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News in brief, May 2020

Editorial

The coronavirus outbreak is subsiding, and life is returning to normal. Businesses that shut down are resuming operations, and most shops have reopened too; notably, some companies have not limited their activities at all – quite the contrary.

Constant legislative changes, often presented only as proposals or declarations, and extraordinary measures adopted by the government only to be reviewed by courts, have the effect of making everybody permanently alert, reminding us of a fairy-tale king who is revoking what he had revoked, and promising what he had promised. One thing is certain: this year's budget deficit – reflecting efforts to minimise the losses caused by the pandemic – will be record-breaking.

But now, let's read about what's new, not just on the coronavirus front.

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Further loosening of rules for foreigners

On 4 May 2020, the government adopted several resolutions significantly expanding the options for foreign employees to come to work in the Czech Republic, thus at least partially accommodating the needs of employers. The government should resume the process of granting visas, and allow foreign employees from third countries to cross our borders.

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The government's resolution of 23 April allows for the economic migration of employees that are EU citizens (for more information, please see our article here). Effective from 11 May, this will also apply to four groups of third-country citizens:

- seasonal workers
- key personnel and their family members who have been granted visas after 11 May 2020
- personnel working in healthcare and social services and their family members who have been granted visas after 11 May 2020
- holders of entry visas granted to pick up residence permits in the CR (D/VR visas)

All the above groups may enter the CR if they submit a negative Covid-19 test not older than four days. Simultaneously, their regime in the first two weeks of their stay in the CR will be restricted, allowing only essential travel. For these foreign nationals, employers must arrange accommodation, travel, medical care and also a return trip back to their country of origin if employment is terminated.

Another welcome development is the resumption of the acceptance of some visa applications by embassies, again from 11 May 2020. However, this measure will only apply in some countries, depending on the local pandemic situation. A list of countries to which the loosening does not apply will be published by the Ministry of Foreign Affairs. What groups of foreign nationals may file applications for visas and residence permits? Which types of applications does the government resolution apply to?

- applications for short-term work permits for specific groups of foreigners (family members of Czech and EU citizens, critical infrastructure maintenance personnel, etc.)
- applications for long-term permits to perform seasonal work
- applications for extraordinary work permits
- applications of foreigners qualifying for the government's Key and Scientific Personnel Programme
- applications of foreigners falling into the government's Highly Qualified Personnel and Qualified Personnel Programmes if they work in health care or social services

Another positive piece of news is the resumption of proceedings to handle applications for residence permits submitted before the declaration of the state of emergency within all the three governmental programmes: Key and Scientific Personnel, Highly Qualified Personnel, and Qualified Personnel. The government has also resumed approval proceedings for applicants for long-term or permanent residence for the purpose of being united with their families or relating to specific groups of foreigners applying for short-term visas (e.g. critical infrastructure maintenance personnel).

A further relaxation of the rules for foreign nationals coming to the CR is to be expected with the gradual slow-

down of the Covid-19 pandemic.

Government proposal to abolish immovable property acquisition tax goes to chamber of deputies

At its session on 30 April 2020, the government passed a proposal to abolish the tax on the acquisition of immovable property, with retrospective effect. Individuals will no longer have the option to deduct from their income tax base interest paid on loans taken to acquire real property. The time test for exempting from personal income tax proceeds from the sale of real property other than for an individual's own housing purposes shall be extended.

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The government is proposing to abolish the tax on the acquisition of immovable property for transfers where the deadline for filing the tax return expires on or after 31 March 2020, meaning transfers where the title was registered in the Real Estate Register in December 2019 and later. If the tax was already paid before the proposed amendment's effective date, it shall be refunded to the taxpayer.

The government has combined the abolition of the property acquisition tax with an amendment to the Income Tax Act. In the amendment, it proposes to cancel the option of deducting interest paid on loans used to finance housing needs from the personal income tax base. The original proposal by the Ministry of Finance assumed that for a certain time, interest may still be deducted if the taxpayer opts for the current regime of immovable property acquisition tax. After debate, the government modified the proposal so that it will still be possible to deduct interest paid on mortgage and other loans concluded by the end of 2021 from the tax base, regardless of whether the acquisition of the real property was subject to the property acquisition tax. According to the Ministry of Finance, interest may be deducted by any buyer acquiring an immovable item in December 2021 and earlier. This means that for property acquired between December 2019 and December 2021, buyers shall not have to pay tax on the acquisition of immovable property, but they may still deduct interest on loans for housing purposes from their tax bases.

The government also proposes to extend the time test for exempting income from the sale of immovable items not intended for an individual's own housing purposes from 5 to 10 years (the original proposal assumed 15 years). The extended time test should apply to sales of real property acquired after 1 January 2021. Under the amendment, the exemption shall remain if the seller uses the proceeds from the sale to satisfy their own housing needs.

The bill still has to go through the standard legislative process. It is thus possible that further changes will be made to the proposed wording.

Compensation bonus for members of limited liability companies with no employees or only family members

The government has passed an amendment to the Act on Compensation Bonuses, allowing them to be also paid to members of limited liability companies ('s.r.o.s') that have no employees and no more than two members, or members who belong to a single family.

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This support is aimed at limited liability companies that have scaled or shut down, with significant effect on their gainful activity (i.e. in the relevant period, the company was unable to carry out its usual gainful activity, fully or in part, as a result of emergency measures, e.g. due to closure of premises, restriction of operation, quarantine of members, etc.). So far, members of limited liability companies with no employees, along with family businesses that are limited liability companies, were not entitled to the compensation bonus, as it was intended solely for the self-employed/unincorporated entrepreneurs.

The compensation bonus will now be available to all individuals who as at 12 March 2020 were members of a limited liability company founded for the purpose of generating profit with either:

- no more than two members who are natural persons and whose share is not represented by a share certificate, or
- only members who simultaneously are also members of one family (direct relatives (ancestors and descendants), siblings, spouses or registered partners under the law regulating registered partnership), and whose share is not represented by a share certificate.

The member must not carry out activity for which they would be covered by employee sickness insurance, except for employment in the limited liability company in which they are a member; at the same time, as at 12 March 2020, they must be viewed as a Czech tax resident or a resident of another EU/EEC member state, as long as their aggregate income from sources in the Czech Republic for the 2020 calendar year accounts for at least 90% of their total income.

In the relevant period (i.e. from 12 March to 8 June 2020, or 31 August 2020 if the bonus period is extended), the company must not be in bankruptcy or liquidation, and must not be registered as an unreliable VAT payer. The company's turnover (under the Accounting Act) for the completed corporate income tax period immediately preceding the bonus period must exceed CZK 180,000, or the company must expect its turnover for the first and so far uncompleted corporate income tax period of its activity to exceed CZK 180,000. As at 12 March 2020, the company must have been a Czech tax resident or a resident of another EU/EEC member state, as long as most of its income for the period was generated from sources in the Czech Republic.

If an individual is a member of several limited liability companies, compliance with the above conditions is

required separately for each limited liability company.

The amount of the compensation bonus is CZK 500 per each day of the relevant period for which the member has not received any other form of support as a compensation for restriction of their activity due to COVID-19 or any related emergency measures. If an applicant is a member of several limited liability companies that meet the above conditions, they will only be entitled to one bonus per calendar day. Applications for compensation bonuses may be filed no later than 60 days after the end of the relevant period.

COVID-19 and intra-group services – a transfer pricing perspective

Implementing emergency plans, trying to keep a positive cash flow, or monitoring the quick succession of legislative changes adopted in connection with the coronavirus pandemic – these have become corporate management's daily bread. Remuneration models for intra-group transactions are an important piece in this puzzle.

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Many companies receive a wide portfolio of services from their parent entities, usually referred to as **management services**. Others act as service providers, supplying support services to their group as a **shared service centre**.

The recent travel restrictions and changes in the quantity or nature of support that service recipients need, have given rise to many questions for group chain participants:

- Will the substance of some management services provided in connection with the pandemic meet the benefit test?
- If the demand for shared service centre services drops, who will pay for the unused capacity?
- How to support the arm's-length basis, the economic reasons of the measures and any possible deviations from historically used remuneration models?

Bene☒t test and management services

The benefit test examines whether inputs – services or goods - purchased by a taxpayer have brought, or had the potential of bringing, economic benefits.

The benefit of a received service may be a cost reduction, access to special technology or know-how, a quality standard, etc. However, in the current pandemic situation, the need may arise for other support, such as assistance in the implementation of emergency plans, technical and legal support in connection with a production scale-down, finding additional financial sources, or the provision of alternative sales channels, such as dedicated e-shops or platforms such as Amazon.

Will these additional activities still constitute a service that brings or could potentially bring benefits to the recipient? Or will they fall under shareholders' activities whereby the owners just maintain and protect their investment in post-crisis times? The distinction between these two categories will be very fine, and may not be the same for all business models. Even if management services meet the substance for which an independent enterprise would have been willing to pay, the question remains whether it would perhaps be appropriate to temporarily suspend billing to group companies that have been most affected by the crisis.

Even in these situations, the pragmatic language of tax laws demands economic reasons for such decisions. When looking for arguments, some judgements of the Court of Justice of the EU may offer a suitable precedent (e.g., the judgement in the Hornbach case of 31/05/2018, C-382/16).

Remuneration for shared service centre services

The remuneration of shared service centres acting as limited-risk entities is usually calculated using the cost-plus method. This approach should ensure that all justified costs incurred by the centres for the provision of their services will be compensated.
How to proceed if the need for support services provided by the centres drops due to the reduced demand for the group's main products?

If these entities are to bear the costs of the (temporarily) unused capacity, their profitability will decrease. Is it appropriate to make efforts to support this lower profitability (or even loss) by preparing a new comparative analysis? If so, how to set the parameters for 'comparable' entities – will loss-making entities be acceptable, though they are otherwise usually not accepted by the tax authorities?

In a wider context, it will be necessary to answer whether the centres' participation in a group's lower profit/loss is acceptable from an arm's-length perspective. The approach of some tax administrators indicates a certain flexibility, however, always within arm's-length processes. Reference to acts by independent persons, e.g. when negotiating modified contractual terms and conditions, will most likely become a necessary component of transfer pricing documentation.

...and documentation, yet again

The above issues are just the notional tip of the iceberg of topics that will have to be addressed in (post)coronavirus times in connection with intra-group services. Management will have to concentrate on new models of cooperation introduced in response to the emergency measures, and their stabilisation. In a couple years' time, tax officers may come knocking, armed with knowledge not available now. We recommend not underestimating the necessity of precise record-keeping and documentation that may serve as evidence of receiving or rendering a service, including comparative and other analyses to support the chosen remuneration models.

Ministry of Finance introduces new old-age savings scheme

The Ministry of Finance has prepared a bill introducing a new old-age savings scheme, in form of a long-term investment account. The bill is part of the Czech Capital Market Development Concept for 2019-2023. The new product should work as an alternative to pension insurance or life assurance schemes and should be associated with similar tax benefits.

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The long-term investment account should be regulated by the Act on Capital Market Undertakings, allowing old-age savings via investments in shares, bonds, investment funds and other investment instruments. The product is to be offered by banks and securities brokers. The new regulation also involves an amendment to the Act on Income Tax and introduces a new old-age savings framework, comprising already-existing tax efficient saving schemes (such as supplementary pension insurance, pension insurance, supplementary retirement savings plans and private life assurance) as well as the new long-term investment accounts.

The conditions and forms of tax benefits applicable to old-age savings schemes should not significantly differ from the existing rules. Employers' contributions to these schemes should again be tax efficient employee benefits: contributions of up to CZK 50 thousand a year will be exempt from income tax on an employee's wage, whereas employers will be able to treat this contribution as a deductible expense. Natural persons will be allowed to deduct paid contributions of up to CZK 48 thousand a year from their income tax bases. Under the new rules, this limit will apply aggregately for all old-age savings schemes.

Other conditions to draw tax benefits will be similar to those currently in effect. Accumulated savings will only be paid to the person who contracted the product, excepting cases involving the person's death. The savings will only be paid out at the earliest 60 months after the product was contracted, and only to clients older than 60 years or in stage III invalidity, or upon a client's death or the product's termination. Similarly as now, if the savings are paid out earlier, additional tax will be charged on the previously applied tax benefits, which will be designated as 'a refund of obtained tax benefits' under the new regulation.

The act is proposed to be effective from 2022. As the bill is currently subject to its external comment procedure, we may expect that it will change further.

Amendment to VAT for 2021: e-commerce

From 2021, a special mini-one-stop-shop regime will also apply to the sale of goods by mail order. Under the new amendment, such sales will be taxed in the recipient's country, potentially excepting small businesses. For harmonisation purposes, the exemption from VAT on the import of low-value shipments will be cancelled. Moreover, new VAT duties will also arise for internet platforms.

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A draft amendment to the Czech VAT Act concerning cross-border e-commerce derives from a tax package adopted by the Council of the EU entering into effect in the entire EU on 1 January 2021 and aiming to harmonise rules, fight tax fraud and restore fair competition between suppliers from the EU and third countries. The applicability of the mini-one-stop-shop (MOSS) regime will be significantly extended, involving not only digital services but also distance sales of goods and imports of low value goods (max. EUR 150) including sales via internet interfaces and platforms.

Changes to the sale of goods by mail order

New terms such as distance sales of goods and distance sales of imported goods have been introduced for sales of goods by mail order.

Generally, distance sales of goods to customers (not performing any business activity) will be taxed in the country of consumption. The turnover for each individual state will no longer be monitored. It will also be possible to apply an exception by small businesses registered only in one of the EU member states and not exceeding the annual threshold of EUR 10,000 for distance intra-EU sales of goods and provision of services. Up to this threshold, suppliers may tax the sales in the country from which goods are supplied.

New VAT duties for internet platforms

The operators of electronic interfaces and platforms facilitating distance sales of goods will have new duties relating to value added tax. The amendment introduces the legal fiction according to which distance sales of goods shall involve the sale of goods to a platform, and the subsequent sale of the goods by the platform to the end customer. For VAT purposes, a single supply is thus fictively divided into two supplies, while assigning transport to the delivery of goods to the end customer.

The new rules apply to the distance sale of imported goods of EUR 150 or less and to the delivery of goods by a foreign person to a person not liable to tax in the EU. Internet platform operators will be allowed to use the special mini-one-stop-shop scheme under the new rules.
In connection with the above legal fiction, platform operators will also have other duties such as keeping records of all supplies effected on the platform.

Cancellation of exemption of imports of low value goods from tax

In connection with the ever-growing number of imports of low value shipments (of up to EUR 22), these shipments' exemption from VAT will be cancelled, as this is discriminatory towards the European market. For imported goods of EUR 150 or less, it will be possible to apply two regimes: that for the imports of goods under the special mini-one-stop-shop regime or an entirely new regime for the import of goods of low value. The latter will allow holders of a special permit, such as post offices, to declare customs and assess VAT on an aggregate basis per calendar month within a supplementary customs declaration.

Amendment to Tax Procedure Code revisited

The Chamber of Deputies did not pass any of the proposed versions of the amendment to the Tax Procedure Code; the bill thus fell through. Within a week, the Ministry of Finance came up with another bill, drawn up on the same layout as the original one, yet with numerous changes demanded by the opposition and the professional public.

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An important change is the preservation of the deadline currently applicable for refunding excess VAT deductions: the deadline shall remain at 30 days, rather than being increased to 45 days as was originally proposed. This change was motivated by the effort to mitigate any negative effects on the taxpayers' cash flow. Closely connected with this change is also the new concept of an advance for a tax refund, which was amended, too: the limit for the advance has been increased from the original CZK 10,000 to CZK 50,000.

Already in its originally proposed wording the amendment substantially changed the system of sanctions and interest. Many of these changes remained in the newly proposed bill, such as the unification of default interest rates with those under the Civil Code. A positive departure from the original version is the preservation of the sanction-free period before default interest starts to accrue: while the original proposal cancelled it completely, the new one only reduces it to three days. The new version also no longer contains the sentence stating that when calculating interest, only those tax overpayments that are used to settle the underpayment on which default interest accrues shall be taken into calculation. Hence, the current practice under which any overpayment in the taxpayer's account is included in the calculation should continue. Interest on incorrectly assessed tax is to be double the standard rate while unlawful enforcement proceedings are pending. The tax administrator will also have to inform the taxpayer of the amount of their tax underpayment before proceeding to enforce it.

A new concept has also been added to the amendment – a waiver of the penalty for late tax assertion. Taxpayer may apply for it once they have filed the tax return for which the penalty has been assessed. The tax administrator may then waive it if the late filing was due to justifiable reasons; as part of their deliberation, the tax administrator has to consider the taxpayer's economic and social circumstances and assess whether imposing a penalty would be excessively harsh.

On the Ministry of Finance, the amendment imposes the duty to stipulate the concrete essentials of printed forms used for individual tax filings. Under the newly proposed amendment, the penalty for the failure to meet a duty of a non-financial nature will be imposed where the filing has not been made in a prescribed manner (e.g. in electronic form), and where it has not been made in the stipulated format (typically .xml).

The extension of the deadline for filing annual tax returns to four months if filed electronically remains in the new wording of the amendment. A new transitional provision makes it possible to already apply the extended deadline to electronically filed tax returns for the taxable period of 2020.

The amendment assumes an effective date of 1 January 2021. However, the version passed by the government on

27 April still has to go through the whole legislative process all over again, so it will be some time before we see the final wording.

New call to participate in TREND

On 29 April 2020, the Technology Agency of the Czech Republic (TACR) announced the third call within the research and experimental development programme, focusing on the creation of research and development results and their use in one´s own business activities (especially to enhance the effectiveness of production and to implement new products and services). The programme´s main objective is to increase the international competitiveness of businesses. Large enterprises may also apply.

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The main candidate may only be an enterprise carrying out a project alone and/or in cooperation with other enterprises/research organisations. The main candidate may apply for support for a maximum of one draft project while providing supporting documentation on the **accounting history of at least two years**.

Basic information:

- acceptance of applications for support from **30 April to 24 June 2020**
- project commencement: 1 Jan 2021 at the earliest and 1 April 2021 at the latest project completion: 31 March 2026 at the latest
- project implementation: 12–60 months.

Candidates may apply for support of up to CZK 40 million per project. The maximum support intensity varies **depending on the size of the involved enterprise and the category of the activity the enterprise has chosen. For large businesses, the aid intensity has been set to range between 25% and 65% of eligible costs.** A higher level of support will be provided to enterprises carrying out their projects in efficient cooperation with another enterprise or research organisation. Efficient cooperation need not be proven by providing any documentation; the fulfilment of this condition will be assessed during the project evaluation process.

Eligible costs will be personnel expenses, expenses for sub-supplies, other direct expenses and indirect expenses, but **no investments/capital expenditures!**

Project proposals must be aimed to arrive at one of the following outputs/results to be subsequently applied in practice: **industrial design, utility design, prototype, functional sample, software, pilot operation, verified technology,** etc.

The call to participate in the TREND programme prescribes a number of other parameters and criteria, which we will be happy to discuss with you should you be interested.

Will tax administrators have to file taxpayers' financial statements in the Collection of Deeds?

At the end of January, a group of deputies submitted a draft amendment to the Act on Public Registers that introduces the duty of tax administrators to file on behalf of individuals and corporate entities recorded in public registers their ordinary, extraordinary and consolidated financial statements in the Collection of Deeds. This change is proposed to be effective from 1 January 2022.

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The current legal regulation imposes the duty on persons recorded in public registers to file their ordinary, extraordinary and consolidated financial statements in the Collection of Deeds. Pursuant to the Accounting Act, corporations must do so before the end of the accounting period immediately following the period for which the financial statements have been prepared. If an entity does not meet this duty despite having been called upon to do so, the court keeping the register may impose a fine of up to CZK 100 thousand on such an entity or, in exceptional cases, even dissolve it with liquidation. Members of the statutory body of an entity not meeting this duty are deemed to violate due managerial care principles. Under the Accounting Act, in such cases, the tax authorities may impose a penalty of up to 3% of the value of assets determined from the entity's financial statements.

Taxpayers must attach the above accounting documentation to their income tax returns. Consequently, according to the deputies that have prepared the draft amendment, where the state already has such documentation at its disposal, filing the financial statements in the Collection of Deeds by the persons recorded in public registers represents an unnecessary burden for them. According to the explanatory report, financial statements are documents significant enough to shift the duty to disclose them to the state administration bodies to which they have been submitted. It would therefore suffice to submit financial statements to the appropriate tax administrator with the income tax return, while the tax administrator would then ensure their proper disclosure. The duty of persons recorded in public registers to file the above documents in the Collection of Deeds would in fact cease to exist as a result of the proposed regulation.

The government's viewpoint on this proposal is negative, claiming that such a change would require changes to several laws, especially the Accounting Act. If the proposed change were approved in its current form, the duty to file accounting documentation in the Collection of Deeds would fall on two entities: the tax administrator and persons recorded in the public register.

However, we consider the proposed change a step in the right direction to open discussions on this topic, as we know from practice that this duty is often violated for various reasons. A discussion and subsequent change may result in the enhanced interconnectedness of public administration systems in this area.

Permits to mediate employment complicate employment of foreign nationals

Last year's amendment to the Act on the Residence of Foreign Nationals forbids foreigners with employee cards to change their employers if these are employment agencies, i.e. entities holding a licence for the mediation of employment. These involve "true" employment agencies, entities mediating employment only exceptionally, and also recruitment agencies. This is a significant complication for both foreigners and potential employers.

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To provide employment agency services, i.e. the temporary lease of employees to clients for consideration, but also to provide recruitment-related services, it is necessary to obtain a valid permit for the mediation of employment. Permits are issued by the General Directorate of the Czech Labour Office. In the Czech Republic, to date, almost 2,200 entities have been authorised to mediate employment. The majority of them carry out this activity as their principal business, representing employment agencies in the true sense of the word.

However, licences are also held by entities mediating employment only as a secondary or supplemental business or those who have kept their licence should they need to use it in the future. The legal definition of an employment agency is also met by entities engaged in recruitment, or advisory and consulting on job opportunities.

For all the above licence holders, the recruitment of new foreign personnel has become much harder since the end of July 2019. From this date, the amendment to the Act on the Residence of Foreign Nationals forbids the holders of employee cards (i.e. the permits necessary to perform work as a foreigner in the territory of the Czech Republic) to change employers and start a new position if their future employer is to be an employment agency. While this change of regulation was probably intended to only target true employment agencies, it does not distinguish between a situation where the mediation of employment is an entity's primary or secondary activity and one where an entity is only engaged in recruitment. The foreigner's option to change employers is generally forbidden to all employment agencies, i.e. all licence holders under the act.

Legislators are not currently contemplating the cancellation or at least a mitigation of the above strict ban. We therefore recommend examining whether your entity is the holder of a licence for employment mediation, and if you are planning to obtain this licence, you should consider whether it is really necessary, as you may be exposed to the risk that you will not be allowed to recruit a potential candidate holding an employee card.

New duty to provide information on tourism services

Within the measures adopted in response to the COVID-19 pandemic, legislators have passed a legal amendment introducing the duty for tourism services intermediaries (typically Airbnb and similar platforms) to provide information on these services to the trade licensing authority.

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For online intermediaries of tourism services, an amendment to Act No. 159/1999 Coll., on Certain Conditions of Carrying Out Business and Certain Activities in the Field of Tourism, has introduced the duty to provide at the trade licensing authority's request information on the services they have mediated, including the type and scope of services, and the identification of the persons that provided the mediated services to customers.

The duty applies to all operators of online platforms mediating all tourism services, meaning not just short-term accommodation but also transport services and car rentals. The online platform operators do not have to provide the information automatically, only at the trade licensing authority's request. The amendment assumes that the trade licensing authority shall then forward the information to other public authorities.

The aim of the amendment is to allow for public-law control over gainful activity carried out through internet platforms, which is currently extremely complicated due to missing information and the service providers' anonymity. The same level of control over these entities as applied to 'classic' entrepreneurs should also help to level the business environment.

The declared reasons for adopting the amendment are of a tax as well as a security nature. In the future, it is to be expected that the state will also more strictly enforce the observance of other duties imposed by public law on the providers of accommodation services, car sharing services, passenger transport and other services mediated online or through mobile applications. Most online platforms are operated by foreign entities, and thus the question remains how successful the enforcement of these duties and the levying of penalties for breaches will be vis-a-vis these entities.

Legal

Amendment to Civil Code abolishes pre-emptive right

In April 2020, an amendment to the Civil Code that may significantly enhance the liquidity of residential units was published in the Collection of Laws. Although a drop in real property prices is expected in connection with the COVID-19 outbreak, the amendment may be beneficial for both investors and real property owners. The pre-emptive right of real property co-owners will be almost completely abolished from July 2020 and the regulation will return back to its version in effect from 2014 to 2018.

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In January 2018, legislators re-established the old concept of the pre-emptive right to real property in co-ownership in the Czech legal order. If you want to sell your co-owner share in real property, you must first offer it to the other co-owners. This negatively affects sales of residential units/apartments associated with sales of some other parts of common premises, typically garage parking places, cellar cubicles, common driveways/pathways within a compound, and front yards.

The above duty often causes problems when selling residential units: it makes the entire transaction longer and more complicated. Moreover, if any co-owners show interest in the co-owner's share in non-residential premises on offer, this may reduce the price of the unit being sold.

We already informed about the amendment a year ago. According to the original plan, the amendment was supposed to enter into effect from January 2020; however, its effectiveness has been postponed until July 2020. Nevertheless, the amendment should be beneficial for the real estate market and has the potential to become an efficient anti-crisis measure, as it may significantly accelerate transfers of residential units and related shares in common premises, thus helping owners to sell their property as best as they can and as quickly as possible.

The abolishment of the pre-emptive right from July 2020 will not only affect transfers of residential units but, thanks to amending proposals, also transfers of co-owners' shares encumbered with pre-emptive rights relating to other types of real property. Transfers of shares in co-ownership arising from inheritances form an exception, unless the co-owner transfers the share to another co-owner or to a family member. In such cases, the duty to first offer the share to other co-owners will apply for the period of six months of the date the co-ownership originated. The pre-emptive right must also be adhered to upon sales carried out before the amendment's effective date.

Case law

CJEU on consumer credit information

In its judgement in case C66/19, the Court of Justice of the EU (CJEU) held that it was unacceptable for a credit agreement to provide obligatory information merely by referring to a provision of national law that itself refers to other legislative provisions. Under obligatory information the court also included the calculation of the period/time limit for the withdrawal from the agreement.

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The CJEU's answers to the prejudicial questions referred to it by German regional court as regards information to be included in consumer credit agreements state that:

- A credit agreement must specify, in a clear and concise manner, the existence or absence of the right to withdraw, the time limit/period for such withdrawal, and other conditions, including the calculation of the withdrawal period.
- The mere reference to a legislative or regulatory act determining the rights and obligations of the parties in the general terms and conditions of an agreement is insufficient, as previously concluded by case law. Reference in a consumer credit agreement to a provision of national law which itself refers to other legislative provisions is therefore unacceptable.

In our opinion, these conclusions should not be applied extensively; consumer credit providers nonetheless should review their contractual documentation and carefully consider any references to legal regulations that give rise to concrete obligations for consumers.

Case law

SAC: proof of tax fraud not sufficient to deny entitlement to VAT deduction

Yet again, the Supreme Administrative Court (SAC) has dealt with a VAT fraud issue, in particular debating under what circumstances it may be concluded that a taxable supply recipient was or should and could have been aware of their involvement in the fraud, and therefore should be denied their entitlement to deduct VAT.

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In the case in question, a company purchased advertising services at golf tournaments and space for advertising spots on LCD TVs in Prague. The services were provided by a company whose statutory representative was subsequently deprived of his legal capacity. The company's activity was arranged by a lawyer based on a power of attorney granted to him by the statutory representative (at that time still in full legal capacity), and by an employee who was assigned tasks by the lawyer. The evidence submitted showed that the supplies had been provided as per the contract, which even the tax administrator did not challenge.

After the statutory representative was incapacitated, the tax administrator found out that the signature of the VAT registration and VAT returns filed had been forged, and hence cancelled all tax assessments as well as the company's registration for VAT. On grounds of the supplier's cancelled VAT registration, the tax administrator then initiated a tax inspection at the recipient of the advertising services.

According to the tax administrator, the service recipient should have deduced that they were involved in a tax fraud from the following clues:

- The signature on the contract did not check against the signature on documents filed in the Collection of Deeds.
- The company's registered office was a virtual address.
- Cooperation was initiated through personal contact with an employee, but there was never any contact with the statutory representative.
- Contracts were presented by the supplier already signed, with a pre-printed date.

According to the court, as far as VAT fraud is concerned, it is not relevant whether the legal acts taken by the statutory representative were invalid or whether the signature was indeed forged. What is decisive is whether the involvement of a person thus limited in their legal capacity constituted an instance of VAT fraud of which the supply recipient was or could have been aware.

The SAC did not agree with the tax administrator's conclusions and held that the above facts did not indicate VAT fraud. According to the court, a virtual registered office and cooperation initiated through employees are common business practice; while on the other hand, having to check signatures against the Collection of Deeds is a rather non-standard requirement by the tax administrator.

CJEU dealt with assigning of transport in a Czech case

In a Czech case (Herst), the Court of Justice of the EU (CJEU) dealt with assigning intra-Community transport to a transaction in a situation where transportation was arranged by the last entity in a chain, and goods were purchased and resold several times during transportation.

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Herst was at the end of a chain of transactions comprising the acquisition of fuel from another member state, while they also arranged transport. Under the contracts concluded, the fuel was supplied to Herst after the regime of excise duty suspension had ended. The CJEU dealt with the point in time when the goods were supplied to Herst (i.e. when the right to dispose of the goods as their owner was transferred).

The CJEU held that in assigning the intra-Community transport, it is crucial to determine whether Herst had gained the right to dispose of the goods as their owner, meaning the possibility to take decisions likely to affect the legal situation of the goods, including, in particular, the decision to sell them. If this right has been gained before the transportation was initiated, it is an intra-Community acquisition, even if the legal title had only been transferred to Herst after the goods were released for free circulation in the Czech Republic. According to the CJEU, it is up to the referring court to make an assessment of these circumstances.

The CJEU also dealt with the application of the in dubio mitius principle in national law. The court assessed whether, where national law offers various interpretations, the one that is most favourable for the taxpayer shall be chosen. Here, the CJEU answered that the national court has to consider all rules stipulated by national law and use interpretation methods accepted by the CJEU so as to interpret national law as far as possible in the light of the wording and purpose of the VAT Directive. The national court should interpret national law in the same manner as the CJEU interprets the directive, to achieve the result pursued by the directive. The application of the in dubio mitius principle is therefore incompatible with EU law.

Case law

Posting of workers from a VAT perspective

In practice, companies often do not pay enough attention to the possible implications of posting high-ranking managers to the Czech Republic to manage or supervise another group entity. A number of these arrangements meet the definition of a VAT fixed establishment.

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The definition of a fixed establishment for VAT purposes is rather broad: a place that is sufficiently permanent and has appropriate personnel and technical resources through which a taxable person can carry out their business activity.

It is common practice for foreign parent companies to post high-ranking managers to a related party in the Czech Republic under a contract on the provision of managerial services. The equipment that posted workers use in the Czech Republic usually includes an office, a mobile phone or a computer, while these are mostly provided by the Czech entity. According to case law, it is irrelevant whether the equipment is provided by the Czech entity, as long as it can be viewed as sufficiently permanent.

Permanent equipment itself does not suffice to give rise to a VAT fixed establishment: the 'independence' condition also has to be met, meaning that the posted manager may make decisions independently of the company to which they are posted.

In many cases, the posted worker has no direct superior, meaning that the parent company is the only entity having a direct influence on them. Obviously, there are certain limits set by the Czech entity, the foreign parent, or both; however, this should not affect the ability to make independent decisions. According to case law, to assess independence, it is crucial whether the activity carried out by the posted worker constitutes a performance of the parent company's business activity in the Czech Republic, and if the services thus can theoretically (without it necessarily being the case) be also rendered to other companies in the Czech Republic, thanks to the resources/equipment available. This would namely involve situations where the posted worker has certain assets for their exclusive use, and a working space (such as an office) assigned solely to them.

Although the issue has been on the agenda of several sessions of the Coordination Committee of the Czech Chamber of Tax Advisors and the General Financial Directorate, so far none of them has offered clear guidance on the treatment of these cases. In any case, it is advisable to assess the postings of workers on an individual basis and review the concrete contractual arrangements between the related entities.

News in brief, May 2020

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

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DOMESTIC NEWS IN BRIEF

- An amendment to the Civil Code, published under No. 163/2020 in the Collection of Laws, introduces the simplification and specification of certain rules applicable to associations of residential unit owners.
- An amendment to the Decree on Applications under the Act on Investment Companies and Investment Funds (no. 201/2020) has been published in the Collection of Laws, reflecting changes in the Act on Investment Companies and Investment Funds and effective from 1 May 2020.
- The financial administration draws attention to deficiencies in applications for compensation bonuses in the event of the concurrence of business activities and employment; self-employed who are at the same time employees cannot usually apply for the compensation bonus.
- In connection with the coronavirus pandemic, the GFD has published a summary of options to exempt imports of goods from third countries from customs and VAT.
- The Confederation of Industry and Transport of the Czech Republic has published guidance titled Tax Implications of Electromobility.
- From May, the Ministry of Justice has resumed in-person super-legalisation, i.e. the possibility to have deeds intended to be used abroad and issued by Czech bodies verified personally, but for safety reasons only to a limited extent so far. The in-person verification of deeds will only be possible after making an online reservation. It is still possible to apply for the verification of deeds by post.
- The government has approved the postponement of all waves of the electronic reporting of sales until the end of 2020. All entities falling into the first two waves, i.e. wholesale, retail, meal services and accommodation, as well as entities that were supposed to start reporting their sales electronically on 1 May 2020 will only commence reporting their sales electronically from 1 January 2021. An amendment to the relevant act will be discussed by the chamber of deputies under the legislative emergency regime.
- The government has approved the provision of support for commercial real estate leases amounting to 50% of the rent if 30% of the rent is borne by the lessor. Lessees will thus have to pay 20% of the rent. This support will apply to rent for the period from 1 April to 30 June 2020. Documentation that will have to be attached to an application will have to include at least a lease contract, an amendment to the lease contract committing the lessor to provide a 30% discount, and a document supporting the rent charged for the months preceding the coronavirus outbreak. The support programme should only apply to entities unable to perform their business activities due to the pandemic and will be prepared by the Ministry of Industry and Trade.
- The government has approved an increase in carer's allowances for the self-employed from CZK 424 to CZK 500 per each calendar day for the period from 1 April to 30 June 2020. The programme will be announced by the Ministry of Industry and Trade this week.

FOREIGN NEWS IN BRIEF

- The OECD announced that multilateral efforts to address the tax challenges arising from the digitalisation of the economy shall continue according to the announced timeline (for further details please refer to Euro Tax Flash issue 423). Working methods have been adapted following various Covid-19 measures, and all participants continue working towards reaching a political decisions on the key components of a multilateral solutions at the G20/OECD Inclusive Framework on BEPS meeting scheduled for the beginning of July 2020.
- In April, the Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent BEPS (MLI) became effective for Liechtenstein and Qatar. At the end of March, the MLI was ratified by Oman. The total number of signatories to the MLI currently stands at 94 jurisdictions. In total, 44 jurisdictions have deposited their instruments of ratification with the OECD. The MLI has entered into force in 39 jurisdictions. The OECD has provided a full list of the signatories and parties to the MLI as of 11 March 2020 here.
- The OECD Forum on Tax Administration (FTA) has published a global reference document summarising measures to support taxpayers taken by FTA tax administrations in connection with the COVID 19 pandemic. The supporting measures help taxpayers to address cash-flow concerns as well as difficulties in meeting reporting and payment deadlines. The document will be updated on a regular basis to assist tax administrations in the development of appropriate supporting measures in their jurisdictions.
- An overview of tax developments being reported globally by KPMG member firms in response to COVID-19 is available here. For further insight into the potential tax, legal and mobility implications of COVID-19, please refer to the dedicated KPMG web page. In addition, KPMG Global is hosting a regular webcast series – Keeping Connected Globally Series – Global Perspectives on the Future of Tax, Legal and Mobility.
- The European Commission approved the Czech regime of Covid Plus guarantees of EUR 5.2 billion for loans provided to large export enterprises affected by the coronavirus outbreak. Entities interested in this type of support should commence negotiations with banks as soon as possible, as the programme is likely to be launched soon and will draw much interest. EGAP has also published a guidance for banks how they should proceed. The programme is expected to open in the upcoming days.

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