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News in brief, September 2020

Editorial

As the number of Covid-I9 cases keeps growing, the government has decided to extend regimes A and B of the Antivirus programme until the end of October. After that date, the programme is to be replaced by the long-awaited support during partial unemployment, the kurzarbeit scheme. The Ministry of Labour and Social Affairs has already presented a draft amendment to the respective law, but the legislative process is only in its initial stage, and it remains to be seen what its final wording will be. While the unemployment rate in August seems to have remained at the July level (at 3.8%), it is clear that such low figures cannot be expected in the future.

Employers will not be happy about the Supreme Court's judgement on equal remuneration: an employee of Česká pošta working as a driver in Olomouc received a lower wage than his colleagues working at the same position in Prague, and sued his employer, asking to have his wage toped up to the same level. Although Česká pošta argued that the work of a driver in Prague differed from that in Olomouc in terms of working conditions, involving namely the complexity, responsibility and difficulty of work, and that it was also necessary to consider the 'real' wage, i.e. the employee's actual wage after deduction of the cost of living, the court did not accept these arguments. Does this mean that employers will now have to top up their employees' wages to level them across regions? Nothing is black and white, and it is always necessary to carefully assess the specifics of a concrete situation. Read more in the article by Barbora Cvinerová and Kateřina Randlová.

For the parents of school children, the back-to school rush has started yet again: buying textbooks, paying for lunches, arranging school and afternoon activity car pools, and many other necessities. Yet, I dare say that most of us were looking forward to 1 September more than usually and were quite relieved when most schools reopened after a forced break of several months. Let's hope things will stay like this!



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The government has decided: Antivirus A and B to continue until the end of October

On 24 August 2020, the government approved the extension of the present regimes A and B of the Antivirus programme until 31 October 2020; originally, both were supposed to end at the end of August. Regime C, comprising the waiver of social security premiums, was extended, and will therefore not continue in September.



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Since April this year, employers have been receiving contributions under regimes A and B of the Antivirus employment support programme, partly covering wage compensations paid to their employees during 'impediments to work'. Regime A is aimed at situations involving forced shutdowns of operations and quarantine, while regime B covers economic difficulties encountered by employers, such as limited availability of inputs or limited demand for products or services.

The contributions from the Antivirus programme compensate employers for 60% and 80%, respectively of wage compensations paid by employers to employees not working due to COVID-19-related impediments to work; the maximum amount of the contribution is CZK 29,000 or 39,000 respectively per month per one employee.

The support under regimes A and B of the Antivirus programme was first to end in April, but was extended by the government until the end of the summer holidays. Further extension of the Antivirus programme was considered for some time, and now the government has finally decided to extend both regimes until the end of October. The extension of regime C, comprising the waiver of social security premiums, would necessitate an amendment to legislation; the third regime of the Antivirus programme thus could not be extended flexibly, and ended at the end of August.

Regimes A and B will continue protecting jobs in the Czech Republic until the end of October at least. According to the current proposal by the Ministry of Labour and Social Affairs, the programme should then be converted into a kurzarbeit (for more information, read here). Whether and in what form this will happen will depend on the legislative process. We will keep you informed of further developments.

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The Ministry of Labour and Social Affairs has presented 'kurzarbeit'

At the end of August, the Ministry of Labour and Social Affairs published a draft amendment to the Employment Act introducing into Czech law the long-awaited support during partial unemployment, commonly called 'kurzarbeit'. Kurzarbeit is to replace the present Antivirus support programme and will take over some of its features and procedures. The ministry is thus responding to the current regulation of the contribution during partial employment contained in the Employment Act proving rather hard to access during the pandemic, mainly because of the necessity for every application to be approved by the government, and also due to a low level of support granted.



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The kurzarbeit system should be activated whenever one of the following occurs:

- A steep increase in unemployment in a relevant period; i.e. the number of job applicants increases by more than 15% year-on-year in three successive calendar months and, at the same time, their total number reaches at least 400,000.
- A governmental regulation issued in extraordinary emergency situations similar to the present pandemic, but also in natural disasters, cyberattacks or other emergencies considered a force majeure and posing a serious threat to the state economy; by the regulation, the government shall set the period for the provision of kurzarbeit, while it may also limit the support to certain sectors of the economy or to employers in specific regions.

Like Antivirus (for more information about the Antivirus programme, read here), kurzarbeit aims to support employment during emergency situations when employers have to partly curtail their operations. Upon a written application filed by an employer, the Labour Office would provide financial support to employees whose employment has lasted at least three months at the date of filing the application. The amount of the support is proposed at 60 to 80% of the average hourly net earnings, depending on the employee's activity and time spent in kurzarbeit. The maximum support amount is proposed at 1.5 times the average wage in the national economy for the first to the third quarter of the prior calendar year.

The maximum period of support should be 9 months. After its elapse, the employer may again apply for a contribution for the same employee no earlier than after three years, unless support is applied for on different grounds.

The Antivirus programme did not clearly stipulate whether support can also be obtained for employees working in an 'account of working hours' regime. The proposed kurzarbeit system is unambiguous in this respect: such employees, as well as employees receiving sickness benefits, maternity leave, paternity leave, carer's allowance, long-term carer's allowance or wage compensation for the first 14 calendar days of inability to work, are not entitled to this type of support.

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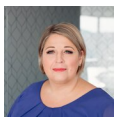
Entitlement to kurzarbeit support shall arise for employees who cannot carry out their work due to an obstacle on the employer's part consisting in downtime or stoppages due to adverse weather conditions, other impediments to work on the employer's part, or partial unemployment. The impediment to work must occur in direct relation to one of the above given reasons/grounds for activating the support, and, as a result of the impediment, the employer must be unable to assign work to employees in the extent of at least 20% and at most 60% of their weekly working hours. This condition shall be assessed in aggregate for all employees of the employer. At the same time, the employee's weekly working hours during the support period must be at least 40% of their stipulated weekly working hours as per the Labour Code.

Until the end of October at least, jobs will continue to be protected by the Antivirus programme. Whether, and in what form, it will then be converted into kurzarbeit will depend on the course of the legislative process, currently only in its initial stage. In Update's October issue, we will summarise for you the proposed rules for applying for support under kurzarbeit, and the applicable support payment rules.

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Who will benefit from abolition of super-gross wage?

The government has decided to proceed with the long-promised abolition of the super-gross wage, while at the same time introducing the progression of personal income tax. The Chamber of Deputies is currently debating an amendment to tax laws, which has already passed the first reading. The coalition has now agreed to submit an amending proposal abolishing the super-gross wage. Who will pay less and who will pay more tax if it is passed?



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The ‘super-gross wage’ was introduced in the Czech Republic in 2008 as a part of the reform of public finance. Under this concept, the employment income tax base is determined as the employee’s gross wage increased by social security and health insurance contributions paid by the employer. An employee’s income tax base is thus artificially increased, which results in effective taxation at 20.1%, despite the income tax rate being 15%. The super-gross wage concept has been criticised as overly complicated and non-transparent, and its abolition has periodically been proposed.

The amending proposal also abolishes the 7% solidarity tax surcharge applied to gross income from dependent activity (employment) and to tax bases from independent gainful activity (self-employment) in excess of 48 times the average wage in aggregate for the taxable period.
If passed, the amending proposal would bring the tax base down to the employee’s gross income (gross wage). Furthermore, two tax rates would be introduced: a first tax rate of 15% would be applied to income up to 48 times the average wage; a second tax rate of 23% would be applied to income above this limit (approximately CZK 140 per month).

Unlike the current legal regulation, under which the solidarity tax surcharge only applies to income from employment and income from independent gainful activity, the two rates should apply to the total of all types of an individual’s taxable income (i.e. also, to rental income, income from the sale of movable or immovable assets, etc.).

The proposal also reintroduces a separate tax base for selected capital gains flowing to individuals from abroad (such as foreign dividend or interest income). This separate tax base would be subject to a single 15% tax rate, while income flowing from the Czech Republic would be subject to a 15% withholding tax. Introducing a separate tax base should prevent different taxations of selected kinds of income flowing to individuals from abroad and from the Czech Republic.

The proposed changes would have a positive effect on practically all employees, as their monthly gross income from employment up to CZK 140,000 would be taxed at 15% rather than at the present 20%. Income from employment above this limit will be effectively subject to the same tax burden as now.

On the other hand, tax would increase for individuals who have income other than from employment or independent gainful activity (for instance rental income or income from the sale of movable or immovable assets, etc.) and whose total income exceeds 48 times the average wage: other income above this level would be taxed at

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23%, rather than at 15% as is now the case.
The amending proposal is to be a part of the currently debated amendment to the Income Tax Act which is to enter into effect on 1 January 2021. At the last session of the government, the governmental coalition of ANO and CSSD agreed on the proposal. The abolition of the super-gross wage is generally also supported by the other political parties. However, the question remains whether it will take place in the above described form as it would have a significantly adverse effect on the state budget.

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First change to new investment incentive criteria

In response to the coronavirus pandemic, the Ministry of Industry and Trade has submitted an amendment to the Government Decree on Investment Incentives aiming to provide more substantial support for investments involving selected strategic products.



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A draft amendment to Government Decree No. 221/2019 Coll. is now subject to a comment procedure reduced to ten working days in accordance with the government's legislative rules.

Changes to parameters for investment projects in manufacturing

The most crucial change is the waiver of an obligation to invest in manufacturing activities with a higher added value where projects involve strategic products as defined in Appendix No. 2 to the decree, such as protective and medical supplies/tools and pharmaceutical products.
Moreover, all investment projects involving the production of strategic products as defined in the above appendix should be regarded as strategic investment projects, i.e. projects that may receive material support to acquire tangible and intangible fixed assets of up to 10% of the investment value, without having to meet the requirements normally applicable to strategic investment projects such as the minimum investment amount and the minimum number of new jobs (i.e. CZK 500 million and 500 new jobs).

In addition, for all investment projects in manufacturing, the minimum investment amount to acquire tangible and intangible fixed assets should be reduced from an original CZK 100 million to CZK 80 million (also resulting in a change of the minimum share of machinery to CZK 40 million).

Relief for small and medium-size businesses

Support for small and medium-size businesses should also change. The above mentioned minimum required investment amount should be reduced to a half (medium-size businesses) or a quarter (small businesses). The option to further reduce the minimum investment amount to a half where an investment is carried out in districts with high unemployment rates, state-supported regions and privileged industrial zones should remain in application. In such situations, the minimum required investment amount may drop to up to CZK 10 million for small businesses and CZK 20 million for medium-size businesses.

Another advantage offered to small and medium-size businesses is the reduction of the required number of newly created jobs to 50% within projects investing in technology centres and strategic services centres, i.e. 10 - 35 jobs according to the type of a centre.

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Immovable property acquisition tax – to pay or not to pay?

The bill to abolish the immovable property acquisition tax is currently going through the legislative process. The Ministry of Finance had expected it to pass smoothly and become valid by the end of 2020. The related extraordinary measure of June 2020 was also drafted under this assumption, but in August, the bill was returned to the Chamber of Deputies by the Senate with amending proposals. Although these do not concern the abolition of the immovable property acquisition tax as such, they may result in an unplanned delay with some rather unintended consequences for taxpayers. What is the situation now as to the duty to file the tax return and pay the tax?



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The bill is to have a retrospective effect, meaning that no immovable property acquisition tax would be paid on acquisitions where the ownership right was entered in the Real Estate Register in and after December 2019 (i.e. acquisitions of immovable property with the duty to file an immovable property acquisition tax return on or after 31 March 2020).

In practice, we are often asked whether one should pay the tax on recent acquisitions. So far, our answer has been "no", taking as a basis the decision of the Minister of Finance dated 10 June 2020 and published in the Financial Bulletin 9/2020: For taxpayers with the duty to file a tax return and pay tax between 31 March 2020 and 30 November 2020 (i.e. where the ownerships right was entered in the Real Estate Register between 1 December 2019 and 31 August 2020), the decision waives the penalty for the late filing of the tax return and the interest on the late payment of tax as long as the tax return is filed and the tax paid by 31 December 2000. The ministry expects that by then the above mentioned bill abolishing the immovable property acquisition tax will have been passed, meaning that the taxpayers will not in fact have to file the tax return and pay the tax at all.

Thus, if a taxpayer acquired immovable property, and the ownership right was entered in the Real Estate Register from 1 December 2019 to 31 August 2020, they do not yet have to file a tax return or pay the tax; they may just wait and see whether the bill abolishing the immovable property acquisition tax is passed. If it is not, they should file and pay the tax by 31 December 2020. If the bill abolishing the tax is passed at a later date, and if its retrospective effect is preserved, this will result in a refundable tax overpayment.

Unfortunately, the mentioned Ministry of Finance measure does not apply to immovable property acquisitions where the ownership was entered in the Real Estate Register in or after September 2020. These taxpayers should file a tax return and pay the tax within the standard deadlines. Should the bill as currently proposed be passed at a later date, the taxpayers will be entitled to a refund of the resulting tax overpayment, based on individual applications to be filed with their respective tax administrator.

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Subsidies

Last calls for Potential, Innovation and Application Programmes

In late August and early September, the Ministry of Industry and Trade announced the long-awaited last calls within the Enterprise and Innovation for Competitiveness Operational Programme (OPEIC). These include calls to participate in programmes focusing on research and development activities and innovation in manufacturing – Potential, Application, and Innovation. Subsidy programmes are under certain conditions also available for large businesses.



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The Potential Programme offers support to projects investing in the establishment or development of research, development and innovation centres; the Innovation Programme provides support to activities leading to the innovation of products and processes in manufacturing or relating to organisational and marketing innovation. The Application Programme helps cover operating expenses incurred to perform industrial research and experimental development activities.

As before, large enterprises must again fulfil intervention codes 065 and 063. Specific requirements applicable to individual programmes are shown in the table below. For the sake of completeness, we also include a short summary of intervention codes:

- Intervention code 065 – projects must have a significant positive effect on the environment, focusing on a low-carbon economy and resilience to climate change
- Intervention code 063 – cooperation with small and medium-size businesses on specific research and development projects.

Individual programmes' detailed parameters are as follows:

Parameter	Potential	Application	Innovation
Application acceptance	4 Sept 2020 – 23 Nov 2020	14 Sept 2020 – 15 Dec 2020	15 Oct 2020 – 29 Jan 2021
Subsidy amount	CZK 2 – 50 mil	**CZK 2 – 50 mil** (for projects without efficient cooperation) **CZK 2 – 100 mil** (projects carried out in efficient cooperation, CZ-NACE 30.3, intervention code 063 or 065)	CZK 1 – 75 mil
Level of support	50% of eligible costs	25 – 65% of eligible costs*	25% of eligible costs

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Parameter	Potential	Application	Innovation
Eligible costs	- tangible and intangible fixed assets - investment to buildings	- personnel expenses - expenses incurred for tools, devices and equipment in form of depreciation - contractual research expenses - R&D advisory services - additional overhead and other operating	- structures, technologies - software and data - project documentation, rights to use intellectual property and certification of products for large businesses under the de-minimis regime
Participation criteria for large businesses	Fulfilling criteria of one of intervention codes: 065 or 063	Limited funds for allocation and a lower maximum subsidy amount available even without having fulfilled the intervention code criteria	Only projects meeting the 065 intervention code criteria

* depending on the activity being supported and the performance of a project with or without efficient cooperation.

All programmes must be carried out in the CR, excluding Prague. Applicants must have their beneficial owners registered in compliance with the Act on Certain Measures against Money Laundering and Financing Terrorism. Large enterprises may submit only one application per one applicant (corporate ID no.). Within the Application Programme, it is possible to apply for support for up to three projects if meeting certain selected criteria.

Should you be interested, we will provide you with more detailed information on the programmes or assess the adequacy of the above programmes and other specific criteria for your planned activities.

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Adaptation/integration courses for foreigners in the CR

The adaptation and integration of foreigners has been a hot topic worldwide. The first element of foreigner integration was introduced to Czech legislation already in 2009 in the form of a Czech language exam as a precondition for certain types of permanent residence permits. The next step will now be the duty of foreigners/holders of certain types of long-term or permanent residence permits to attend an adaptation/integration course; this shall apply from 1 January 2021.



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Since the Foreigners' Residence Act only contains a basic course regulation, the Ministry of Internal Affairs has drafted the Decree on Foreigner Adaptation/Integration Courses, specifying the requirements in more detail. The decree stipulates course organisation requirements; attendance fees; course content and time scope; course attendance conditions; essentials of attendance certification documents; professional qualification requirements for lecturers and interpreters; the content, extent and essentials of the lecturer and interpreter examinations, the manner of taking exams, and their result assessments.

The courses will be organised by the 18 Foreigner Integration Centres currently operating in the Czech Republic. There will be public courses open to the general public, and non-public ones partly organised and paid for by third parties, such as employers of foreigners, who will determine who may attend the course. The decree also stipulates the minimum and maximum number of attendants for public courses (10 to 30), and the maximum number for non-public ones (30). Deviations from these limits will only be possible with the consent of the Ministry of Internal Affairs.
The courses shall take place in the Czech language, under the supervision of a lecturer and an interpreter. They may be interpreted to some of the nine languages listed in the decree, or, upon the ministry's consent, to another language. The courses are to be led and interpreted solely by lecturers and interpreters who have passed the decree-prescribed exam, thus meeting the professional qualification requirements.

The attendance fee has been set at CZK 1,500 for public courses (to be paid by the foreigners themselves) and CZK 800 for non-public courses (to be paid by the entity taking part in organising the course, in aggregate for all attending foreigners). The payment shall be credited to an account determined by the ministry.

Prior to attending the course, the foreigners must present a residence permit or, if they do not have one and cannot obtain it, a passport. Attendants of public courses must prove that they have paid the attendance fee.

Courses will be scheduled for four hours in a single day and comprise a lecture by a lecturer, and a 'Welcome to the Czech Republic' video approved by the ministry. The content of the course will inform foreigners of their rights

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and duties in connection with their stay in the Czech Republic, and acquaint them with the key values, local conditions, and cultural habits in the Czech Republic. Foreigners will thus receive a wide range of information, both practical and concerning business, employment, education and housing, domestic violence and equal treatment issues, as well as input on major social, cultural and religious events in the Czech Republic.

Foreigners not attending the course will commit an offence for which they may be fined up to CZK 10,000. However, failure to attend the course should not have a negative impact on residence permits.

According to the draft decree, courses supervised by qualified professionals should help foreigners adapt to the living conditions in the Czech Republic and better understand the new culture, while also aiming to prevent some security risks, including terrorism. Employers taking part in organising the non-public courses may include the adaption/integration courses in their initial training for new employees, while providing them with a benefit of not having to pay the course fee. The draft decree is now going through a commenting procedure. We will thus have to wait to see what its final wording will be.

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Business with Northern Ireland after Brexit

The European Commission has prepared a draft of changes to the VAT rules applicable to trading with Northern Ireland. The draft has been submitted as part of the preparations for Brexit at the end of this year. The new rules adjust the existing regulations to comply with the Protocol on Ireland/Northern Ireland that regulates post-Brexit relations between the UK and Ireland.



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The United Kingdom ceased to be a member of the EU on 31 January 2020. On 1 January 2021, after the end of the transition period, both citizens and businesses will fully feel the consequences of the UK's withdrawal from the EU. Where trading in goods is concerned, changes are to be expected not only in the customs and tax area but also in marking and labelling of goods and obtaining various permits. As for the provision of services, it is necessary to prepare for changes relating to financial, transport and electronically provided services and to the recognition of certificates and qualifications.

"A communication on readiness at the end of the transition period between the European Union and the United Kingdom" should help the UK in its transition to sovereignty in most affected areas, assessing the readiness of not only the UK economy for Brexit in individual areas such as VAT, customs and excise duties.

The European Commission also dealt with the EU VAT rules that will cease to apply to the UK but will remain in application in Northern Ireland to prevent the creation of a hard border between Ireland and Northern Ireland. This will lead to the existence of a mixed VAT system in Northern Ireland: trading in goods will be governed by the harmonised EU rules, whereas the provision of services will be governed by the UK rules. This system will require that taxable persons delivering goods to Northern Ireland have EU identification numbers for VAT purposes that should be assigned to these persons under EU rules but, at the same time, must be different from other numbers assigned under UK rules, i.e. those starting with "GB".

Since Northern Ireland does not have any special designation within the two-letter code system, the European Commission proposes the introduction of a special "XI" prefix for Northern Ireland to be used for VAT identification number purposes. If the proposal is approved, the directive will enter into effect on the first day following the date it is promulgated in the EU's Official Journal.
All parties involved should prepare themselves as best as they can for the upcoming changes. We will keep you informed about any future developments in this area.

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Case law

Italian Supreme Court applying beneficial ownership and abuse of right

In its July judgement, the Italian Supreme Court applied the principles formulated by the Court of Justice of the EU (CJEU) in the Danish cases clarifying certain preconditions for applying an exemption from withholding tax under the EU directive on a common system of taxation applicable to interest and royalty (the I+R Directive). The court also laid down the conditions under which foreign holding companies meet the status of beneficial owner.



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Following Danish, Spanish and Dutch cases, the Italian Supreme Court also issued a judgement dealing with the beneficial ownership and abuse of right concepts. In the case brought before the court, Italian tax authorities challenged the application of the withholding tax exemption under the I+R Directive on interest paid by an Italian company to its Luxembourg parent. The interest related to a loan in group financing of a corporate acquisition.

The Italian tax authorities argued that the Luxembourg holding company could not be considered the beneficial owner of the Italian-sourced income, since shortly after receiving the interest the holding company passed it on to another group entity, retaining a very low margin (0.125%). According to the Italian tax authorities, this indicated that the holding company was a mere conduit entity. The Italian Supreme Court rejected these arguments, for the first time relying on the principles formulated in the mentioned CJEU Danish cases: It confirmed that the Luxembourg holding company qualified as the beneficial owner since it had the right to use and enjoy the interest income with no contractual or legal obligation to pass it on to another entity.

As for the abuse of right, the Italian Supreme Court confirmed that a foreign holding company shall not be automatically considered an entity lacking economic substance. Considering the specific nature and activities of a holding company, a light asset structure is not at odds with market standards. The key point is instead to verify whether a company makes independent management decisions, especially with regards to the income received.

The Italian Supreme Court held that there was no abuse of right since the Luxembourg holding company performed financial and treasury functions for the entire group and retained adequate profits. In this respect, the court specified that the functions performed by the holding company should be assessed globally, not just with respect to the Italian-sourced income. The court emphasised that in the case in question, the Luxembourg holding company managed the group's cash flow and played a key role in a challenging and complex acquisition transaction.

The Italian judgment, as the previous Spanish and Dutch ones, indicates that the national courts are slowly starting to follow and align their decision-making practice with CJEU judgements.

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Supreme Court: same wage for same work in Prague and elsewhere

The Supreme Court (SC) ruled that a driver working in the regional town of Olomouc is entitled to the same wage as a driver working for the same employer and at the same position in Prague. According to the SC, external social and economic circumstances such as the job market situation or cost of living in the region do not constitute a criterion for assessing whether the same work or, more precisely, work of the same value, is involved. Does this mean that employers will have to top up their employees' wages to level them across regions?



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Under the Labour Code, all employees of the same employer shall be entitled to the same wage for the same work or work of the same value. Same work or work of the same value shall mean work of the same or comparable complexity, responsibility and difficulty that is performed under the same or similar working conditions, with the same or similar performance and results. This means that the amount of individual employees' wages does not always have to be the same, but the differences, if any, must be justified solely by the grounds listed above. Fair compensation, equal treatment and no discrimination are the fundamental principles of labour law.

In the case in question, an employee of Česká pošta (the Czech postal service) in Olomouc working as a driver in a specific position with an assigned remuneration grade received a lower wage than his colleagues working in the same position in Prague, and sought compensation for the difference in court. Česká pošta argued that the working conditions in Prague were different from those in Olomouc, mainly in terms of the complexity, responsibility and difficulty of work. However, the courts concluded that the difficulty of the work and of the working conditions did not significantly differ in the two locations.

Česká pošta then filed an extraordinary appeal with the Supreme Court, arguing mainly that it was necessary to consider the real wage, i.e. an employee's actual wage after deducting the necessary cost of living, including costs for accommodation, transport, services, etc., which are significantly higher in Prague and its surroundings than in other regions of the Czech Republic. The Supreme Court admitted that social and economic conditions do indeed affect the job market on both its supply and demand side, and that employers in more costly locations may compete for employees by offering them better working conditions, including wages. However, in the court's opinion, this does not justify the conclusion that this may be done to employees working for the same employer. The court insisted that working conditions may only be compared using the criteria listed in the Labour Code , which are limited solely to the employer's internal conditions; the Labour Code does not allow considering also external social or economic conditions. The Supreme Court did not review the facts of the case, i.e. whether the working conditions in individual regions did indeed differ. Nonetheless, the case is interesting mainly because of the extensive evidentiary proceedings during which most assertions made by Česká pošta in support of the different wages of drivers working in the same position in Prague and Olomouc were disproved.

Although the Supreme Court ruled in a specific dispute, its conclusions can be applied generally. It is therefore likely that employees and trade union organisations will respond to the judgement. Importantly, the court did not

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dispute that even in the same position, different work or work of a different value may be performed, therefore deserving a different wage. However, if employers with workplaces in several regions remunerate their employees in the same positions differently, they must be ready to present and prove specific reasons/grounds for their approach; and these may only be based on the criteria admitted by the Labour Code, not on the social or economic circumstances in the given region.

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Is it possible to correct tax base for claims not lodged in insolvency proceedings?

In Case C-146/19, the Court of Justice of the EU (CJEU) held that a creditor may adjust the VAT base for a claim not lodged in insolvency proceedings if they prove that the claim would have been irrecoverable even if it had been lodged in insolvency proceedings.



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SCT, a Slovenian company, corrected VAT on unpaid claims it held against two companies in respect of which insolvency proceedings had already been concluded. The Slovenian tax authority did not accept this correction, as the claims concerned had not been lodged in insolvency proceedings, which is the precondition for claiming the adjustment of the taxable amount prescribed by Slovenian legislation.

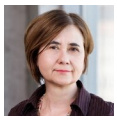
The CJEU was referred the question whether a taxable person (SCT, in this particular case) can be refused the right to a correction of the VAT paid in respect of a claim that had not been lodged in insolvency proceedings and therefore extinguished the moment the related insolvency proceedings were concluded, even though the taxable person may prove that had they lodged the claim, they would not have been able to recover it nonetheless.

The CJEU concluded that a reduction of the tax base should be feasible provided that the creditor's claims are proven definitely irrecoverable. The court also held that the requirement to lodge claims in insolvency proceeding aims to prevent tax evasion or avoidance in compliance with the VAT Directive. However, according to the CJEU, the requirement to lodge a claim in insolvency proceedings in situations where the creditor proves that had they lodged it they would not have recovered it, goes beyond what is necessary to attain the objective of eliminating the risk of loss of tax revenue.

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News in brief, September 2020

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



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DOMESTIC NEWS IN BRIEF

- We draw attention to the effectiveness of an amendment to the VAT Act implementing quick ☒xes relating to cross-border supplies of goods and consignment (call-off) stock arrangements. The amendment was promulgated in the Collection of Laws on 14 August 2020 and entered into effect on 1 September 2020.
- Financial Bulletin 11 and 12 disclose communications on the Czech Republic-Ireland treaty to prevent double taxation and tax evasion relating to income and property taxes following the multilateral convention to implement tax treaty-related measures to prevent base erosion and profit shifting.
- Following the effectiveness of the multilateral convention to implement tax treaty-related measures to prevent base erosion and profit shifting for the Czech Republic's tax treaties from 1 September 2020, the Ministry of Finance communicates that the multilateral convention applies to double taxation treaties with the following countries: Australia, Belgium, Denmark, Finland, France, Georgia, Island, India, Ireland, Israel, Japan, Canada, Cyprus, Lichtenstein, Lithuania, Latvia, Luxembourg, Malta, the Netherlands, Norway, New Zealand, Poland, Portugal, Austria, Russia, Singapore, Slovakia, Slovenia, Serbia, Sweden, Switzerland, and the United Kingdom.
- The government has approved the draft measures arising from the Czech Capital Market Development Concept for 2019 – 2023. Major novelties include, among other things, the introduction of a long-term investment account and an alternative participation fund. The draft also includes measures aimed to enhance the protection of investors and strengthen tools against fraudulent bonds.
- Act No. 343/2020 Coll., amending the Act on International Cooperation in Tax Matters and introducing a new reporting duty relating to cross-border arrangements (DAC6), has been published in the Collection of Laws. In relation to DAC 6, the act entered into effect on 29 August 2020. In response to the COVID-19 pandemic, the Council of the EU adopted a COVID-19-related amendment to the Directive on Administrative Cooperation which, among other things, postpones the deadlines for meeting reporting duties under DAC6 by ca. six months. As stated in Information on the Exchange of Information under DAC6 of 17 June 2020, the Ministry of Finance supplemented an amendment to tax legislation (Act No. 299/2020 Coll.) with an enabling clause based on which the government may implement the above postponement of deadlines via a decree. The government decree postponing the deadlines for fulfilling the reporting duties under DAC6 was approved on 7 September 2020 and is expected to become effective during the course of September 2020 depending on its promulgation in the Collection of Laws.

FOREIGN NEWS IN BRIEF

- The Council of the EU adopted new rules for applying excise duties on alcohol effective from 2022. The new rules are included in Council Directive (EU) 2020/1151 amending Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages.
- The European Commission issued its first report on the implementation of ATAD in individual member states.

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