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In brief

News in brief, January 2022

Editorial

The new year has brought with it the new government's policy statement. Although the basic trends in the tax area could already be discerned during the post-election debate, the statement is still an inspiring read, in some aspects at least.

Unsurprisingly, following the historically highest deficits of the state's economy, the key task will be to seek stability in public finances. However, this might prove difficult without increasing the tax burden. Since the government announced that the fundamental changes shall take place by 2024, 2022 should nonetheless be a rather quiet year.

One of the key points on the tax agenda is the promise to reduce social security contributions – by two percentage points for employers, and just as importantly, to reduce them for part-time workers. Another piece of good news for many taxpayers is the intention to reduce the number of depreciation categories and to accelerate depreciation of some real property (green or rental housing, to 20 years). Housing should also be supported by reducing the VAT rate for the construction or reconstruction of houses and apartments. With the effective date of the new Accounting Act (2024 or later) we expect the possibility to keep accounts and tax records in euros or other foreign currencies. At the same time, electronic reporting of sales in its present (currently suspended) form has apparently come to an end.

Between the lines, we can also read where the government will look for new sources of funding. These areas may be excise duties ("excise duties shall take into account the harmfulness…") and, for local budgets, real estate tax ("we shall extend municipalities' options in determining the basic real estate tax rate coefficient"). Another major issue is the outflow of profits through dividends. However, with regard to EU legislation, I do not see much space for taxation here, and future changes may instead take the path of supporting reinvestment.

On the tax revenue side, systemic measures and probably also tax inspections will focus on transfer pricing and other forms of (albeit formally legal) tax optimisation. The introduction of the OECD's two pillars of global taxation could also help in this respect. However, whether this will be enough to stop the growth of the state budget deficit or at least limit its speed will only be seen in the coming years.

In any case, here's to more good news for the new year.

P.S.: And should you encounter a tax inspection (of transfer pricing or other areas), I recommend the series of articles on the distribution of the burden of proof, starting with this issue's "Tax tips and tricks" section.

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Antivirus' Regime B suspended again

The long-awaited Regime B of the Antivirus programme, reactivated in November 2021, has again been suspended as of 1 January 2022.

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Regime B of the Antivirus programme, intended to provide relief to companies affected by the COVID-19 pandemic by having a significant number of employees on carer's leave or in quarantine, having limited inputs necessary for their operations, or experiencing limited demand for their services or products due to the pandemic, has been deactivated again after two months of operation. According to the Ministry of Labour and Social Affairs, the programme's suspension relates to the government's intention to analyse and assess the programme's setup and effectiveness. Employers will continue to receive relevant contributions for November and December 2021 if they meet all the conditions of the programme.

Regime A of the Antivirus programme, applying to cases where staff are ordered to be quarantined or isolated due to COVID-19, remains in force until the end of February 2022.

Within the Antivirus programme period until 30 June 2022, the government may, depending on the situation, re-establish the expenditure eligibility period under Regime B, extend the programme, or approve a new one.

Taxes

What's new in tax for employees in 2022?

With the new year come changes in the taxation of employees and social security and health insurance contributions. The basic tax relief per taxpayer has increased and the limit from which wages are taxed at 23% under progressive income taxation has been raised. Employed parents will be pleased about an increase in the tax credit for placing a child into pre-school facilities and the possibility to claim a higher tax credit for every dependent child and a tax bonus in their monthly wages already.

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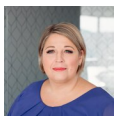

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Here is an overview of the most important news for 2022:

The maximum annual assessment base for social security contributions has increased to CZK 1,867,728. This change will also affect personal income tax: employees' income exceeding this amount will be taxed at a 23% rate (for monthly wages, the threshold for the application of the 23% rate is CZK 155,644). Up to this limit, the 15% tax rate will continue to apply.

The basic tax relief per taxpayer has increased to CZK 30,840 (from CZK 27,840 in 2021). The monthly tax relief applied in the calculation of a tax prepayment will be CZK 2,570.

Higher monthly tax credits can be applied in monthly payroll processing from January 2022. Although higher amounts have been approved also for 2021, these will only be claimed in the annual settlement of income tax on wages or the tax return for 2021. The tax credit for the second child amounts to CZK 22,320 (i.e., CZK 1,860 per month) and CZK 27,840 (i.e., CZK 2,320 per month) for the third and any subsequent child. The tax credit for the first child for 2021 and 2022 remains at CZK 15,204 (i.e., CZK 1,267 per month).

From January 2022, **the minimum wage increases** by CZK 1,000 to CZK 16,200, which also affects the minimum monthly assessment base for health insurance. As a result, the tax credit for placing a child in a pre-school facility also increases to CZK 16,200 per year.

Another change occurred in **the payment of the monthly tax bonus**. The annual tax bonus limit was already abolished in the tax package in effect from 1 January 2021, but the limit for the calculation of monthly wages was maintained until the end of 2021. The tax bonus will therefore be payable for the first time in the monthly salary for January 2022. The tax bonus entitlement for 2021 will be settled in the annual settlement of income tax on employment (or in a tax return). To be able to claim the tax bonus, the annual income from employment or self-employment must be at least six times the minimum wage (i.e., CZK 97,200 for 2022). To qualify for the payment of a tax bonus on a monthly salary basis, the monthly income must be at least half of the minimum wage, i.e., CZK

8,100.

It will now also be possible to claim **a tax credit** for discontinued enforcement proceedings in the 2022 tax return or annual tax settlement. For more detailed information, see our article from September 2021.

Taxes

VAT from January – what's new and what remains unchanged?

This new year brought only a few changes: the end of the waiver of VAT on supplies of electricity and gas; major differences in VAT for tour operators; and simplified Intrastat reporting. In contrast, the amount of turnover for statutory VAT registration shall remain unchanged in 2022.

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Following the energy crisis, the previous finance minister decided to waive VAT on supplies of electricity and gas effected in November and December 2021, or on the advance payments received during this period. The current government decided not to extend the waiver. Thus, starting from the first of January, these supplies are again subject to tax at 21%. We will continue to monitor whether the new government will submit a proposal to reclassify these items to a reduced rate during the year to combat the ongoing energy crisis. So far, however, its current policy statement makes no mention of this.

The finance ministry also did not extend the waiver for filter half masks and respirators of protection class FFP2 and higher, which therefore ended on 31 December 2021. A VAT waiver continues to apply to diagnostic medical devices for COVID-19 testing and to vaccines, so far until 31 December 2022.

Changes are also awaiting tour operators. For instance: the abolition of the possibility to calculate VAT on travel services provided from the aggregate data for the taxable period, or the introduction of the duty to pay VAT on advances received for travel services. We reported on these changes in more detail here.

From January 2022, a simplified Intrastat reporting is being introduced. To use it, the precondition is that the entity has not exceeded the limit of CZK 20 million in twelve consecutive months in terms of receipts or dispatches of goods from or to another EU member state. The advantage is that under the simplified reporting, Intrastat data may only be reported once a year. However, selected commodities (listed in the Czech Statistical Office's notice) cannot be reported under the simplified regime.

What remains unchanged for the calendar year 2022:

- VAT rates: except for some healthcare items reclassified to a reduced rate.
- The amount of turnover for VAT registration remains at CZK 1,000,000; an increase to CZK 2,000,000 will only occur in subsequent years.
- Electronic reporting of sales: The duty to electronically report sales remains suspended until 31 December 2022. A decision on its full abolition should be taken in the course of 2022.

Coordination Committee: Tax base correction upon payment of bonuses to insurance companies

Within the Coordination Committee (No. 586/15 September 2021), the Chamber of Tax Advisors and the General Financial Directorate (GFD) discussed the issue of correcting the tax base for payments (bonuses) paid in arrears to health insurance companies by pharmaceutical companies. The GFD confirmed that the reduction of the tax base can be performed by the pharmaceutical company that pays the bonus to the health insurance company regardless of whether it holds a decision on the registration of medicinal products and on their placement on the Czech market.

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Pharmaceutical companies (drug manufacturers) supply medicines to distributors who dispense them to patients either directly or through other healthcare providers. If the patient is insured with a health insurance company, it is the insurance company that pays for the medicine. The latter has a contract to limit the risks/costs associated with the reimbursement of the medicines with the drug manufacturer (pharmaceutical company), which holds a decision on the registration of medicinal products in the Czech Republic in compliance with the Medicines Act. Under this contract, the drug manufacturer pays a bonus in arrears to the health insurance company once the agreed limit of the insurance company's annual cost for the medicine is reached.

The holder of the decision on the registration of medicinal products may place medicines on the Czech market directly or through a pharmaceutical importer (i.e., the registration holder and the importer are two different persons). The importer procures the medicines and supplies them to distributors or healthcare providers on the Czech market who then dispense them to patients. In most cases, the importer is a VAT payer in the Czech Republic.

Where a health insurance company enters into a contract to limit the risks/costs associated with the reimbursement of medicinal products directly with the importer, it is the importer's tax base that will be reduced upon the payment of the bonus to the health insurance company, as the importer is economically burdened by the payment of the bonus.

However, if a health insurance company has concluded a contract to limit the risks/costs associated with the reimbursement of medicinal products with the registration holder, but the bonus is in fact paid by the importer, doubts have arisen in practice as to who should reduce the tax base on account of the paid bonus paid. The GFD confirmed the conclusions of the Coordination Committee that if the importer paying the bonus is in a contractual relationship with the registration holder, the importer may even in this case correct the tax base when the bonus is paid to the health insurance company.

New GFD information on claiming tax losses

At the end of 2021, the General Financial Directorate issued its information on the application of a special provision on claiming tax losses as an item deductible from the tax base under Section 38zh of the Income Tax Act.

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The information relates to a special provision of the Income Tax Act governing situations where taxpayers file additional income tax returns claiming a tax loss as an item deductible from the tax base while the loss has not yet been finally/conclusively determined. The information reflects the basic parameters of that provision; its purpose is not to cover the impact of the provision on all conceivable situations, but to increase taxpayer awareness and legal certainty.

Section 38zh the Income Tax Act involves situations where an additional tax return through which the taxpayer plans to claim the tax loss as deductible from the tax base is filed at the same time as a regular or an additional tax return for the period in which the taxpayer reports such a tax loss. The provision introduces a fiction whereby the additional tax return is deemed to have been filed on the date on which the tax loss was finally/conclusively determined. The taxpayer therefore claims the tax loss prematurely and assumes that the tax loss will be finally determined in the amount claimed.

Since the taxpayer files the additional tax return before the tax loss is determined, the above provision expands the number of inadmissible tax assertions stipulated in the Tax Procedure Code. For example, an additional tax return filed from the date of filing the first additional tax return (at the same time as the regular tax return) until the day preceding the date on which the tax loss is legally determined will be considered inadmissible. Information from such a return may be used to assess additional tax. As this is an invalidly filed additional tax return, a penalty will be assessed in addition to default interest. The new provision has been incorporated into the Income Tax Act with effect from 1 July 2020 and can be applied to losses for taxable periods ending on or after 30 June 2020. However, taxpayers need not use the fiction provided for by Section 38zh and can claim the loss as a deductible item after it has been finally/conclusively determined.

We recommend paying increased attention to claiming tax losses retrospectively and filing corrective and additional income tax returns.

Tips and tricks

Who bears the burden of proof in tax proceedings and why is it important to know?

The questions of who bears the burden of proof in tax proceedings and when has plagued many a taxpayer and even tax administrators. The burden of proof is distributed between them and during tax proceedings usually shifts from one to the other. The proper understanding of how the burden of proof works is therefore central to the choice of an appropriate strategy and can often be the key to success.

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The burden of proof generally lies with taxpayers as they have the primary obligation to prove their assertions, most often in their tax returns and other submissions to the tax authorities. The provision of evidence first involves the provision of relevant documentation, i.e., the taxpayer's accounting books are the primary means of proof.

If at this stage the taxpayer fails to bear their burden of proof, i.e., does not prove the facts stated in their tax assertions, the burden of proof cannot be shifted to the tax administrator. It is therefore important that taxpayers keep their accounting documents in good order.

If the tax administrator has doubts regarding the credibility, relevance, accuracy or completeness of the mandatory files and accounting records of the taxpayer, they must provide the proof of such doubts, i.e., identify the specific facts based on which they believe that the documents submitted by the taxpayer are insufficient to prove the taxpayer's assertions.

If the tax administrator manages to bear their burden of proof, the burden shifts back to the taxpayer who must then refute the tax administrator's doubts. Logically, at this stage the taxpayer will no longer prove their assertions with accounting documents, as it is these documents that the tax authority has doubts about. Other evidence may include, for example, various other records, deeds, witness statements or photographs.

The burden of proof can thus be thought of as a ping-pong ball that the tax administrator and the taxpayer exchange until the game is over. To not lose the game, the taxpayer should remember that they must prove only what they assert while also carefully considering what information and documents they provide to the tax authority.

When less is more in this respect or, contrariwise, when you should be prepared for consistent demonstration of proof will be discussed in Tax and Legal Update's next issues. In the future, we will also look at the operation of the burden of proof in some specific situations, for example, when proving a VAT deduction, tax deductible costs or transfer pricing.

Fifth call under TREND

The Technology Agency of the Czech Republic (TA CR) informed about the preparation of the 5th call to participate in the TREND programme, sub-programme 1 - Technology Leaders. The original announcement scheduled for 22 December 2021 had been postponed, and the TA CR is currently negotiating changes in the terms and conditions with the Ministry of Industry and Trade.

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The call will again be aimed at supporting research, experimental development, and innovation. The Technology Leaders sub-programme is specifically intended for projects focusing on the creation of research and development results and their use in the applicants' own business activities. Projects should involve the manufacturing, digital, and cyber technology areas.

Parameters:

- Maximum aid amount per project: CZK 40 million.
- Maximum aid intensity per project: up to 70% of eligible costs.
- Call also open to applicants from the capital city of Prague as well as large enterprises, either alone or in collaboration with other participants.
- Planned funds for allocation: CZK 2 billion.

A new mandatory appendix to the project proposal will be a document called the Project's Compliance with the "No Significant Harm" Principle. In the document, the participants will describe how they will avoid violating six environmental objectives, both in terms of the activity itself and with regard to the impacts of the products and services provided, taking into account their entire life cycle.

According to preliminary parameters, the call was to be launched with a competition period from 23 December 2021 to 16 February 2022. The announcement of the results was to take place no later than 31 August 2022, with the deadline for the completion of the projects being December 2025. It is currently unclear whether these deadlines will be maintained.

Stricter conditions for foreign workers relocations

During the past year, the coordination body for state border control and migration management repeatedly changed the conditions for using governmental economic migration programmes. The last changes entered into effect in December last year.

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Currently, the relocation of foreign workers is one of the few options for employers trying to meet their need for skilled labour. However, the process is time-consuming and entails a considerable administrative burden for both potential employees and their employers. Government programmes for economic migration can greatly simplify and in some cases shorten this process. However, to qualify for any of the government programmes, certain repeatedly changing conditions must be met. We previously informed you about past changes in the *Update.*

Currently there are three government-approved economic migration programmes that may be used to relocate foreign employees. The first one is the Key and Scientific Personnel (KVP) programme, intended for highly qualified staff and scientists. Under the new rules, workers may be included in the KVP programme only if the posting and the receiving company are related through capital, or if the receiving company in the Czech Republic is a branch of the foreign company and the employee has been employed abroad for at least six months. Entities that are not related may use the Highly Qualified Employee (VKZ) programme instead.

Another change that affects both the KVP and the VKZ programme is a restriction concerning the family members of foreign workers. Previously, it was possible to include the closest family members, i.e. spouse and dependent children, even at a later date. Under the new rules, the inclusion in the programme and the filing of applications for the whole family must take place at the same time.

The last major novelty again concerning both the KVP and the VKZ programme is a wider range of barriers that that can prevent an employer from being included in either programme. These barriers include an employer's penalisation for the concealed mediation of employment. Concealed mediation of employment, carrying a fine of CZK 50,000 to CZK 10 million, is the renting of labour while not complying with the conditions for mediation of employment under the Employment Act. Since last August, this fine can be imposed on entities that carry out concealed employment mediation as well as on those allowing the performance of disguised employment mediation. Until now, this barrier only applied to the Qualified Employee (KZ) programme. Please note that a provision has been explicitly added to all programmes stating that that the barriers shall also apply when assessing an employer's application for the further inclusion of additional foreign worker or workers in the programme.

The conditions for the inclusion of foreigners in the programmes and their successful relocation are becoming increasingly stringent. We thus strongly recommend keeping a close eye on any changes in the programmes in 2022. What's more, please don't hesitate to contact us for assistance.

Will amendment to the Act on the Protection of Competition bring significant changes?

Even though the Czech Republic has already missed the deadline for the transposition of the relevant EU directive, it is yet again attempting to amend the Act on the Protection of Competition. The amendment should allow to keep the identity of whistle-blowers confidential and is also intended to strengthen the powers of the Czech anti-trust office and tighten settlement conditions.

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The Office for the Protection of Competition (ÚOHS) prepared a draft amendment to the Act on the Protection of Competition, submitted for comments by the end of last year. The amendment specifically implements the relevant EU directive, giving more powers to competition protection authorities. The deadline for the directive's implementation expired on 4 February 2021 and infringement proceedings are pending against the Czech Republic. It is therefore high time that the law was brought into line with the EU directive, otherwise the Czech Republic may face sanctions by the European Commission.

One of the important changes will be the confidentiality of whistle-blowers reporting anti-competitive behaviour. Whistle-blowers will be able to request their identity's confidentiality to guard against threats or damage to their legitimate interests. Their identity will then remain confidential before, during, and after the proceedings, during the taking of evidence and during judicial review, and will not appear in documents issued by the Office for the Protection of Competition.

The amendment also significantly strengthens the powers of the Office for the Protection of Competition, proposing that the office be able to use wiretaps acquired by the police in criminal proceedings if they suspect the conclusion of a prohibited (target) cartel agreement. The amendment also explicitly stipulates that the Office for the Protection of Competition may request police assistance when conducting a local investigation.

Equally important will be the intended alteration of settlement procedures. Under the current concept, if a competitor admits to anti-competitive conduct, their fine is reduced by 20% and they are not banned from performing public contracts. For many competitors, this has been the main motivation for using the settlement procedure. Under the proposed amendment, however, the conditions for using the settlement procedure will be much stricter: the office may reduce the competitor's fine by less than 20% (but still by at least 10%) and, above all, may impose a ban on the performance of public contracts for up to one year. The aim of the proposed new rules is to make the leniency programme (allowing to detect other members of prohibited cartel agreements) more advantageous, to the detriment of the settlement procedure.

Big changes ahead for databoxes. Will you get one, too?

The ever-present emphasis on digitisation will also have a significant impact on communication via databoxes. The first changes brought about by an amendment to the law regulating databoxes will already be effective from January 2022.

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The Act on Electronic Acts and Authorised Document Conversion, which includes the regulation of databoxes, has undergone significant changes. Five amendments will gradually come into effect between 1 January 2022 and 1 July 2023. The following important changes deserve attention, as they may affect people who do not yet have a databox.

The first change concerns private data messages, i.e., messages from individuals (natural persons) and legal persons that are not public entities. From 1 January 2022, all persons with a databox are automatically allowed to deliver private data messages. Individuals who do not conduct business may turn off receiving these private messages whereas legal entities and individuals conducting business shall not have this option.

To unify the regime for the delivery of data messages from both private and public entities, the fiction of delivery until now applying only to data messages from public authorities will be extended to private data messages. This means that if the owner does not log in to the data box within 10 days from the date of delivery of the data message, the message will be considered to have been delivered on the tenth day. Owners of data boxes should thus be alert and make sure that they collect messages from their databoxes.

The most crucial change awaits us from 1 January 2023, when the range of entities that must have a databox will be extended. A ‘datovka’ will be automatically established for all legal entities and entrepreneurs. Apart from companies registered in the Commercial Register, legal entities registered in the registers of foundations, associations and institutes, associations of unit owners, and public benefit corporations will also receive a data box.

In addition, a data box shall be set up for any individual (natural person) who uses an electronic identification tool issued under a qualified electronic communication system. What does this mean in practice? For example, if you use a citizen's identity, bank identity or electronic ID card, a databox will be automatically created for you. However, you do not have to worry that it will happen without your knowledge or that you will have to use the databox from that moment on. Its establishment must be preceded by notifying you, and as its owner you may request that it be disabled (deactivated). However, if you do not, you will be obliged to communicate with public authorities exclusively through the databox.

EU wants to introduce a global minimum effective tax as early as 2023

In December last year, the OECD published draft rules for a minimum global effective corporate income tax of 15%. The European Commission subsequently issued a draft directive containing rules for the implementation of this tax by EU member states. It is proposed to take effect as early as 1 January 2023, by which time it should have been approved by the EU Council and the European Parliament and implemented in national legislation.

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The minimum effective tax will apply to companies and permanent establishments of corporate groups whose consolidated revenue exceeds EUR 750 million in at least two of the last four consecutive years.

Two rules to fall under the minimum effective tax regime:

- Income Inclusion Rule – IIR
- Under Taxed Payments Rule – UTPR.

The Income Inclusion Rule is a basic rule that obliges holding or (sub)holding companies established in the EU to additionally tax the profits of the companies in a (sub)group, whether located inside or outside the EU, unless their effective tax rate reaches 15%. The effective tax rate will be calculated at the level of each state on a consolidated basis for all companies or permanent establishments having their registered office or place of business in that state. Profits from jurisdictions in which the effective tax rate is below 15% must then be topped up to 15% by the holding company. Both the OECD rules and the draft directive allow member states to adjust their legislation so that the top-up tax is collected by the state in which the group companies are located, regardless of the place of residence of the (sub)holding company (EU or non-EU).

The Under Taxed Payments Rule is a subsidiary rule that automatically allocates the top-up tax among the individual foreign (sub)group companies if the (sub)holding company state does not apply the basic Income Inclusion Rule.

Determination of profit to calculate an effective tax

The starting point for determining the profit from which effective tax is calculated will be the accounting profit or loss in the financial statements prepared for the purpose of preparing the consolidated financial statements before adjustments for intra-group transactions. The profit (loss) so determined will be further adjusted for selected items such as tax expenses, revaluation expenses or revenues, and dividend income. In line with its model rules, the OECD guidelines exclude income from international shipping.

Determination of tax to calculate an effective tax

The calculation of effective tax includes tax liabilities that have been recorded in the accounts and relate to profits (losses) from the relevant financial statements prepared by a corporate group, adjusted for selected items relating to, e.g., deferred tax.

Calculation of an effective tax rate per jurisdiction

The effective tax rate is calculated as the sum of the adjusted tax liabilities of all group companies within a jurisdiction divided by the sum of the adjusted profits and losses of all group companies in that jurisdiction. If the effective tax rate determined in this manner is lower than 15%, a top-up tax liability shall be calculated.

Calculation of a top-up tax liability

The top-up tax liability is determined as the product of the difference between 15% and the calculated effective tax rate and the adjusted profit within the given jurisdiction. In calculating the top-up tax, it is possible to reduce the adjusted profit by 10% of payroll expenses and 8% of the book value of tangible assets within the jurisdiction. Where the legislation of a particular state provides that the top-up tax liability must be borne by the companies in that jurisdiction, the tax liability shall be apportioned among the individual companies.

Some European countries (such as Spain) have already announced that the minimum effective tax will be introduced in respect of companies in their jurisdiction or have expressed their consent with such concept. Failure to adopt such legislation would essentially mean that the top-up tax relating to activities in that jurisdiction would be collected by the holding company's state.

The proposed rules do not address how to treat, e.g., tax losses from previous years, research and development allowances or tax credits under investment incentives granted based on national legislations, as all these may significantly reduce the effective tax rate under domestic legislation and lead to the occurrence of a top-up tax.

EU to strengthen protection for Uber and other internet platform workers

Over 28 million people in the EU work for internet platforms such as Uber, Wolt and Dáme jídlo. It is estimated that by 2025 this number could increase to 43 million. Internet platform workers are mostly hired as self-employed persons, although they in fact are employees. In response to the growing importance of new forms of employment, the European Commission has put forward a proposal for a directive to ensure the greater protection for internet platform workers.

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The draft directive aiming to improve working conditions of those working through platforms includes guidance on determining whether a worker is actually an employee. At the same time, it provides for the rebuttable presumption that if a worker performs activities through an internet platform and the platform can control the worker's performance, the worker is considered an employee. In such a case, the worker is entitled to the same level of protection as 'ordinary' employees, whether financial (e.g., entitlement to minimum wage, unemployment benefits or wage compensation for temporary incapacity to work) or non-financial (working time arrangements, OSH, etc.). Online platforms that claim that a worker is not their employee will then have to prove that no (even de facto) employment relationship exists between them. The burden of proof will therefore lie solely with them.

The directive also responds to the fact that in practice, internet platforms are replacing managerial decisions with computer algorithms (so-called algorithmic management). To enhance worker protection, the directive makes regular human supervision of these automated systems and their decision-making mandatory and gives workers (both employees and self-employed) the possibility to challenge these decisions.

Since internet platforms often operate in more than one EU member state, it is hard to determine when, by whom and for whom work is performed. Hence, the directive orders them to inform the national authorities about the performance of their activities and about the persons who work for them.

The new rules should thus increase the legal certainty and protection for those carrying out such innovative forms of work, and in many respects also make it more difficult for online platforms to circumvent legislation on, e.g., labour-law, tax, social and food safety issues.

Case law

CJEU deals with actual supplier and related right to deduct VAT

The Court of Justice of the European Union has ruled on a question referred by the Czech Supreme Administrative Court whether the recipient of a taxable supply could be entitled to deduct VAT even if they were unable to properly prove the identity of the supplier named on the invoice.

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Kemwater ProChemie, a Czech company, received advertising services from VIASAT SERVICE in 2010 and 2011. Kemwater claimed a VAT deduction on these services in the relevant VAT returns. Following a tax inspection, the tax authority denied the claimed deduction of VAT on the advertising services, arguing that Kemwater had failed to properly prove the identity of the supplier. The tax administrator also expressed doubts as to whether the company had actually received the supplies in question from the entity named on the invoice.

The dispute went all the way to the Supreme Administrative Court, which once again pointed out that it is the customer who must prove that the statutory conditions for claiming a VAT deduction are met if the supplier of the supply cannot be identified. Subsequently, the Supreme Administrative Court asked the CJEU for a ruling.

In its reasoning, the CJEU followed the recent Ferimet case, commented on in the previous issue of Tax and Legal Update. The CJEU again confirmed that to qualify for a VAT deduction, the customer must be able to prove the identity of the supplier and prove that the supplier acted in the capacity of a taxable person if the tax authority does not have sufficient evidence.

Considering the current interpretation of the CJEU, we note that the customer should always bear in mind that they may be called upon to prove who actually delivered or provided the supply. In case of ambiguity, the right to deduct VAT may be lost.

Case law

Extended panel of the Supreme Administrative Court to rule on deadline for filing additional tax return for lower tax liability

In its recent judgment, the Supreme Administrative Court again dealt with the possibility of filing additional tax returns in situations where subjective deadlines had elapsed. What is the consequence of non-compliance with subjective deadlines, and is it at all relevant that the tax is being reduced by the additional tax return? These are the questions that now an extended panel will have to decide on.

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Under the Tax Procedure Code, the deadline for filing an additional tax return ends on the last day of the month following the month in which the discrepancy was ascertained. This is a subjective deadline. At the same time, an additional tax return can only be filed if the objective deadline, i.e. the deadline for assessing the tax, has not yet elapsed.

The Supreme Administrative Court previously commented on the consequences of non-compliance with the deadline for filing an additional tax return in relation to an additional reduction of the tax liability. The case law consistently implies that in such a situation, the subjective deadline is preclusive, i.e., that once the deadline elapses, the taxpayer's right to file an additional tax return for a lower tax expires; therefore, they lose their right to claim a tax overpayment refund.

However, the second panel of the Supreme Administrative Court came to a different conclusion when dealing with a case of late filing of an additional tax return for a lower tax (Judgement No. 2 Afs 363/2019). According to this panel, only the general objective deadline for determining the tax applies to such filings (normally three years from the end of the deadline for filing a regular tax return). Once it expires, it is no longer possible to change the tax.

The second panel justified its conclusion primarily by arguing that the rules governing taxpayers' obligations should be also applied mutatis mutandis to their rights. If the tax liability is being increased, the obligation to file an additional tax return does not end at the end of the subjective deadline: the obligation continues, and filings after the deadline are subject to penalties. If the tax liability is being reduced, no sanctions can be imposed, as it is taxpayer's right to file an additional tax return and not their legal obligation. The second panel of the SAC also emphasised that the Tax Procedure Code does not contain any provisions stating that the right would cease to exist

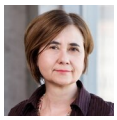
upon the elapse of the subjective deadline, neither can anything to this effect be inferred from other provisions. For this reason, the judges considered the interpretation that the subjective deadline concerning an additional tax return for a lower tax was preclusive to be disproportionate – in particular on the grounds that if an additional tax return is being filed for a higher tax, the taxpayer's obligation does not end upon the expiry of that deadline.

Further arguments were put forward by the second panel as it dealt with what should be the legal consequences of non-compliance with the subjective deadline when reducing the tax liability. In view of the current wording of the Tax Procedure Code, the only possible consequence could actually be the extinction of the right to file an additional tax return. However, that conclusion cannot stand, as the logical interpretation beyond the simple wording of the law cannot curtail a taxpayer's rights ensuing from the simple interpretation. The panel also stressed that the current interpretation goes against the main objective of tax administration – the correct determination and assessment of tax.

The second panel concluded that the failure to observe a subjective deadline when tax is being reduced by an additional tax return has no legal consequence. Since this conclusion departs from previous case law, the dispute will be decided by an extended panel of judges of the Supreme Administrative Court.

News in brief, January 2022

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



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DOMESTIC NEWS IN BRIEF

- In its policy statement, the government has presented the following tax-related plans:
  - Advocate within the European Union for the implementation of a global agreement on two-pillar taxation at the OECD level, ensuring that multinational companies pay taxes where they actually do business and generate profits.
  - Cancel non-systemic tax exemptions that are not social in their nature.
  - To the extent possible in public budgets, aim to reduce social insurance on the employers' side by two percentage points.
  - Abolish the obligation to electronically report sales and parametrically modify the VAT ledger statement to reduce disproportionately high penalties.
  - Introduce a single collection point currently running on a pilot basis for about 70,000 entrepreneurs applying the lump-sum tax regime.
  - Accelerate the digitalisation of the state administration by linking incompatible portals of individual offices.
  - Introduce an annual adjustment to the basic tax relief per taxpayer and a tax holiday with a cap on the income for families drawing parental allowance or having three or more children.
  - Extend municipalities’ options when setting the real estate tax rate coefficient.
  - Create a uniform public registry of state budget subsidies and set rules for transparent documentation of the beneficial owners of companies drawing on state subsidies.
- GFD’s Instruction No. D-54 – Determination of fixed rates for the 2021 taxable period under Section 38 of Act No. 586/1992 Coll., on Income Tax, as amended until 31 December 2021 was published in the January issue of the Financial Bulletin.
- The Confederation of Industry and Transport of the Czech Republic has published an updated version of the popular "Tax Issues of Electromobility" handbook.
- The Czech Social Security Administration’s ePortal offers another online service for employers, as they can now access data on any open insurance relationships of their employees, search for employees of all or one payroll office or access data on one specific employee. Details can be found here.
- The Ministry of Industry and Trade's website summarises what laws will change with the new year here.
- Changes in labour and social affairs from 2022 can be found here.
- Starting from the 2021 taxable period, the conditions for claiming the exemption of proceeds from the sale of a family house or a unit conditional upon the use of the acquired funds for one's own housing needs have been tightened. The financial administration has issued further information on this topic.
- The Act on the Extraordinary Allowance to an Employee in the Event of an Ordered Quarantine was promulgated in the Collection of Laws under No. 518/2021; the Act on the Compensation Bonus for 2022 was promulgated under No. 519/2021; and the Act on Further Adjustments to the Provision of Carer’s Allowance in connection with Emergency Measures related to the COVID-19 Pandemic was promulgated under No. 520/2021.
- Due to the ongoing update of the financial administration's database of prescribed forms, it is not yet

possible to process and send the personal income tax return form for the 2021 taxable period via the Electronic Filing Application (EPO).

FOREIGN NEWS IN BRIEF

- The European Commission has issued a proposal for a directive aimed at fighting the use of shell entities and arrangements for tax purposes (designated as ATAD 3). Companies failing to meet the substance indicators as set out under the directive will be denied certain tax benefits arising from double tax treaties and EU directives. The new directive should become effective from 2024.

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