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In brief

News in Brief, September 2022

Editorial

The beginning of autumn is dominated by the skyrocketing energy prices. Numerous companies and business associations are sounding the alarm, and the situation of at-risk households is also causing concern. Specific support programmes are already emerging: the austerity tariff that the government has prepared within an amendment to the Energy Act should help households. In this issue, we outline how the tariff will affect the VAT area.

Relief will also be welcomed by companies. Minister of Industry and Trade Jozef Síkela has already announced a plan to compensate companies from the manufacturing sector for high energy prices, by covering of up to 70% of eligible costs. However, companies can also find a solution in the new Operational Programme Technology and Application for Competitiveness, which opened for receipt of applications on 1 September and will provide subsidies for energy-saving projects. We provide an overview of the current calls.

High inflation also has an impact on compensation provided to employees for accidents at work and occupational diseases – they were further valorised starting from September. We cover this topic in the Legal section.

Finally, I would like to ask for feedback on our newsletter. We want it to be as beneficial to you as possible. It will help us a lot if you let us know what you find useful and what else you would like to see here. Your answers will help us move the Tax and Legal Update forward.



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Windfall tax outlined

The government has released a working paper on extraordinary profits tax (windfall tax) that it used in its negotiations with the National Economic Council of the Government (NERV). The finance ministry will now use the document as a basis for drafting a bill. The document proposes to tax extraordinary profits in the energy and banking sectors and, possibly, in fuel production and distribution. Extraordinary profits shall be determined as the difference between the current year's tax base and the average tax base for the preceding five-year period and shall be subject to an additional tax at 40%, 50%, or 60%.



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The released document is the economic basis for the discussion on the introduction of the tax in a situation of a sharp growth in energy prices and overall inflation, as the government is forced to compensate for the high energy prices and at the same time consolidate public budgets. The main criteria for the selection of the sectors were: an increase in profitability in connection with an external shock; a low probability of the tax burden being shifted onto the end consumer; or the state's low interest in the growth of investment activity in the sector.

Based on the above reasons, the likely sectors for the introduction of the windfall tax are energy, banking and, possibly, fuel production and distribution. Preliminary information by the finance minister indicates that, in the energy sector, the tax should apply to electricity producers, although the document itself does not state this.

Similarly, in the fuel production and distribution sector, the tax should not apply to the sale of fuel to end consumers. Since these activities are usually carried out within a single legal entity or group, this may have to be considered in structuring the tax.
The tax base would be **the difference between the current year's tax base and the normal profit determined as an average for the last five taxable periods**. A tax rate of 40%, 50%, or 60% would be applied to that tax base.

The document admits that a retroactive application of the tax would be problematic. We may thus expect that if implemented, the tax will only be effective after the completion of the entire legislative process, i.e., from 2023. However, the final form of the tax and its implementation are subject of further negotiations.

We will keep you informed of further developments of the legislative proposal.

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Austerity tariffs for gas and electricity – what about VAT?

The austerity tariff for households that the government has prepared in response to skyrocketing energy prices will be reflected in legislation as an amendment to the Energy Act. Details on the provision of a contribution for energy payments are set out in the related government decree. Below, we are providing more detailed information on possible VAT implications.



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The contribution will not be paid by the state directly to households but to individual electricity traders who will then reduce the amounts billed to customers. The state will pay the contribution to traders through an intermediary (OTE) where all related data will be gathered.

According to an explanatory report, the contribution should have the character of a subsidy provided from the state budget. The VAT Act generally regards price subsidies to be part of a consideration; hence, we conclude that the contribution received by traders within the austerity tariff will be subject to VAT.

According to the decree, the contribution shall primarily be used to pay the nearest advances in the current billing period. In this case, from a VAT perspective, a received contribution will be considered payment received before the date of taxable supply – for energies, usually the date of billing. Generally, payments received before the date of taxable supply give rise to the obligation to pay VAT on the date of the receipt of the payment, i.e., on the date of receiving the contribution from OTE.

The contribution can also be used to reduce an incurred debt or a future billing

Furthermore, the decree allows for the possibility to apply the contribution to the nearest regular billing (e.g., when the customer has already paid the advances), or even to reduce debt incurred before the date from which traders are to apply the contribution. It may thus be the case that on the date of receiving the contribution from OTE, the energy trader will not yet be able to determine for what purpose (an advance, future billing, or historical debt) the contribution will be allocated. This means that arguments can be found for taxing the payments received only after the allocation has been made, and only for the part of the contribution that will be used to pay the 'future' advances.

The above observation is based on information currently available; however, the financial administration has not yet provided their opinion on the taxation of the contributions. Because of the importance and complexity of the contribution, **we expect the financial administration to issue an official statement soon.** The procedure they will propose may not be completely identical with the general interpretation presented above. We will keep you informed about further developments in the *Tax and Legal Update*.

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2024 VAT Act amendment: notification obligation for payment providers

The draft amendment to the VAT Act that should enter into force on 1 January 2024 introduces a new notification obligation for payment service providers regarding payments abroad. The obligation is based on changes to EU legislation establishing CESOP, a central electronic system of payment information which will provide information on cross-border payments received by recipients from consumers shopping online.



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The draft amendment currently going through external comments imposes the obligation on payment service providers (mainly banks) to keep records of cross-border payments and their recipients and to provide these data to tax administrators. This is the result of recent simplifications in e-commerce making it possible to shop without physical presence in a brick-and-mortar store, but at the same time opening up space for fraud.

Who will be subject to the obligation?

The obligation to keep records shall apply to all providers of payment services that provide them in the Czech Republic – i.e., not necessarily only Czech entities. Payment service shall mean a payment transaction such as a transfer of money from own funds or from a credit in the form of a card payment, direct debit, or standing order, with a bottom line of money being transferred. Records shall be kept of payments received from another member state and payments to a third country. The obligation to report cross-border payments shall only be activated upon exceeding the threshold of 25 cross-border payments credited to one person during a calendar quarter.

What data will have to be recorded?

No new record-keeping obligations, i.e., the collection of new information not so far recorded by payment service providers, are being introduced. Information to be recorded includes the BIC of the payment service provider, the payment recipient's name, tax ID number (not necessarily assigned for VAT purposes), IBAN/BIC and address, and, where applicable, other payment data (such as the date and time of payment, its amount and currency).

What will be the notification deadlines and formats?

Notifications will be submitted to the tax administrator by the end of the month following the end of the calendar quarter, even if no obligation to keep records arises (a 'zero report'). The notification must always be given by the last day of the month even if it falls on a weekend or holiday. The submission will be electronic via a data message in a predetermined structure.

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2021 as seen by financial administration

The yearbook titled Information on the Financial Administration's Activity once again provides interesting insight into the activities of the tax authorities. Did you know that the number of completed procedures to remove doubt and tax inspections has decreased by more than one third over the last two years?



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The yearbook provides statistical data for the last year, an evaluation of the past year, and an outlook for the future. In 2021, the Ministry of Finance completed the MOJE daně project, enabling taxpayers to communicate more easily with the tax authorities via the internet. The whole of 2021 was marked by the COVID-19 pandemic; consequently, the financial administration paid out over CZK 19 billion under the compensation bonus programme.

Tax collection increased slightly

Compared to 2020, tax revenues increased marginally. Total tax collected amounted to nearly CZK 866 billion, which is a year-on-year increase of 1.8%. The largest share of the state budget revenue was again value added tax (CZK 461 billion), whose collection increased by 8.7% year-on-year. The highest increase in the amount of collected tax, of a full 67.9%, relates to tax on the income of individuals filing tax returns. The collection of corporate income tax increased by more than 25%. The financial administration attributes this increase in corporate income tax to a sharp reduction in requests for changes in the amount of income tax prepayments and the absence of general pardons. By contrast, the sharp decline (over 32%) in the collection of income tax on employment was largely due to the abolition of the super gross wage and an increase in the basic tax relief per taxpayer.

Fewer tax inspections but more additionally assessed taxes

The financial administration attributes the continued decline in inspection activity to the prolonged unfavourable situation caused by the COVID-19 pandemic, as various anti-epidemic measures had a significant impact on the length of inspection procedures. In 2021, the financial administration's staff carried out a total of 12,343 procedures to remove doubt and 6,534 tax inspections. The total amount of additionally assessed tax was just under CZK 6.15 billion, which represents a year-on-year increase of approximately CZK 201 million, despite the decrease in the number of tax inspections. The procedures to remove doubt resulted mainly in the assessment of VAT, namely CZK 1.3 billion to increase VAT liabilities and almost CZK 2 billion to reduce excess VAT deductions. Tax inspections mainly focused on transfer pricing, one-crown bonds, and the investigation of taxable entities involved in chain fraud.

With the cancellation of anti-epidemic measures, we are seeing a renewed increase in the number of initiated inspection procedures.

Fewer appellate and court proceedings

There was also a slight decline in the number of appellate and court proceedings. In 2021, over 4,500 new appeals

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were filed by taxable entities. In total, 6,057 cases were dealt with during the year; 990 of which were upheld by first-instance tax administrators, and another 1,086 were fully upheld by the Appellate Financial Directorate. As every year, most of the appeals concerned value added tax. The regional courts ruled on 1,004 cases; in 258 cases they ruled with the taxpayer, involving a total of CZK 2,303 million this year. At the end of the year, 1,287 cases were pending and 766 cases were awaiting a decision by the Supreme Administrative Court.

Increase in interest paid by the tax authorities

2021 saw a significant increase in the total amount of interest paid by the tax authorities to taxpayers as compensation for incorrect decisions, late refunds of overpayments, or lengthy examinations of deductions. In total, almost CZK 2.8 billion was charged to taxpayers, representing a year-on-year increase of 18.5%.

And what will this year bring?

The financial administration is planning to implement additional measures to support digitisation, communication with the public, and tax payment simplification. The MOJE daně portal should be further modernised to make it as responsive as possible to the needs and demands of taxpayers. Furthermore, the financial administration intends to focus on improving the efficiency of tax collection and recovery of tax underpayments, as well as on further inspections of taxable entities, especially concerning transfer pricing and tax fraud.

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GFD's new information on reporting obligation under DAC 6: practical part

The General Financial Directorate (GFD) has published a new list of questions and answers on the reporting obligation for cross-border arrangements (DAC 6 reporting). Below we summarise the most relevant information from the practical part of these questions and answers.



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The GFD outlines its position on each type of arrangement, i.e., it indicates whether an obligation to report such an arrangement arises under DAC 6:

Sale of a foreign parent company's interest in a subsidiary to another foreign entity. The sale of an interest in a Czech company between two foreign entities does not meet the de nition of a cross-border arrangement.

Payment of dividends as a standardised transaction. The payment of dividends is not in itself a cross-border arrangement unless one of the purposes of the transaction is to obtain a tax advantage.

Meeting the hallmark of loss utilisation in a cross-border merger. A merger is not in itself a cross-border arrangement.

Capitalisation of receivables arising from a loan. The capitalisation of receivables is only reportable if one of the main purposes of the arrangement is to obtain a tax advantage. The reporting duty may arise for a broader arrangement where the objective is to achieve a lower taxation of dividends compared to the taxation of interest.

Circular transactions. The hallmark of a circular transaction is met, e.g., in the following situation: Company A and Company C are tax residents in the same jurisdiction, while Company B as a special purpose vehicle (SPV) is a tax non-resident in that jurisdiction. If Company A owns Company B and, at the same time, Company B owns Company C, assets may in fact circulate. If nancial resources are sent in this way from A via B to C for the purpose of making a foreign direct investment enjoying preferential tax treatment in the country of residence of Company A, this will be a reportable arrangement if the main bene t test is simultaneously met.

Near-zero tax rate. In relation to profit shifting hallmark, the GFD clarifies that a nominal tax rate of less than 1% is considered to be a 'near-zero tax rate'.

Provision of a loan by a parent company from another member state. Provided that one of its purposes is not to obtain a tax advantage or that it is not an interest-free or low-interest loan (see below), it is generally not subject to the reporting obligation.

Regular business transactions. Unless they are part of another complex arrangement, they are not subject to reporting obligation.

Multiple depreciation. Meeting the multiple depreciation hallmark does not involve situations where assets are depreciated by both the incorporator and the permanent establishment according to the principles of individual

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jurisdictions if the related income is allocated to them in each jurisdiction. Nor does multiple depreciation refer to the sale of an asset to another jurisdiction where the new owner subsequently begins to depreciate it. By contrast, multiple depreciation may include cross-border leases where the asset is depreciated by both the lessee and the lessor or where a foreign company owns a building in the Czech Republic through its subsidiary and both companies depreciate the building for tax purposes.

Transfer of ☒nancial resources to a jurisdiction not bound by the automatic exchange of information. A single instruction to transfer ☒nancial resources to such a jurisdiction cannot be considered an arrangement, and the activity of the ☒nancial institution in this context does not give rise to the obligation to report it as secondary intermediary.

Transfer of a Czech registered branch by its foreign incorporator to a Czech related entity. If the tax base of both the transferor and the transferee is adjusted, two hallmarks are being met: the existence of an arrangement and the existence of a specific tax advantage. In this case, the first part of Hallmark E3 (i.e., cross-border transfer of functions, risks, or assets) is met. In addition, to further meet the hallmark, in the three years following the transfer, the transferor's projected annual earnings before interest and tax (EBIT) must be less than 50% of the transferor's projected annual EBIT the transferor would have achieved if the transfer had not taken place. The three-year period should be viewed as a period of 3 x 12 months following the date of the transfer, and a drop below the 50% threshold in at least one such period should be sufficient to meet Hallmark E3. It is not relevant whether the transfer was carried out at arm's length.

Provision of interest-free or low-interest loans. Any arrangement involving the use of rules simplifying the application of the arm's length principle in transfer pricing unilaterally adopted in any state falls under Hallmark E1. Such arrangements include situations where an interest-free or low-interest loan is granted between related parties under Section 23(7), the third sentence of the Income Tax Act (the creditor is a foreign tax resident, a member of a corporation that is a Czech tax resident, or an individual) whereby a departure from the general arm's length principle is allowed. If several such loans are provided, the reporting obligation arises only once in relation to one affiliated entity. Changes in the interest rate do not need to be reported, but a new report must be submitted if a loan is made to another affiliated entity.

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Tips and tricks

Tax deferment and waivers – what deadlines apply?

Waivers of default interest, penalties, interest on the deferred tax amount, and tax deferment itself offer interesting options for mitigating the negative effects of the assessment of additional tax. What are the relevant time limits for applying for waivers and deferments? And what are the time limits applicable to the tax authorities in this respect?



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In many past articles in this section of Tax and Legal Update, we described how tax deferments and waivers may mitigate the sanctions associated with the assessment of additional tax and postpone the date on which the tax is due. However, it is always necessary to apply for these remedies in a timely manner, and often pay an administrative fee. However, time limits also apply to the tax administrators who are expected to make relatively quick decisions in this respect.

Waivers of default interest and interest on the deferred tax amount: The taxpayer may seek a waiver of such interest from the tax administrator if there are justifiable reasons. A waiver may be granted from the time the tax liability arises until the time limit for payment of the tax expires and even after the tax has been paid. The time limit for payment of the tax is six years, starting from the date on which the tax is due.

We recommend not delaying and submitting your application as soon as possible. The tax authority is expected to decide on a waiver within three months from the date of receipt of the application. In certain cases, the time limit may be interrupted. However, this deadline is not directly stipulated by law but only by an instruction from the General Financial Directorate. Should the tax authority fail to make a decision within this period, this does not automatically mean that the waiver has been granted.

Waiver of penalties: An application for the waiver of penalties may be filed within three months from the date on which the payment order establishing the obligation to pay the penalty becomes legally enforceable. In practice, this usually means within three months of the date on which the decision on an appeal (if lodged) is received. This time limit does not run for as long as the payment of the tax additionally assessed has been deferred or deferment has been applied for. An application for the waiver of penalties should also be resolved within three months of the receipt of the application by the competent tax authority.

Tax deferment: Deferment may be granted from the due date of the tax at the earliest, even retrospectively. The period of deferment may not be longer than the time limit for the payment of the tax, which is six years (as stated above) starting from the date on which the tax is due. The law sets no time limit for applying. Since in practice deferment is usually granted from the date of filing the application, it is advisable to do so as soon as possible. The tax administrator has 30 days for its decision on an application for deferment starting from the date the application was filed.

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Long-awaited first calls under OP TAC

On 1 September 2022, the new Operational Programme Technology and Application for Competitiveness (OP TAC) started accepting applications for the Application, Innovation, and Energy Savings programmes. The Application and Energy Savings programmes are also intended for large enterprises. Participation in the Innovation programme is limited to enterprises employing a maximum of 499 employees.



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Application – Call I

The activities supported under this call are industrial research and experimental development. Eligible costs may include operating costs incurred in carrying out the project, specifically, costs for contract research and research and development consultancy services; personnel costs of development staff working on the project; costs of tools, instruments, and equipment in the form of depreciation of tangible fixed assets; costs of materials and components; and additional overheads. The mandatory output of the project must be, e.g., a prototype, a patent, or a verified technology. A large enterprise (including mid-caps and small mid-caps) is entitled to submit a maximum of two projects, i.e., two applications for support.

Innovation – Call I

Under this programme, enterprises can receive support for product or process innovation using completed R&D results. Eligible costs include the cost of project documentation including engineering, the cost of rights to use intellectual property, and the cost of product certification. Costs of technology and construction may also be eligible if certain conditions are met. Unlike the previous programme period, this programme is not intended for large enterprises. There is no limit to the number of applications per one corporate ID number.

Energy Savings – Call I

Under this call, it is possible to apply for support, for example, for the reduction of energy consumption of buildings, the use of renewable energy sources, the modernisation of electricity, gas, heat, cold and compressed air distribution systems, the use of waste energy, the modernisation of production and technological processes, etc.

It is also possible to claim the costs of tangible and intangible fixed assets, engineering, energy assessment reports, project documentation, and the costs of organising tenders. The maximum amount of total eligible costs for the calculation of the subsidy is CZK 25,000/GJ per year, i.e., an equivalent of CZK 90,000/MWh of savings per year. To ensure the cost-effectiveness of the project, the actual expenditure must not exceed CZK 37,500/GJ of savings per year, i.e., CZK 135,000/MWh. Projects must also meet one more criterion, which is to achieve savings in primary energy from non-renewable sources of at least 30% or, in the case of projects other than building renovation, achieve a reduction of direct and indirect greenhouse gas emissions of at least 30% compared to previous emissions. There is no limit to the number of applications per one corporate ID number.

Individual call parameters

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Parameter	Application	Innovation	Energy Saving
Applications accepted from / to	30/9 – 30/11/2022	1/9 – 30/11/2022	1/9 – 30/11/2023
Total funds for allocation	CZK 4 billion	CZK 1 billion	CZK 10 billion
Latest date for project completion	31/12/2026	31/10/2025	30/11/2025
Aid amount	CZK 2 mil – CZK 125 mil	CZK 1 mil – CZK 40 mil	CZK 500 thousand – CZK 200 mil
Aid intensity*	25% – 85%	20% – 60%	35% – 65%
Applicants	large enterprises, SMEs, mid-caps**, and research organisations	small mid-caps, SMEs	large enterprises, SMEs
Criteria for large enterprises	effective cooperation with an SME***	X	X
Type of call	single-round	single-round	continuous

** Depends on the size of enterprise and the place of project implementation.*
*** These are entities that have no more than 3,000 employees and are not SMEs.*
**** In the case of a large enterprise with more than 3,000 employees, it is always necessary to implement the project in cooperation with a small or medium-sized enterprise while fulfilling the definition of effective cooperation.*

All projects must be implemented in the Czech Republic outside of Prague. This applies to all programmes. The supported activities do not include simple property restoration and production activities. Further conditions are set within individual calls.

Should you be interested, we will be happy to provide you with more information or to check the suitability of the programme for your planned activities and other special conditions.

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Legal

Compensation for work accidents and occupational diseases to increase from September

The high inflation of recent months has affected the compensation provided to employees for accidents at work and occupational diseases. From September, such compensation is to be further valorised, primarily for the benefit of employees.



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Compensation for loss of earnings following an inability to work caused by an accident at work or an occupational disease is due in the amount of the difference between the average earnings before the accident and the earnings after the accident plus any disability pension. As a result of the recent increase in pensions by Government Decree No. 136/2022 Coll., on the third increase in pensions, compensation provided to employees decreased. The government therefore agreed to also increase the amount of average earnings used to calculate compensation for accidents at work and occupational diseases: from 1 September 2022, the average earnings of an employee from which compensation is to be calculated shall increase by 5.2%. The same adjustment was made for the service pay of soldiers and police officers.

In the same way, average earnings for the purposes of calculating compensation for the maintenance costs of survivors also increased from September. Such compensation is due to the survivors of an employee who died as a result of an accident at work or an occupational disease and amounts to 50% of the employee's average earnings before their death if they provided maintenance to one person, and 80% of such average earnings if they provided maintenance to several persons.

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Beneficial owner registration: a game-changing amendment enters into effect in October

From 1 June 2021, the Beneficial Owner Registration Act following from the V. AML Directive has brought fundamental changes to the registration of beneficial owners in the Czech Republic, making life difficult for numerous companies and other entities. Less than half a year after the law entered into effect, the European Commission has identified serious shortcomings in the transposition. The Commission has thus made any drawing of funds from the National Recovery Plan by the Czech Republic conditional upon the shortcomings' swift elimination. To this end, Czech legislators have already managed to discuss and adopt an amendment that will enter into effect on 1 October 2022.



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Following from the AML Directive, the amendment better defines a material beneficial owner and narrows down the list of entities that do not have a beneficial owner. It also abandons the division of 'beneficial owner' into 'ultimate beneficiary' and a 'person with ultimate control'.

Under the new rules, the material beneficial owner shall be any natural person who ultimately owns or controls a legal entity or legal arrangement (e.g., a trust fund). Decisive criteria are an ownership stake of at least 25% or the possibility to exercise decisive influence (control). A corporation is owned or controlled by any natural person who directly or indirectly:

- has a stake in a corporation or a share of voting rights of more than 25%
- holds the right to a share in profits, other own resources (equity), or a liquidation balance of more than 25%
- exercises decisive influence in a corporation or in corporations that individually or jointly have a stake of more than 25% in that corporation
- exercises decisive influence by other means.

Decisive influence in a corporation is exercised by its controlling entity and by any person who at their own discretion may directly or indirectly through another person or legal arrangement achieve that the decisions of the corporation's supreme body correspond to their will.

If despite all efforts that may be reasonably required it is not possible to determine a material beneficial owner, or if a person without a beneficial owner exercises decisive influence in a corporation, then each natural person in the top management of the corporation shall be considered a substitute beneficial owner. The formal beneficial owner for certain entities (e.g., trusts, foundations, and public benefit corporations) shall remain unchanged and depend on the status or office of certain persons within the entity.

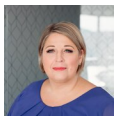
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Please note that you have until 1 March 2023 to check whether your beneficial owners' registrations comply with the modified definition and – if necessary – to make the records compliant with the amendment. During this time, changes to records in the register of beneficial owners made in connection with the amendment will be exempt from court fees.

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Social security perspective on cross-border work from home and remote work

During the pandemic, to allow some sectors to operate without major restrictions, employees often had to work from home or remotely. Working from home (including cross-border) has thus become a common part of working life, even in 'post-covid' times. The EU Commission for Social Security Coordination is now responding to this phenomenon by preparing to regulate cross-border teleworking in terms of social security and health insurance contributions.



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In May 2020, the commission issued a guideline stating that a temporary change in the place of work caused by the pandemic and the associated restrictions should not change applicable social security legislations. Starting from 1 July 2022, this no-impact approach only applies to cross-border workers and only until the end of this year.

This means that presently, when determining the state where a remotely working employee is to be insured, the procedure laid down in Regulation No. 883/2004, on the coordination of social security systems, shall be followed.

To ensure that teleworking workers are not discriminated against in social security matters, and to maintain continuity in their coverage by the national social security system, the commission has issued a document containing illustrative examples of how the provisions of the regulation shall be applied:

- If teleworking is one-off and temporary, it is subject to Article 12 of the regulation, which governs the posting of workers. The employee thus remains in the social security and health insurance system of the posting state for a period of 24 months (provided that all other conditions laid down in Article 12 are met). It is irrelevant whether the employee had asked to work remotely for personal reasons or whether they had been ordered to do so by their employer.
- If an employee works both from their home abroad and from their workplace at their employer in another member state on a regular basis, the applicable social security legislation shall be determined following the procedure under Article 13 of the regulation, which governs work in two or more member states. Under these rules, the proportion of activities carried out in each country over the next 12 months is of decisive importance.
- A worker may also apply for an exemption under Article 16 of the regulation, in which case the applicable social security legislation will be determined on a case-by-case basis. Under this article, member states may also negotiate an exemption in the interest of certain persons or categories of persons or for specific situations.

The commission is also seeking to amend the OECD Model Tax Convention to consider the specificities of teleworking in the tax area. We will inform you as soon as we have information on the results of the negotiations between the commission and OECD representatives.

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Workshops focusing on performance of work in the EU

Work in several member state is one of the topics to be discussed at the tax breakfast on 15 September, which will also be attended by specialists from the Ministry of Labour and Social Affairs and from Kancelář zdravotního pojištění. We will also address this topic at the Czech-Slovak seminar, which will take place on 19 October. In attendance will be our colleagues from KPMG Slovakia who will share their perspective. We cordially invite you to these events.

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Case law

May tax administrator request information about movement of vehicles from traffic cameras?

The Supreme Administrative Court (SAC) has confirmed that tax administrators may for tax purposes request from the Police of the Czech Republic information on the movement of particular motor vehicles processed within the automatic vehicle detection system (Automatická kontrola vozidel, AKV).



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A taxpayer claimed a VAT deduction on the acquisition of a car for business purposes, resulting in an excess deduction. The taxpayer supported the acquisition of the car with a tax document stating the date of the taxable supply. The tax administrator initiated a procedure to remove doubts as to the lawfulness of the claimed right to deduct, challenging the car being used for economic activity.

The tax administrator requested the Police of the Czech Republic to provide them with information on the movement of a motor vehicle with a specific license plate number from the automatic vehicle detection system; the aim was to compare these data against the records in the logbook by which the taxpayer supported the use of the car for economic purposes. The automatic vehicle detection system records information on vehicles' license plate numbers together with data on the time and place of recording the number. These data are meant to help the police fulfil their tasks as defined in the Police Act, such as ensuring public order, searching for persons and objects, and detecting and investigating criminal activities.

The SAC dealt with the legitimacy of the tax administrator's request to obtain records on the movement of a vehicle based on its license plate number kept by the Police of the Czech Republic. Generally, tax administrators may request from persons and public authorities records that are necessary for tax administration. In the present case, the court concluded that the data on the movement of the vehicle were necessary for assessing whether the taxpayer had used the car for economic activity and was therefore entitled to deduct value added tax.

According to the court, the tax administrator had requested the records lawfully, and the Police of the Czech Republic had been obliged to provide such data. Since the police had obtained the records on the movement of the taxpayer's vehicle within the defined scope of their activity and had provided them to the tax administrator for the purpose of using them in tax administration, the SAC did not accept the objection that the records were only obtained upon the tax administrator's request for the purposes of tax administration and therefore contrary to the scope of competences as defined by the Police Act.

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Case law

Can VAT be deducted within the adjustment mechanism even after the limitation period?

In the Dutch case of Company X (C-194/21), the Court of Justice of the European Union held that the adjustment mechanism should not be applied where the taxable person failed to exercise the right to deduct VAT and has lost that right due to the expiry of the limitation period



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In 2006, a company purchased building plots from another company for the purpose of building mobile homes and then selling them. The company received an invoice including VAT for the supply of the plots, which it did not deduct. Due to economic circumstances, the planned development of the land did not take place. In 2013, the company sold some of the plots back to the original owner, including output VAT. However, the company neither declared that tax in its VAT return nor paid it.

In 2015, the tax administration sent the company an additional VAT assessment ordering them to pay VAT on the sale. The company argued that under Articles 184 and 185 of the VAT Directive (on adjustments of deductions), the additional assessment shall be reduced by the VAT paid on the supply of the land in 2006; the court of appeal accepted this argument.

However, the Supreme Court of the Netherlands had doubts whether Articles 184 and 185 of the directive could be applied in the case at hand, as the limitation period for the company to claim the deduction had already expired: this would in fact mean that the possibility to make an adjustment under the mentioned articles could be resorted to whenever the limitation period was not observed.

The Court of Justice of the EU first pointed out that being able to exercise the right to deduct VAT without any time limit would be contrary to the principle of legal certainty which requires the tax position of a taxable person as regards their rights and obligations vis-à-vis the tax authority not to be indefinitely open to challenge. Next, the court reiterated that setting a limitation period that if not observed (by lack of diligence) would result in the loss of the right to deduct VAT, is consistent with the directive. This is subject to the condition that the limitation period is applied in the same way to analogous rights in tax matters under national and EU law (principle of equivalence) and that it does not in practice render the exercise of the right to deduct VAT impossible or excessively difficult (principle of effectiveness).

Thus, although the Court of Justice of the EU confirmed that the obligation to make an adjustment to the VAT deduction under the adjustment mechanism is defined broadly, it is necessary that the right to deduct VAT exists at the time the adjustment is made. The mentioned articles of the directive cannot give rise to a right of deduction. It follows from the above that the adjustment mechanism shall not be applied where the taxable person has not exercised the right to deduct VAT and has lost that right because of the expiry of the limitation period (which is the

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case here).

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Case law

When claiming R&D allowance, attention must be paid to cost accounting

According to the Regional Court in Ostrava, when proving compliance with the conditions for claiming a research and development allowance, it is necessary that expenses incurred in the implementation of research and development projects are recognised as such in accordance with applicable accounting legislation.



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A taxpayer claimed a R&D allowance in their 2013 and 2014 tax returns. In the allowance, they included the cost of materials and components which they had initially recognised as fixed assets under construction (account group 04). The tax administrator did not accept the inclusion of these costs in the R&D allowance and assessed additional tax.

The tax administrator emphasised that the R&D allowance is a form of public aid, and thus claiming it is conditional upon compliance with all legal conditions. The tax administrator did not challenge the substance of the research and development projects and accepted the deduction of all costs that were properly accounted for but did not accept the amounts incurred for materials and components that were not charged to expenses.

The taxpayer appealed against the tax administrator's decision, arguing that they had made an error, and that the tax administrator preferred the formal state of erroneous accounting to the actual state of affairs. According to the tax administrator, the taxpayer had chosen the method of accounting for the costs of acquiring fixed assets under construction, while they had not considered the tax consequences of the chosen accounting method. Thus, this was not an accounting error as the taxpayer argued, but a choice of accounting method. The additional tax assessment thus did not penalise incorrect bookkeeping as inferred by the taxpayer, but the failure to comply with all legal conditions.

The Regional Court agreed with the tax administrator's conclusions: for costs to be claimed within a R&D allowance, it is a necessary condition that they are also accounted for in accordance with applicable accounting regulations. On these grounds, the court dismissed the action.

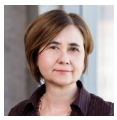
The same conclusion was reached by the Regional Court in Brno (Judgment No. 62 Af 92/2019-73 of 25 November 2021), or the Supreme Administrative Court (Judgment No. 1 Afs 357/2021-50 of 7 June 2022).

Keeping separate accounting records as well as correctly recognising expenses is very important for claiming the R&D allowance. To increase the certainty as to the correct recognition of costs/expenses, a binding assessment can be useful. We will be happy to assist you in this respect and help you prepare it.

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News in Brief, September 2022

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



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DOMESTIC NEWS

- The Minister of Industry and Trade has announced that the government plans to compensate ☒rms in the manufacturing industry for high energy prices. Compensation may amount to up to 70% of eligible costs. The government is expected to discuss the proposal during September. Compensation would be given to companies that can prove operational losses caused by high energy prices. Compensation should equal up to 30% of eligible costs for companies with normal energy consumption, up to 50% for companies with energy-intensive operations, and as much as 70% for particularly energy-intensive operations. The maximum aid amount should be EUR 2 million (i.e., about CZK 49.1 million). Its introduction is made possible by the European Commission's Temporary Crisis Framework.
- The government has approved its first 'anti-bureaucratic package', non-legislative material containing a proposal dealing with twenty obligations or restrictions that complicate business. In the tax and accounting area, the main objectives are to enable the use of foreign currency (euro) for financial reporting, to allow corporate income tax returns to be filed in foreign currency, to allow payment in a foreign currency, and to reduce tax depreciation methods. Involved ministers are to report to the government by 31 December on how they have implemented the proposed measures.
- Instruction No. GFD-D-56 on the waiver of penalties for the failure to report exempt income pursuant to Section 38v of Act No. 586/1992 Coll., on Income Tax, as amended, has been published in Financial Bulletin 11/2022. This obligation applies to income exempt from personal income tax if exceeding CZK 5,000,000 per individual income.
- A list of contracting states applying the common reporting standard along with a list of relevant dates for the purposes of fulfilling the information obligation under Section 13s(1) of Act No. 164/2013 Coll., on International Cooperation in Tax Administration and on Amendments to Other Related Acts, as amended ("List of Contracting States") has been published in Financial Bulletin 12/2022.
- Decree No. 237/2022, on the change of the rate of basic compensation for the use of road motor vehicles and meal allowances and on the determination of the average price of fuel for the purpose of providing travel allowances, as amended, contains an extraordinary update of the average price of 98 octane petrol (an increase from CZK 40.50 to CZK 51.40). The decree also increases travel allowances to CZK 120 if the business trip lasts between 5 and 12 hours, CZK 181 if the business trip lasts more than 12 hours but less than 18 hours, and CZK 284 if the business trip lasts more than 18 hours. The changes took effect on 20 August 2022.
- In connection with the above decree, the GFD has issued its 'Information on the increase of the limit for exemption of the monetary meal allowance from income tax on employment'. A new limit of CZK 99.40 (previously CZK 82.60) for the monetary meal allowance per shift under the Labour Code that qualifies as tax-exempt income has been in effect from 20 August.
- The Ministry of Industry and Trade has completed the comment procedure on an amendment to the Investment Incentives Act aimed at removing the mandatory government decision on all incentives. Only decision-making on strategic investments is to remain. The amendment has yet to go through the entire legislative process.

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- The previous issue of Tax and Legal Update informed readers about the new rules for the taxation of low-emission company cars in effect from July. In this respect, the GFD has issued its 'Information on the identification of low-emission vehicles for the purposes of Section 6(6) of Act No. 586/1992 Coll., on Income Tax, as amended'. Battery electric vehicles (BEVs), fuel cell vehicles (i.e., hydrogen vehicles), plug-in hybrids, and electric vehicles with extended range (E-REVs) shall meet the CO2 emission limit of 50 g/km and 80% of the emission limits for air pollutants in real operation until the end of 2025.
- At the request of the Chamber of Tax Advisors, the Czech Social Security Administration commented on the issue of providing low-emission vehicles to employees for business and private purposes. It confirmed the same conclusions as Czech health insurance company VZP: the reduced value of the non-monetary benefit can be applied in the assessment base for the calculation of social security contributions no earlier than from the date of the law's entry into force, i.e., from 1 July.
- The combined nomenclature update based on Commission Regulation EU 2021/1832, which took place on 1 January 2022, modifies certain codes of the combined customs nomenclature with an impact on the application of the reverse charge mechanism. A new government decree (No. 228/2022) reflecting the changes made in the tariff schedule has been in effect from 10 August. The GFD has subsequently issued its 'Information on the procedure of taxable entities when supplying goods with a modified nomenclature code in the period from 1 January to 9 August 2022, i.e., from the date the EC regulation came into force until the date the new government decree entered into effect. The GFD allows the application of the reverse charge mechanism where both the supplier and the recipient acted in concert.
- Those interested in building a photovoltaic plant or digitising a business using support from the National Recovery Plan still have time to file an application. In response to the current energy situation, the Ministry of Industry and Trade has decided to extend the deadline for the receipt of applications under the Photovoltaic Systems with/without Accumulation call until 30 November 2022. An additional CZK 2 billion will be allocated for the acquisition of photovoltaic power plants and battery systems. The original maximum time limit for submitting the required annexes to the application for support has also been extended, from 180 days to 270 days. Applications for support under the Digital Enterprise and Virtual Enterprise calls can be submitted until the end of October.

FOREIGN NEWS

- The OECD has received public comments on a detailed progress report on determining Amount A (the amount to be reallocated to market countries) under Pillar 1. The interim report includes model legislative rules and a list of issues to be resolved by the October 2022 OECD Inclusive Framework meeting. For more information, click here.
- The OECD Global Forum has published eight new transparency and exchange of information on request (EOIR) reports for the Cook Islands, Ecuador, Finland, Pakistan, Poland, Portugal, St. Martin, and Sweden.

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