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News in brief, December 2020

Editorial

I was already on the lookout for Brexit in the Tax and Legal Update editorial in April 2018, and then again in February 2019 - and so far, it hasn't happened. Now it finally seems that nothing will stand in its way, and the tax and customs areas are up for major changes – as I predicted twice before in this same place, for that matter. However, even today it is not clear what type of Brexit will finally take place – whether it will be with, without or with just a temporary deal. One thing is for sure: from 1 January 2021 the United Kingdom will become a 'third country' for EU member states.

Unless governmental measures demand a special issue, this may well be the last Tax and Legal Update you'll get to read this year. Hence, I would like to wish you all the best for the new year well in advance. At the end of each year, we usually wish each other an upcoming year better than the last one, and good health. This year, it seems that these very commonplace words we usually say without much thought have regained their true meaning. So I sincerely wish you good health, plenty of happiness, and may the year 2021 be better than the one about to end.



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Antivirus A Plus – improved support for closed businesses

On 14 October 2020, the government extended Regime A of the Antivirus programme until the end of the year, and at the same time launched Regime A Plus with retroactive effect from October 1. The new regime offers significantly more favourable conditions for the support of restaurant owners and other employers who were forced to restrict their operations. However, not all employers will qualify for A Plus.



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Since April of this year, Antivirus, an employment protection programme, has been compensating employers for a portion of wage compensations they pay to employees not working due to 'impediments to work'. While Regime A applies to ordered restrictions of operation and quarantine, Regime B covers associated economic difficulties faced by employers – such as a decline in demand for their products or services.

In October, both regimes were extended by the government until 31 December 2020. At the same time, along with new measures restricting business activity, the government adopted A Plus, a new regime of the Antivirus programme.

Regime A Plus is based on Regime A, but applies only to businesses that were ordered to restrict their operations; where employees are not working due to ordered quarantine or isolation, support has to be applied for under standard Regime A.

Also, support under Regime A Plus is more generous: while under Regime A the employer is entitled to reimbursements of 80% of the wage compensations and statutory premium payments amounting to up to CZK 39,000 per employee, under Regime A Plus the employer is entitled to the reimbursement of 100% of wage compensations, up to CZK 50,000 per one employee.

However, to qualify for support under Regime A Plus, additional conditions beyond those for the other regimes of the Antivirus programme have to be met, following from the rules for the provision of state aid in the EU stipulated in Article 3.1 of the Temporary Framework for State Aid Measures to Support the Economy in the Current Spread of COVID-19 Coronavirus Disease, governing Regime A Plus.

The first requirement is that the aid be used to compensate losses of liquidity. For the purposes of Regime A Plus, a loss of liquidity is assumed and does not have to be proven in any manner. The second condition is that the sum total of all aid received by the applicant and its related undertakings under Article 3.1 of the Temporary Framework (in the Czech Republic also, for instance, COVID-rent, COVID-spa, etc.) shall not exceed EUR 800,000. For the fishing and aquaculture sector, this limit has been reduced to EUR 120,000 and for agricultural primary production to EUR 100,000. The third condition is that the aid applicant is not an 'undertaking in difficulty' as per the European Commission's definition.

In practice, applicants support their compliance with the conditions through an affidavit. To prove that they have not exceeded the overall limit for public aid, with each wage compensation statement they must submit a list of aid

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granted to them under Article 3.1 of the Temporary Framework, including the amounts. As the support under Regime A Plus itself falls within this category of aid, the list of aid has to be regularly updated for aid granted under A Plus for the past months.

Employers who have been ordered to restrict or close their operations but do not meet some of the additional conditions for participation in A Plus may still apply for support under standard Regime A. Both regimes may be combined in individual months and for individual employees.

For employers ordered to restrict their operations, Antivirus A Plus is undoubtedly more advantageous than Regime A. However, employers must first assess whether they meet the additional conditions to qualify. Given the complexity of the new rules, it may be difficult in practice for employees to assess whether they are eligible for support under Regime A Plus without professional legal advice.

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Second wave of emergency carer's allowance

As in the spring, the government has responded to the second wave of the pandemic by taking steps to financially support both employers and employees, as well as the self-employed. Among other things, the measures adopted include an 'emergency' carer's allowance, introduced at the end of October by the new Act on Changes in Providing Carers' Allowances in Connection with Emergency Measures in the Event of an Epidemic. Compared to the spring, several changes has been made to the present emergency carer's allowance.



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Employees temporarily unable to work due having to take care of young children, dependent children, persons with disabilities, or children unable attend school due to quarantine ordered in their family are entitled to a carer's allowance under the conditions stipulated in the act. Under the new rules, employees working based on an agreement to perform work or an agreement to complete a job shall also be entitled to carers' allowances, provided that social security insurance has been paid for them. As in the spring, carers' allowances for self-employed persons/sole traders fall within the competence of the Ministry of Industry and Trade.

The good news for parents (and other beneficiaries) is that the possibility to take turns with one other care giver remains in place; however, carers may not alternate within one single day.

A worse but equally important change from the spring is that the child's age limit to qualify for the carer's allowance has been reduced from 13 to 10 years. Also, the amount of the allowance has changed: currently it amounts to 70% of the daily assessment base and a minimum of CZK 400 per day; for shorter working hours, the amount is reduced proportionately. Carers' allowances can be applied for retrospectively from October 14, 2020, when schools were officially closed.

Carer's allowance benefits shall be paid by the respective District Social Security Administration ('DSSA') on the basis of an electronically submitted application made using a new form. Employees must file the application through their employers.

The new rules have been set for the duration of the emergency measures banning on-site instruction in schools, but no later than until the end of the school year. As in the spring, once the emergency situation passes, the original rules under the Sickness Insurance Act should apply again.

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Travellers' Traffic Light (Semafor) changing colours

On 9 November 2020, the Czech Ministry of Health disclosed a measure regulating the rules for foreign nationals arriving and staying in the Czech Republic. Countries are divided into three groups according to the level of risk of infection and are designated by the traffic light colours green, orange and red.



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The ministry itself calls the measure the Travellers' Traffic Light (Semafor). The list of green and orange designated countries has been modified by this measure and is available at the ministry's website. Foreigners arriving to the Czech Republic from the designated countries must adhere to certain rules and duties.

Foreign nationals arriving from green countries must proceed in accordance with the rules applicable before the outbreak of COVID-19. If such foreigners did not spend at least 12 hours in the last 14 days in the territory of an orange or red state, they neither have to undergo any tests nor fill in arrival forms. Moreover, such foreigners do not have to submit any test results before commencing employment or education.

The arrival of foreign nationals from orange countries (marked with an asterisk (*) on the list) is generally not restricted or subject to any specific conditions. A test on the presence of COVID-19 must only be submitted to if the foreigner spent at least 12 hours in the last 14 days in the territory of an orange or red state under the conditions specified in the measure. Workers who must undergo testing may not be let into their workplace unless they provide negative test results (the same duty applies to educational institutions in relation to students and teachers).

The strictest rules apply to foreigners arriving from red countries, i.e. those with the highest risk of infection and not included in the list of low-risk countries. Foreigners arriving from red countries must fill in arrival forms before their entry, and within seven days of their arrival must submit to the respective public health offices the results of their tests undergone in the Czech Republic. EU citizens and non-EU citizens having long-term and residence permits in another EU member state form an exception to this rule: they may submit test results not older than 72 hours and done in another EU member state. The rules for entering the workplace or an educational institution are the same as for foreigners arriving from orange countries.

The protective measure as amended on 16 November introduces a number of exceptions from the above duties. The duty to undergo a test and complete an arrival form does not apply to foreigners passing through the CR and not staying more than 12 hours, as well as foreigners arriving in the CR for a period of less than 24 hours for urgent health, family, business or work reasons. The duties also do not apply to cross-border workers, pupils and students who at least once a week are crossing the Czech border to or from a neighbouring country for work or educational purposes.

The last area regulated by the protective measure is the receipt of applications for residential permits at Czech embassies abroad. Under the amended measure, it has become possible to apply for short-term visas at selected

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embassies as well. A list of embassies exempted from the ban on the acceptance of applications for residence permits has been published at the Ministry of Foreign Affairs' website.

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Ministry of the Interior's operations limited during pandemic

As the pandemic develops, the functioning of some departments of the Ministry of the Interior, namely the Department of Asylum and Migration Policy (OAMP) and the Department of the Foreigners' Police, has been changed. Until now, only clients with urgent matters necessitating personal presence were allowed to visit the OAMP offices, with appointment. Effective from 30 November 2020, foreigners can make an appointment to visit OAMP offices in all matters, while urgent matters necessitating personal presence will still be prioritised and attended to first.



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Urgent matters include, e.g., the processing of biometric data, the issuance of new residency permits and 'bridging labels' allowing foreigners in urgent need to travel abroad and return to the Czech Republic with a residency card which has expired and whose extension proceedings have not yet been completed. This label is entered in the applicant's travel document as a visa for a stay over 90 days with a maximum validity of 120 days, usually within one visit. In the current situation, it is necessary to present an air or train/bus ticket to support the urgency of the request for issuing the label.

Urgent matters also include responding to the authorities' calls to correct errors in one's application or to provide additional documents. If a foreigner receives a call to appear at the OAMP in person, they may make an appointment at the specific office or may apply by post for an extension of the deadline for doing so. If a foreigner is not in the Czech Republic because of measures against the spreading of COVID-19, they have to apply for an extension of the deadline, and sufficiently justify the absence.

Another fundamentally urgent matter and obligatory for foreigners is to register with the foreigners' police upon their arrival in the Czech Republic. Due to the current measures, this is conditional upon a negative result of an RT-PCR test. The foreigner is obliged to come to the foreigners' police office to register within three days of their arrival in the Czech Republic. According to the new travel safety system named Travellers' Traffic Light (Semafor), foreigners arriving from a high-risk (red) country must undergo an RT-PCR test and self-isolate until results are obtained. The registration period is thus now calculated from the receipt of the negative test result, not from the arrival itself. If the test result is positive, the foreigner has to self-isolate and follow the instructions of the respective regional health protection office. The deadline for registration is then extended until the receipt of a negative test result. To register, it is also necessary to confirm the completion of the arrival form with a QR code that the foreigner receives by email.

The new governmental measures also affect the acceptance of applications for residency permits. In the current situation, it is only necessary to appear in person at the OAMP to submit applications where a foreigner's presence is explicitly required by law, i.e. first-time applications for long-term residency permit in the territory of the Czech Republic following long-term visas, and applications for residency permits for children born in the Czech Republic and for temporary residency permits of family member of EU citizens.

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All applications for the extension of residency permits of foreigners already residing in the Czech Republic can be sent to the appropriate OAMP office by post. The ministry also recommends that any changes (changes in addresses or travel documents, etc.) be done by post or via a data box. However, please note that the statutory deadlines for reporting data changes or for filing extension applications remain the same and continue to be governed by the relevant legislation.

From 30 November 2020 it is also possible to visit the OAMP's offices without previous appointments regarding departure orders where the deadline for the foreigner to leave the country was set by a decision; to collect documents delivered by a public announcement; if previously called upon to visit the office by an administrative authority; or to be issued a 'bridging label' where there is danger in delay, to be proven by the foreigner (e.g. urgent travel to the home country for personal reasons).

The Ministry of the Interior continues to publish important information on its website. During office hours, answers to specific questions can also be obtained through the OAMP's hot-line.

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2021 tax package

The Chamber of Deputies has passed an amendment to the tax laws for 2021 (Print No. 910) in the third reading. The bill is now to be debated by the Senate. The most important changes that the tax package introduces to income tax are the abolition of the super-gross wage, the introduction of the progressive taxation of individuals at 15% and 23%, the acceleration of tax depreciation, a change in the taxation of discounted bonds, and, quite unexpectedly, also the introduction of a cap on the exemption of income from the sale of securities. Below, we bring a summary of the most important changes from the original bill that the chamber has approved.



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The amendment introduces a limit of CZK 20,000,000 for the exemption of income from the transfer of a security, a mutual fund or an equity certificate where a three-year (or five-year, for equity certificates) time-test is met. It is not clear from the wording of the adopted amending proposal what income will be subject to the limit: whether income for the taxable period, from a single sale transaction, or from the sale of a single security.

An amending proposal abolishing tax depreciation of intangible assets was also passed; this means a return to a system where accounting depreciation can be claimed as a tax-deductible expense. These new rules can already be applied for intangible assets acquired during 2020. Another change is the increase in the limit for tangible fixed assets: from currently CZK 40,000 to CZK 80,000. The extraordinary depreciation of tangible assets was also approved. Read more here.

Deputies have also passed a one-year postponement of the abolition of the tax exemption of non-residents' interest income from 'Eurobonds', i.e. bonds issued by Czech companies or the Czech Republic abroad. The exemption will therefore be abolished only for Eurobonds issued after 31 December 2021. A new exemption for EU and EEA governmental bonds should start to apply from the beginning of 2021. The new rules for the taxation of bonds (in particular discounted ones) remain unchanged from the original draft.

Deputies have also approved an amending proposal abolishing the super-gross wage and the 7% solidarity tax surcharge. Only employees' gross income shall thus be subject to taxation, without it being increased by the compulsory premiums paid by employers. The amendment introduces two tax bands: the first tax rate of 15% should be applied to income up to 48 times the average wage, and the second rate of 23% to income exceeding this limit (i.e. about CZK 141,000 per month). For more details, see Tax and Legal Update's September 2020 issue.

Under the transitional provisions, the new method of calculating tax shall apply to the entire 2021 tax year, even though the amendment could enter into effect only in the course of 2021. Employees' personal income tax (payroll tax) prepayments for the calendar months of 2021 preceding the amendment's effective date will continue to be calculated from the 'super-gross wage', according to the original wording of the Act. The new calculation method

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shall then be applied to the income for the whole year in employees' annual payroll tax settlement or in their 2021 tax returns; this means that any overpayments for the months of 2021 preceding the amendment's effective date would only be received by employees after the end of the year.

As a result of the abolition of the 'super-gross wage', the gross amount of remuneration for exercising the office of member of a corporation's body considered to be a Czech tax non-resident will be taxed by a 15% withholding tax only.

Should the amendment only enter into effect after 1 January 2021, taxpayers – individuals will have the choice to calculate the tax on their 2021 income either in the old or in the new way. If they opt for the old method, they will have to do so by filing a tax return. The basic tax relief for individual taxpayers themselves may also change: from now on, it should always equal the average wage for the calendar year before last; currently, basic tax relief is stipulated by the law as a fixed amount of CZK 24,840 and has not changed since 2008. As a result of linking basic tax relief to the average wage, the 2021 tax relief would be CZK 34,125. The tax package also abolishes the cap for the tax bonus (so far CZK 60,300); tax bonuses are paid to taxpayers if their child credit for the year exceeds their tax liability.

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Last calls under OPEIC

The end of the programme period for the Operational Programme Enterprise and Innovation for Competitiveness (OPEIC) is approaching, but support may still be drawn. On 24 November 2020, the Ministry of Industry and Trade announced another call under the popular Energy Savings programme, with support also available to large enterprises.



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The Energy Savings programme focuses on the reduction of energy consumption in the business sector. It covers, e.g., capital expenditures and energy assessment costs. The total allocation is CZK 1 billion. Applications are accepted from 24 November 2020 to 30 April 2021. The maximal amount of support is CZK 200 million per project, the level of support is 30-50% of eligible costs (depending on the size of the business).

Activities supported under this programme include the modernisation and refurbishment of electricity, gas and heat distribution systems in buildings; installation or modernisation of energy regulation and measurement systems; replacement of lighting at production halls; building insulation, etc.

Within this call, it will not be possible to implement a project solely comprising the installation of an electricity accumulation system or a photovoltaic power plant (FVE) with electricity accumulation, and such activities have to be complemented with another supported activity.
All planned projects must be carried out in the Czech Republic outside of Prague, and each applicant must prove the ownership or other title (a long-term lease) to the real estate and land where the project is to be implemented. Importantly, the number of applications per one economic entity (one corporate ID) is not limited under this call.

We will be happy to provide you with more information or assert whether the conditions of the programme may suit your company's planned activities.

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Online fraud or: “misfortune a mouse click away”

Increasingly often, we’ve come across cases where clients have fallen victim to sophisticated online fraud. Since virtually anyone can potentially become a victim of social engineering, let this article be a warning of this dangerous phenomenon.



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Undoubtedly, the best defence against online fraud is prevention by educating the general public. And it important to keep in mind that online fraud occurs in equal measure during personal and work transactions. A report recently issued by Europol summarises the most common forms of online financial fraud.

For instance, fraudsters may pretend to be a potential victim’s superiors (usually a high-ranking person in the corporate hierarchy) and try to persuade them to pay a fictitious invoice or make an unauthorised transfer of funds from the company's accounts to the account of the fraudster (‘CEO scams’). Victim are led to believe that the instructions come from an actual person whom they often know. Yet, a seemingly identical telephone number or email address hides a fraudster. To prevent these types of fraud, vigilance and, ideally, a two-person check before making a requested transaction is key. Fraudster also often trick their victims by pretending to be a contractor or a client, and manipulate them into making a payment for goods or services to the imposter’s own bank account.

‘Phishing’, ‘vishing’ or ‘smishing’ are popular types of attacks in which attackers try to lure personal, financial, business, security or other information from their targets through telephone calls, SMS or emails, usually requesting the victim to click on a link or download an attachment. Attackers rely on addressees often being too busy and deceived by the apparent trustworthiness of the person contacting them (usually pretending to be a bank officer). These attacks are the most common form of social engineering and usually target clients of banks.

Other types of online fraud include, for instance: fake bank websites aiming to obtain access data to bank accounts from clients; personal data theft through social networks accounts; or investment scams promising ‘lucrative’ investment opportunities.

Generally, all the mentioned types of online fraud have been on the rise. Therefore, anyone active online should:

- be alert,
- check your online and bank accounts regularly,
- watch out for warning signals (no bank would ever ask its clients for sensitive information; over-advantageous offers are always suspicious, as are urgent and unusual requests marked as confidential, which are also in conflict with corporate policy; a stranger requesting your personal data on social networks; etc.),
- protect your personal and security information,

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- report suspicious incidents (to the police, the bank, the social network operator).

First and foremost: To detect that you are at risk of becoming the victim of online fraud, you must be able to recognise the signs. Being appropriately informed is therefore your most effective weapon.

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Effects of Brexit on income tax in 2021

Although the United Kingdom already left the EU as of 31 January 2020, the transition period during which the United Kingdom is still viewed as an EU member state will end on the last day of 2020. It seems unlikely that the transition period will be extended at the end of the year, hence we can expect significant changes in income tax and other areas. Some of them we present below.



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As for personal income tax, from 1 January 2021 UK tax residents working in the Czech Republic will no longer be entitled to some income relief and credits: the law only grants these to EU or EEA residents.

UK tax residents with more than 90% of worldwide income sourced in the Czech Republic will thus claim in their 2021 tax return only the basic tax relief (for the taxpayer themselves), and possibly relief for being a student (same as other tax residents of non-EU or EEA countries). They will no longer be able to, for example, reduce their tax base by charitable donations, or claim a tax relief for a dependent child or a spouse.

The fact that the EU will no longer be an EU member state may also affect the calculation of the super-gross wage, if this concept is maintained. Employees who are covered by UK compulsory social security and taxed in the Czech Republic will not have their wages increased (for the purpose of calculating tax) by the actual UK social security contributions paid, but by a hypothetical compulsory insurance. However, if the super-gross wage is abolished, employers will no longer be increasing employees' tax base by any insurance premium paid.

As for corporate income tax, the end of the transition period on 31 December 2020 will bring the following changes:

- Dividend paid from the Czech Republic to the UK will always be taxed by a withholding tax and it will no longer be possible to apply the benefits of the implemented EU directive. Under the Double Tax Treaty (DTT) between the Czech Republic and the UK, a rate of 5% shall be applied to dividend payments if the recipient holds at least a 25% of the company's voting rights; in other cases, a rate of 15% shall apply.
- Czech tax residents receiving dividend from the UK or income from the transfer of a shareholding in a UK corporation will under certain conditions still be able to claim the exemption, since the condition that the corporate tax rate must be at least 12% is fulfilled - at present, the tax rate in the UK is 19%.
- When making interest and royalty payments, it will no longer be possible to apply the exemption under the EU directive. Rulings previously issued by the tax authorities to this effect shall cease to apply. Generally, the withholding tax rate for royalties is 15% and under the DTT may be reduced to 10% or even 0%, depending on the type of royalties. Interest payments are currently not subject to withholding tax in the CR, as under the DTT the interest is only taxed by the UK.
- As regards the application of the EU Directive on business transformations, it will not be possible to apply certain special tax regimes (such as taking over an assessed tax loss of a company ceasing to exist) in cross-border transformations involving a UK resident company.
- When making a gratuitous supply (donation) to a UK tax resident, its amount shall not reduce the tax base.

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- A Czech resident making payments to a UK resident of income sourced in the territory of the Czech Republic and not taxed by a withholding tax at a special rate will be obliged to secure the tax.

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Customs procedure post-Brexit

Brexit is drawing unstoppably closer, even though the coronavirus pandemic seems to have upstaged it for now. Early next year, however, the UK's withdrawal will hit us with full force. Which is why British experts are trying to shed light on at least the most critical issues of Brexit: VAT and customs duties are to undergo significant changes.



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While it is not yet clear whether the representatives of the parties involved will manage to sign a future partnership agreement by the end of the year, it is certain that as from 1 January 2021, the United Kingdom will become a third country for EU member states. Currently three options remain for UK's final exit: with an agreement, without an agreement or with a temporary agreement that will not be subject to ratification and will temporarily regulate only the most fundamental problems, especially in the customs area.

The introduction of tariffs (customs duties) to trading with the UK will mainly affect small and medium-sized enterprises that have not yet had experience with customs procedures. The first thing to do if trading with the UK is to apply for an EORI number. If you already had a number assigned to you in the UK, you must get a new one, as the old one will expire in January 2021.

The customs procedure itself still remains a great unknown. The UK is trying to make most measures importer-friendly: when importing goods that are not subject to checks, importers from the EU may enter the imported goods in their own records and only attend to customs formalities within six months from the delivery of the goods; the delay will apply to goods imported until the end of June 2021. However, customs declaration cannot be delayed for goods subject to checks: usually commodities subject to excise duty.

If a company registered for VAT in the United Kingdom opts to delay, their obligation to assess import VAT and report it in their tax return shall also be delayed until after all customs formalities are settled.

For the sake of completeness, please note that transactions with the UK will no longer have to be reported in the Intrastat report and in the EC Sales List. This, however, applies only to supplies of goods whose transportation will commence in January 2021. All shipments dispatched or transported in 2020 must still be included in these statements.

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Case law

CJEU: Imports of goods from third countries without the right to deduct VAT?

In the case of Weindel Logistik Service (C-621/19), a company providing repacking services to its customers, the Court of Justice of the European Union (CJEU) confirmed the conclusions of the financial administration and denied the right to deduct import VAT. The CJEU argued that there was no direct link between the VAT payable on import and the service provided.



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Weindel's main activity is to repack goods for customers, making the packaging better suited to the various intended markets. The case before the court involved a Swiss customer's goods which were released for free circulation in Slovakia. Weindel was stated as an importer, therefore a person liable for import VAT, and claimed the deduction of import VAT.

Weindel repacked the goods in Slovakia and sent them back to the Swiss customer (who remained the owner of the goods for the entire time), to another member state or to a third country. Weindel charged the customer only for the repacking of the goods.

The Slovak tax authorities challenged and subsequently denied Weindel's right to deduct import VAT on the grounds that Weindel never owned the goods, and did not use them in any way for their economic activity. Weindel argued that without the goods they could never have provided the repacking services, their main economic activity.

In the case in question, the CJEU sided with the Slovak tax authorities: in the court's opinion, Weindel acted only as a service provider, without it being evident that they acquired the imported goods or bore the import costs. Based on this argument, the CJEU concluded that there was no direct link between the VAT payable on import and the services provided.

The CJEU's decision is to be understood to the effect that an importer who imports goods but does not become their owner (the right to dispose of the goods as their owner is not transferred to them) does not have the right to deduct import VAT. However, this should not apply where the cost of importing the goods is included in the price of downstream supplies to customers.

Therefore, if you import goods for a customer without the ownership being transferred to you, there is a risk that the deduction of VAT on import may be challenged by tax authorities. If you identify such a risk, do not hesitate to contact us, we will be happy to help you eliminate it.

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Case law

Holdings: do failed investments and changes in use of inputs lead to correction of VAT deduction?

At the beginning of November, the Court of Justice of the European Union (CJEU) ruled in the case of a Portuguese holding company which intended to acquire another company, but the transaction did not ultimately materialise. The Court was dealing with whether the right to deduct VAT is maintained even if the investment failed, and whether the change in the actual use of the inputs affect the right to deduct VAT already claimed.



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The case involved Portuguese holding company Sonaecom SGPS SA (C42/19), which planned to acquire a share in another company, a telecommunications operator. For this purpose, they purchased market research services, and also paid a commission to a bank for arranging a bond loan, the proceeds of which the holding company intended to use to purchase the mentioned share. The plan was to provide the company being acquired with management services subject to VAT, therefore the VAT on inputs was deducted in full.

In the end, the acquisition did not take place. The issue at dispute therefore was whether the right to deduct VAT already claimed shall be maintained even though the funds obtained through the bond loan were eventually used for a loan to the parent company.

The court first referred to the principles of VAT as regards holding companies: in particular, that a company whose sole purpose is to acquire shares in other companies without directly or indirectly participating in their management and providing them with no services does not have the status of a taxable person for VAT purposes; subsequently, such a company does not have the right to deduct VAT on its purchases. On the other hand, a company involved in the management of companies in which it has acquired ownership shares is a taxable person. Its right to deduct input VAT is then governed by the nature of the services provided: if they are services which are subject to output VAT or, in general, supplies upon whose provision the right to deduct the related input VAT is maintained, the company is entitled to deduct VAT on directly related inputs in full.

Furthermore, the court stated that a mixed holding company is a company which not only holds shares in companies, but provides services to some of those companies for consideration, which are subject to VAT. Such a company is thus a taxable person and entitled to deduct VAT on indirectly related costs, pro rata.

The court further stated that any economic activity also includes preparatory activities, and that each person who intends to pursue an economic activity independently must be regarded as a taxable person. The once arisen right to deduct is thus maintained even if the intended economic activity does not ultimately take place, for objective reasons.

If, due to a failed investment, the purchased inputs are used for a different purpose, the actual use of those inputs

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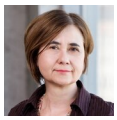
must be taken into account for VAT purposes. This means that it is necessary to assess whether the ultimate use of the inputs gives rise to the right to deduct VAT.

In the case in question, the Court thus ruled that a company whose involvement in the management of its subsidiaries is recurrent is entitled to deduct input VAT paid on the purchase of market research services even though the intended acquisition of a shareholding did not ultimately take place. At the same time, however, the same company is not entitled to deduct input VAT on the commission paid to a credit institution in connection with the bond loan if the capital obtained through the bonds was paid in full to its parent company as a loan and such transaction constitutes a VAT exempt supply without the right to deduct.

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News in brief, December 2020

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



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DOMESTIC NEWS IN BRIEF

- From 1 January 2021, the amount of interest on building savings and mortgage loans used to finance housing and provided by a bank or a building society that may be deducted from the personal income tax base will be reduced. The tax administration has published methodological information on this. In view of some uncertainties of the new legislation, the issue is to be discussed at the Coordination Committee of the Chamber of Tax Advisors and the General Financial Directorate in the nearest future.
- From January, the minimum wage will increase by CZK 600, i.e. from CZK 14,600 to CZK 15,200. The lowest guaranteed wage will range from CZK 15,200 to CZK 30,400 per month, or from CZK 90.50 to CZK 181.00 per hour in 2021.
- Decrees regulating printed/electronic forms for filings regarding VAT, road tax, and property tax, customs documents and gambling have been published in the Collection of Laws.
- Deputies have passed a draft amendment to the Excise Duty Act aiming to mitigate the effects the COVID-19 pandemic has had on breweries. The amendment introduces the possibility to return beer that could not be distributed and consumed due to government measures restricting the operation of hospitality facilities back to tax warehouses for disposal or reprocessing, with the right to claim a tax refund.
- The Ministry of Industry and Trade has prepared an amendment to the Regulation on the Implementation of Certain Provisions of the Investment Incentives Act. Its aim is to support investments by private investors, and at the same time to localise the production of selected commodities of strategic importance for the protection of citizens' life and health in emergency situations in the Czech Republic, and to encourage production by existing domestic producers to the reduce the Czech Republic's dependence on foreign suppliers.
- The Ministry of Finance has prepared an annual decree setting the amount of per diem allowances when travelling abroad. Based on the proposal of the Ministry of Foreign Affairs, it has proposed an upwards adjustment of the basic rates of foreign per diem allowances for 21 items.
- The Senate has discussed a governmental proposal to introduce a lump-sum tax for the self-employed/sole traders. The limit for applying this scheme is an annual income from the business activity of up to CZK one million. The senators also added to the bill a technical modification concerning the budgetary allocation of taxes. The deputies will decide on the lump-sum tax at the beginning of December.

FOREIGN NEWS IN BRIEF

- At a summit hosted by Saudi Arabia, the European Union and others, the G20 leaders agreed to endeavour to find a consensus-based solution for a globally fair, sustainable and modern international tax system by mid-2021. It is to be built on the OECD's ongoing work on new approaches to the taxation of the digital economy.
- A council directive laying down the rules on special VAT identification numbers for businesses in Northern Ireland was published in the Official Journal of the European Union. After the transition period given in the withdrawal agreement between the EU and the United Kingdom concludes at the end of 2020, EU VAT

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regulations will continue to apply in Northern Ireland so as to avoid a hard border between Ireland and Northern Ireland.

- The OECD published its mutual agreement procedure statistics for 2019. Compared to the prior year, the number of new cases continues to increase, which also confirms the trend that is likely to continue with the changing rules of international taxation. Most cases involved transfer pricing.
- On 6 October 2020, the Economic and Financial Affairs Council of the EU (ECOFIN) adopted a revised EU Blacklist, a list of non-cooperative jurisdictions for tax purposes. Two new jurisdictions, Anguilla and Barbados, have been added to the list, while, at the same time, the Cayman Islands and Oman were removed. Following this latest revision, the EU Blacklist includes the following twelve jurisdictions: American Samoa, Anguilla, Barbados, Fiji, Guam, Palau, Panama, Samoa, Seychelles, Trinidad and Tobago, the US Virgin Islands, and Vanuatu.

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