KPMG

Tax & Legal

Taxes
Tips and tricks
Legal
World news
Case law
In brief

May 2023

Obsah

Editorial

Taxes

New savings product for retirement: conditions for claiming tax relief

Italy: platform use in exchange for user data is barter; VAT base is the data's value

Legislative basis for global minimum tax

Tips and tricks

Confidentiality in tax proceedings: what can tax administrator say about you, what can you not disclose to them?

Legal

Amendment to Labour Code: major changes to remote work rules

Amendment to Labour Code: further changes for workers under agreements outside employment

Svarc system detection to be easier for the state

New retirement savings product: new options for long-term investment

World news

How to avoid greenwashing? With a new EU directive!

Case law

SAC on calculation of reduction coefficient upon sale of land

Application of reverse charge to supplies of movable items when providing construction or assembly work

CJEU on the VAT treatment of real property sales

News in Brief, May 2023

Editorial

In April, the Czech Republic's budget ended with a record-breaking deficit, and thus it's no surprise that savings are now being sought wherever possible. Among the proposed ways to save a few crowns from the state budget are some that many would have just laughed at not so long ago. In the debate on cost-cutting, apart from carefully calculated proposals by economists or practitioners, we can also hear suggestions that do not seem thought out at all: for instance, the proposal to abolish May Day (1 May) as a national holiday has been voiced in mass media. At a time when we have not yet started to investigate standard savings methods, it seems rather short-sighted to look for benefits the getting rid of a public holiday may bring. Or is it? Since those in charge refuse to listen to savings proposals put forward by experts, how about asking artificial intelligence whether it is possible to quantify the benefits of abolishing this holiday for the Czech state budget?

"Quantifying the benefits of abolishing May Day as a public holiday for the state budget of the Czech Republic would be quite complicated and would depend on many factors. It would also be necessary to consider the cost of compensating employees who would lose their public holiday. For example, it might be necessary to offer employees other benefits to motivate them to work on a day that was previously considered a public holiday. In short, even if the public holiday of 1 May were abolished, the benefits for the state budget would not be easily quantified, as it would be a complex issue, with varying effect depending on the industry and size of the business, and possibly different consequences for different groups of employees."

We can see that artificial intelligence cannot yet cope independently with complex considerations and impact quantifications. Which is why I hope that we will give space to debates among economists and experts. It is certainly not possible to rely on artificial intelligence to solve the structural deficit of the state budget and other complex issues for us. It can help us, but the final decision and responsibility must lie with us humans. For you to be able to make decisions based on correct and verified information, we continue to put together our Tax and Legal Update, in which we as always summarise the most important legal and tax news.



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New savings product for retirement: conditions for claiming tax relief

With effect from 2024, the Ministry of Finance proposes to extend tax-efficient retirement savings with a new form - a long-term investment product. It is an alternative to the current 3rd pillar of the pension system (comprising supplementary pension insurance, pension insurance, and supplementary pension savings) and private life insurance.



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The amendment to the Income Tax Act is part of the bill amending certain laws in connection with the development of the financial market, responding to the introduction of the 'long-term investment product' in form of an investment pension account kept with a financial institution defined by law. Through this account, the taxpayer will be able to purchase various financial products, such as shares, bonds, and units of an investment trust, as a long-term tax-efficient form of retirement savings.

A single **maximum limit of CZK 48,000 per year** to decrease the taxpayer's tax base has been proposed. This limit equals the sum total of the existing limits of contributions that the taxpayer can deduct from their tax base: **CZK 24,000 per year for pension pillar III** and **CZK 24,000 per year for private life insurance**. The single limit will therefore be used for all contributions to all tax-efficient retirement savings products, including the new proposed long-term investment product. The taxpayer will be able to choose how to apply the entire amount, i.e., only for one product, or a combination of several forms of savings.

Conditions for granting tax relief

At the same time, the proposal extends the condition for granting the tax relief, which is the duration of all retirement products, from the current 60 calendar months to 120 calendar months. The earliest withdrawal of funds in the year of reaching the age of 60 remains unchanged.

If the relevant conditions are met, the new long-term investment product will be exempt from income tax similarly as the existing retirement savings products today.
The exemption of contributions to the employee's retirement savings product paid by the employer remains unchanged: the current aggregate limit of **CZK 50,000** for employer contributions shall apply to any tax-efficient products, i.e., including a new product.

If the taxpayer breaches the **120-month/60-year rule**, they will have to refund the applied tax relief in the form of an item decreasing the tax base for a maximum of ten previous taxable periods, i.e., similarly as under the current legislation. At the same time, they will lose the right to the exemption of income paid from these products.

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Employer contributions that were exempt from income tax will have to be additionally taxed as income from employment in the taxpayer's tax return for the year in which the conditions were breached, for the ten immediately preceding taxable periods. This is also the case today.

The amendment is proposed to be **effective from 1 January 2024**.Contracts on supplementary pension insurance and private life insurance concluded before that date shall be subject to the existing legislation, except for the maximum amounts that can be deducted from the tax base in respect of these products: **the new single limit of CZK 48,000 per year** shall apply regardless of whether the product is an old-age savings product under the existing or new legislation.

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Italy: platform use in exchange for user data is barter; VAT base is the data's value

The Italian tax administration has assessed additional output VAT to a platform on which users can register and use it free of charge. According to the tax administrator, this involves the provision of services for consideration, more precisely barter in exchange for user data. To be able to access and use the platform free of charge, users agree to the commercial use of the data provided, under the general terms and conditions. In the tax administrator's opinion, the tax base for calculating VAT should therefore be the value of the data.



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The platform concerned provided its Italian users with registration and use free of charge if they transferred to the platform the right to commercially exploit their personal data. The Italian tax administration initiated proceedings with the platform to assess additional output VAT for the 2015 to 2021 taxable periods. In its view, the arrangement did not involve the provision of access free of charge but the provision of access in exchange for the right to commercially exploit the data, i.e., a service subject to VAT. For the seven-year period in question, VAT amounting to approx. EUR 870 million should have been declared in tax returns and subsequently paid, said the tax administrator.

The question of VAT treatment of online services provided in exchange for user data was addressed by the EU VAT Committee. At the 111th meeting of the Committee of 30 November 2018, the member states unanimously agreed that the provision of IT services to internet users in exchange for the use of their personal data **shall not be a taxable supply as long as these services are offered under the same conditions to all internet users regardless of the quantity and quality of personal data provided**, in such a way that there is no direct link between the IT services provided and the consideration in the form of acquired data.

Although it is questionable to what extent the approach of the Italian tax administration corresponds to the recommendations of the EU VAT Committee (which are not binding), we recommend all platforms (not only those with users in Italy) proactively revise their general terms and conditions, in particularly focusing on the above provision of personal data which is often a condition for the gratuitous use of the platform.

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Legislative basis for global minimum tax

The date the global minimum tax will be introduced is approaching, and therefore the Czech implementation law is being prepared. The only legal act that has gone through the standard legislative process so far is an EU directive deriving from documents approved at the OECD level. Below we summarise the documents that will be decisive for the application and interpretation of the new rules.



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EU directive

On 15 December 2022, the Council of the EU approved **Directive 2022/2523** on ensuring a global minimum level of taxation for multinational enterprise groups and large national groups in the EU. The directive was promulgated in the Official Journal of the EU on 22 December 2022. The member states are obliged to transpose the directive into their legislations by 31 December 2023 and apply the new rules to accounting periods starting on or after the same date.

The adoption of the directive builds on a series of documents prepared by the OECD Inclusive Framework, which is a platform of 135 countries that have committed to introduce minimum tax rules into their legislation or not to oppose their application by other states. The documents approved by the Inclusive Framework shall be applied in the transposition and interpretation of the EU directive.

GloBE rules

The basic document of the Inclusive Framework lays down the Global Anti-Base Erosion Model Rules, or GloBe rules, specifying the basic principles of the global minimum tax. The effective tax rate of a multinational enterprise group in each state in which this group operates should be compared to the agreed minimum tax rate of 15%. If the effective rate is lower, an obligation to pay a top-up tax shall arise.

Commentary on the GloBE rules and administrative guidance

The commentary and administrative guidance provide a uniform interpretation of the GloBE rules from the perspective of tax administrations and multinational groups. Both documents should be combined in the future into a consolidated version of the commentary.

Safe harbour rules

The main objective of the safe harbour rules is to provide for a temporary, simplified application of the minimum tax for certain situations in the first years of application of the new rules. This includes waiving penalties if the multinational group proves that it has made reasonable efforts to correctly apply the new requirements.

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Examples

The document prepared by the OECD Secretariat contains several concrete examples that follow from the GloBE rules, the commentary, and the administrative guidance.

GloBe information return and tax certainty for GloBE rules

The GloBE information return is an overview of calculations of the effective tax and any top-up tax for individual states. The Tax Certainty document includes mechanisms to prevent and resolve disputes between member states that may arise in the application of minimum tax rules. The text of both documents is being finalised.

All of the above OECD materials can be found on the OECD website.

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Tips and tricks

Confidentiality in tax proceedings: what can tax administrator say about you, what can you not disclose to them?

Confidentiality in tax proceedings is a key principle that protects the privacy of taxpayers and ensures the confidentiality of information submitted in tax proceedings. What limits and boundaries does the obligation of confidentiality impose on tax administrators and taxpayers?



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The obligation of confidentiality binds both the tax administrator and other persons involved in the administration of taxes (taxpayer, third parties, etc.). The tax administrator as well as individual officials must maintain the confidentiality of all information obtained during the administration of taxes regardless of whether it is directly related to the taxpayer.

In a broader sense, tax secrecy prohibits the tax administrator from providing information to third parties about the taxpayer and the proceedings without their prior consent. The tax administrator must ensure that the information obtained during the tax inspection is used solely for the purposes of the inspection and that no confidential and sensitive business information is leaked from the tax proceedings. However, the obligation of confidentiality does not apply to information that is publicly known or available to the public from public administration information systems.

On the other hand, the taxpayer may also submit information and data of another taxpayer in tax proceedings if the other party agrees. Similarly, the taxpayer may submit information from their tax proceedings to another taxpayer or publish it, for example, in the media, but only on the condition that this information does not contain data and information about other taxpayers.

Breaches of confidentiality are fined up to CZK 500,000. You may sue for damages.

A breach of confidentiality is an offence that can only be committed by a natural person. The penalty for a breach of confidentiality is **a fine of up to CZK 500,000**. However, the injured person (taxpayer) may claim compensation for damage caused by a breach of confidentiality in court, e.g., in connection with the disclosure of trade secrets or other damage (reputational, competition, etc.).

In practice, the tax administrator often takes information from various tax inspections, e.g., when checking supply chains as part of the VAT fraud investigation. The tax administrator may, e.g., take over information on the declaration of supplies or on the payment of tax. Such information should be anonymised, and sensitive data should not be shared.

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Amendment to Labour Code: major changes to remote work rules

A draft amendment to the Labour Code is heading to the chamber of deputies. The bill has undergone significant changes since last autumn when it was first published. From an employers' perspective, the changes to the rules for working from home are very favourable.



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Changes to privileged employee groups

One of the most discussed areas was the right to work from home of employees caring for children under 15 or other dependent persons, and of pregnant employees. While the amendment still favours these employees, they are no longer entitled to work from home. Under the current wording of the amendment, they have the right to apply for remote work, and employers not granting their request must provide the reasons for their refusal in writing. Another significant change is the lowering of the age limit for children – only employees with children under 9 years of age will fall within the category of parents.

Agreement remains mandatory

Under the draft amendment, it will still be necessary to conclude a written agreement on remote work with each employee who works from home (even on a one-off basis). Compared to the original draft, however, the extensive list of mandatory essentials that such agreement must contain has been omitted. We still recommend that the agreement at least set down how the employee and the employer will communicate, how work will be assigned and checked, how costs will be reimbursed, and how the employer will be able to assure the employee's occupational health and safety by the employer, including checks and the possibility for the employer to enter the place of work in order to clarify the cause and circumstances of on-the-job accidents. The OHS area will certainly require special attention: the draft amendment does not lay down any special OHS regulations for remote work, meaning that the employer's obligations and responsibilities will be the same as they are for employees working at the employer's premises, while the employer logically will not have the same opportunity to influence the place of work or check it on a regular basis.

Significant changes to reimbursement of employees' costs

From the very beginning, the reimbursement of employees' costs has been the most controversial point of the amendment. Since its initial proposal which stipulated an employers' obligation to pay employees an 'energy compensation lump sum' of CZK 2.80 for each commenced hour of work, the amendment has moved forward significantly. As of today, the proposal provides for three options for the reimbursement of costs for employees working from home:

- reimbursement of actually incurred costs;
- provision of a lump sum for increased energy costs in the amount stipulated by a decree of the Ministry of

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Labour; and
- agreement that the employee is not entitled to any or only a partial reimbursement of costs.

We see this change as very positive – the government has understood the requirements of the practice, as many employees and employers perceive work from home as a benefit that in itself saves the employees' time and costs.

We welcome the above shift in the proposed wording. After the first draft had been published, we warned that the proposed wording would mean a significant administrative and financial burden for employers, which could ultimately lead to limiting remote work. From our point of view, the changes are positive. The question remains what the final wording of the amendment will be once the legislative process is completed and the bill enters into effect.

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Amendment to Labour Code: further changes for workers under agreements outside employment

Agreements to perform work and agreements to complete a job (i.e., agreements on work performed outside employment) are very popular in the Czech Republic. The updated wording of the proposed amendment to the Labour Code, which was published by the government a few days ago, brings several further modifications to the original draft.



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A significant change concerns **vacation entitlement of workers under the agreements: for both type of agreements on work outside employment** (agreement to perform work and agreement to complete a job), fictitious **weekly working hours at 20 hours** a week shall apply for the purpose of determining vacation entitlement. However, only workers whose relationship with the employer has lasted at least 4 weeks continuously and who have worked at least four times the stipulated fictitious weekly working hours, i.e., at least 80 hours, will be entitled to vacation. **Vacation entitlement** shall be calculated in the same manner as for employees in standard employment, i.e., under an employment contract. To eliminate possible complications in making the calculations and setting up internal accounting systems, the provisions concerning the vacation entitlement of workers under agreements will only enter into effect on the first day of the new calendar year.

The employer will newly be obliged **to schedule the working hours of employees** working under agreements and inform them of this schedule. The minimum time in advance in which the employer is obliged to inform the employee of their working hours schedule has been shortened from 7 to 3 days compared to the original proposal unless the employer and the employee agree otherwise (on a general or individual basis). The bill does not stipulate a minimum (or maximum) period of time that can be agreed on, but it can be assumed that the employer should schedule the employee's working hours and inform them of the schedule at least one day in advance (subject to the sufficient predictability of the work).

While the original wording of the amendment envisaged that the regulation of obstacles to work should also apply to workers under agreements as they do for employees under standard employment, the current wording stipulates that the employee will be entitled to time off but not to the compensation for the remuneration under the agreement unless provided by the employer, e.g., in an internal regulation, or unless it has been agreed in a collective agreement. The employer’s obligation to provide extra pay for work at night, in a difficult working environment, on weekends or public holidays, but not for overtime work, has remained in the proposal.

The Labour Code should also stipulate that the **employer's obligation to provide information on the content of the relationship between the employee and the employer s**hall also apply to workers under agreements, to the same extent as for employees in a standard employment.

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It will still be possible to terminate an agreement to perform work or an agreement to complete a job with a fifteen-day notice without giving any reason or for any reason. In some cases, however, the employee may request a written statement of the reasons for the termination, and the employer will be obliged to comply.

Workers under agreements whose legal relationships based on the agreements with the same employer have lasted **at least 180 days in aggregate in the previous 12 months** will now have the right to ask the employer for a standard employment (under an employment contract). In response to such a request, the employer must provide the employee with a written response stating the reasons for their decision within one month.

When do the changes take effect?

The government has announced that there is a basic consensus among the social partners regarding the latest draft of the amendment, so we can assume that any changes adopted during the legislative process should be of a rather marginal nature.

The amendment assumes a 'split' effect. The effective date (except for some provisions concerning agreements on work outside employment) is expected in the second half of this year, although all will depend on the speed of debate and the extent of comments in the individual readings in the chamber of deputies.

In view of the signalled changes, we recommend employers adjust their existing agreements on work performed outside employment and their approach to workers under the agreements in accordance with the proposed amendment to avoid possible sanctions by the labour inspectorate.

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Svarc system detection to be easier for the state

The Ministry of Labour and Social Affairs wants to fundamentally change the definition of illegal work. The length of work should no longer be relevant to conclude that a relationship is unlawful. The purpose of the change is to make work easier for inspection authorities when detecting the Svarc system. Although the ministry has received many comments to preserve the current status, they insist on keeping the new definition in the draft amendment to the Employment Act.



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According to the current definition, illegal work is dependent work performed by a natural person outside employment, an agreement to perform work, or an agreement to complete a job. Under the Labour Code, dependent work is work that is performed:

- within a relationship in which the employer is superior and the employee is subordinate
- in the employer's name,
- according to the employer's instructions,
- and personally by the employee for the employer.

In addition to the above, the courts have also deduced consistency as a necessary characteristic.
When checking for the Svarc system, State Labour Inspection officers must prove that employees are working illegally. They must therefore check and confirm the existence of all dependent work characteristics, including that persons have been employed for a prolonged period of time. In practice, it is often difficult for inspection authorities to prove that a particular employee has been performing dependent work at the workplace on days other than the day of the inspection itself.
Under the proposed amendment, characteristics other than those stipulated in the Labour Code for dependent work should not be relevant for the assessment of illegal work. This means that the characteristic of consistency, deduced by case law, will no longer apply.

The ministry expects the change to facilitate the penalisation of illegal work, and thus to increase revenues for the state budget. Illegal employment work is subject to a fine of up to **CZK 10 million**.
Last year alone, the State Labour Inspection Office carried out over 6,500 inspections aimed directly at illegal employment, detecting the performance of illegal work by 2,500 people. Fines of almost **CZK 176 million** were imposed on the employers. These numbers are bound to increase in the future because of the legislative change.

Work performed using an individual's sole-trader status (an entrepreneur's Id. No. or "IČO") is a common standard in many fields today, often sought after not by the hiring entities but by workers themselves. Therefore, we recommend that you prepare for these changes on time – review the existing relationships and assess whether it is appropriate to modify their conditions or even switch to proper employment contracts.

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New retirement savings product: new options for long-term investment

The government will discuss a long-prepared amendment concerning financial market developments, in particular amending the Act on Capital Market Undertakings and introducing a new retirement savings product: a long-term investment product known as a long-term investment account or investment pension product. The proposal also includes the regulation of an alternative participation fund, an increase in the lower and upper limits for obtaining state contributions for investments in pension funds, and the regulation of bonds. The amendment should come into effect on 1 January 2024



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Long-term investment product

Under the 3rd pillar of the pension system, it will newly be possible to invest through a long-term investment product. This retirement product allows for the further appreciation of money through state-supported investments.

As it is an investment-type product, it will be possible to invest in assets that may offer potentially higher returns while also entailing a higher risk of the depreciation of the investments. It will be possible to buy, e.g., shares, bonds, units in an investment trust or a foreign investment fund, or derivatives as hedging instruments.

Only banks, savings and credit cooperatives, securities dealers, investment companies, self-managed investment funds or similar foreign entities authorised to provide services in the Czech Republic will be able to offer this long-term investment product.

The product will be tax efficient under conditions similar to those for life insurance or existing 3rd pillar pension products. Information about the maximum amount by which the tax base can be reduced on the employee's part, and on the exemption of employer's contributions from income tax on the employer's part can be found here.

Alternative participation fund

In addition to the long-term investment product, the amendment brings changes to the Act on Supplementary Pension Savings, proposing to introduce a new type of fund in supplementary pension savings, an alternative participation fund for which the fee policy and investment strategy should be set more freely compared to the existing participation funds. This should enable pension companies to invest more dynamically and achieve higher returns for participants.

At the same time, there will be no restrictions on the range of assets in which an alternative participation fund can invest, nor will there be any investment limits.

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Changes in the amount of state contributions in pension funds

To motivate participants to increase their contributions, the amendment increases the lower and upper limits for obtaining state contributions when investing in pension funds. The lower limit of the contribution at which entitlement to the state contribution arises is to be increased from the current **CZK 300 to CZK 500** per month and the upper limit from the current **CZK 1,000 to CZK 1,700 per month.** Another proposal is to set the amount of the state contribution in a linear way, namely at 20% of the participant's contribution.

The last significant change in the provision of state contributions concerns persons who are entitled to state contributions when investing in pension funds. According to the proposal, people who have already been granted an old-age pension and persons over 65 years of age will not be able to receive this contribution.

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How to avoid greenwashing? With a new EU directive!

A proposal for a new EU directive promises to strengthen consumer protection against a misleading business practice referred to as greenwashing, and stricter rules for entrepreneurs who claim that their products are environmentally sound (green).



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Recently, we have seen increasing pressure on products to be as environmentally friendly and sustainably produced as possible, as consumer demand for such products has been growing. Some entrepreneurs have been taking advantage of this, as in their marketing strategy they try to convey the (false) impression that their products are green, i.e., environmentally sound (hence the term "greenwashing"). Examples include the use of "eco" or "organic" labels, various green symbols and logos, or claims that the product contains a certain proportion of recycled materials or ingredients of natural origin. In some cases, such claims may be well-founded, but according to a 2020 study by the European Commission, more than half of them are misleading or unsubstantiated.

The European Commission has therefore presented a proposal for a **Directive on Green Claims**, which should strengthen consumer protection against greenwashing. Consumers should have more certainty that products labelled as ecological do not have a negative impact on the environment. In particular, entrepreneurs will be obliged to substantiate their green claims with reliable scientific evidence. In addition, they will have to specify whether the claim refers to the whole product, its part, or even just to the activity of the entrepreneur or a specific aspect of it.

Directly on the product, the entrepreneur will then have to provide information, among other things, on how the green claims have been substantiated, including background studies or calculations made in the environmental impact assessment. The summary of that information should be clear and understandable for consumers. To comply with this information obligation, it will be sufficient if, e.g., a link to a website or a QR code containing the information is placed on the product.

The directive also affects entities issuing environmental certificates, as it lays down requirements that will have to be complied with by public institutions and the private entities issuing such certificates. This includes the symbols of these certificates on products, which should not be misleading to consumers.

EU member states will then have to ensure that an independent body verifies that entrepreneurs comply with the obligations set out by the directive. It will also be up to member states to stipulate adequate penalties in their national law. Penalties may comprise fines, the confiscation of revenues gained from selling the products concerned, or the exclusion from public procurement and from access to subsidies for up to 12 months.

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Thanks to the directive, consumers will be better able to make informed purchasing decisions. The legislative process of the proposal for the directive is currently at its very beginning. Once the directive enters into force, member states will have **18 months to transpose** it into national law.

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Case law

SAC on calculation of reduction coefficient upon sale of land

The Supreme Administrative Court (SAC) dealt with a case in which a sale of land was excluded from the calculation of the reduction coefficient. The taxpayer had sold land that they considered and accounted for as fixed assets. The tax administrator, however, believed it to be inventory, as the taxpayer's main economic activity was development, and the land was acquired with the intention of its subsequent sale. The tax administrator thus refused to exclude the sale of land from the calculation of the reduction coefficient.



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A taxpayer whose main economic activity was development treated the sale of land for VAT purposes as a sale of fixed assets used for their economic activity and, consequently, did not include its value in the calculation of the reduction coefficient in the VAT return. In a tax inspection, however, the tax administrator concluded that the transaction was a sale of goods and should be included in the coefficient calculation.

The taxpayer purchased the land with the intention of converting it into individual building plots and subsequently selling it. The expected future use of land is decisive for assessing whether it is a fixed asset or goods. As the taxpayer carried out development activities, the tax authority believed that for VAT purposes the land should be regarded as goods.

The taxpayer argued that they had demonstrated the active use of the land for their business activity, such as renting for agricultural purposes, placing advertisements or storing raw materials, and therefore it should be considered a fixed asset. The Supreme Administrative Court confirmed the tax administrator's approach, stating also that the use of the land for other purposes does not affect this assessment, as the taxpayer would have to prove that they had acquired the land for their own use.

The SAC thus agreed with the decision of the tax administrator and the municipal court, stating that a small-scale use is not decisive for determining whether a fixed asset or an inventory is involved. Similarly, it is not decisive how the taxpayer accounts for the land. What is crucial is the taxpayer's actual activity. For this reason, the sale of land should be included in the calculation of the reduction coefficient.

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Case law

Application of reverse charge to supplies of movable items when providing construction or assembly work

The Supreme Administrative Court dealt with the correctness of applying the reverse charge regime to the modernisation of a dairy which also included supplies of movable items functionally related to the dairy. At the heart of the dispute was whether the movable items supplied could be regarded as ancillary to the construction and assembly work provided and thus be also subject to the reverse charge regime. The SAC confirmed the conclusion of the regional court and the tax administrator that in the specific case at hand this was not the case.



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ZETES KT, spol. s r.o. performed work for its customer comprising the modernisation of a dairy for an agreed price excluding VAT. The work also included the delivery of an especially modified Citroën refrigerated truck, a digital scale with label printer, a vacuum packer, stainless steel racks, a glass refrigerator, a hand forklift, a refrigerator and freezer, cheese moulds, and mobile work desks and steel racks.

The company applied the reverse charge regime and therefore did not pay output tax on the supply provided. They argued that the VAT Act allowed the reverse charge regime to be applied to taxable supplies carried out in connection with the provision of construction or assembly work, which, in their opinion, was the case here.

The interpretation of the reverse charge provisions was unreasonably broad, the court ruled

Following a tax inspection, the tax administrator assessed additional output tax and related sanctions. Their approach was later confirmed by the regional court: it stated that the interpretation of the provision in question to the effect that it also applied to supplies related to the purpose for which the immovable property in question would be used, was unreasonably broad. In its decision, the regional court also referred to a commentary on the VAT Act, which provides some guidance on how to assess whether a supply is related to construction or assembly services. According to the commentary, this is the case, e.g., in the delivery and installation of equipment that is firmly attached to the building. In the case of a dairy, this can be, e.g., industrial machines for milk filtration, centrifugation, pasteurisation, ventilation or homogenization.

The commentary on the law indicates in what direction its interpretation should be going and, according to the regional court, it clearly implies that the movable assets mentioned cannot be considered accessories to which the reverse charge regime could be applied. To conclude, the regional court added that otherwise even extreme interpretations would be admissible, to the effect that to transfer the tax liability to the customer, it would suffice for the ancillary supply to be indirectly related to the future use of the building. The regional court's conclusions

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were also confirmed by the Supreme Administrative Court in cassation complaint proceedings.

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Case law

CJEU on the VAT treatment of real property sales

In judgment C-239/22, the Court of Justice of the EU (CJEU) specified that the criterion of ‘first occupation’ of immovable property means the first use of the property by its owner or tenant. The application of VAT to the sale of the property then depends on whether the sale of the property generates added value.



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Belgian companies Immo 2020 and Promo 54 owned a building of a former school, which they intended to convert into apartments and offices. The sale of the future apartments took place in two steps. Immo 2020 sold to the buyers a part of the building that was to be converted into apartments, and Promo 54 concluded a contract for work with the buyers for the renovation work. The Belgian tax authorities took the view that the transaction was in fact a single supply of new apartments, subject to VAT at the standard rate.

The court dealt with the following question: is it possible to exempt from VAT the supply of a converted building which had been already occupied before the conversion if the member state has not provided in its legislation that the condition of ‘first occupation’ of the building also applies to buildings after conversion?

The CJEU specified that the reason for the exemption of the supply of immovable property after its first occupation is that such a supply does not generate any significant added value (unlike the first supply of immovable property). The supply of a building that has been converted does generate significant added value, therefore, according to the CJEU, it meets the ‘first occupation’ criterion and is generally to be taxed. In the commented case, however, the member state did not define in its legislation the conditions for taxation of the supply of a building after conversion, hence the CJEU concluded that the supply of the building could in the case at hand be exempt from VAT.

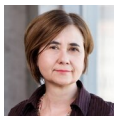
To correctly determine the VAT treatment of a sale of immovable property, **we recommend assessing the conditions and circumstances of the transaction on an individual basis**. In the light of the CJEU's case law, the buyers' known intention when purchasing the property may also have an impact on the tax assessment.

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In brief

News in Brief, May 2023

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



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DOMESTIC NEWS

- An EU-wide framework agreement has been published, allowing employees to work for a foreign employer from home for up to 49.9% of their working hours without changing their social security jurisdiction. Individual EU/EEA member states, Switzerland, and the UK have time to decide whether to join. The agreement will enter into force on 1 July 2023. States that sign must prepare administratively for its implementation.

FOREIGN NEWS

- The EU Council approved the introduction of a Carbon Border Adjustment Mechanism (CBAM) as part of its Fit for 55 measure. Under this mechanism, importers of goods covered by the EU's emissions trading scheme will have to pay the difference between the price of carbon emissions in the country of production and the price of carbon allowances in the EU. A measure on the review of aviation emission allowances was also passed, as well as the introduction of Emissions Trading System II, which will charge for emissions from road transport fuels and emissions from the use of buildings starting from 2027. The EU will publish the regulations in its Official Journal.
- The European Commission adopted an implementing regulation on the reporting obligation of digital platform operators (DAC 7). The regulation sets out the criteria under which information exchanged under an agreement between the tax authorities of EU member states and non-EU countries shall be regarded as equivalent to information compulsorily reported in the EU. If reportable information matches subsequently exchanged information, platform operators from these countries would not be subject to EU reporting obligation.

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