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In brief

News in Brief, November 2023

Editorial

With the end of the year getting closer, a legislative storm in taxation is approaching, too. The chamber of deputies has finally passed a consolidation package that will significantly change the existing tax rules. This issue of Tax and Legal Update provides a brief overview of the proposed changes. Unfortunately, the timing of the legislative process will probably lead to the legislative amendments only being passed just before or during Christmas. Any last-minute changes in VAT rates, in particular, are bound to be trying for all.

Although the changes contained in the consolidation package have not yet been passed with final effect, there is already talk about changing them again: this mainly concerns agreements on work outside employment, which in their current (consolidation package) version are extremely difficult to navigate for both the employers and public finance administrators. The deferred effective date of these changes – 1 July 2024 – indicates possible major amendments even before the effective date.

On the other hand, the law on top-up tax for large multinational and national groups has passed through the chamber of deputies completely unnoticed. No amending proposal to the bill was tabled, and none of the deputies voted against it (one abstained). Even though this implements EU legislation, such voting behaviour is highly unusual for a bill containing almost 80 pages of dense text. The law brings new obligations for large corporate groups mainly in the reporting area, and in some cases also an obligation to pay a new tax. We already informed you about the details in our article on Pillar 2.

May you and your accounting systems not be taken aback by new tax rules. Should it happen, may you always have a friend on the phone willing to help.



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Taxes

Consolidation package: detailed overview of changes

The Parliament approved the The Act on the Consolidation of Public Budgets. Most of the provisions are proposed to come into effect on 1 January 2024. Below we summarise the planned changes in tax and related areas.



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Corporate income tax and accounting

Corporate income tax rate increase

The tax rate will increase from **19%** to **21%.**

Limitation of tax deductibility for selected costs/expenses

- The limitation of the tax deductibility of costs incurred to purchase **passenger cars for business purposes** will be introduced. Depreciation calculated on amounts exceeding CZK 2 million will not be deductible for income tax purposes.
- **Extraordinary depreciation** will be applicable for electric cars purchased between 1 January 2024 and 31 December 2028. This will be the only newly acquired asset for which extraordinary depreciation can be applied.
- The tax deductibility of costs for **still wine** provided as a gift of up to CZK 500 will be abolished. The exemption from excise duty remains unchanged.
- Expenses for **non-financial benefits** provided to employees will be tax deductible on the part of the employer if these are subject to taxation on the part of the employee (i.e., above the amount of the employee's exempt income) and if the entitlement to the non-financial benefits arises either from a contract, an internal regulation, or a collective agreement.
- **Employee meal expenses** will be fully tax-deductible on the employers' part (current tax deductibility limits will become limits of tax exemption on the employees' part).
- The **deductibility of costs incurred for exams** verifying the results of further education will be cancelled.

Reporting income flowing abroad

Taxpayers will be obliged to report income flowing to non-residents who are exempt from withholding tax or not

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subject to taxation in the Czech Republic under an international tax treaty only where it relates to income from interest, royalties, and dividends. Furthermore, no reporting obligation will apply to interest income not exceeding **CZK 300 thousand** per month. The rules for reporting income subject to withholding tax remain unchanged.

Functional currency

Entities will be able to keep accounts in a foreign currency (specifically in euros, US dollars, or British pounds) if it is their functional currency. This is understood to be the primary currency of the economic environment in which the entity operates.

The tax calculation will be based on the profit or loss denominated in the foreign currency. The items stated in tax returns will be translated into Czech crowns using the CNB's exchange rates (usually the exchange rate valid at the end of the taxable period). The limits set by the Income Tax Act will also be converted into functional currency.

It will be possible to pay tax in Czech crowns or in foreign currency. No underpayments or overpayments will arise from FX differences, i.e., no entitlement to refunds will originate.

Possibility to tax only realised FX differences

Payers of income tax will have the option to exclude unrealised FX differences from their tax base in the taxable period in which they arise (are recognised) and tax them only in the taxable period in which they are realised. They must inform the tax administrator about the application of this tax regime and must subsequently apply it to all FX differences that arise. The period for which the taxpayer will be in this regime should not be shorter than three taxable periods, and when discontinuing the regime, all previously untaxed FX differences will have to be additionally taxed.

Country by country reports and sustainability reports

Large multinational groups will now be obliged to publish reports on income tax paid (public country-by-country reporting) for taxable periods beginning on **22 June 2024**. In addition, selected groups will also have to submit sustainability reports for taxable periods beginning on **1 January 2024.**

Personal income tax

Progression extension

A higher **tax rate of 23%** will be applied already to income that is equal to or more than 36 times the average wage set by the Sickness Insurance Act, i.e., for 2024, more than **CZK 1,582,812** per year (CZK 131,901 per month).

Changes in mandatory payments for agreements to complete a job (outside employment)

From 1 July 2024, the limit for the application of withholding tax and the limit for participation in social security and health insurance schemes will be set at **25%** of the average wage for agreements with one employer (**CZK 10,500 in 2024**). For multiple agreements with several employers, the limit for participation in pension insurance is **40%** of the average wage (**CZK 17,500 in 2024).**

Changes in the exemption of non-financial benefits

- A limit for the exemption of non-financial (leisure-time) benefits amounting to half of the average wage will be introduced. In 2024, it will thus be possible to exempt the benefits up to **CZK 21,983** per year. The new limit will only apply to benefits provided by the employer after the amendment's effective date.
- The exemption for managers' accommodations will be abolished.

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- The limit for the exemption of monetary meal allowances will also apply to meals provided in non-financial form.
- The exemption for benefits provided from the cultural and social fund will be abolished.

Abolition of certain items deductible from the tax base and tax credits/reliefs

- A tax credit for being a student and a tax credit for placing a child into pre-school facilities will be abolished. The tax credit for a spouse will be conditional on the spouse caring for a child under three years of age.
- The reduction of the tax base by payments for exams verifying the results of further education and of the reduction of the tax base by payments of membership fees to trade unions will be cancelled.

Limitation on exemption of income from the sale of securities and shares (ownership interests)

With effect from **1 January 2025**, income from the sale of securities and shares/interests will be exempt from tax if the time test of three years for securities and five years for interests is met, but only up to **CZK 40 million** per taxpayer per taxable period. Taxpayers will be able to include the acquisition cost of non-exempt securities or interests in their expenses on a proportionate basis. Special rules will be laid down for determining the acquisition cost of securities and shares acquired before **31 December 2024.**

Limit for exemption of other income

An annual limit of CZK 50 thousand for the exemption of other income will be introduced. The limit will apply only to specified types of income.

Decrease in non-financial income of employees using business cars for private purposes

When using zero-emission vehicles for private and business purposes, 0.25% of the purchase price including VAT will be included in the employee's salary as non-financial income.

Sickness insurance

Sickness insurance amounting to 0.6% of the assessment base will be reintroduced for employees. **From January 2024**, total social security contributions for employees will increase to **7.1%** (instead of 6.5%).

From 1 July 2024, employees working based on agreements to complete a job (outside employment) will have to participate in sickness insurance if their income from all agreements with one employer exceeds **25% of the average wage (CZK 10,500** in 2024) or if their income from all agreements with multiple employers exceeds **40% of the average wage (CZK 17,500** in 2024). However, in the case of multiple agreements with more than one employer, the part of the social security contributions of **7.1%** that is to be paid by the employee will be paid by the employees on their own behalf. The obligation to pay health insurance contributions on behalf of the employees will remain with the employers.

Self-employed

The minimum assessment base for social security contributions of self-employed persons will be increased from the current 25% of the average wage to **40% of the average wage**. At the same time, the percentage of the tax base for the calculation of insurance contributions will also be increased from the current 50% to **55% of the tax base.**

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Prolongation of tax measures in relation to Ukraine

The following measures will be extended for 2023 (natural persons) and for taxable periods ending between 1 March 2022 and 29 February 2024 (legal entities):

- It will still be possible to deduct the value of gratuitous supplies up to **30% of the tax base** (applicable universally).
- Tax-deductible gifts will continue to include donations related to Ukraine and persons established in Ukraine.

The following measures will also be extended to include supplies provided in 2023:

- An employee's income in the form of provided accommodation will continue to be tax exempt.
- Gratuitous income for the purpose of providing support to Ukraine's defence efforts will also remain tax exempt.
- It will still be possible to claim as a tax-deductible expense the value of a gratuitous non-financial benefit that cannot be deducted due to a low tax base.

Value added tax

Reduced tax rates will be unified into a single **12% rate**, leaving only **the rates of 21% and 12%.** Some goods and services will shift from one rate category to another, e.g., activities without demonstrable social or health significance, and activities previously reclassified due to COVID-19 will be moved to the basic VAT rate category. These include, e.g., hairdressing services, repairs of shoes, leather products, and bicycles, or repairs and alterations of clothing. Newspapers and magazines will after all be subject to a 12% rate no matter how often they are published. For food services, beverages other than drinking water and selected beverages (e.g., milk) will need to be excluded from the 12% VAT.

From the very beginning of the consolidation package, it was proposed that the **supply of books**, both printed and electronic, be included in a new category of VAT-exempt supplies with the possibility of requesting a binding assessment from the General Financial Directorate.

In the third reading in the chamber of deputies, **medical and diagnostic devices** that will be subject to a reduced VAT rate were specified in more detail. Specifically, the condition that they be ordinarily intended for the exclusive personal use of the sick or disabled for the treatment of an illness or disability or to alleviate their consequences was excluded. Newly, frequently discussed contact lenses are also included among the goods subject to the reduced VAT rate.

We already informed you in detail about the issue of limiting the VAT deduction for **passenger cars to CZK 420 thousand** (corresponding to a purchase price of CZK 2 million). This concerns cars included in the fixed asset category. Therefore, in general, this may also affect lease companies where more expensive cars might be subject to double taxation. However, it cannot be ruled out that this potential discrepancy will be resolved by the interpretation of the law, as was indicated to us during discussions with tax administration representatives. The interpretation of the related transitional provisions is also unclear, especially where an advance payment for a specific car is made before the end of 2023. According to the wording of the transitional provisions, it could be inferred that if an advance for a specific car was paid in 2023, the limitation of the deduction would not apply.

Excise duties

All excise duty rates will gradually be increased. The duty on alcohol will increase significantly while the duty on electronic cigarettes, including nicotine pouches, will be increased more moderately.

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Gambling tax

The minimum tax per slot machine will increase to CZK 13,400. 55% of gambling tax revenue will be state budget revenue.

Real estate tax

Real estate tax rates will on average increase **1.8 times the current rates**. In addition, an inflation coefficient will be introduced as a tool to prevent the tax from decreasing in value over time (it will be first applied in 2025). Other changes include, e.g.:

- possibility for a municipality to choose a **local coefficient in the range of 0.5–5** for all real estate; exceptions are selected agricultural plots of land, permanent grassland, and unusable areas, for which the municipality can only choose a **coefficient in the range of 0.5–1.5,**
- changes in the subject of the tax and in tax exemptions,
- abolition of restrictions on the creation of paved areas used for business purposes that until now could only be created on certain types of land.

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Bookkeeping in foreign currency: how to determine functional currency and make changes to accounting

The Ministry of Finance has published a draft amendment to the decree for entrepreneurs implementing the Act on Accounting. The new wording of the decree is related to the changes introduced by the consolidation package: provisions regulating the method of determining the functional currency and the procedure for changing the currency used for bookkeeping will be added to the decree. The draft decree is now in the comment procedure; its effectiveness will depend on the effective date of the consolidation package.



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Functional currency

An entity can keep accounts in **euros, US dollars, or British pounds** if such a foreign currency is its functional currency. A company's functional currency is defined in accordance with international accounting standards as the currency of the primary economic environment in which the entity carries out its activities. After switching to one's functional currency, it is not possible to switch back unless the functional currency changes.

If an entity decides to change its accounting currency, it shall state and justify this decision in the notes to the financial statements, both in the financial statements for the period in which the functional currency changed and for the period immediately preceding it. The financial statements shall be prepared in the currency in which accounts are kept (accounting currency). Individual items of the financial statements continue to be presented in whole thousands, with the exception of companies whose assets exceed **10 billion units of the accounting currency.**

Transition to a functional currency

When switching to its functional currency, an entity is obliged to restate the data for the prior accounting period using the general FX rate at the balance sheet date of the prior accounting period.

The data in the prior-period income statement can be translated at the average general FX rate if the use of the general FX rate would lead to significant misstatements. The average general FX rate is determined based on the general FX rates in the accounting period, using a method of calculation to be determined by the entity in an internal regulation. Any translation differences shall be reported as other retained earnings. The draft decree does not deal with any tax implications.

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New rules for presentation of top-up tax in accounting

Entrepreneurs, banks, and insurance companies accounting for deferred tax will not have to consider the top-up tax when calculating deferred tax. However, they will be obliged to provide information about the top-up tax in the required extent in the notes to the financial statements, already for the periods in which they expect to become liable to the top-up tax.



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The Ministry of Finance has published a draft amendment to the accounting decree for entrepreneurs, banks, and insurance companies. The proposed changes derive from the Act on Top-up Taxes (global minimum tax under Pillar 2), which has already been passed by the chamber of deputies and which should become effective for taxable periods starting after 31 December 2023. **Czech companies and permanent establishments of multinational groups with a turnover exceeding EUR 750 million will be the payers of the top-up tax** even if their liability to pay top-up tax does not arise.

Given the uncertainty regarding the exact amount of the top-up tax, it is proposed that entities that account for deferred tax should not consider any top-up tax when calculating the deferred tax.

The impact of the top-up tax may be significant; therefore, entities will be required to disclose information on the top-up tax and its impact on the entity (including its quantification) in the notes to the financial statements.
Entities will have to disclose the following:

information that the entity is a payer of top-up tax or expects to become one in the immediately following accounting period

- information that the top-up tax was not considered in the calculation of deferred tax
- the portion of current tax payable attributable to the top-up tax
- a description and quantification of the expected impacts of the top-up tax on the entity.

The draft decree does not contain any simplifications for the accounting period preceding the effective date of the top-up tax. The new regulation will already apply to the financial statements prepared after the effective date of the new decree, i.e., to the financial statements with the date of preparation **on or after 1 January 2024** prepared for accounting periods commenced before this date.

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Proposed changes in taxation of employee stock option plans

If you intend to provide employees with a benefit in form of an employee option or a share in a business corporation (most often by transferring shares as part of employee stock option plans), you will be interested in the currently discussed government bill amending certain laws in connection with the development of the financial market and the promotion of old-age security. The amendment should come into effect on 1 January 2024.



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The amending proposal submitted in the second reading in the chamber of deputies regulates the taxation of employee stock option plans in the Income Tax Act. It will apply to the acquisition of options and shares in a business corporation that is the employee's employer, as well as the acquisition of options/shares in a business corporation from this employer's parent company, subsidiary, or a corporation related to the employer through capital.

The amendment explicitly defines the point in time **when this non-monetary benefit is to be taxed on the part of the employee.** The taxable moment, absent in existing legislation, has been completely redefined for most situations. Possible taxable moments are:

- the employee ceases to perform dependent activity with the employer
- the employee or employer ceases to be a Czech tax resident
- transfer of shares or options
- exercise of an option
- expiration of 10 years from the date a share in a business corporation or an option was acquired.
- Transferable or non-transferable options

The proposed wording of the amendment does not specify whether it applies to freely transferable or non-transferable options. According to the Supreme Administrative Court's established case law, the allocation of a non-transferable option does not currently establish a taxable moment on the part of the employee. According to the unofficial statement of the Ministry of Finance, the proposed regulation is aimed mainly at the taxation of transferable options and not non-transferable ones. However, time will tell whether this interpretation will actually be applied, mainly considering that this conclusion is not clearly evident from the proposed wording of the law. When calculating taxable income, it should now be possible to consider any impairment of shares or options that may occur over time.

Obligations of employees and employers

Employees will be obliged to inform their employer about the transfer of shares or options by the end of the calendar month in which the transfer took place. However, this is the only notification obligation that the amendment introduces for employees. How an employer will determine other facts relevant to taxation on the part of the employee (such as a change in tax residency) therefore remains a great unknown. Since the determination of

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an employee's tax residency is time-consuming and the necessary facts can be determined with certainty only after the end of the relevant taxable period (and the other state may have a different taxable period from the Czech Republic), it can be expected that the employer will often be in default with the relevant tax and insurance payments and will thus be subject to possible sanctions.

If shares or options are acquired from another company in the group that is not considered a taxpayer and the related expenses are not borne by the employer, the employee will be obliged to report this income in their tax return for the taxable period in which one of the taxable moments occurs.

We will continue to monitor the draft amendment and keep you informed of further developments.

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Proving R&D allowances will be easier

The chamber of deputies has discussed amendments to laws in connection with the development of the financial market. In the second reading, the coalition submitted a proposal to amend the Income Tax Act with the aim to simplify proving R&D allowances.



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The proposed amendment responds to the decreasing number of taxpayers claiming R&D allowances. Lower interest in the allowance is likely due to the high formal and substantive requirements for R&D projects and the risk of not meeting these.

Taxpayers should now be able to prove that **their project documentation contains all essential elements by other means of evidence**. The essentials include, e.g., the project's duration, the objectives of the project, the method of control and evaluation of the progress of the project, and the achieved results.

This extended possibility of proving does not reduce the requirements on the formal aspects of R&D projects and their completeness in terms of the required essentials. However, in case of doubt on the part of the tax administrator, taxpayers will be able to prove that they have met the essential requirements of individual projects by other means of evidence. The purpose of the new provision should be not to supplement the mandatory essentials of the project documentation but to subsequently elaborate on and prove these essentials in greater detail.

The proposed change should be applicable to tax proceedings initiated after the new regulation comes into effect, i.e., from **1 January 2024**. The proposal will be discussed in the third reading in November.

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Amendment to the VAT Act 2024: notification obligation for payment service providers

The Chamber of deputies has approved a draft amendment to the VAT Act that is to come into effect on 1 January 2024. Amending proposals that have been passed mainly concern the development of case law around tax submissions using prescribed forms. At the same time, the General Financial Directorate has issued its Information on new obligations for payment service providers regarding the reporting of data to the Central Electronic System of Payment Information (CESOP).



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The VAT bill is based on changes in EU legislation establishing CESOP. The new legislation imposes an obligation on payment service providers to keep records of cross-border payments and their recipients and to submit the data from these records to the tax administrator. One of the amending proposals clarifies that a notification containing data from the records of cross-border payments and their recipients will be submitted using a prescribed form as defined by the Tax Procedure Code. Thus, the format and essential elements, including the detailed content structure, of the notification will be laid down in a subordinate legislative instrument.

In connection with this, the GFD has published the above Information announcing that the submission of the Notification of Data for the Purposes of CESOP can be tested from 16 October 2023. Payment service providers can already try out this form of submission in the test environment of the financial administration, whose goal is to eliminate any errors before going live.

On its website, the financial administration offers basic information about CESOP and all additional documentation, which includes, e.g., guidelines issued by the European Commission that are not legally binding but provide practical tips.

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ViDA: extension of OSS and introduction of single VAT registration

The VAT in the Digital Age (ViDA) proposal promises to modernise the VAT system across the European Union, aiming to increase EU tax revenue, digitalise reporting, defend against tax fraud more effectively, and move towards a definitive VAT system. What changes will the extension of the One-Stop-Shop scheme and the introduction of single VAT registration bring?



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OSS scheme extension

According to the draft directive, the One-Stop-Shop (OSS) scheme is planned to be extended as early as **2025.**

The OSS extension is intended to include:

- supplies of goods with subsequent installation for end customers,
- supplies of electricity, heat and cold,
- supplies of goods on board of aircraft to end customers.

The extension could also apply to the domestic supply of goods to end consumers via various electronic platforms (web interfaces) and to special VAT regimes, e.g., the scheme for second-hand goods and investment gold. In significantly more cases, companies would therefore be able to settle their tax liabilities through a single VAT registration, i.e., a single tax administrator they will be registered with.

New scheme for transfers of own goods

As a result of the abolition of the call-off stock scheme, a completely new scheme will be introduced for transfers of own goods to another EU member state. Transfers of goods will be subject to a mandatory reverse charge in the state of receipt. Such transfers will be reported via the OSS scheme in the state of dispatch, i.e., not as part of the EC Sales List as before. The draft directive also foresees that if goods are not declared through the OSS, they will not qualify for VAT exemption.

Other changes

The registration limit for the OSS remains the same, i.e., **10 thousand euros**. The limit is calculated together for all supplies across the EU including electronic services. Until this limit is reached, VAT could be paid in the country of the supplier.

Furthermore, ViDA proposes an extension of reverse-charge for B2B supplies of goods by non-established suppliers. Such a legal provision is already in force in the Czech environment, so it will not be new for Czech companies.

Electronic platforms from third (non-EU) countries supplying goods to final consumers (B2C) in the EU will have to register for the IOSS scheme (import OSS). Large traders from third countries will settle their tax liabilities

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monthly directly in the destination countries of the shipments. This scheme also applies to the sale of goods with a value of less than EUR 150 outside the EU. To avoid passing on the tax liability to the end customer, an IOSS-registered entity must have an established representative in the EU territory. A taxable person may be exempted from the scheme for breaching the rules.

Deemed suppliers (a new concept introduced within the platform economy, which we informed you about in the last issue of the *Tax and Legal Update*) cannot be exempted from the IOSS regime. However, they may be subject to other penalties for non-compliance.

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Tips and tricks

Tax administration principles as boundaries of tax proceedings

The Tax Procedure Code is the basic regulation governing tax administration which is then modified by laws on individual taxes in partial aspects. Tax procedures are based on the principles of tax administration, and all provisions of the Tax Procedure Code should thus be interpreted in the spirit of these principles. The same principles should also be respected by the tax administrators in their day-to-day activities.



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The basic principles of tax administration are listed at the very beginning of the Tax Procedure Code. They constitute the basic rules of its interpretation and application. **These principles are**:

- the principle of legality
- the principle of legal license (everything not forbidden is allowed)
- the principles of restraint and proportionality
- the principle of procedural equality
- the principle of cooperation
- the principle of instruction
- the principle of helpfulness and decency
- the principle of speed and economy
- the principle of free evaluation of evidence
- the principle of legitimate expectations
- the principle of material truth
- the principle of non-publicity and confidentiality
- the principle of personal data gathering.

The individual principles are not specifically defined but are **general maxims setting the boundaries within which the tax administration should operate**. Nonetheless, the application of individual principles may be regulated in more detail by the specific provisions of the Tax Procedure Code. For instance, as regards the principle of confidentiality, the Tax Procedure Code lists authorities and institutions to which the tax administrator is entitled or even obliged to provide information without violating this principle. All the principles have one thing in common: they are directly binding upon the entire tax administration, i.e., on all its acts, even those outside tax proceedings. This means that tax administrators are obliged to follow these principles universally.

The direct binding effect of the basic tax administration principles also means that taxpayers may challenge and dispute the legality of a tax administrator's conduct by referring to the principles. A judicial review of a tax administrator's procedure in the context of the basic tax administration principles is a very practical use of the principles. Yet, as for other rules of tax administration, it is not enough to merely claim that a tax administrator acted contrary to the basic principles, but it is necessary to prove the violation of the principles and the impact that

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the unlawful conduct had on the taxpayer and the tax administrator's decision.

The basic tax administration principles do not just help the taxpayers but work the other way round, too, as they also apply to the taxpayers and all other persons participating in tax administration. Acting contrary to these principles may thus be held against them in subsequent proceedings. The Tax Procedure Code also provides for **monetary penalties** for certain undesirable conduct by persons participating in tax administration, which are based on the tax administration principles: for instance disciplinary fines to ensure a smooth and dignified course of the tax administration’s activities.

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News in health insurance for foreigners

The last amendment to the Foreigners' Residence Act has brought significant changes. Some of them, such as the abolition of the monopoly of the general health insurance company (VZP) have already taken place. What else has changed, and what will the amendment bring from 1 January 2024?



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Expanding the list of commercial insurance providers

Under the Foreigners' Residence Act, citizens of non-EU countries residing in the Czech Republic for **more than 90** days are obliged to have valid comprehensive health insurance for the entire duration of their stay. Since the 2021 amendment to the Foreigners' Residence Act, only the VZP health insurance company has been authorised to arrange this type of insurance. This factually and legally created a monopoly for the provision of comprehensive health insurance for foreigners. With the amendment, this situation will now change: starting **from 20 September 2023**, applicants for long-term visas and long-term residence permits can arrange comprehensive health insurance with any insurance company that is licensed to provide this type of insurance. After two years, VZP's monopoly, originally intended for a five-year period, has come to an end.

Foreign nationals who have previously taken out insurance with VZP may terminate it within three months of the effective date of the amendment. However, this does not give rise to a right to a refund of one-off premiums already paid.

The end of the monopoly should level the conditions on the insurance market, as foreigners will be able to choose an insurance company based on their own needs and preferences. At the same time, it means a return to compliance with EU and constitutional law. The resumed competition may also lower insurance prices.

Increase in insurance benefit limits

The insurance benefit limit has also been adjusted. The original limit per insured event set at EUR 60,000 has been increased to **EUR 400,000** without an insured's deductible. Under the law, insurance companies have the right (although not the obligation) to increase premiums even for insurance contracts already concluded. According to VZP's statement, they will not resort to this step and will leave the premiums for already concluded contracts at the original level.

Changes from 1 January 2024

From 1 January 2024, access to insurance shall change for **foreigners under 18 years** of age residing in the Czech Republic based on valid long-term residence permits. They will have to become participants in public health insurance, without the option to replace it with commercial insurance. If the validity of their existing commercial

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insurance ends after 1 January 2024, it will not be necessary to cancel such insurance. An under-age foreign national shall become a participant in public health insurance on the day following the termination of the current insurance and will not be able to extend the validity of their commercial insurance.

The foreign national must notify the selected public health insurance company of their transition to public insurance no later than eight days before the end of their commercial insurance. Their participation in public health insurance shall then terminate once they turn of age or upon the expiry of their long-term residence permit. After reaching the age of majority, foreigners will thus have to take out private health insurance covering comprehensive healthcare.

Another important novelty will be the **health insurance register**, which should be established within a year of the effective date of the amendment and whose purpose is to ensure greater transparency and better health insurance coverage of foreigners. The founder will be the Czech Insurers' Bureau.

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New EU rules: increased liability of payment service providers

The European Commission has published a proposal for the Directive on Payment Services in the Internal Market (PSD3) and a proposal for the Regulation on Payment Services (PSR). Their aim is to revise current legislation to reflect rapidly changing trends in finance. In particular, the Commission focused on consumer and user protection, the open banking system, and the different positions of bank and non-bank payment service providers.



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New obligations for providers

According to the Commission, a key problem of current legislation is a high risk of fraud and the subsequent consumer distrust in payments. PSR thus increases the liability of payment service providers in the event of fraud:

- Providers will now be obliged to check, free of charge, the consistency between the unique identifier (e.g., IBAN) and the name of the recipient (payee) provided by the payer. If the provider does not notify the payer of an inconsistency, the provider shall be fully liable for all financial losses of the payer.
- Where a consumer has been manipulated by a third party pretending to be an employee of the provider, the provider shall be obliged to refund to the consumer the full amount of the fraudulent transaction (if the third party used the provider's name, email address, or telephone number and the consumer reports the fraud to the police without undue delay).
- Providers will also be obliged to share fraud data with other payment service providers.

Increased user control over data

Within open banking, providers will be required to introduce a **dedicated interface for users** to provide an overview of previously granted access to open banking (permission overviews). The Commission considers it essential that users have full control over their data and receive clear information on data access permissions. On the other hand, some matters should also become simpler for payment services providers: e.g., the obligation to maintain a permanent fallback interface for the exchange of data with account information service providers and payment initiation service providers is to be abolished.

End of the differentiated position of bank and non-bank providers

Another important change is the **abolition of the distinction between payment institutions and electronic money institutions**. PSD3 and PSR will only regulate payment institutions. Licenses issued before PSD3 enters into effect will probably remain valid for 24 months after the directive's effective date. Within that deadline, payment and e-

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money institutions will thus have to apply for a new license with the competent national authorities; in the Czech Republic, this should continue to be the CNB.

If everything goes according to the Commission's plan, the proposed regulation will enter into effect in the course of 2025. After that, PSD3 will be transposed into national law, in the Czech Republic most likely by an amendment to the Payments Act. However, it is important to prepare for these changes in advance.

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De minimis aid limit to increase substantially from January 2024

Along with 2023, two important state aid regulations are coming to an end: the general regulation on de minimis aid (De Minimis Regulation) and the regulation on de minimis aid for providers of services of general economic interest (SGEI De Minimis Regulation). The European Commission has therefore submitted a new proposal for both regulations, under which the de minimis aid limits should be increased and other substantial changes made from 1 January 2024.



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The most fundamental and long-awaited change is the increase in the de minimis aid limit. If the new regulations are adopted as presented, member states will be able to grant to businesses de minimis **aid of up to € 300,000** compared to the current € 200,000. The de minimis aid limit for SGEI providers (e.g., providers of social, transport, or waste management services) will also be increased to **€ 700,000** from the current € 500,000. The reason for increasing the de minimis aid limit is mainly to make up for rising inflation.

How the **three-year period** for the de minimis aid limit is set will also fundamentally change. The three-year period should now cover the three years preceding the date of granting the aid, not the current and two previous one-year accounting periods, as is currently the case.

The draft regulation places greater emphasis on the transparency of the provision of aid. Unlike the current regulation, which leaves it up to the member states whether to use a central register of de minimis aid, the new regulations oblige member states to ensure that a central register of de minimis aid is established. The Czech Republic already uses such a central register; however, the regulation introduces certain new requirements in this respect, which means that some adjustments will have to be made, including related legislative changes. The adoption of the new regulations aims to increase the transparency and credibility of the de minimis aid system.

We expect that the regulations will be adopted by the end of this year. Both regulations should then enter into effect from **1 January 2024**. Because of the rather short time allotted to adapting to the new requirements, both regulations contain transitional provisions allowing member states to continue granting de minimis aid under the existing rules (including the current limits) until 30 June 2024.

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Legal

Mobility Directive to facilitate cross-border transformations

Companies in the EU can cross national borders by means of cross-border transformations. Current Directive (EU) 2017/1132 on certain aspects of company law only regulates cross-border mergers. This is now changing, as amending Directive 2019/2121 (the "Mobility Directive") substantially expands the legal framework for cross-border operations.



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The Mobility Directive has been in force since the end of 2019 and was supposed to be implemented into member states' national laws by the **end of January of this year**. However, a relatively large portion of member states, including the Czech Republic, have not yet implemented it. This has led to regulatory fragmentation and has complicated the process of cross-border transformations.

The aim of the directive is to facilitate cross-border operations by specifying the rules for their implementation. It provides the uniform regulation of the **three types of cross-border transformations of capital companies**:

- cross-border conversions (transfers of the registered office)
- cross-border divisions (demergers)
- cross-border mergers.

The most important change is the addition of the regulation of cross-border division (demerger) and cross-border conversion (transfer of the registered office). As for cross-border mergers, the entire process is being finetuned and streamlined in response to current application practice.

A single EU framework for cross-border operations

The directive lays down procedures for verifying the legality of cross-border transformations by national authorities of the originating member state in the form of cross-border operation certificates. If issued by the relevant authority, only a limited review by the national authorities of the destination member state needs to follow.

The directive also introduces new rules to protect the legitimate interests of persons who may be adversely affected by cross-border transformations. These are:

- shareholders/members of participating companies having the right to exit the company,
- creditors entitled to additional safeguards,
- employees of the participating companies having the right to information, the right to consult on the employer's transformation, and the right to participate in the bodies of the participating companies.

The directive also aims to digitise the entire process of cross-border operations. The Czech draft amendment to the

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Transformations Act implementing the directive will include, e.g., the fulfilment of the information obligation through the Collection of Deeds of the Commercial Register. The directive also implements into the transformation process the Business Registers Interconnection System (BRIS), where all relevant information should be published.

The directive is certainly a step towards setting a single framework for cross-border company transformations within the EU. However, it still leaves room for local-specific regulation. Therefore, even after the directive is implemented, there will be significant differences between the legal systems of individual member states, which will continue to complicate cross-border company transformations. Implementing these transactions will thus remain legally complex and costly.

In this context, we would like to draw your attention to the **Mobility Directive Compass**, a tool created by KPMG professionals to make the process of cross-border transformations more transparent. The Mobility Directive Compass provides information on legal (and other) aspects of cross-border transformations in individual countries, as seen by both the law of the country of origin and the law of the country of destination. This can make transformations much simpler and more efficient, especially when several jurisdictions are involved.

The directive has yet to be implemented in the Czech Republic. The respective implementing amendment is currently in the legislative process, with the expected effective date sometime next year. However, the current legislation in the Transformations Act already regulates and allows for cross-border transformations in the form envisaged by the directive (except for divisions (demergers) by spin-off). The implementing amendment thus mostly harmonises the existing legislation in the Transformations Act with the directive.

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Trusts as employee remuneration option

Creating schemes whereby employees participate in their employer's profits is a modern and innovative way of remunerating employees. Stock option plans (ESOPs) and other employee participation programmes are rather more common in the international context but have also been gradually gaining ground in the Czech Republic. As an alternative, trusts can also be used to remunerate employees.



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How a trust works

A trust is a legal entity whose main purpose is the long-term asset management for a set goal. A founder creates the trust and places assets in it (which are thus separated from the founder's personal property), determines the purpose of the trust, and adopts the trust's statutes (by-laws) setting the rules of its operation. Each trust has a trustee who takes care of the assets and manages them in accordance with the specified conditions and objectives. Beneficiaries are then entitled to certain benefits from the trust.

In the Czech Republic, trusts are primarily used in areas other than employee remuneration, e.g., in the management of assets of companies or private individuals, or as an alternative mechanism for the intergenerational transfer of assets.

Employee trusts as a way to remunerate employees

A trust can be an alternative way to set up employee remuneration. As it is a specific tool primarily used for other purposes, its use in this area requires careful analysis and planning. It is also necessary to consider the tax implications of the chosen solution. This remuneration method can be applied by joint-stock companies as well as by limited liability companies, for employees, board members, and other persons.

Corporate governance implications

The use of a trust for employee remuneration assumes setting aside shares, interests, bonds or other securities or funds, placing them in a trust, and designating employees as beneficiaries. The beneficiaries will then be entitled to the benefits from the fund, subject to (fully discretionary) conditions set out in the fund's statutes, which may or may not be linked to the company's financial results, achievements of certain performance goals, or the passing of certain periods of time.
Thanks to trusts, employees may participate in the company's financial results without being direct owners of shares. They will thus be prevented from interfering in the company's operations as its shareholders, disposing of the shares or, for instance, hindering the sale of the company to investors. Such rights will be exercised by the trustee appointed by the founder of the trust and will thus remain under the control of the company or its shareholder.

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A key prerequisite for the implementation of a trust is **setting up an appropriate legal structure** including a mechanism for appointing trustees and beneficiaries, setting an investment policy, and defining rules for the distribution of benefits from the trust. The foundation is formed by **carefully drafted statutes** setting out the basic conditions for the trust's operation, including the purpose and time for which the trust is being established, and the possibilities of its termination.

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Pillar 1: first draft of multilateral convention

The OECD has published the first draft of a multilateral convention to implement the rules for the reallocation of a portion of profits (Amount A) of large multinational groups to countries where their end customers or service users are located (the market jurisdictions).



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The obligation to allocate a portion of profits to market jurisdictions applies to multinational enterprises with global revenue of **more than €20 billion** and a **pre-tax profit margin above 10%**.

Amount A, to be allocated to market jurisdictions, shall be determined as **25% of the group's total profit** above a **10% profitability**. The allocation shall be made based on the proportion of revenue generated by customers or end-users in the jurisdiction to the group's total revenue.

The amount of the reallocation shall be adjusted if the group already taxes a portion of profits from marketing or distribution activities in the jurisdiction. The amount of this profit (Amount B) shall be determined based on uniform safe harbour rules for determining the profitability of marketing and distribution activities, so as to minimise disputes between jurisdictions.

The convention will also include a mechanism for determining the countries from which profits will be distributed, and the rules to eliminate double taxation if they have already been taxed there.
A group should be filing a single tax return through an appointed entity that would pay the tax for the entire group. The tax administration of the country where the tax is being paid would then reallocate the relevant portions of the tax to the tax administrations of the market jurisdiction countries.

As the reallocation of a portion of profits to market jurisdictions is a certain alternative to digital taxes, the convention also includes an overview of these taxes, and obligates the countries acceding to the convention not to introduce such taxes.

Once the areas of dispute (as indicated in the current wording of the convention) have been resolved, the convention will be open for signing by the members of the OECD Inclusive Framework (more than 130 countries) and will enter into effect after having been ratified by at least 30 countries together representing at least 60 percent of the ultimate parent companies falling within the scope of Amount A. More information can be found here.

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Overview of subsidy programmes for 2024

Many new subsidy opportunities will be available in 2024. For example, large companies will be able to obtain support for research and development activities, photovoltaic power plants, or production decarbonisation. Here is an overview of selected calls.



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Technology Agency of the Czech Republic

Under the auspices of the Technology Agency of the Czech Republic, calls will be announced next year for several popular subsidy programmes, such as **TRANSPORT 2030**, **TREND**, and **THETA 2**.

In the **TRANSPORT 2030** programme, projects focused on applied research in the transport sector, namely sustainable and safe transport, automation and digitisation in transport, or low-emission and environmentally friendly transport, will be able to apply for support. The call is scheduled to be announced at the end of the first quarter of 2024.

It will be possible to apply for support for the creation of research and development results and their use for one's own business purposes through the 12th call of the **TREND** programme, specifically Sub-programme 1 focusing on businesses with experience in research and development activities. This call is due to be announced at the end of the second quarter of next year.

The **THETA 2** programme focuses on applied research and innovation projects in the energy sector. The aim is to transform and modernise the energy sector. The announcement of this call is planned for the third quarter of next year.

Modernisation Fund

In the Modernisation Fund, a call under the RES+ programme is expected to be announced at the end of 2023, with applications being accepted at the beginning of 2024. This call will support the construction of photovoltaic power plants, including battery storage systems and hydrogen production using water electrolysis.

Another planned programme is the **ENERG ETS**, designed for large industrial companies in the EU ETS. This programme aims to decarbonise industrial processes, and reduce their energy consumption, i.e., improve their energy efficiency. The call is scheduled to be launched in early 2024.

Operational Programme Technology and Applications for Competitiveness

At the turn of 2023 and 2024, the API agency plans to announce calls under the **Applications and Energy Savings** programmes. The Application programme will support projects focused on industrial research and experimental development. Large enterprises will have to implement their project in effective cooperation with small or medium-sized enterprises. Under the Energy Savings programme, it will be possible to gain support, e.g., for the reduction of energy consumption of buildings, the modernisation of production and technological processes or the use of renewable energy sources.

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Get support for research and development via TREND

The Technology Agency of the Czech Republic has announced the 11th call to participate in sub-programme 2 – Newcomers of the TREND programme, aiming to support research and development (R&D) activities of businesses that have not yet carried out such activities.



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Applications for support can be submitted until 22 November 2023. Only businesses that have drawn R&D support up to a maximum of **CZK 1 million** in the last five years can apply for aid via this programme and must do so in cooperation with at least one research organisation.

The funds for allocation through this programme are **CZK 200 million**, with a maximum subsidy per project of **CZK 15 million**. The aid intensity for large enterprises ranges from **25% to 65% of eligible costs**, depending on whether the project consists of industrial research or experimental development, or whether the project is performed in effective cooperation with another entity or research organisation. Eligible costs may include personnel costs, subcontracting costs, other direct costs, and indirect costs.

The project must start between June and August 2024 and must be completed by December 2027. The project's output must be applicable in practice and may include, e.g., an industrial design, a functional sample, a prototype, or software, which will lead to streamlining production or introducing new products and services.

The lead applicant may submit a maximum of one project proposal. Eligible projects can be implemented throughout the Czech Republic including Prague.

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Marketing services from VAT perspective

In its recent judgment, the Supreme Administrative Court (SAC) dealt with the question of whether a distribution of pharmaceuticals and marketing services constitute a single supply for VAT purposes.



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Pharmaceutical company ELI LILLY provided marketing services to a foreign group company and treated them as a separate supply – the provision of services with a place of supply outside the Czech Republic. However, the tax administrator regarded the services as an ancillary supply - an integral part of the main supply provided by ELI LILLY, which is the distribution of pharmaceuticals in the Czech Republic. Therefore, according to the tax administrator, payments for these services should be included in the tax base for the sale of pharmaceuticals in the Czech Republic.

The SAC had previously dealt with an identical dispute between the same parties. In previous judgments, the SAC emphasised that it was necessary to distinguish between the recipient of the marketing service (the one who ordered the service and benefits from it) and the recipient of the marketing information (the one whom the content of the marketing service is intended to influence). According to the SAC, the tax administrator's factual conclusions did not reflect the complexity of trading on the strictly regulated pharmaceutical market.

The SAC concluded that ELI LILLY does not supply to its customers any other supplies together with the medicines. The only supply that the customers received from the company was the medicine. Therefore, in the context of medicine distribution, payment for marketing services cannot be regarded as part of the consideration, as those services were not provided to customers: they were only the recipients of the marketing information.

The SAC was of the opinion that in the case at hand, the distribution of pharmaceuticals and the provision of marketing services **represent separate supplies**, as they were provided to different entities and from the perspective of the average customer are not a single indivisible supply. Thus, only the first supply can be included in the tax base.

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Case law

SAC: Is it always possible to depreciate a movable item separately?

In judgment 8 Afs 229/2021-52, the Supreme Administrative Court (SAC) concluded that a technology such as a stationary power plant is a technical improvement to a building with which it forms a single functional unit and not a separate movable item. Therefore, it cannot be depreciated separately. In this context, the judgment deals with the application of the GFD Instruction defining equipment and items that can be regarded as separate movable items and depreciated in a separate depreciation group.



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A taxpayer (a heating company) acquired a stationary power plant as a backup power source, which they placed in an unused building of a former boiler station. To put it into operation, they made the necessary modifications to the premises, which were subject to a building permit and an occupancy approval, and then started to depreciate the power plant as a separate tangible asset.

The taxpayer based this approach on then-valid **GFD Instruction D-6**, according to which technological equipment to produce electricity shall be regarded as an independent movable item even though it is firmly connected to a building. The tax administrator challenged this approach, arguing that it was a technological (technical) improvement to the building, which had to be depreciated in the fourth depreciation group. Expenses in the form of the claimed tax depreciation of the power plant were thus treated by the tax administrator as tax non-deductible.

GFD instruction on the application of the Income Tax Act must be applied on a case-by-case basis
In its decision, the SAC upheld the conclusions of the tax administrator and the regional court, stating that each case must always be assessed individually. In the given case, the functional connection of the buildings and the stationary power plant and the purpose of the structural and technical design of the buildings were decisive. The taxpayer acquired the power plant as a whole and carried out significant structural modifications to their real property for the sole purpose of placing the power plant there and connecting it to the building.

The power plant technology and building are an interconnected system consisting of a technological and structural part that form a single, functionally inseparable unit. By separating the power plant from the building, the function and purpose of the real property would cease to exist. The taxpayer's arguments referring to technologies of nuclear power plants or cremation ovens, which are also part of the buildings but are depreciated as separate items, did not stand with the court. According to the SAC, although GFD Instruction D-6 states that technological equipment for power generation should be regarded as a separate movable item, it is always necessary to consider the specific case at hand when applying the regulations.

When acquiring major equipment (even if defined by the GFD Instruction as a separate movable item), we

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recommend **considering whether their placement in a building may have led to such structural, technical and functional modifications** to the building that they should be regarded as a technical improvement to the building.

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Case law

CJEU: tax administrator may also refund wrongly charged VAT

The Court of Justice of the European Union (CJEU) ruled in Case C-453/22 that a taxpayer has the right to demand from a tax administrator a refund of VAT that a supplier has wrongly charged to the taxpayer and will not return due to the statute of limitations.



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A taxpayer – a German farmer – purchased timber from its subcontractors and then supplied it to its customers. Invoices received by the farmer indicated the basic tax rate he claimed on input. He then applied output VAT at a reduced rate.

A German court ruled that a reduced rate should also have been applied to the received invoices and assessed additional VAT plus interest, as the farmer had wrongly claimed a higher tax on input. However, the subcontractors refused to correct the invoices and refund the wrongly charged VAT on the grounds that the limitation period had already expired. The taxpayer then turned to the tax administrator, demanding the additionally assessed VAT and interest to be waived.

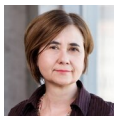
According to the CJEU, a claim to refund wrongly paid VAT can be subsumed under a right to recover amounts paid but not due (undue enrichment). A penalty of a full denial of the right to a refund of VAT wrongly charged and paid but not due appears disproportionate where no tax evasion or harm to the budget of the member state has been ascertained. As it would be very difficult for the taxpayer to obtain the wrongly charged VAT from subcontractors, the taxpayer indeed has the right to demand the refund directly from the tax administrator.

The CJEU also commented on the risk of a double refund of VAT, which, in its opinion, was non-existent. If the subcontractors subsequently wanted to correct the tax documents, they would have no other intention than to obtain a tax advantage; in such a case, the subsequent refund of the VAT to the subcontractors would be precluded.

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News in Brief, November 2023

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



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DOMESTIC NEWS

- The Chamber of deputies has approved a bill on top-up taxes (global minimum tax). The bill will be further discussed by the Senate. The proposed effective date is 31 December 2023.
- In the second reading, the chamber of deputies discussed a bill amending laws connected with the development of the financial market. The bill contains an amendment to the Income Tax Act regulating the tax treatment of long-term savings products. Within this amendment, the coalition also submitted two amending proposals concerning the taxation of employee shares and the simplification of proving research and development allowances. Most of the provisions are proposed to take effect on 1 January 2024.
- The chamber of deputies has approved an amendment to the Act on Investment Incentives. The amendment's main objective is to shift the process of approving individual incentives from the government to the Ministry of Industry and Trade. The amendment is now to be discussed by the Senate.
- The Ministry of Finance has published a draft decree amending certain tax submissions using prescribed forms for 2024.
- The EU list of tax non-cooperative jurisdictions approved by the EU Council has been published in Financial Bulletin 12/2023.
- Deputies have approved an increase in the parental allowance through an amendment to the Act on State Social Support. The allowance for parents of children born after 1 January 2024 will increase by CZK 50 thousand, i.e., from the original CZK 300 thousand to CZK 350 thousand. At the same time, the time of drawing the allowance will be reduced from four to three years. The amendment also simplifies communication with Czech labour offices. More information can be found HERE.
- The Ministry of Labour and Social Affairs has sent to the inter-departmental comment procedure an amendment to the Labour Code introducing a minimum wage indexation mechanism. More information can be found HERE.
- The Ministry of Justice has organised a conference on cross-border delivery (service of documents) and taking of evidence, focusing on the following topics: the digitisation of cross-border judicial cooperation in the EU, recent CJEU case law, the role of the European Judicial Network in civil and commercial matters, and current challenges in the delivery service and taking of evidence in selected non-EU member states.

FOREIGN NEWS

- The OECD has published a Minimum Tax Implementation Handbook under Pillar 2, changing neither the model rules, the commentary, the agreed administrative guidance, nor their interpretation. The handbook is intended for tax administrations and other stakeholders.
- The Council of the EU (ECOFIN) has decided to add Antigua and Barbuda, Belize, and Seychelles to the EU list of tax non-cooperative jurisdictions and to exclude three jurisdictions from the list, namely the British Virgin Islands, Costa Rica, and the Marshall Islands.
- The Council of the EU (ECOFIN) has approved a directive introducing the exchange of information on crypto-assets and certain other areas (DAC8). The final wording of the directive will be published in the Official Journal of the EU and will enter into force within 20 days after publication. The member states

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should implement the new rules by 31 December 2025 so that they can take effect from 1 January 2026.
- Detailed information from the EU and international institutions from KPMG EU Tax Centre's experts with the possibility to subscribe to a regular newsletter can be found here.
- The European Commission has approved a €2.5 billion (CZK 60 billion) Czech aid scheme to help manufacturing companies decarbonise their production processes and improve energy efficiency. The aim is to support the transition to a climate-neutral economy in line with the Green Deal industrial plan. The support will be financed by the EU's Modernisation Fund and should take the form of direct grants, in particular for the benefit of companies covered by the EU Emissions Trading Scheme.

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