KPMG

Tax & Legal

Taxes
Tips and tricks
Legal
World news
Case law
In brief

November 2021

Obsah

Editorial

Taxes

Deputies do not approve digital tax

Tips and tricks

When do penalties for additional tax returns arise? How to avoid them?

Legal

Beware of high penalties when posting workers abroad

World news

Blue Card – future of EU labour mobility

Changes in international taxation probably as early as 2023

Case law

Unequal pay: Constitutional Court rejects Czech Post's complaint

Court rejects possibility of increasing investment incentive tax credit through discounting

Contributions to insurance company viewed as price reduction for VAT purposes

SAC refuses right to deduct VAT on acquisition of movable assets after business establishment purchase

SAC comments on invoicing services containing tax non-deductible expenses

In brief

News in brief, November 2021

Editorial

The Czech Chamber of Deputies did not manage to pass the digital tax in the just-ended parliamentary term. Thus, the Digital Tax Act will have to go through the entire legislative process again should the new government want to introduce the tax. But this is rather unlikely given the agreement on the new rules of international taxation reached at the G20 level. In this issue, we dedicate two articles to this topic.

Beware of unequal pay. You may remember the case of a Czech Post driver from Olomouc who did not like the fact that his colleague in the same position in Prague was receiving a higher wage. The case was dealt with by the Supreme Court, which concluded that the cost of living in a given region cannot affect the level of remuneration. The Czech Post lodged a complaint against the verdict, but the Constitutional Court has now rejected it.

Finally, I would like to invite you to our biggest client event – the Tax and Legal Forum. You can listen to the traditional summary of next year's tax and legal news in the form of a live broadcast on 8 December. As has become a tradition, Deputy Finance Minister Stanislav Kouba will be available to answer your questions. You may register here.



Tomáš Kroupa
Partner

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Deputies do not approve digital tax

In the just-ended parliamentary term, the Czech Chamber of Deputies did not approve the bill on a digital service tax. Hence the bill would have to go through the entire legislative process again should the new government want to introduce a digital tax. However, this does not seem likely given the agreement reached on new international taxation rules at the G20 level, since it also includes a commitment by participants not to apply or introduce new digital taxes.



Václav Baňka
vbanka@kpmg.cz



Kateřina Zákostelská
kzakostelska@kpmg.cz

The government submitted the digital services tax bill to the deputies in 2019. The new tax was to apply to income from targeted advertising and income from the sale of data where the source of the income was a Czech user using a digital interface operated by a foreign company. The tax was also to apply to foreign platform operators' income generated from the mediation of sales of goods or services in the Czech Republic. The bill passed through its first and second readings but ran out of time before the third reading.

Thus, the relevant law will have to go through the entire legislative process again should the new government want to introduce this or a similar digital tax. However, this does not seem very likely at present. A joint declaration of 136 countries including the Czech Republic, associated under the OECD's Inclusive Framework (also including non-OECD members) contains a commitment not to apply or introduce digital taxes in the period from 8 October 2021 to 31 December 2023 or until the entry into force of a binding agreement negotiated between the participants in the declaration. This binding agreement will allow for the reallocation of taxing rights on a portion of the profits of the largest multinational groups of companies to the countries of sale of services or goods, regardless of their physical presence. In essence, it is therefore a kind of digital tax, notwithstanding a shift during the negotiations between the parties: the new new rules will apply depending on the size and profitability of the corporate group regardless of the business sector, i.e., even outside the digital sector. We provide more details on this area in a separate article.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Tips and tricks

When do penalties for additional tax returns arise? How to avoid them?

Generally, no penalty arises if the incorrectly paid tax is corrected in an additional tax return. Unfortunately, the amendment to the Tax Procedure Code effective from 1 January 2021 gives rise to situations where an additional tax return can lead to the occurrence of a penalty. Such situations involve the so-called inadmissible additional tax returns. However, filing inadmissible additional tax returns can be avoided.



Jana Fuksová
jfuksova@kpmg.cz



Matěj Kolář
kpmg@kpmg.cz

The obligation to pay a penalty does not arise where the tax is additionally assessed based on an additional tax return. However, this exception to the obligation to pay a penalty does not apply if the additional tax return is inadmissible, i.e., where it is submitted during the assessment or additional assessment proceedings, or where an extraordinary appeal or court proceedings are pending. The question of inadmissibility and the occurrence of penalties is further elaborated on in the General Financial Directorate's methodological guidance.

Let us give you an illustrative example. A taxpayer discovers that they have not paid the tax correctly and file an additional tax return by the end of the month following the month in which the error was identified. This situation may repeat itself and the taxpayer may file another additional return for the same period. However, if it is filed before the tax authority has dealt with the first additional return and has assessed the additional tax, the second additional return will be deemed inadmissible. The tax authority will use the information from that return and assess an additional tax for the two additional returns. But the second return will not qualify for the penalty exception. The tax additionally assessed therein will be subject to a penalty of 20 % of the tax additionally assessed and, as in other cases, only 75 % may be waived.

How to avoid an additional return being inadmissible and leading to penalties? Section 141(6) of the Tax Procedure Code offers a solution: the time limit for filing an additional tax return does not run during the period the additional tax return would be inadmissible. In other words, it is necessary to wait until the next additional tax return can be filed. In practice it is therefore necessary to make sure that all pending assessment and additional assessment proceedings have been completed. Here, the tax information box in which tax assessment/additional tax assessment is recorded may be of help. It is also possible to ask for copies of the issued orders to pay tax, but receiving them may take up to 30 days.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Beware of high penalties when posting workers abroad

Although the European and Czech regulation of special rights of employees posted abroad is quite old, many employers are unaware of its existence or choose to ignore it arguing that no one will find out. With such ignorance, they are risking heavy fines, as the inspection authorities carry out systematic checks in this area. A case in point may be the EUR 54,000 fine faced by a Slovak company posting its workers to Austria.



Barbora Cvinerová
bcvinerova@kpmg.cz



Anna Kretková
kpmg@kpmg.cz

The EU Posting of Workers Directive, which has been amended several times since 1996, is the source of the strict regulation. The directive responds to the impact of the free movement of services within the EU on labour relations, in particular the possibility of social dumping in the cross-border provision of services. If a company from a member state with lower levels of worker protection and minimum wages were to provide its services to a foreign customer in a country with higher standards, it would have a major advantage over local suppliers. Its employees, on the other hand, would be disadvantaged in their entitlements compared to their local colleagues. The directive therefore introduces several rules to correct these inequalities.

The first category of obligations is rather formal, in particular the obligation of the posting employer to inform the regional branch of the Czech Labour Office about the posting of the worker and about any changes to or the termination of the posting, as well as the obligation to keep a register of posted workers at the workplace and copies of documents proving the existence of the employment relationship in Czech, i.e., for example copies of employment contracts.

To meet the obligations in the second category, i.e., the obligations to guarantee employees a certain standard of working and pay conditions according to the place of posting, is quite more demanding. These conditions include, e.g., maximum working hours and minimum rest periods, minimum annual leave, minimum wages, mandatory remuneration components, accommodation conditions, and reimbursement of travel expenses. However, foreign standards apply to posted employees only if these are more favourable to them than the terms and conditions of employment under the law of their home country. In practice, this means that employers need to look at the labour law of the country to which they are posting their employees and compare whether it is more or less favourable to the workers. This is often very difficult. Long-term postings are even more complicated - if they last more than a year or a year and a half, the posted employee becomes entitled to an even wider catalogue of local working conditions.

The Czech Labour Code applies to foreign employers posting their workers to the Czech Republic. Other member states have similar regulations, which must be complied with by Czech employers who provide their services there through posted employees. And both in the Czech Republic and abroad, inspection authorities monitor compliance with the rules arising from the directive.

The Labour Inspection Office was very active last year in checking compliance with cross-border posting

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

obligations and is focusing on checks in this area this year as well. Foreign inspection authorities are doing even more: e.g., in a case pending before the Court of Justice of the EU, a Slovak company is fighting a fine of EUR 54 thousand imposed by the Austrian authorities for failing to comply with several obligations, in particular requirements relating to payroll and social security records. Ignoring the obligations associated with posting workers abroad may therefore definitely not pay off.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Blue Card – future of EU labour mobility

Projections show that by 2070, the European Union will have 292 million people of working age, compared to 333 million in 2016. This trend would mean a significant decline in the workforce for the EU member states. This is one of the reasons why the European Parliament approved a revised draft of the 2009 Blue Card Directive, which should facilitate labour mobility between member states. The European Council adopted the directive on 7 October this year.



Romana Szuťányi
kpmg@kpmg.cz



Michal Mikovčík
mmikovcik@kpmg.cz

The employment of foreign workers is a rather sensitive issue in all member states. To be authorised to enter the EU labour market, third-country nationals must undergo a time-consuming and administratively demanding visa procedure.

The most common residence permit for employment purposes in the Czech Republic is the employment card. Another option is the EU Blue Card that is subject to stricter rules and is intended for employment requiring high qualifications. A foreigner planning to apply for the Blue Card must meet several important criteria: their annual gross salary must equal at least 1.5 times the average annual gross salary prescribed by the Czech Ministry of Labour and Social Affairs (gross monthly salary of at least CZK 51,188); they must have completed a post-secondary higher education programme of at least three years; and they must submit an employment contract for at least 12 months with the application. If the foreigner fulfils the criteria and receives the Blue Card, they will be allowed to move to another member state after one year of residence in the member state that issued the blue card. The procedure to obtain the residence and work permits in such a state should then be easier. However, it is often otherwise in practice.

The European Parliament is therefore bringing forward a revision of the Blue Card Directive to give employers in sectors facing labour shortages greater ☒exibility in employing highly qualified workers. The revised directive should allow member states to maintain their national systems for the employment of highly qualified personnel, but at the same time introduce conditions to avoid putting them at a disadvantage compared to national permit holders.

Under the revised directive, the requirements on Blue Card applicants should be reduced. For the first application, it should be sufficient if the applicant submits an employment contract for at least six months. The minimum salary threshold should change to range between 1 and 1.6 times the average salary of the country in which the applicant is applying for the Blue Card. The mobility of family members accompanying the Blue Card holder should also be facilitated. The revised directive also pays attention to the mobility of asylum seekers and refugees. They should be able to apply for the Blue Card not only in the member state where they have been granted asylum, but also in other EU member states.

The adopted wording of the directive shall enter into force on the twentieth day following its publication in the Official Journal. Member states will have two years to adapt their legislation to the new rules.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Changes in international taxation probably as early as 2023

The G20 has endorsed the framework changes to international taxation agreed at the OECD level (including non-member countries) on 8 October 2021. The changes are spread across two pillars containing rules for shifting taxing rights on profits from existing countries to countries where the sale takes place and introducing a global minimum effective tax of 15%. The new rules will also apply to multinational groups outside the digital sector. Their effective date is planned for 2023.



Václav Baňka
vbanka@kpmg.cz



Simona Zahradníčková
szahradnickova@kpmg.cz

Pillar 1: Reallocation of profits

Pillar 1 contains new rules for shifting taxing rights to market countries regardless of physical presence. According to available estimates, this could involve a redistribution of USD 125 billion of profits to the market countries. The new rules are based on the following principles:

- Profit reallocation will apply to corporate groups with a turnover of more than EUR 20 billion and a profitability of more than 10% (measured as the ratio of revenue to profit before tax). Groups operating in the ☒nancial and mining sectors will be exempted from the rules.
- The amount of the group's profits to be taxed in the market countries will be determined as 25% of the portion of the group's profits above the 10% threshold (Amount A).
- Amount A will be apportioned among the market countries based on the proportion of revenues from sales generated by the group in that country to the group's total revenue.
- If the group has a company or permanent establishment in the market country that has taxed its profit generated there from distribution and marketing activities (Amount B), this profit will be considered and a simple procedure to determine this profit will be agreed upon.
- The rules will also include mechanisms to avoid double taxation (taking into account the tax paid in the market country), resolve disputes in the calculation and allocation of Amount A, and the process of filing tax returns.
- The new rules will be the subject of a multilateral convention that will amend existing double taxation treaties, probably with effect as early as from 2023. At the same time, the parties will commit not to apply any local digital taxes.

Pillar 2: Global minimum effective tax

Pillar 2 introduces a global minimum effective tax of 15%. The OECD estimates that this measure could generate additional taxable profits of USD 150 billion (i.e., not just involve the reallocation of taxable profits, as is the case under Pillar 1). The new rules are based on the following principles:

- The global minimum tax will apply to corporate groups with a turnover exceeding EUR 750 million, excluding Certain pension and investment funds and international transport except for air transport.
- The new rules contain several instruments aimed at achieving a global effective tax rate of at least 15% for

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

the above groups. The most important of these is likely to be a top-up tax that will be compulsorily applied at the parent company if the effective tax rate at the subsidiary does not reach 15%. Other instruments will be the denial of tax deductibility or the imposition of withholding tax in the source country if the corresponding income is not sufficiently taxed in the recipient country.
- The new rules will be summarised in a binding legislative recommendation and should be effective as early as from 2023. A directive is likely to be prepared at EU level, which member states will then implement in their legislation.

The final version of the new rules, including the legislative framework, should be known for most measures by the end of this year, so that multilateral conventions can be concluded and individual states may adopt relevant legislative acts in 2022.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Case law

Unequal pay: Constitutional Court rejects Czech Post's complaint

You may remember the case of a Czech Post driver who objected to his pay not being the same as that of a colleague in Prague. The Constitutional Court has now sided with the Supreme Court's decision that external social and economic conditions, such as the labour market situation or cost of living in the region, shall not affect the level of employees' remuneration, and rejected the constitutional complaint lodged by the Czech Post.



Romana Szuťányi
kpmg@kpmg.cz



Tereza Burdová
tburdova@kpmg.cz

Equal pay for equal work. The Labour Code obliges employers to ensure equal treatment of all employees in terms of their remuneration. According to the courts that decided the case, this principle was violated by the Czech Post when they paid different wages to employees in the same job position and at the same wage schedule level but in different cities. An employee of the Czech Post who worked as a driver in Olomouc received lower remuneration for his work than a driver working in Prague. The Czech Post was arguing a higher difficulty of work in Prague compared to Olomouc, and significantly higher cost of living in Prague and its surroundings than in other regions.

The Czech Post argued, among other things, that in terms of equal pay, ‘real’ wage rather than ‘nominal’ should be considered, i.e. taking into account the cost of living in the region. However, during extensive evidentiary proceedings, the lower courts found no grounds that would justify the differences in remuneration between the two job positions, such as a lower workload or poorer work performance of the drivers. Importantly, the Labour Code does not list external socioeconomic conditions as a criterion, therefore does not allow taking them into account when determining wages.

Although in the course of the proceedings, the Chamber of Commerce also appealed to the Constitutional Court, pointing out, among other things, that the Supreme Court's decision would create inequality between local entrepreneurs and entrepreneurs with a wider territorial scope who would be discriminated against, the Constitutional Court rejected the Czech Post's complaint.

In its decision, the Constitutional Court stated that they were well aware of the view of business entities on the matter and of the situation on the labour market and admitted that Czech legislation was rather strict in this respect. However, the Constitutional Court emphasised that it was not their role to create legal rules or interpret them differently from the wording of the law. If legislators intend to allow for the consideration of regional socioeconomic conditions, nothing prevents them from adopting such a regulation if political consensus is reached on the matter.

In the light of this decision, it is advisable that employers revise their remuneration systems. Should they find that they remunerate employees in the same job positions differently depending on their place of work, they must either provide reasons justifying the different wages in accordance with the principles enshrined in the Labour Code, or they should adjust their remuneration systems. Otherwise, they risk that they will be fined by labour inspectorates or that their employees will succeed in similar disputes as that of the mentioned Czech Post

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

employee.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Case law

Court rejects possibility of increasing investment incentive tax credit through discounting

The Regional Court in Hradec Králové confirmed the tax administrator's opinion that it is not possible to increase the insurmountable total of tax credits through discounting and thus effectively draw an investment incentive in a higher amount than stipulated in the Ministry of Industry and Trade (MPO)'s decision on granting the investment incentive.



Eva Lenzová
elenzova@kpmg.cz



Markéta Jakobová
mjakobova@kpmg.cz

In case 31 Af 2/2020- 77, the court dealt with a taxpayer who through an additional tax return decided to claim a corporate income tax credit based on an investment incentive granted. The taxpayer believed that they had the legal right to discount it. The tax administrator did not accept this approach. The taxpayer then appealed the tax administrator's decision, arguing that the relevant provisions of EU law had been misinterpreted and that the aim of the legal regulation of discounting had not been respected.

The taxpayer had an analysis prepared which concluded that under the EU law, namely Commission Regulation (EU) No. 651/2014 of 17 June 2014 (GBER), state aid payable in the future, as well as relevant eligible costs, should be discounted to their value at the time of granting the aid, using a discount rate applicable at the time of granting the aid, even where the decision on granting an investment incentive did not allow for the discounting of the cost or of the individual amounts of the investment incentive in form of a tax credit. The taxpayer believed that they had the right to discount the public aid granted, as the GBER takes precedence over a different national legislation.

The tax administrator disagreed, concluding that the tax credit claimed in the additional tax return was not justified, as the taxpayer exceeded the nominal value of the maximum amount of investment incentives as stipulated by the decision on granting the investment issued by the Ministry of Industry and Trade. The Regional Court upheld this view, stating, among other things, that the decision on granting the investment incentive stipulates the admissible aid intensity and amount, as well as specific rights and obligations of the investment incentives beneficiary. It is not possible to increase the tax credit solely through discounting. The taxpayer filed a cassation complaint against the Regional Court's decision. We will inform you of further developments once the Supreme Administrative Court rules on the case.

Considering the above, we may conclude that when claiming aid under investment incentives, it is necessary to follow the decision on granting the investment incentives issued by the Ministry of Industry and Trade, which lays down the conditions under which public aid may be used as well as the insurmountable total amount of tax credits. KPMG considers increasing the investment incentive tax credit solely by discounting risky and does not recommend it to its clients.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Contributions to insurance company viewed as price reduction for VAT purposes

Judgment C-717/19 (Boehringer Ingelheim) dealt with a question of whether for VAT purposes, contributions paid to an insurance company for subsidised medicines constitute a reduction in the invoiced price. The Court of Justice of the European Union (CJEU) confirmed its previous conclusions, stating that the insurer is in the position of the final consumer vis-à-vis the supplier, and that the payment of contributions calculated from the revenues from the medicines sold shall lead to a subsequent reduction in the tax base. The supplier shall therefore be entitled to reduce their originally declared tax base, as the price had been reduced.



Tomáš Havel
thavel@kpmg.cz



Petra Němcová
pnemcova@kpmg.cz

Boehringer Ingelheim is a Hungarian company that markets subsidised medicines. It supplies medicines to wholesalers (distributors) who resell them to pharmacies. For final consumers, medicines may be subsidised by a health insurance company (NEAK), which means that the consumer only pays a 'residual portion' of the price in the pharmacy (the difference between the price of the medicine and the subsidy paid by NEAK). The subsidy is paid by NEAK to the pharmacy.

The amount that pharmacies receive for the medicines, which constitutes a VAT tax base, therefore has two components: the NEAK subsidy, and the 'residual portion' paid by the patient. The pharmacy pays VAT on both components of the price.

Boehringer concluded cost reimbursement agreements with NEAK for the purpose of providing contributions for selected medicines. By doing so, Boehringer de facto contributed to NEAK for the subsidy (the contributions were determined based on the medicines sold) – paying them a part of its revenues from the sales in question. NEAK did not issue an invoice for the contributions, but sent a request to pay the contribution, and the payment was supported by a bank statement.

Due to the payment of the contribution, Boehringer reduced the VAT originally paid (or, more precisely, reduced the originally declared output tax base), on the grounds of a reduction in the price of the medicines.

In line with the conclusions of C-426/16 of 2017, the previous Boehringer Ingelheim Pharma judgment, the referring court held that NEAK must be considered a final consumer. Therefore, if Boehringer did not receive a part of the price of the medicines because they had paid a contribution to NEAK, the price of the medicines had thereby been reduced.

The CJEU confirmed that since the pharmacy must pay VAT on the amount paid by both the patient and NEAK, NEAK must be considered a final consumer of the supply effected by Boehringer. Since Boehringer did not receive part of the consideration for the medicines sold due to the NEAK contribution, this should be viewed as a subsequent reduction in the price of the medicines.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The above cannot be disproved by the fact that the contributions are paid to NEAK not on the basis of a statutory duty, but on the basis of a contractual arrangement.

Another issue addressed by the CJEU in the case at hand was the question of holding an invoice as a possible precondition for adjusting the tax base. On this issue, the court concluded that holding an invoice is not necessary for correcting the tax base if the supply (and its payment) can be supported otherwise.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

Case law

SAC refuses right to deduct VAT on acquisition of movable assets after business establishment purchase

The Supreme Administrative Court (SAC) rejected a cassation complaint filed by a taxpayer in a dispute concerning a refusal of the right to deduct VAT on an acquisition of movable assets followed by a purchase of a business establishment from the same supplier. The acquisition of assets by the taxpayer and the acquisition of a part of a business establishment constitute a complex business transaction that cannot be viewed as two separate supplies; it is necessary to look into the overall substance of the transaction.



Veronika Výborná
vvyborna@kpmg.cz



Lukáš Arazim
larazim@kpmg.cz

In the present case (9 AFS 28/2021-43) a taxpayer was interested in doing business in leasing and renting construction equipment and related services. For this purpose, they first acquired movable assets from their supplier (namely vehicles and construction equipment). Having in mind that the acquired movable assets would be used for their business activities, they claimed a VAT deduction in their tax return. In a tax inspection, the tax administrator found that the set of assets acquired did not constitute a functional unit through which the taxpayer could fully carry out their business activity and that it was closely related to a subsequent acquisition of a part of a business establishment. An acquisition of a part of a business establishment is not subject to VAT, therefore, in the case in question, the deduction had not been justified. The tax administrator's approach was confirmed by the Municipal Court in Prague. The taxpayer brought the matter before the SAC.

The SAC confirmed the position of the tax administrator and of the Municipal Court. The SAC emphasised that for the purposes of VAT, the functional character of the assets being acquired is not relevant, but the overall aim of the transaction is. Importantly, at the time of issuing the tax document for the acquisition of the movable assets, the contract for the transfer of a part of a business establishment had already been concluded. An acquisition of a part of a business establishment is not subject to VAT, and even though a tax document was issued including VAT when purchasing a part of a business establishment, the buyer did not have the right to deduct the tax. The fact that formally there were two contracts (a purchase agreement and an agreement on purchase of a part of a business establishment) was not relevant.
By concluding two contracts, a single transaction was artificially divided, which for VAT purposes must still be viewed as a sale of a part of a business establishment.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

SAC comments on invoicing services containing tax non-deductible expenses

The Supreme Administrative Court (SAC) confirmed that tax non-deductible expenses cannot be treated as deductible solely on the grounds that the taxpayer invoiced them plus a profit mark-up to the parent company for the provision of services.



Filip Svoboda
fsvoboda@kpmg.cz



Bohumil Dopita
kpmg@kpmg.cz

Section 24(2)(zc) of the Income Tax Act (ITA) in the wording before the amendment dated 1 January 2015 stipulates that expenses non-deductible pursuant to Section 25 may, under certain conditions, be included in tax deductible expenses up to the amount of the income (revenues) directly related to them. The condition is that the expenses must have affected the result of operations in the same or previous taxable periods.

In the case before the SAC, the taxpayer treated certain expenses (travel expenses of an affiliated company's employees, refreshment expenses, over-the-limit expenses for employee catering, other fines and penalties) in their tax return as tax deductible, arguing that they were a part of the total price for the provision of the software services to the parent company. The total price of the services was determined on the basis of the costs incurred (even tax non-deductible ones) plus a mark-up. As the transaction involved related parties, the mark-up was set at 5%. The taxpayer believed that the conditions for applying the above provision of the ITA had been met.

The crucial question was whether the expenses were directly related to revenues from services. The SAC concluded that while there was a proportion between the expenses and the revenues as an increase in expenses by CZK 1 lead to an increase in revenues by CZK 1.05, in the court's opinion a direct relation between these expenses and revenues had not been demonstrated, i.e., the taxpayer had failed to support how the expenses (e.g., for refreshments) related to the provision of software services. The SAC thus confirmed the tax administrator's approach excluding these amounts from the tax deductible expenses and assessing additional tax.

For the sake of completeness, please note that after the amendment effective 1 January 2015, the above provision only applies to expenses that are determined to be cross-charged to another entity or that another entity has to pay, and only up to the amount of such cross-charging. According to current interpretations, the expenses have to be demonstrably cross-charged (for instance itemised in the invoice), so that the character of the expenses is maintained on the recipient's part, i.e., it must be clear that these are refreshment expenses rather than expenses for the provision of services. In our opinion, in the case at hand, the expenses could not have been treated as tax deductible even after the amendment.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

News in brief, November 2021

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



Lenka Fialková
lfialkova@kpmg.cz



Václav Baňka
vbanka@kpmg.cz

DOMESTIC NEWS IN BRIEF

- The Minister of Finance has decided on an extraordinary waiver of VAT on supplies of electricity and gas for November and December this year. At the same time, the government approved a draft amendment to the VAT Act exempting electricity and gas supplies from a 21% VAT for the whole of 2022, with effect from 1 January 2022.
- Decree No. 375/2021 Coll., amending Decree No. 589/2020 Coll., changing the rate of basic compensation for the use of road motor vehicles and meal allowances and determining the average price of fuel for the purpose of providing travel allowances, has been published in the Collection of Laws. The Ministry of Labour and Social Affairs has had to respond to the rising prices of fuel and adjusted the price of petrol. With effect from 19 October 2021, the price for one litre of 95 octane petrol will increase from CZK 27.80 to CZK 33.80. Other prices and depreciation rates remain unchanged. The decree also sets an average price of CZK 5 per 1 kWh of electricity. In view of the rising electricity prices, further amendments to the decree can be expected.
- Notice No. 380/2021 of the Ministry of Labour and Social Affairs prescribing the reduction limits for the adjustment of the daily assessment base for sickness insurance purposes applicable in 2022 has been published in the Collection of Laws.
- The CNB has raised interest rates from 1 October 2021. The two-week repo rate of 0.25% was applied for default interest for the first half of 2021 (as well as for the second half of 2020). The repo rate effective on 1 July 2021 of 0.50% shall be used for default interest in the second half of 2021. The newly announced repo rate of 1.50% shall apply to penalties in the tax administration only from 1 January 2022, unless it is changed before then.
- The GFD draws the attention of taxpayers and payroll software developers to the new prescribed forms for tax on income from employment and withholding tax for the 2021 and 2022 taxable periods.
- The financial administration informs personal income taxpayers who use the lump-sum regime that the monthly lump-sum advance payment amount will change for the 2022 taxable period due to the increase in advances for health and social security insurance. The total amount of the lump-sum advance payment per calendar month will now amount to CZK 5,994.
- Financial Bulletin No. 32/2021 offers a list of countries on the EU list of non-cooperative jurisdictions for tax purposes approved by the Council of the European Union.

FOREIGN NEWS IN BRIEF

- The lower house of the Polish parliament passed the Polish Deal tax package. If approved by the Polish senate, most measures should become effective from 1 January 2022. The bill includes significant corporate income tax changes, like a new Polish holding company regime, a minimum corporate income tax, innovation reliefs, and a reform of the transfer pricing rules. The bill also includes amendments to the

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

withholding tax collection system. For more details, please see an overview of all proposed measures here.
- The European Parliament Subcommittee on Tax Matters (FISC) urges the European Commission to assess the possibility of introducing a pan-European corporate income tax regime. The system would be optional, and the revenues would be allocated to member states based on an agreed formula. The subcommittee also asks the Commission to propose procedures to ensure a more consistent determination of tax residency within the EU and reflect these procedures in a directive on tax dispute resolution mechanisms in the EU in 2023.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

LinkedIn | Twitter | Facebook | Instagram

www.kpmg.cz
Tel.: +420 222 123 111

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2026 KPMG Česká republika, s.r.o., a Czech limited liability company and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.