaint may be successful especially where the tax administrator's efforts to collect the tax collide with fundamental rights and freedoms protected by the Constitution or the Charter of Fundamental Rights and Freedoms. This aspect was currently pointed out by the Constitutional Court in a well-known case involving the use of footage from road cameras of the Police of the Czech Republic in tax proceedings (File No. IV. ÚS 2621/22).

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Ukrainians in the Czech Republic losing temporary protection due to Canadian visas

Temporary protection is provided to foreigners who left Ukraine after 24 February 2022 in connection with Russian aggression and meet certain specified conditions. This type of residence permit allows free access to the labour market and offers other social and health benefits in the Czech Republic. However, many temporary protection holders are unaware that they can easily lose this status, for instance by obtaining a foreign long-term visa. The trend of applying for Canadian visas, which are very easy to get, is particularly unfortunate in this respect.



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Especially before the entry into force of the amendment to the Lex Ukraine extending the validity of temporary protection, there was much nervousness in the Ukrainian community. One option that seemed easy and quick and thus began to spread rapidly, was to obtain a Canadian visa. However, this step taken just in case has a serious and unwanted effect: under the law, once a foreign visa with a validity of more than 90 days is granted, the holder of temporary protection automatically loses this status.

Obstacle to access to labour market

This makes life complicated not only for Ukrainians but also for their employers: once the temporary protection holder loses this status, they also lose free access to the Czech labour market. With immediate effect, they may no longer be employed; if they continue to work, it is illegal employment, for which employers face fines of up to CZK 10 million, plus they are labelled ‘unreliable employers’, which temporarily significantly limits their possibility to employ foreigners; for many companies this can be a serious complication. In these situations, employees must urgently deal with administrative issues relating to the shortage of labour and must communicate about the situation with the authorities. The illegally working foreigner may also be fined up to CZK 100,000.

Exemption for visas issued before 10 February

Some hope was brought to the situation by the Ministry of the Interior, which announced on its website that Canadian visas issued before 10 February 2023 and marked as "V1" or "W1" shall not be viewed as an obstacle to extending temporary protection. The ministry justified this step by the understandable nervousness of temporary protection holders before changes to the applicable legislation. However, for visas issued after that date, the exception does not apply, and the temporary protection expires and cannot be extended. However, if the Canadian

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visa is revoked, it is possible to again apply for new temporary protection.

We emphasise that the ministry has only applied this lenient approach to Canadian visas, not to all foreign residence titles in general. We therefore recommend that Ukrainian citizens with temporary protection be cautious and always find out in advance whether their actions, especially applications for foreign residence permits and visas, may have negative consequences for their residence status in the Czech Republic.

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Minimum tax: transitional safe harbour rules

A global minimum tax will apply from taxable periods beginning on or after 1 January 2024. It will be applied to groups with consolidated revenues of more than EUR 750 million. This is the same revenue threshold that obliges corporate groups to compile a country-by-country report under applicable (CbCR) legislation. Corporate groups may thus temporarily use CbCR to prove that they have not become liable to the minimum tax.



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The global minimum effective tax will apply to all companies of a corporate group whose consolidated turnover for at least two of the four immediately preceding taxable periods exceeded **EUR 750 million**. For example, if a group had consolidated revenues exceeding this **threshold for 2020 and 2021**, the global minimum tax rules will apply to it regardless of the development of turnover in subsequent years.

This revenue threshold is the same as the one that obliges corporate groups to prepare country-by-country reports under CbCR legislation. Given this fact, in financial years 2024 to 2026, corporate groups may use the CbCR to prove that they are not liable to the minimum tax (safe harbour rules).
These temporary safe harbour rules can only be applied for reports compiled using data drawn either from the group consolidated statements or from the individual entity financial statements (a 'qualifying' CbCR); reports prepared based on management accounts data cannot be used.
CbCR safe harbour rules can be used if:

- the group's revenues in the tested jurisdiction do not reach **the threshold of EUR 10 million, and the profit before tax is less than EUR 1 million** (de minimis test) or
- the group's effective tax rate for the tested jurisdiction is higher than the stipulated tax rate (**15%** for taxable periods beginning in 2023 and 2024, **16%** for taxable periods beginning in 2025, and 17% for taxable periods beginning in 2026), with the tax rate determined as the tax (adjusted for the specifics of calculating the minimum tax) divided by the profit as stated in the CbCR (ETR test), or
- the group's profit in the tested jurisdiction does not exceed the substance-based income exclusion amount; this amount reduces the profit when calculating the top-up tax and is determined as **5–10%** of personnel expenses and the carrying amount of fixed assets in the taxable period (routine profits test).

A group shall test its compliance with the above rules for each individual tax jurisdiction, using data stated in the qualifying CbC report. If it meets at least one of the conditions, it shall be temporarily excluded from the much more complex calculation of the effective tax rate and subsequently from the calculation and payment of the top-up tax in the tested tax jurisdiction.

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Thus, in our opinion, it is important to prepare the reports so that they meet the conditions for the application of the simplified test for minimum tax reporting.

At the same time, we believe that data from the reports for the previous period, if prepared in the format of the qualifying report, can be used to plan and model the impact of the minimum tax on the financial results for 2024 and subsequent years already during 2023 or subsequently in the financial statements for 2024. The tax return or notification whether the obligation to pay minimum tax has arisen has a filing **deadline on 31 March 2025**.

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Advertising services under scrutiny: recent case law

Reviewing the tax deductibility of advertising costs is still very popular with tax administrators during inspections. Below, we inform you about recent case law that could indicate what documents taxpayers should have on hand during an inspection by the tax administrator.



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7 Afs 53/2020 – 30: tax non-deductible entertainment costs

The dispute concerned, among other things, the tax deductibility of expenses for renting a go-kart track for business partners. The taxpayer submitted contracts on the provision of advertising space but did not demonstrate that the renting of the go-kart track was the subject of the advertising. The tax administrator believed the supply was intended solely to benefit existing business partners (giving them the opportunity to race for free). Both the tax administrator and subsequently the Supreme Administrative Court thus treated the supply as tax non-deductible entertainment expenses.

8 Afs 42/2020 – 58 and 2 Afs 219/2021-54: advertising expenses

In an earlier judgment from 2020, the tax administrator considered non-deductible expenses for advertising broadcasted on screens at shopping malls. While acknowledging that an advertising campaign had in fact taken place, the administrator stated that its actual extent had not been supported. The taxpayer produced various means of evidence, such as screenshots of the screens at the shopping malls as well as expert opinions. However, the evidence submitted to the tax authorities was in some cases contradictory and did not fully prove that the advertising was provided in the contractually agreed-upon extent. According to both the tax administrator and the Supreme Administrative Court, the taxpayer did not fully refute the doubts as to the extent of the services actually provided; the taxpayer thus failed to bear the burden of proof, and the entire advertisement expenses were excluded as tax non-deductible.

In contrast, in a more recent decision from 2021 concerning the same taxpayer but a different taxable period, the Supreme Administrative Court sided with the taxpayer, emphasising that the taxpayer does not have to prove every single broadcast of a spot on the screens, and that whether a campaign had taken place can also be verified by random checks, employee testimonies, and photographs.

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1 Afs 88/2022 – 54: change in the scope of services by oral agreement

The tax administrator excluded as non-deductible expenses incurred by the taxpayer on various advertising services (radio spots, logo and banner presentations at various events, websites, and tickets, etc.). In their opinion, the advertising services were provided in a different extent than originally agreed-upon in the contract. The taxpayer argued that the scope of services had been changed by oral agreement. According to the tax administrator and the Supreme Administrative Court, while not prohibited, such agreement is not suitable and if concluded, it becomes necessary to obtain other means of evidence credibly supporting the extent of the transaction.

7 Afs 13/2021 – 44: challenging the price of advertising

In the case in question, the tax administrator did not challenge the expenses for advertisements placed at football stadiums and golf courses as such but the price at which the advertisements were acquired, even though the transaction involved a supply of services between unrelated parties. The tax administrator believed that by entering into a contract with the advertising agency, a relationship was established between otherwise related parties who created a legal relationship for the primary purpose of reducing the tax base or increasing the tax loss. In the tax administrator's opinion, the contracted price was many times higher than the usual (arm's-length) price. The Supreme Administrative Court sided with the tax administrator and considered the reference price to be the amount negotiated directly with sports clubs plus the usual commission, rather than the price contracted between the advertiser and advertising agencies as declared by the taxpayer. The taxpayer's tax base was thus increased by the difference between the contracted price and the price set by the tax administrator based on the determined reference price.

It is clear from the above decisions that for advertising expenses to be tax-deductible, tax administrators place increasing emphasis on robust documentation that should prove not just that the services were actually provided but that they were provided to the extent declared in the contract or invoices, and incurred to generate, secure or maintain taxable income.

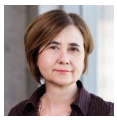
Taxpayers should therefore set up a control system that will make it possible to verify the provision of the service in the agreed-upon extent and support this by sufficient evidence that must not be contradictory. For specific types of advertisements (e.g., video spots), we recommend carrying out checks of their provision at random intervals. The outputs of these controls must be recorded and archived.

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In brief

News in Brief, April 2023

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



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DOMESTIC NEWS

- Amendment to Act No. 66/2022 Coll., Lex Ukraine, implemented by Act No. 75/2023 Coll., imposes a new obligation on employers from 1 April 2023 to report to the relevant Social Security Administration the recruitment of an employee who is a foreigner with temporary protection status and simultaneously in small-scale employment or working under an agreement to perform work. Thus, uninsured persons shall also be registered. At the same time, employers will also have to register themselves.
- On 22 March 2023, the government approved a draft amendment to the Investment Incentives Act, including the relevant decree, which amends the existing rules for the consideration of applications for investment incentives and the conditions for their approval. The decision-making power will be returned to the Ministry of Industry and Trade and to other ministries concerned; the government will continue to approve only strategic investments.
- The following regulations were published in the Collection of Laws:
  - Communication 75/2023 of the Ministry of Labour and Social Affairs, on the average gross annual wage in the Czech Republic for 2022 for the purposes of issuing blue cards pursuant to Act No. 326/1999 Coll., on the residence of foreign nationals in the territory of the Czech Republic
  - Act No. 75/2023, amending Act No. 66/2022 on employment and social security measures in connection with the armed con□ict in Ukraine caused by the invasion of the Russian Federation troops
  - Regulation 85/2023, amending Regulation No. 467/2022 Coll., amending the basic compensation for the use of road motor vehicles and meal allowances, and determining the average price of fuel for the purpose of providing travel allowances for 2023
- Government decree No. 89/2023 amending government decree No. 221/2019 Coll., on the implementation of certain provisions of the Investment Incentives Act, as amended.
- As of 1 January 2023, the range of persons for whom a data box had been established by law was significantly expanded. This has a major impact on the delivery of communications to this group of persons by public authorities. The financial administration has issued an explanatory leaflet on this.
- In March, the MoF updated the overview of effective double taxation treaties. In March, the MoF published three Financial Bulletins which contain:
  - Financial Bulletin 4/2023
    - a list of contracting states applying the common standard for notification and decisive days published pursuant to Act No. 164/2013 Coll., on International Cooperation in Tax Administration.
  - Financial Bulletin 5/2023
    - an overview of the types of taxes and their parts for which personal tax accounts are kept by the Czech Customs Administration. A list of matrix parts of bank accounts of customs offices.
  - Financial Bulletin 6/2023
    - communication on a treaty between the Czech and Romanian governments on the avoidance of double taxation and the prevention of tax evasion in the field of income and property taxes

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in relation to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting.

- The Ministry of Labour and Social Affairs has introduced its new Family Policy Strategy 2023-2030, aimed at creating favourable and stable conditions for families, raising children, and caring for loved ones. Around 40 different stakeholders ranging from ministries to non-profit professional organisations and the academic sphere were involved in drafting the strategy. More information can be found HERE.
- The Ministry of Industry and Trade has issued Q&A on data boxes and the capping of electricity and gas prices.
- The GFD has summarised information on the obligation of natural persons to report exempt income (deadlines, examples, etc.). A natural person's incomes exceeding CZK 5 million exempt from tax must be reported.

FOREIGN NEWS

- The European Parliament's sub-committee on economic and monetary affairs (ECON) has discussed amendments to the forthcoming directive on the debt-equity bias reduction allowance (DEBRA). The European Parliament is due to vote on the amendments on 17 April 2023. However, its position on the legislation is advisory only. The adoption of the directive is a matter for the EU Council, which has suspended its deliberations for the time being.
- Following consultations with member states, the European Commission has adopted a new Temporary Crisis and Transition Framework for state aid. In addition to the rules on state aid in the context of high energy prices, it significantly relaxes the conditions for state aid (including tax benefits) for new climate investments, in response to a similar regulation in the United States.

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