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In brief

News in Brief, August 2022

Editorial

Nobody's really expected a quiet summer this year, and the dull season has not arrived for the tax and legal area either. The August issue of Tax and Legal Update is clear proof of this. While not really up to par with your favourite holiday novel, our selection of key news is certainly still worth reading.

The present issue looks at the new rules of taxation of low-emission company cars used by employees for both work and private purposes. This popular benefit is sure to be used by many employees during holiday trips. Although the changes have been in place since July, many issues are only gradually becoming clear. Further, we summarise the recent opinions of the GFD and VZP (a public health insurance company) and their implications for the calculation of taxes and insurance premiums.

An updated list of questions and answers on the reporting obligation for cross-border arrangements under DAC 6 has been released, to help determine which transactions are reportable. It is quite an interesting read. The first part of our summary can be found in this issue, the second one, with practical examples, in the next issue.

During summer holidays, who would not like to take a break from strict deadlines? Hence, it is good to be reminded that not just companies and entrepreneurs but also the tax administrator must keep an eye on time limits, as in some cases, decisions issued after the expiry of the deadlines are unlawful. In the popular Tax Tips and Tricks section, we will advise you on how to defend yourself against non-compliance with deadlines by the tax administrator.

I wish you a nice summer and an interesting read.

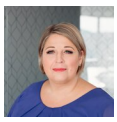


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Discount on social security contributions for part-time employees

From 1 February 2023, an amendment to the Act on Social Security and State Employment Policy Contributions will allow employers to apply a discount on insurance premiums for selected employees in part-time employment or service relationships. The amendment aims to promote the employment of persons who cannot work full-time due to age or various life situations.



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This involves a discount on the part of the insurance premium paid by the employer, i.e., the current 24.8% of the assessment base, which thus applies to the employer and not to the employee.

The employer will be able to apply a monthly social security contribution discount of 5% of the aggregate of the assessment bases of employees in part-time service or employment relationships under all the following conditions:

- working hours shall be at least 8 hours but not more than 30 hours per week
- the employee's assessment base arising from all jobs with the same employer does not exceed 1.5 times the average wage
- their assessment base for all jobs with the same employer attributable to 1 hour of the total hours worked in a calendar month does not exceed 1.15% of the average wage.

The amendment contains further specific conditions for applying the discount.
Selected categories of employees will include, e.g.:

- persons above the age of 55 years
- parents caring for children younger than 10 years of age
- persons caring for a close person under 10 years of age who is dependent on the help of another person
- people with disabilities
- persons undergoing requalification.

The discount shall also apply to employees under the age of 21 regardless of the extent of their agreed working hours.

Should employees hold multiple jobs with the same employer, it will only be possible to claim the discount for one job of the employee. If an employee is employed by more than one employer in a given calendar month, only the employer applying for the discount first may can claim the discount.

Another condition is that employers notify the Czech Social Security Administration of their intention to apply the discount using the prescribed form within the deadline for submitting the overview of premiums paid for the calendar month for which the discount is claimed. The discount shall be deducted from the total premium for that month. The employer must also keep records of the employees for whom the discount is claimed.

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The amendment also introduces an information obligation of employees towards their employer so that the employer has the information necessary to claim the monthly premium reduction. Under the amendment, if the employee fails to meet the information obligation or deliberately provides incorrect information to the employer and the premium discount is thus incorrectly applied, the employer may require the employee to pay the resulting penalty.

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Taxes

New company car taxation rules in effect from July

The GFD has issued Information for Payers of Income Tax on Employment relating to the Amendment to the Income Tax Act effective from 1 July 2022, which concerns employee non-monetary income in form of the free-of-charge provision of a motor vehicle by an employer to an employee for both business and private purposes.



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For low-emission vehicles, the non-monetary income has now been set at 0.5% of the purchase price of the car per month. While the amendment is effective from 1 July 2022, transitional provisions allow the new rule to be applied for the entire taxable period of 2022 (i.e., the entire calendar year of 2022). The GFD's information addresses how to treat the reduction in non-monetary income (and the resulting tax overpayment) for months prior to the effective date of the law (i.e., January through June 2022), both with respect to the annual settlement of income tax prepayments done by the employer and to the certificate of taxable income from employment issued by the employer for employees who file their own income tax returns.

However, the GFD information does not address how to proceed with social security and health insurance contributions for the first six months of 2022, nor does it provide a more detailed definition of low-emission vehicles. This raises several questions, namely as to which cars fall under this category and how taxpayers can prove that the conditions set out in the law have been met.

Czech health insurance company Všeobecná zdravotní pojišťovna also commented on the issue, responding to a query from the Chamber of Tax Advisors: **for the purposes of calculating health insurance contributions, the reduced value of a given non-cash bene▪t can be included in the assessment base only from the effective date of the law, i.e., from 1 July 2022** and not retroactively for the first half of 2022. VZP justifies this by the decisive period for determining the employee's assessment base for health insurance being the calendar month for which the premium is paid and not the calendar year. Consequently, the transitional provisions of the amendment to the Income Tax Act cannot be applied.

In practice, this means that **the total annual assessment base for health insurance premiums and the employee's total annual taxable income for 2022 will differ.**

We are still awaiting a statement from the Czech Social Security Administration on the procedure relating to social security contributions. As soon as we have this information, we will update you.

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GFD releasing new information on reporting obligation under DAC 6

The General Financial Directorate (GFD) has published a new list of questions and answers on the obligation to report cross-border arrangements (reporting under DAC 6), which complements the December 2020 document and sheds new light on this reporting obligation. Below we summarise the most important general information.



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According to the GFD, members or partners of transparent taxable entities (such as unlimited (liability) companies or mutual funds) who are not participating in the arrangement as investors should not be considered arrangement users. Therefore, only the relevant tax-transparent entity has a reporting obligation under DAC 6.

In the case of a cross-border arrangement created within a corporate group by another member entity (the GFD gives a tax or legal department as an example), the following situations may arise:

- If the member entity has only proposed the arrangement but is not participating itself, it has a reporting obligation as an intermediary.
- When the member entity creates an arrangement in which it is itself involved as a user, it does not report the arrangement from the position of an intermediary but from the position of a user.

The GFD also clarifies a tax advisor's relationship to the reporting obligation under DAC 6 when preparing a tax return. The involvement of a tax advisor, attorney or auditor providing services after the arrangement has been implemented does not qualify for reporting as an intermediary. Similarly, the provision of advice relating to an arrangement already implemented in which the tax advisor was not involved does not qualify as reportable by the tax advisor as an intermediary or a secondary intermediary. According to the GFD, even a tax advisor's assessment of the reporting obligation for an already implemented arrangement does not trigger an intermediary reporting obligation. Changes to standardised arrangements consisting of a change of name, registered office, or the dissolution or merger of a person or company are not subject to the reporting obligation either.

If the intermediary has their domicile, permanent residence, registered office, or place of management in the Czech Republic, the reporting obligation always arises in the Czech Republic even if the tax savings occur outside the Czech Republic.

On the assessment of the main benefit test, the GFD states that for arrangements reportable under DAC 6, **the causal link between the hallmark and the anticipated tax advantage must be fulfilled**.

- If the arrangement results in a tax advantage which is not the result of the fulfilment of a hallmark, the main benefit test does not need to be performed and no reporting obligation arises.
- If the arrangement results in a tax advantage due to the fulfilment of a hallmark, the main benefit test is not automatically met, as it is necessary to assess whether gaining the tax advantage is the main benefit or one of the main benefits of the arrangement put in place.

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The main benefit test is not met if the tax advantage does not represent a tax saving but only a simplification of tax administration, etc.

We end by adding the statistics from the ☒nancial administration, showing a total of 154 reports filed under DAC 6 as at 30 June 2022, including reports of historical arrangements.

We will look at examples of specific arrangements contained in the GFD's information in the next issue of the Tax and Legal Update.

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Standard VAT rate confirmed for take-back of electrical equipment

The Coordination Committee of the General Financial Directorate (GFD) and the Chamber of Tax Advisors has concluded that the current practice of applying the standard VAT rate to the take-back of electrical equipment and related services shall remain unchanged. The discussion paper responded to an article whose author mentioned the application of the reduced VAT rate to the take-back of electrical equipment on the assumption that it can be classified as municipal waste.



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At issue therefore was whether **discarded electrical equipment can be considered municipal waste**. Referring to the GFD's information from 2021, the paper submitter states that the term 'municipal waste' should be interpreted based on EU legislation and that the de nition under the Waste Act cannot be used. Under EU law, municipal waste is only and exclusively waste produced by a household through ordinary non-business activities. Furthermore, the collection and disposal of electrical equipment is very **different from municipal waste treatment**. First of all, it is not possible to determine where the waste electrical equipment originated, as not only citizens but also businesses can dispose of it in the collection containers. Also, for municipal waste, the municipality becomes the owner of the waste dumped on its territory. On the other hand, for waste electrical equipment, municipalities themselves can neither handle such waste nor collect it from citizens; hence they cannot own it. Municipalities can only collect electrical waste if they conclude a contract with the relevant rm (a collective system operator).

Another difference consists in the **recycling fee included in the purchase price** the buyer pays for the equipment and used under the collective scheme to cover the costs of taking back and disposing of appliances. The recycling fee is usually subject to a 21% VAT rate, the same rate as for the appliance. According to the GFD, the purpose of including municipal waste in the reduced VAT rate is to reduce the costs of municipal waste management for citizens and municipalities. However, this cannot be achieved for the take-back of electrical and electronic equipment, as citizens already pay 21% VAT on the recycling fee when they purchase an appliance.

For waste electrical equipment, the waste is not generated by the citizen but by the person who processes the waste electrical equipment, because electrical equipment becomes waste only when the appliance reaches the final processor who disassembles it and sorts the output components of the electrical equipment into different types of waste. At this point, the owner of the waste is the final processor and not the person who disposed of the electrical equipment.

In line with the paper submitter, the GFD confirmed that the 21% VAT rate shall continue to apply in this case.

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Tips and tricks

Even the tax authority must meet deadlines

Not only taxpayers but also tax administrators must keep an eye on deadlines. There are lapse periods, after which it is no longer possible to take action and decisions issued by the tax administrator after the expiry of such time limits are unlawful. And there are procedural time limits, which, if not complied with, do not expose the tax administrator to the risk of unlawful decisions. How to understand the deadlines and how to defend against the tax administrator's failure to comply with them?



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The most important lapse period for the tax authorities is the deadline for assessing tax, which is three years from the date on which the taxpayer's deadline for filing a proper tax return expired or the tax became due (without there being a concurrent obligation to file an ordinary tax assertion). This period may be extended in certain circumstances; however, it always ends no later than 10 years after its commencement. A decision on the assessment of tax issued later is unlawful and can be challenged via an action filed with administrative courts.

Procedural time limits for tax administrators are set either directly by the Tax Procedure Code (e.g., a 30-day time limit for issuing a decision on a request for tax deferment) or the Ministry of Finance's Internal Instruction No. MF-5. The instruction specifies the time limits for the processing of the most common types of submissions and the conditions for suspending or extending these time limits, e.g., a six-month time limit for the processing of an appeal by the appeal authority or a six-month time limit for a decision on the waiver of tax and its accessories. Although failure to comply with the procedural time limit does not result in the unlawfulness of the decision, taxpayers can defend themselves against delays and hold-ups caused by the tax administrator. If the tax administrator fails to take action within the time limit set by law or within the period that is customary for taking such action, it is possible to file a complaint of inaction with the nearest superior tax administrator. That authority will examine the complaint and will either order the tax authority to remedy the situation or inform you why it considers the complaint inappropriate, within a maximum of 30 days.

The tax administrator's deadlines and defence options will be discussed in more detail in subsequent issues of the Tax and Legal Update.

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Subsidies

Promotion of corporate circular economy solutions

On 20 July 2022, the Ministry of Industry and Trade announced the first call for support for the circular economy under the National Recovery Plan. The programme is designed to accelerate the transition to a circular economy.



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The call will support projects aimed at waste prevention, increasing recycling infrastructure, limiting waste of secondary raw materials, increasing the volume of recycled materials in products, and increasing the raw material security of the Czech Republic.

The planned funds for allocation are CZK 1 billion. Large enterprises can also apply for this type of support. The aid intensity can reach up to 40% of eligible costs, the minimum subsidy amount is CZK 1 million, the maximum amount CZK 20 million. This programme will support projects throughout the Czech Republic including Prague.

Applications will be accepted from 27 July to 30 September 2022. The call can be closed once the required allocation has been reached, but no earlier than 30 days after the call is launched. The project must be physically completed by 30 June 2025 at the latest. During the project, aid recipients must monitor their values, report any relevant information, and meet both of the following indicators:

- 00005 – use of secondary raw materials
- 00028 – saving raw materials or reducing waste production.

Eligible costs include costs for tangible and intangible fixed assets. However, costs for intangible assets can only be included if these are necessary for the proper operation of the tangible assets.

If you are interested in this programme, we will be happy to check whether you could benefit from this call.

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New calls to support photovoltaic power plants

On 30 June 2022, the Ministry of Environment announced two calls from the Modernisation Fund under the RES+ programme to support renewable energy sources. Both calls aim to support the installation of photovoltaic power plants



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RES+ call no. 1/2022

This call is aimed to support the construction of small photovoltaic power plants with an installed capacity of up to and including 1 MWp. Applications will be accepted from 10 August 2022 to 15 March 2023. A total of CZK 1.5 billion will be allocated to applicants under this call. To determine the maximum aid amount, 'per-unit' subsidies shall be used, multiplied by the installed capacity. Depending on the type of subsidy, the support per unit of installed capacity may vary between CZK 11 thousand/kWp to CZK 18 thousand/kWp. The maximum aid intensity is 50% of the total project costs. The project must be implemented within two years of the decision on receiving the subsidy.

RES+ call no. 2/2022

The call aims to support the construction of large photovoltaic power plants with an installed capacity of over 1 MWp. Applications will only be accepted from 3 August 2022 to 31 October 2022. A total of CZK 5.5 billion will be allocated under this call by the Ministry of Environment. You can calculate the rate of support per unit of installed capacity yourself using the formulas included in the tender documentation. The maximum aid amount that can be claimed for projects without accumulation is CZK 11 thousand/kWp; for projects with an accumulator, CZK 20 thousand/kWp. The maximum aid intensity per project is 50% of total project costs. The project must be implemented within five years of the decision on receiving the subsidy.

Please note that under RES+ call no. 1 and RES+ call no. 2, the maximum aid intensity for large enterprises based in Prague has been limited to 45% of total costs. Both calls are intended for existing and future holders of the licence to do business in the energy sectors (electricity generation) and the renewable energy communities. Obtaining a license is not a difficult process. Both stand-alone and clustered projects with one or more transfer points can be supported. Support can also be granted to projects focusing on systems for the barrier accumulation of generated electricity and systems for the generation of hydrogen through water electrolysis.

For both calls, eligible costs include in particular direct implementation costs and costs incurred for technical and author supervision, occupational health and safety coordination and expertise, publicity measures (complying with the project requirements) and, if necessary, costs of extra works. However, these must be supported by objective reasons and their provision must be necessary for the completion of the project.

Photovoltaic systems with/without accumulation programme

As regards photovoltaics, you can continue to submit applications to participate in the Photovoltaic systems

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with/without accumulation programme announced by the Ministry of Industry and Trade under the National Recovery Plan (see the April issue of Tax and Legal Update). The deadline for submitting applications has been extended to 31 August 2022.

Please note that support is directed towards photovoltaic power plants on business buildings and shelters with an installed capacity of 1 kWp to 1 MWp inclusive. However, one project can cover only one implementation site. Funds are allocated to two activities depending on whether the applicant leases (owns) the entire building or leases only part of it.

If you are planning to install and purchase photovoltaic power plants, please contact us for more information.

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Czech Labour Code not applicable to drivers in transit from other EU member states

The amendment to the Road Transport Act brings many changes: the law newly regulates the posting of drivers from other EU member states, and these rules significantly differ from the general regulation of the posting of workers under the Czech Labour Code. Drivers from other EU member states passing through the Czech Republic will not enjoy the same standard of protection as other employees.



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On 22 July, an amendment to the Road Transport Act long-awaited by employers was published in the Collection of Laws. It implements Directive (EU) 2020/1057 laying down specific rules for the posting of drivers in road transport, with the aim to ensure, inter alia, adequate working conditions for drivers. It also clarifies that international carriage in transit does not constitute a posting of workers, as there is no significant link between the driver and the country of transit, unless they load or unload cargo or pick up or set down passengers during the transit.

A large part of the amendment concerns the posting of drivers employed by a carrier established in another EU member state to the Czech Republic. In certain cases, the amendment excludes the application of the provisions of the Czech Labour Code on the minimum standard of protection of employees posted to the territory of the Czech Republic. Generally, the Labour Code guarantees these workers the same treatment as Czech employees in terms of the length of working hours, holidays, minimum wage, equal treatment, and non-discrimination, etc.

The amendment specifies that the Labour Code shall not apply to drivers carrying out bilateral freight transport for other persons, scheduled or unscheduled passenger transport, or international shuttle transport, and having been posted to work in the Czech Republic within a transnational provision of services in the Czech Republic. Conversely, if the driver transports people, animals, or things between places located in the territory of the Czech Republic, the Labour Code shall apply to them.

Carriers not exempt from the application of the Labour Code must fulfil their information obligation towards the Ministry of Transport and, after the end of the posting and upon request, also towards the Transport Office and the State Labour Inspection Office. However, these carriers will usually not be subject to the information obligation under the Employment Act, or the obligation to equip drivers with Czech translations of their employment contracts.

For breaches of obligations, carriers face sanctions up to CZK 500,000.

The amendment will enter into effect soon, so we recommend that both carriers and drivers familiarise themselves with the new wording of the law as soon as possible. We will bring more details in upcoming issues.

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New EU directive to bring more transparency and equal pay

The European Commission has proposed new rights and obligations for workers and employers in the public and private sectors to strengthen the application of the principle of equal pay for men and women for equal work or work of equal value. It will be up to the member states to put in place mechanisms to ensure pay transparency. These should consist, e.g., in the employees' right to information or mandatory reporting on the gender pay gap.



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In March 2021, the European Commission presented a proposal for a directive aiming to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms. The final wording is now being negotiated at the level of the European Parliament, the European Commission, and the Council of the EU. Member states will have two years to put in place appropriate mechanisms and implement the directive in their national legislations. They will also have to introduce specific sanctions for breaches of the equal pay rule, including a minimum level for financial penalties.

The draft directive includes, e.g., **the applicants' right to salary or wage information** before job interviews without having to request it.

It also gives workers **the right to request information from their employer** on their individual pay level and on the average pay levels, broken down by sex, for categories of workers doing the same work or work of equal value, as comparing wages or salaries is one of the easiest ways for employees to find out whether their employer observes the equal pay principle.

Employers with at least 250 employees are required by the draft directive to **publish on their website or otherwise information on the gender pay gap in their organisation**. Where differences in average pay for equal work or work of equal value between women and men not justifiable by objective and gender-neutral criteria are revealed, employers shall be obliged to remedy the situation in close cooperation with, e.g., workers' representatives or the competent labour inspectorate. Workers who have suffered harm from a breach of any of the rights or obligations related to the equal pay principle should have the right to claim full compensation.

Equal pay is a very relevant topic in the Czech Republic, as courts deal with unequal pay quite often. As an example, we can mention the Constitutional Court's ruling in a Czech Post driver's case: here, the Constitutional Court sided with the Supreme Court's decision stating that external social and economic conditions, such as the labour market or the cost of living in a given region, cannot affect the level of remuneration of employees in individual regions.

It is yet too soon to predict what the final wording of the directive will be. However, we recommend that employers already at this point review their remuneration system and in particular check whether it meets the requirements for transparency and equality in the light of the latest case law and the Labour Code.

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Prepare for EU legislation on working conditions

It is no news that the Czech Republic is now in delay with the implementation of several EU regulations. Employers should pay particular attention to the directive on transparent and predictable working conditions and the directive on work-life balance for parents and carers, whose implementation deadlines expired on 1 and 2 August 2022, respectively.



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The directives introduce, e.g., the employers' obligation to schedule work in advance also for people working under agreements other than employment contracts (agreement to complete a job or agreement to perform work), the right to paternity leave of 10 working days, the possibility for parents with children up to eight years of age and carers to request working from home or a return to longer working hours after a previous change to shorter working hours.

The consequence of the expiry of the implementation deadlines is that the directives may have a direct effect. We can but hope that the legislators will ensure their transposition in the foreseeable future; the Ministry of Labour and Social Affairs is already working on the transposition amendment. Although the date of the transposition of the directives is not yet known, it is advisable to remember that fortune favours the prepared and revise internal labour documentation as soon as possible.

In this context, we also draw attention to the amendment to the Act on Social Security Contributions and Contributions to State Employment Policy, which was published in the Collection of Laws on 22 July and aims to promote part-time work for a certain type of employees, e.g., parents of young children, older employees or, conversely, graduates.

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Women on Boards: quotas to increase gender balance in corporations

After almost a decade of debate on the EU platform, a provisional political agreement has been reached on a proposal for a directive to promote a more balanced gender representation on corporate boards.



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The proposed directive on improving the gender balance on corporate boards, also referred to as the "Women on Boards Directive", aims to introduce transparent procedures for the election of members of corporations' bodies, thereby increasing the share of the under-represented sex on the boards of companies established in EU member states and publicly traded there (EU-listed companies). The directive should not apply to small and medium-sized enterprises with fewer than 250 employees. By 30 June 2026, the companies concerned should achieve a status where at least 40% of non-executive board positions, i.e., non-executive positions on administrative or supervisory boards, and 33% of all board positions are filled by women.

When introducing new procedures for the appointment of board members, companies should ensure that there shall be no automatic preference to one sex to the detriment of qualifications, and that qualifications shall remain the key criterion. However, where two equally qualified candidates seek a position, priority shall be given to the candidate of the under-represented sex. Selection procedures shall be as transparent as possible. Unsuccessful candidates should have the possibility to request information on the course of the selection procedure, i.e., the qualification criteria based on which the selection was made, the objective comparative assessment of those criteria and, where relevant, the considerations tilting the balance in favour of the candidate of the other sex.

Under the proposal, companies will also be required to annually inform the relevant authorities about the representation of women and men on their boards. If they fail to meet the objectives of the proposed directive, they will have to outline how they plan to meet them in the future. They should also publish the information on their website.

Specific sanctions for failures to meet these objectives should be left to the legislators of the individual EU member states; they may include fines or annulments of the appointment of members of the relevant bodies of the corporation.

The draft directive has yet to be approved by the European Parliament and members of the Council of the EU. After that, the directive will enter into force and member states will have two years to implement it.

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VAT upon incorrect classification of intra-community supplies in chain transactions

In Polish case C-696/20 B., the CJEU ruled on whether a VAT payer involved in a chain transaction may be required to pay VAT on both the supply and the acquisition of goods. In its opinion, the CJEU recalled that the purpose of Article 41 of the VAT Directive is to guarantee the taxation of the acquisition of goods while avoiding the double taxation of the same supply/acquisition.



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Dutch company B was an intermediate party in a chain transaction in which it first acquired goods from a Polish supplier and then supplied the goods to its customers in other EU member states. The goods were transported from the Polish supplier directly to customers in other EU member states. Since company B provided the Polish supplier with its Polish VAT number and not the VAT number of the state where the transport ended, the companies regarded the first supply of goods as a local supply subject to Polish VAT; the subsequent supplies to final customers were then treated as supplies of goods to another member state.

However, the Polish tax authorities argued that transport could only be attributed to the first supply (i.e., the supply of goods to company B) and reclassified that transaction as an intra-Community supply. Following Article 41 of the VAT Directive, the tax authorities considered Poland to be the place of supply for the purposes of the acquisition of the goods because company B had provided the supplier with its Polish VAT number. Therefore, the authorities demanded the payment of VAT on that acquisition in Poland. At the same time, they also demanded the payment of VAT on the intra-Community supply of goods by the first supplier, since the transaction could not be exempt from VAT (because of the provision of a Polish VAT number).

The CJEU disagreed with the Polish tax authorities' decision and stated that **such a course of action was contrary to the principles of neutrality and proportionality**. The purpose of Article 41 of the VAT Directive is to guarantee the taxation of a given acquisition of goods while avoiding double taxation of the same supply/acquisition. Since, in the case in question, VAT would be paid in Poland on both the intra-community supply of goods and the intra-community acquisition of goods, this would lead to the double taxation of a single transaction.

In this case, the CJEU did not agree with the application of Article 41. Generally, however, Article 41 still applies. Thus, if the customer does not provide the VAT number of the destination country upon the delivery of goods to another member state, tax implications have to be considered. Which is why for cross-border transactions we recommend always **checking that the customer's VAT number corresponds to the goods' country of delivery**.

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Case law

Months of uncertainty end: SC unifies interpretation of 'unseizable amount'

Early this year, legislators quite exceptionally increased the normative monthly housing costs for 2022. These are usually updated annually to correspond to housing prices; for 2022 however, they were increased for the second time in response to rising energy prices. However, the unclear wording of the law left many people in uncertainty as to whether the increased amount of normative housing costs should be applied also for purposes other than determining housing allowances as envisaged by Section 26a of the Act on State Social Support.



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Normative housing costs enter, e.g., into the calculation of the 'unseizable amount' in enforcement and insolvency proceedings. To unify the practices of insolvency administrators, some insolvency courts issued guidelines under which the unseizable amount for the purposes of calculating the instalment in debt relief shall not be increased correspondingly to the increase pursuant to Section 26a of the Act on State Social Support. However, such guidelines are only binding for insolvency proceedings before those courts. Nevertheless, they have been referred to by some bailiffs as they requested employers making deductions from wages of employees subject to garnishment of wages not to increase the unseizable amount and keep making the deductions in the original amount without taking into account the January increase of the unseizable amount.

Employers have thus found themselves in uncertainty: on one hand, they could assume that the legislators' intention was to increase the unseizable amount also for the purposes of enforcement proceedings, especially since this conclusion was also supported by the opinion of the Ministry of Justice; on the other hand, they were requested by the bailiffs to take the opposite approach. It was thus virtually impossible for them to determine which approach to take.

After months of uncertainty, the issue was resolved by the Supreme Court in June. In opinion No. Cpjn 202/2022, the SC has clarified that **the increase should be applied not only when calculating housing allowance, but also when calculating the unseizable amount for the purposes of enforcement and insolvency proceedings**. Hence, there should be no doubt about this in the future. The increase in normative housing costs is not the only positive change for people facing enforcement proceedings: the increase in the subsistence minimum to CZK 4,620 from 1 July 2022 may bring them further relief.

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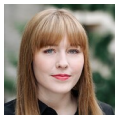
Case law

When are statutory representatives liable for their company's debts?

At the end of June, the Supreme Court (SC) issued a judgment dealing with the conditions of the liability of statutory representatives of a limited liability company for the company's debts. The court also commented on the possibility to recover debts from statutory representatives if it is not possible to recover them from the company.



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A statutory representative of a business corporation has the duty to exercise the office with a due managerial care, i.e., with the necessary loyalty, knowledge, and diligence. According to established interpretation by the SC, this means that the statutory representative of a limited liability company is obliged to act in an informed manner, i.e., to use reasonably available information sources and to carefully consider the possible advantages and disadvantages of various options based on them when making decisions. Whether they have met this duty is then assessed from the perspective of the facts that were known or could and should (if using available information sources) have been known to them at the time of making the business decisions.

If a statutory representative breaches this obligation, be it knowingly or negligently, they are liable for the damage they have thus caused to the company. If they do not compensate the company for such damage, they are liable to the company's creditors for its debts (to the extent that they failed to compensate the damage) if the creditors are unable to recover the debt directly from the company.

In the present case, a statutory representative of company A repeatedly attempted to recover an alleged claim against company B, even though he was aware of a final and conclusive court decision stating that that claim did not exist. By one of those lawsuits, he thus caused damage to company B consisting in the costs of legal proceedings.

At first, company B tried to obtain compensation for this damage from company A, which, however, was already insolvent at that time and therefore unable to provide compensation. Company B therefore claimed the damage compensation directly from the statutory representative who had caused it, arguing that he was liable for company A's debts because he had caused damage to that company by breaching his duty of due managerial care.

During the court proceedings, it was considered whether the statutory representative may only be liable for the company's debts if they had been already called upon to settle the damage. This issue is particularly relevant in cases where the statutory representative is at the same time also the sole member, therefore it cannot be expected that the company would make such a call.

In that regard, the SC concluded that for the damage to be recoverable from the statutory representative, it suffices that their debt to damaged company is at that time due - the company does not have to call upon its statutory representative to settle the debt to the company.

The statutory representative is not liable for any damage caused to the company, but only for damage they have

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caused by breaching their duties. As for due managerial care, a statutory representative must always act and recognise the potential risks of his actions as an ordinary 'reasonably diligent' manager would. The SC then concluded that when initiating any legal proceedings, it is always necessary to consider the possibility that it may be necessary to cover the opposing party's costs of proceedings.

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Case law

Controversial issues of claiming R&D allowance

On 22 June 2022, the Supreme Administrative Court (SAC) issued an interesting judgment dealing with the application of a research and development allowance. The SAC commented on two controversial issues: the concurrence of receiving a subsidy and claiming the allowance and allowing the tax administrator to take away technical documentation for a R&D project or its copy for the purpose of verifying the element of novelty.



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On the issue of the concurrence of receiving a subsidy and claiming a research and development allowance within one project, the SAC emphasised that current legislation allows this possibility, but the subsidy and the allowance may not involve the same costs. Therefore, project costs/expenses not (even partially) covered by a subsidy can be claimed within the R&D allowance.

When assessing which cost/expense items are supported within the subsidy, the content of the decision or contract on granting the subsidy is essential, whereby the subject matter of the subsidy and the extent and purpose of the provided funds are defined. The SAC thus concluded that it was not decisive which cost/expense items were actually paid from the subsidy, as the taxpayer erroneously believed. Instead, **decisive is which items were defined as eligible costs/expenses in the contract on granting the subsidy**.

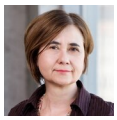
On the second issue, the court assessed whether the taxpayer had sufficiently demonstrated the presence of an appreciable element of novelty or clarification of a research or technical uncertainty in one of its R&D projects. Despite repeated requests, the taxpayer did not hand over the relevant technical documentation for the project or its copy to the tax authorities due to fears for their know-how. The taxpayer merely stated that all documents were available to the tax authorities at the company's registered office.

The SAC uncompromisingly concluded that the taxpayer failed to bear the burden of proof as regards demonstrating the element of novelty. This means that, **during a tax inspection reviewing a R&D allowance, taxpayers must make the relevant documentation available to the tax administrator**.

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News in Brief, August 2022

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



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DOMESTIC NEWS

- The double taxation treaty with San Marino entered into force on 19 July 2022 and will enter into effect on 1 January 2023.
- The Ministry of Finance has published its Report on the Activities of the Czech Financial Administration and Customs Administration for 2021.
- The GFD has updated the Certificate of Exemption from VAT or Excise Duty prescribed form (effective from 1 July 2022) to re☒ect changes to EU regulations introducing new VAT and excise duty exemptions for EU defence purposes.
- The General Customs Directorate points out that as a result of changes to the Air Protection Act and related tax regulations the obligation to blend biofuels into fuel was abolished as at 1 July 2022, while also abolishing, among other things, the obligation for suppliers of petrol and diesel to submit a notification of compliance with the obligation to provide a minimum quantity of biofuels during the calendar year. The obligation has been abolished for the period April to June 2022 and subsequently for the submission of the annual statement for 2022.
- The Labour Market Forecasting - KOMPAS project of the Ministry of Labour and Social Affairs, ☒nanced from the Operational Programme Employment, shows the direction of the labour market at the national and regional level over the next five years. KOMPAS is intended for the professional public and all those interested in optimum employment in a changing labour market.
- The financial administration authorities have launched a targeted inspection effort to verify the accuracy of taxation of income related to cryptocurrencies (e.g., bitcoin).
- The government is considering introducing a windfall profits tax. It should mainly concern energy companies whose profits have grown because of external influences. Profits above a company's average profit over the last five years would be liable to a tax of between 40% and 60%. The introduction of this tax is also being considered for other sectors making windfall profits due to the situation on world energy markets.

FOREIGN NEWS

- The Czech EU presidency has announced that it will focus on the finalisation of the implementation of the proposed EU Minimum Tax Directive with a view to reach a unanimous agreement in the ECOFIN Council at the next scheduled meeting on 4 October 2022. An updated list of non-cooperative jurisdictions should also be discussed at this meeting.
- The tax topics on the agenda for the ECOFIN meeting on 6 December 2022 are as follows:
    - a progress report on the proposal for a council directive to prevent the misuse of shell companies (the Unshell Directive) and proposal for a council directive laying down rules on a debt-equity bias reduction and on limiting the deductibility of interest for corporate income tax purposes (the DEBRA Directive)
    - political agreement on the Carbon Border Adjustment Mechanism (CBAM)

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    - a policy debate on the implementation of the global agreement on reallocation of taxing rights (Pillar One) and on the revision of the Energy Taxation Directive.
- According to the OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors, Pillar 1 and Pillar 2 addressing the tax challenges arising from the digitalisation of the economy have been delayed. Pillar 1, which changes the principle of the allocation of taxing rights, should be completed so that a new multilateral convention may be signed in the first half of 2023 (with entry into force in 2024). The technical work on a 15% global minimum corporate tax rate is largely complete. The OECD also recognises that most Inclusive Framework members are planning for an entry into force not earlier than 2024.
- The OEDC has also released a progress report on Amount A of the OECD Pillar 1 solution to reallocate profits of multinational enterprises to market jurisdictions. The progress report includes a consolidated version of example domestic model rules that will also serve as the basis for a multilateral convention.

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