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Editorial

A company's reputation is one of its most valuable assets. At times when information spreads through digital space at lightning speed and its accuracy often remains unverified, the risk of damage to the reputation of legal entities is higher than ever. Which is why the recent decision of the Constitutional Court strengthening the protection of the reputation of legal entities is good news. Legal entities (companies) may now claim adequate satisfaction for non-pecuniary damage caused by unlawful interference with their reputation. You may read more about this landmark judgment in this Update's section dedicated to case law.

Risks prevention is essential not only when protecting one's reputation. Artificial intelligence is becoming an integral part of business processes, so it is important to keep up with new legislative requirements. Starting in February, the EU Regulation laying down harmonised rules on artificial intelligence bans the use of the riskiest AI systems, with another wave of obligations to follow over the following years. If AI regulations apply to you, it's high time you started to take steps to reflect them in your business processes.

Technology is all about opportunity. The right use of modern tools can bring you greater efficiency as well as significant savings. Our survey described in this issue looks at how the tax departments of major companies in the Czech Republic are keeping up with digitisation. The survey was conducted as part of our Tax Technology & Transformation initiative, which connects experts across the law, tax, and IT fields. If you are wondering how to embrace digitisation in your company, do not hesitate to contact our experts - Jana Fuksová, Martin Čapek, Martin Süss, or Tereza Chovanec Králová. They will be happy to help you identify key areas for improvement and propose solutions.

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Lex Ukraine retains tax relief for donations

A draft amendment to Act No. 65/2022 Coll., on certain measures in connection with the armed conflict in the territory of Ukraine caused by the invasion of the Russian Federation, has passed the senate and is now heading for the president's signature. The validity of the tax measures, mainly concerning the tax treatment of donations, will thus be extended until 2026.

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Previously, the Ministry of Finance announced its intention to extend the tax deductibility of aid to Ukraine until 2026, as we reported in the article titled Increased tax support for donations to apply until 2026.

Individuals and corporations will be able to deduct the value of donations from the tax base for taxable periods 2024, 2025, and 2026 (and corporations also for the taxable period ending 28 February 2027), and up to 30 rather than the standard 15 percent of the income tax base.

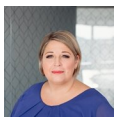
Other measures, such as an extension of the scope of deductible donations to include donations in connection with support for Ukraine or the possibility of claiming such donations directly as a tax-deductible expense, also remain applicable for these taxable periods. For details on the individual measures whose validity is being extended refer to our article Income tax view on 2022 donations to Ukraine.

Moreover, for the above periods, individuals shall not be obliged to file a tax return should such obligation arise solely because they claim a donation provided to Ukraine through the Embassy of Ukraine in the Czech Republic as an item reducing the tax base.

Taxes

Exemption of income from sale of crypto-assets approved by senate

On 22 January 2025, the senate passed a bill amending certain laws in connection with the implementation of EU regulations on the digitisation of the financial market and sustainability financing. This includes an amendment to the Income Tax Act that will make certain income of individuals from the transfer of crypto-assets for consideration exempt from personal income tax. The bill now heads to the president for signature.



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Under the new legislation, income arising from certain transactions with crypto-assets, which was previously subject to personal income tax as other income, will now be tax exempt. The assessment of eligibility for the exemption is to be based on two rules, similar to those for securities, namely the income threshold test and the time test:

1. **Under the income threshold test**, income from the transfer of crypto-assets for consideration, excluding electronic cash tokens, will be exempt if the aggregate gross income from such sales does not exceed CZK 100 thousand in the taxable period.
2. **Under the time test**, income from the transfer of crypto-assets for consideration will be exempt where the taxpayer had held these crypto-assets for more than three years immediately before the transfer. The exemption is limited to CZK 40 million of gross income in the taxable period, which also covers income from the transfer for consideration of securities and shares in corporations.

Ambiguities in interpretation

The passed amendment to the Income Tax Act brings several technical and interpretative ambiguities in relation to the introduction of the personal income tax exemption, such as the absence of a definition of crypto-assets for the purposes of the Income Tax Act or no interruption of the time test for certain exchanges of crypto-assets. These ambiguities, which may complicate the application of the provisions in practice, were discussed in detail in our October 2024 issue of Tax and Legal Update.

Expected effect of the new provisions

The law is set to take effect on the day following the date of its promulgation in the Collection of Laws. This general effectiveness also applies to the amendment to the Income Tax Act. It will now depend on when the president signs the law and when it is subsequently promulgated in the Collection of Laws.

In the absence of transitional provisions, the exemption applies to transfers of crypto-assets made for consideration after the effective date of the amendment, including the crypto-assets acquired before that effective

date. For the purposes of the income threshold test and the exemption limit of CZK 40 million, only transfers made after the amendment came into effect are to be taken into account.

Change in depreciation of photovoltaic power plants awaits approval

The amendment to the Energy Act also includes an amendment to the Income Tax Act, specifically a change in the depreciation of photovoltaic power plants. The amendment proposes to abolish the special method of depreciation of photovoltaic power plants (i.e., their technological parts).

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Under the amendment, photovoltaic power plants (their technological parts) will be treated in the same way as other assets, i.e., classified into depreciation groups and depreciated for tax purposes accordingly. The senate returned the amendment to the chamber of deputies with amending proposals that do not concern the tax area. Whether deputies approve their or the senate's version, the amendment is expected to take effect after its promulgation in the Collection of Laws.

Current status

The technological part of a photovoltaic power plant used to generate electricity from solar radiation is depreciated on a straight-line basis over 240 months, without the possibility of accelerated depreciation. This treatment also applies to the technological parts of photovoltaic power plants for which depreciation started before 1 January 2011.

Status after the amendment

After the amendment becomes effective, the assets used to generate electricity from solar radiation, for which depreciation commences after the amendment becomes effective or after 30 June 2024, will be depreciated according to the relevant depreciation group with the option of straight-line or accelerated depreciation. Technological parts of photovoltaic power plants will now be depreciated depending on the characteristics of the individual technological parts of the asset in the second, third, or fourth depreciation group. The construction part will be depreciated according to whether it is a technical improvement to an existing structure or a new construction.

This amendment restores the legal situation that existed before 1 January 2011.

According to the proposed transitional provisions, for the assets for which depreciation (on a straight-line basis over 240 months) has already commenced, the existing method of their depreciation will continue to apply. An exception is made for the assets for which depreciation commenced after 30 June 2024 until the amendment comes into effect; for these, the taxpayer will be able to choose whether to use depreciation over the set time or the now proposed method of depreciation in traditional depreciation groups.

Taxes

Fuel cards and VAT: What does new GFD's information contain?

At the end of last year, the General Financial Directorate (GFD) issued long-awaited information on fuel cards following the much-discussed CJEU judgment of May 2019 in the Vega International Car Transport and Logistic case and the conclusions of the EU VAT Committee.

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The GFD's information follows the conclusions of the EU VAT Committee, which we have already informed you about here. Thus, the activities of fuel card issuers can generally be considered as exempt financial activities. However, if the contract is set up correctly from the legal point of view, the issuers may act as a buyer and subsequent seller of fuel, i.e., use the 'commissionaire' model and claim full VAT deduction on the supplies received (if all other conditions are met).

In order to benefit from this scheme, it is necessary to fulfil the conditions specified in the GFD's information, i.e., to prove the transfer of ownership from the fuel supplier to the fuel card issuer and subsequently from the fuel card issuer to the fuel card holder. One of the key elements to prove this is to identify the link in the chain that bears the risk of non-payment and damage to the goods. In the past, e.g., it was possible that if damage was caused to a vehicle due to the poor quality of fuel, the vehicle owner claimed this damage from the fuel supplier (i.e. the petrol station operator). However, the GFD's information now provides that if the 'commissionaire' model is used, the person liable for damage should be the fuel card issuer, as it is the fuel card issuer who supplied the "defective" goods.

Furthermore, the fuel card issuer cannot change the fuel in any way (i.e., the supply received and effected by the fuel card issuer is of a similar nature) and must conclude a written contract with the fuel card holder that reflects the economic reality.

In case of doubt, we will be happy to check whether your contractual terms and conditions allow the existing practice to continue.

KPMG survey: how are tax departments in CR keeping up with digitisation?

A recent KPMG survey shows that tax departments in companies in the Czech Republic are generally satisfied with the management of their tax agenda, but there are still some gaps in the implementation of new technologies; e.g., only 8% of respondents have implemented robotic process automation. In addition to asking finance and tax managers about their satisfaction with the management of the tax agenda, we also inquired about the technology used and the degree of digitisation of individual processes. We have conducted the survey as part of our Tax Technology & Transformation initiative, which helps companies to modernise and digitise their tax processes.

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The survey involved over sixty companies and corporate groups, 55% of which were large businesses with more than 500 employees. The results show that the majority of respondents are **quite satisfied or very satisfied** with their company's tax agenda management. In contrast, **only 16% of companies expressed dissatisfaction**. For their tax agenda management, three-fifths combine in-house tax specialists and external advisors, one-fifth rely exclusively on internal resources, and the last fifth depends entirely on external advisors.

MS Excel rules technology

When it comes to technology, it's no exaggeration to say: "Excel is the king." Although technology in tax administration is rapidly evolving, Excel tools and spreadsheets are used as at least one of the technologies by over 83% of respondents. Of the **ERP** (enterprise resource planning) systems, SAP dominates (34%). A quarter of the companies surveyed use o**ther applications or in-house software**. Other tools such as Power BI, Microsoft Dynamics 365, or Microsoft Azure are also used in tax departments. **Robotic process automation** is used by only 8% of respondents.

Areas where technology leads and lags behind

The leader in automation is the VAT area - preparation of VAT ledger statements and tax returns (both over 60%), and the payroll agenda is also performing well. In contrast, the most manual work is required for current and deferred income tax calculations, keeping records of fixed assets, and transfer pricing. Invoice processing and accounting somewhat polarised our respondents - it took the imaginary bronze position both in the most automated processes and in the most manually performed processes.

Digitisation as an opportunity

KPMG's survey shows that directors and managers of tax departments recognise that innovation helps to make tax agenda management much more efficient and use a wide range of new technologies. However, there are still areas that require more manual work and digitising them would reduce the administrative burden and deliver savings.

Tax administration principles: procedural equality, cooperation, and instruction

Three principles play a key role in the tax system: the principles of procedural equality, cooperation, and instruction. What do they ensure? With this article, we conclude our year-long series presenting to you the various principles of tax administration.

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All articles can be found in the Tips and Tricks section.

Principle of procedural equality

The principle of procedural equality ensures a fair and transparent tax system. It ensures that all persons involved in tax proceedings are treated equally, regardless of their financial situation or social status. Based on their position in the proceedings, all persons involved must have access to the same information and opportunities. This eliminates discrimination or unequal treatment. The tax administration must follow uniform procedures and rules, which promotes the fairness of tax proceedings and contributes to the predictability of the tax process.

The principle of cooperation

This principle ensures collaboration between the tax administrator, the taxpayer, and other persons involved in the tax proceedings. The obligation to cooperate in tax proceedings is imposed on both the tax administrator and the taxpayer. Both have the right to request appropriate cooperation from the other party in the proceedings. In practice, this means that the parties in tax proceedings should remain mutually helpful. If the tax administrator violates this principle, it also means a violation of the principle of legality of the tax proceedings. If, on the other hand, the other party to the proceedings violates it, the tax administrator may impose a fine. Moreover, the tax administrator has sufficient tools to ensure that the objective of tax administration will be met even without the taxpayer's collaboration, i.e. that tax will be assessed and collected.

The principle of instruction

The tax administrator’s duty in tax proceedings is to adequately inform the persons involved in the proceedings about their rights and obligations. However, such instruction is provided only if necessary due to the nature of the act or if the law so provides. It follows from the wording of the law that the tax administrator has a certain degree of discretion as to when and to what extent to provide such instruction; this discretion is limited by the requirement of non-arbitrariness.

The instruction should also include information on the possibilities of defence, whether it involves legal remedies

or other effective defence mechanisms. The principle of instruction does not cover the tax administrator's instructions as to what a person involved in tax proceedings could or should do to achieve the desired result.

Amendment to Lex Ukraine headed to president for signature

The senate has passed an amendment to the law allowing the extension of the temporary protection of Ukrainian citizens. Some of them will also qualify for special long-term residence permit. The amendment, also known as "Lex Ukraine VII", contains further innovations, such as stricter conditions for Russian citizens living in the Czech Republic and wanting to obtain Czech citizenship.

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In the context of the Russian invasion in 2022 and the ongoing war, the Czech Republic, like other EU countries, has allowed the granting of temporary protection status to persons fleeing Ukraine. In the nearly three years of the war, almost 4.5 million refugees have benefited from temporary protection in the EU. Over 350,000 Ukrainians are registered under temporary protection status in the Czech Republic.

As of the beginning of this year, temporary protection holders will once again be able to register for its extension until March 2026. The new legislation will also allow temporary protection holders who meet the stipulated conditions to apply for a special long-term residence permit valid for five years.

Extension of temporary protection until 2026

The process of extending temporary protection will be the same as in previous years and will therefore consist of two steps. First, it will be necessary to register on the website of the Ministry of the Interior of the Czech Republic where applicants will express their interest in extending their temporary protection status. After successful registration, they will be given an appointment to visit the ministry's office where they will be issued with a new temporary protection visa sticker valid until March 2026. Online registration has not yet been launched due to delays in the legislative process but should be initiated soon.

Special long-term residence

All current temporary protection holders extending it in 2025 and having resided in the Czech Republic under this status for at least two years will be able to apply for long-term residence. To obtain this permit, they must first express their interest and meet the conditions stipulated by the law, such as a clean criminal record, economic independence, school attendance, etc.

Registration for these special long-term residence permits should open by mid-2025. Spouses and their minor children will need to express their interest in special long-term residence jointly. This means that families can apply for long-term residence only after all their members have met the relevant conditions. Once this happens, applicants will register just like they did for the extension of temporary protection. Applicants will go through a biometric scanning appointment, after which a long-term residence permit will be issued.

Benefits of special long-term residence

In addition to the longer validity of the residence permit, holders will also continue to have free access to the labour market and will not have to undergo adaptation and integration courses. The special long-term residence permit thus offers its holders security and stability, with the prospect of obtaining permanent residence.

Refugees not meeting the conditions will remain under temporary protection status until they do so. Only then will they be able to transfer to long-term residence.

Stricter conditions for obtaining Czech citizenship for citizens of the Russian Federation

The bill also contains an amendment tightening the rules for the citizens of the Russian Federation to obtain Czech citizenship: it imposes the obligation to prove the loss of Russian citizenship. Given the complexity of the conditions under which it is possible for Russians living abroad to renounce their Russian citizenship, the amendment has become the subject of a long debate, with its opponents arguing its potentially discriminatory nature.

Information on the legislative process

The chamber of deputies approved the draft amendment on 18 December 2024. It was expected to encounter opposition in the senate, mainly because of the disagreement on the issue of granting Czech citizenship to the citizens of Russian Federation. However, as the senate did not pass any resolution within the statutory deadline, the amendment has proceeded to the next stage of the legislative process in the wording as passed by the chamber of deputies.

Riskiest systems stopped: AI Act in effect

As of August 2024, the EU Regulation laying down harmonised rules on artificial intelligence (the AI Act) has been in force. A first wave of effects has arrived, as from 2 February 2025 the regulation bans the use of certain AI systems that the legislators judge to pose an unacceptable risk to society.

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We previously reported on the main points of the AI Act (**Regulation (EU) 2024/1689 of the European Parliament and of the Council**) here.

The ban affects particularly problematic AI systems that may become a tool for unethical practices abusing power and control and may lead to discriminatory and unjustified treatment. These practices are contrary to the key values, public interests, and fundamental rights recognised and protected by EU law, such as human dignity, freedom, equality, the right to privacy, and others. Accordingly, the EU legislators considered it necessary to prohibit such strictly defined and unacceptable practices in AI to prevent their occurrence in the territory of the European Union.

Companies developing or using AI have had the last six months to map their AI systems and assess whether they fall within the category of the prohibited practices. If so, they should have prevented their use.

The prohibition of AI systems with unacceptable risk is the first and crucial step towards the responsible and ethical use of AI. It sets clear boundaries for the use of the technology and thus contributes to creating a safer and more transparent environment for its users and others.

AI systems whose placing on the market, putting into service, and use are prohibited include:

- AI systems that influence users beyond their consciousness through s**ubliminal, manipulative, or deceptive techniques**. Further, AI systems that exploit the **vulnerabilities of persons** (e.g. children or the elderly who are more susceptible to deception or manipulation), with the objective or the effect of influencing the persons' behaviour and interfering with their freedom of choice. An important prerequisite is the occurrence or at least the reasonable likelihood of harm.
- AI systems for **social scoring**, used to evaluate or classify persons or groups of persons based on their social behaviour, personal or personality characteristics, with the social score leading to their detrimental or unfavourable treatment in unrelated social contexts, or to treatment that is disproportionate to their social behaviour or its severity. The main concern about these systems is that the outcome could be discriminatory and lead to the exclusion of certain groups.
- **AI systems for predicting the risk** of a person committing a criminal offence based solely on the profiling of a natural person or assessing their personality traits and characteristics (e.g. nationality, place of residence, financial standing, etc.). Such a procedure is contrary to the presumption of innocence, as criminal prediction should be based on the person's actual behaviour.
- AI systems that **create or expand facial recognition databases** by the untargeted collecting of facial images from the internet or CCTV footage. This method of data collection reinforces the impression of blanket surveillance and constitutes an infringement on an individual's fundamental right to privacy.

- AI systems to infer **the emotions of persons at their workplace or education institutions** based on their biometric data. These systems are problematic because of their reliability and accuracy, as individuals' expression of emotions can vary widely from one situation to another and can lead to the disadvantageous treatment. The only exceptions are AI systems used for medical or safety reasons.
- AI systems for **biometric categorisation** that categorise individuals based on biometric data to infer their race, political views, religious beliefs, etc. The only exceptions to this prohibition are the filtering of lawfully acquired biometric datasets and the categorisation of biometric data in the context of law enforcement to protect public order and safety.
- With certain exceptions, law enforcement agencies may not use AI systems for **real-time remote biometric identification** in publicly accessible spaces to prevent or prosecute crime and execute a criminal penalty. Their use is allowed only under specified conditions and in exceptional cases, such as searches for victims of abduction and missing persons, the localisation of persons suspected of having committed serious crimes or the prevention of substantial and imminent threats.

If you are using AI systems and have concluded that the AI Act will affect you, it is high time you started preparing. At a minimum, take stock of what AI systems you have in your company, whether you are a mere user or are also developing and marketing them, what the function of the identified systems is, and what risk category under the AI Act they fall into. If you find that any of the AI systems falls within the category of prohibited systems, modify its operation as soon as possible or stop using or marketing it in the EU altogether. Failure to do so exposes you to the threat of heavy fines, which can reach up to **EUR 35 million or 7% of your worldwide annual turnover**.

Government approves mandatory employers' contribution to employees' savings

The pension system reform will bring about a major change for employees in certain high-risk jobs. As they will no longer be able to retire early without their pension being cut, the new law includes the obligation for employers to contribute to selected employees' retirement savings product. If employees in high-risk jobs decide to retire early, the difference in their pension will thus be compensated.

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The government has approved a bill making it mandatory for employers to contribute to retirement savings products for employees in the third category. These are employees who are required to use protective equipment or other protective measures at work. The obligation to contribute to the savings scheme is applicable if the employee works at least three shifts per month. In addition, the conditions for applying for a pre-retirement pension for people doing high-risk work will be relaxed.

Employers will be obliged to inform the employees of their entitlement to such a contribution. Employees will in turn have to inform their employer of their intention to have such a retirement savings product and provide them with an account number to which to deposit the contribution. The contribution amount will be based on the number of shifts worked in each calendar month. If the employee works at least three shifts in a month, they will be entitled to a contribution of 3% of their assessment base; if they work at least 11 shifts in a month, the contribution will be 4% of their assessment base.

Both trade unions and employers' representatives have complained that they were not consulted on the rules for these mandatory contributions and that the regulation was submitted by the deputies instead of the government. They have also pointed to the heavy administrative burden the new law places on those involved in its practical application.

Anti-Trust Office hands out million-crown fines: How to avoid problems with supplier contracts?

In the past year, the Office for the Protection of Competition conducted numerous on-site investigations concerning significant market power, involving e.g., hotel restaurants, wholesalers, and non-food e-shops. The office focused on whether they complied with their obligations stipulated by the amendment to the Act on Significant Market Power.

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We comment on the important amendment to the Act on Significant Market Power, in force from 2023, here. Until 2023, the law only applied to a few large retail chains. The amendment then significantly broadened its scope of application, so that **the law now covers the entire supply chain** (Farm to Fork (F2F) Strategy). Buyers with a turnover of more than EUR 2 million should take note, as the law may now also apply to them. Apart from introducing a broad list of prohibited unfair commercial practices, the amendment also makes it compulsory to conclude a contract for the supply of goods or services in writing and stipulates other mandatory requirements for the contract. It also prohibits the due dates of invoices from exceeding 30 days.

As part of its sectoral investigation, the office inspected more than 500 businesses and read more than 4,000 supplier contracts. They discovered that businesses in some sectors (e.g. hotel restaurants, producers and sellers of wine and spirits or meat and meat products, etc.) have little awareness of the law and its new rules. Breaches were thus numerous and repeated.

The most frequent shortcoming was the failure to comply with the 30-day deadline for payment of the purchase price. The office also found instances of non-compliance with the requirement for contracts to be in writing and in the terms and conditions not being in accordance with the law. The office therefore initiated administrative proceedings with 15 businesses, imposing fines e.g. on Heineken Czech Republic, Jan Becher – Karlovarská Becherovka and Košík.cz, the latter being fined CZK 1.8 million.

A breach of the law may indeed have serious consequences for businesses, as the office **has the power to impose fines of up to 10% of net turnover**. Given the way turnover is calculated, this may especially for large businesses come to tens or even hundreds of millions of crowns, which is a risk not to be underestimated. The Polish Competition Authority, for example, fined the Biedronka retail chain over PLN 506 million, i. e. more than CZK 3 billion, under similar legislation.

The office let it be known that in 2025 they will continue to monitor compliance with the obligations arising from the Act on Significant Market Power. We therefore recommend that businesses check whether the law applies to them and whether their contractual relations with suppliers need to be revised. Early prevention can protect against unnecessary fines and lengthy administrative proceedings. If you are unsure whether your contracts and terms and conditions comply with the requirements of the law, please do not hesitate to contact us.

Legal

Trump tightens US immigration policy. Will Czech visa applicants be affected?

On 20 January 2025, just hours after taking the oath of office, US President Donald Trump issued six executive orders covering various areas of immigration policy. These orders, already announced during his election campaign, are intended to fundamentally change the United States' approach to immigration.

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Protecting the Meaning and Value of American Citizenship

This order seeks to end the right to US citizenship for children born in the US after 19 February 2025 unless at least one parent has lawful permanent resident status or US citizenship. Since its issuance, the order has faced opposition due to a possible violation of the Fourteenth Amendment to the U.S. Constitution that guarantees citizenship to all children born within the United States. On the third day after its issuance, the order's enforceability was suspended by a federal court, which will now review its constitutionality.

America First Trade Policy

Another order concerns the USMCA (United States-Mexico-Canada Agreement) and other foreign trade agreements, in terms of tariffs, duties and other foreign trade-related revenues. Particular attention is paid to US trade policy in relation to China. Trump's order also calls for an assessment of the agreements' impact on American workers, farmers, and businesses. The outcome of the review may affect the availability of work visas for citizens of Canada and Mexico.

Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats

With the third order, the president has instituted the more detailed vetting of all applicants for entry into the US, including those who have already arrived. Emphasis is placed on security threats as well as on enhanced screening for individuals from "regions or nations with identified security risks." The order also calls for an evaluation of all visa programmes and emphasises that agencies must be vigilant during the visa issuance process. In the context of this order, it can be expected that the deadlines for the examination of visa applications will be extended and that there will be delays in visa processes.

Realigning the United States Refugee Admissions Programme

As of 27 January 2025, the United States Refugee Admissions Program (USRAP), under which refugees could enter the United States, has been suspended. Refugees may now only be admitted on a case-by-case basis, and only once the Secretary of State and the Secretary of Homeland Security jointly determine that their entry is in the national interest and does not pose a threat to the security or welfare of the United States. The agencies shall produce

a report every 90 days on the impact of this, and whether USRAP refugee admissions should be resumed.

Securing Our Borders

This executive order establishes a policy to secure borders. This is to be done, for example, by constructing a physical wall and other barriers, deterring and preventing illegal entry into the US, apprehending persons suspected of violating federal or state laws, and by their prompt deportation.

Declaring a National Emergency at the Southern Border of the United States

The so far final order sets out rules for the use of the armed forces, physical barriers, and unmanned aerial systems on the southern border of the US to address a newly declared state of emergency. The order also calls for the revision of existing policies and strategies, which is consistent with the Securing Our Borders order. The sixth order in particular focuses on strengthening security and control at the southern US border.

Impact on Czech applicants for US visas

In our experience, obtaining a US visa is a rather demanding and sometimes lengthy process, requiring compliance with a number of conditions and presenting a significant number of documents. Even though the executive orders are not aimed directly at Czech citizens, they may affect their visa applications, if just by longer approval times due to more thorough checks.

The visa application process may also be affected by a more thorough vetting of people with a history of travel to high-risk countries. It is possible that further immigration legislation will be adopted, given that this is one of the areas on which the old-and-new US president intends to focus.

Czech Republic granted qualified top-up tax status

On 15 January 2025, the OECD published a set of documents on the global minimum tax (Pillar 2). These documents include a record of countries with a qualified top-up tax status, a GloBE Information Return (GIR) form, a model Multilateral Agreement on Exchange of Information, and Administrative Guidance on Article 9.1 of the GloBE Model Rules relating to deferred tax.

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Central record of qualified top-up tax

The Central Record contains a list of countries with a transitional qualified status for the top-up tax at the level of the ultimate parent entity (income inclusion rule, IIR). The second list includes countries that have been granted a transitional qualified status for their domestic top-up taxes (QDMTT). The Czech Republic is on both lists. The lists will be updated for additional countries that consider their allocated tax to be qualified (in accordance with the OECD Model Rules). The final status of the countries has yet to be confirmed by the OECD; if this does not happen, the country will lose its qualified status for the future but not retroactively.

GloBE Information Return

The OECD has also published an updated standardised GloBE Information Return (GIR) form and a user guide. This version also includes a template that can be used to notify jurisdictions that they will receive a GIR through the exchange of information (see below). In connection with the GIR, the OECD has also published an updated version of the part of the Administrative Guidance, and the XML schema of the GloBE Information Return.

Agreement on the exchange of information contained in the GloBE Information Return

The set of documents includes a model Multilateral Competent Authority Agreement on the Exchange of GloBE Information, based on Article 6 of the Convention on Mutual Administrative Assistance in Tax Matters. The agreement allows only one GloBE Information Return to be filed and then shared between the tax administrations of the countries that have joined the agreement. In the EU, this possibility will already be provided for by the exchange of information under the Directive on Administrative Cooperation in the Field of Taxation (DAC 9). However, until such international agreements and regulations are in force, domestic rules will apply to filing the GIR.

Clarification on historical deferred tax assets

The revised Administrative Guidance on Article 9.1 of the GloBE Model Rules excludes certain deferred tax assets from the calculation of the multinational group's effective tax rate if these were incurred before the introduction of

the global minimum tax because of specific governmental actions or after the introduction of the new corporate income tax.

For more detailed information, see KPMG's comments here and the full OECD press release here.

E-invoicing has green light in Germany

From 1 January 2025, companies established in Germany are obliged to use electronic invoicing for all transactions between local business partners. This makes Germany the first country to introduce e-invoicing under the approved VAT in the Digital Age (ViDA) Directive. This step leads to the need to digitise business processes not only in Germany.

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Electronic invoicing, also known as e-invoicing, will be mandatory for all transactions between resident (German) business entities (B2B transactions). Exceptions will be tax documents issued for transactions that are exempt from VAT, tax documents issued for amounts up to EUR 250, and travel tickets. In these cases, the tax documents may be on paper or in another electronic format (e.g. PDF), i.e., without a structured data format.

Electronic invoicing is currently not applicable to foreign entities, e.g., those that are "only" registered for VAT in the Federal Republic of Germany. From 1 January 2025 to 1 January 2027, there is a transitional period during which standard printed tax documents can be used and are on an equal footing with electronic tax documents. Czech entities may be affected by e-invoicing indirectly. If you have German suppliers, you should be prepared for the possibility that the supplier will not be able to technically distinguish between a tax document issued for a German customer and a tax document for a foreign customer. In such a case, Czech companies need to be prepared to convert the e-document from XML or UBL format to a human-readable format (e.g. PDF or HTML).

The e-documents issued by German companies for local transactions are already compatible with the EU EN 16931 standard under the ViDA Directive. These are machine-readable formats such as the XRechnung or ZUGFeRD standard (version 2.0.1 and higher), or hybrid versions. EDI formats according to the EDIFACT standard are also acceptable.

Regular PDF files without integrated datasets will not be accepted after 1 January 2027. E-documents must still ensure authenticity of origin, integrity of content, and readability.

The introduction of mandatory e-invoicing in Germany marks a fundamental change in tax administration and business communication. Businesses should pay attention to preparing for the new obligations, including the introduction of technical infrastructure for receiving, issuing, and reading e-documents to avoid the risk of tax penalties and possible loss of the right to VAT deduction.

If e-invoicing already concerns you or you are dealing with the need to adapt e-documents to a human-readable format, do not hesitate to contact us.

Subsidies

New subsidy programme for climate neutrality to distribute up to 24 billion

On 24 January 2025, the Ministry of Industry and Trade launched a new subsidy programme to attract strategic investments and support the growth of the Czech economy. The programme is designed for large investments in the production of batteries, solar panels, heat pumps and other equipment or in the production of components or raw materials for this equipment.

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The programme is open for applications until 30 September 2025 and is intended for investments **of at least CZK 2.8 billion**, while the state plans to distribute a total of CZK 24 billion for these investments. Within the investment project, the applicant for the subsidy will be obliged to create and occupy **at least 100 new jobs**.

Applications are to be submitted to the Ministry of Industry and Trade and will be approved by the government.

Programme objectives and focus

The programme aims to stimulate economic activity in areas that directly contribute to climate protection. It specifically targets:

- energy production and storage, specifically the production of **batteries, solar panels, wind turbines, heat pumps, electrolysers, and carbon capture and storage equipment**;
- p**roduction of key components** and critical raw materials necessary for these technologies.

While this programme is designed for the largest projects with the aim of attracting a limited number of key investors, similar types of investments can also obtain support under the existing system of investment incentives. These are generally used for investments not exceeding EUR 110 million and therefore complement the new programme in terms of investment scale.

Aid intensity

Aid intensity varies according to the location of the investment project and can reach 15%, 20% or, in some regions, up to 35% of eligible expenses. Depending on the region, the maximum subsidy amount may be between EUR 150 million and EUR 350 million.

Other conditions and criteria

The key conditions for obtaining support (in addition to the above requirements for the minimum value of the investment and the creation of new jobs) are mainly the following:

- work on the project must start after the date of submitting the subsidy application;

- the value of the machinery intended for production should be at least CZK 1.4 billion and at the same time account for at least 50% of total investment costs;
- the project purpose and objectives achieved within 7 years of the date a decision to grant the subsidy was issued and the obligation to maintain the assets for at least 5 years after the project has been completed;
- the obligation to maintain the new jobs for at least 5 years from the date of their first employment for each new job;
- aid cannot be used to facilitate the relocation of production activities between EU member states.

If your company is planning a significant investment, or you would like more detailed information, please do not hesitate to contact us.

Czech companies at start of Ukraine's recovery

The EU Ukraine Facility, implemented in cooperation with the National Development Bank (NDB), provides Czech companies with the opportunity to participate in the reconstruction and recovery of post-war Ukraine and offers loan guarantees and advantageous financing conditions.

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The European Union is responding to the difficulties of commercial entities in raising finance for investment in Ukraine. Through the Ukraine Facility, it has made funds available from the EU budget for loan guarantees, reducing the risk associated with these investments and facilitating the financing of the recovery and reconstruction of the war-damaged country.

In the Czech Republic, NDB is a key partner in the programme and has already applied for support in the upcoming guarantee programme. Once approved, NDB will be able to offer entrepreneurs the opportunity to apply to Czech and Ukrainian banks for loans with longer maturities and guarantees backed by NDB and the European Commission's counter-guarantee. However, the programme will not provide any grants or subsidies.

The programme opens the door for Czech companies that want to expand into the Ukrainian market or participate in the reconstruction of the country. Since the beneficiary of the guaranteed loan must be a Ukrainian entity, the Czech company will indicate in its application the Ukrainian beneficiary that will implement the project and apply for the guaranteed loan.

The involvement is possible, e.g., via:

- a subsidiary of a Czech company in Ukraine/a Ukrainian branch a local company (co-)owned by Czech owners,
- a Czech-Ukrainian joint venture,
- a project SPV or a Ukrainian company with a partner Czech company,
- a Czech investor investing in projects in Ukraine,
- a Ukrainian public entity (e.g., city, municipality, state entity).

The programme is expected to formally launch in September or October 2025. Companies already have the opportunity to contact NDB to consult on their proposed project in relation to the terms of the programme. Once the programme is approved, we will report on this.

In cooperation with our colleagues from KPMG Ukraine, we will be happy to help you find a suitable solution for your project from a financial, legal, tax, and risk management perspective.

Subsidies

First call under new subsidy programme: GREENGAS

Within its Modernisation Fund, the State Fund for the Environment has started to accept applications under GREENGAS Call No. 1/2024. This new subsidy programme supports the introduction and use of renewable gaseous and liquid fuels or raw materials.

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Applications for support will be accepted from **20 January to 30 June 2025**. The programme, intended also for **large businesses**, aims to provide support for the installation of new electrolysers to:

- **produce hydrogen from renewable sources** without the possibility of supplying electricity to the electricity grid or
- **accumulate electricity into hydrogen** where the electricity is produced from renewable sources of non-biological origin, with the possibility of supplying electricity to the electricity grid.

The funds for allocation are **CZK 3 billion** (with a priority allocation of CZK 1 billion intended for the Moravian-Silesian, Ústí nad Labem, and Karlovy Vary regions). The maximum aid intensity is **30–45% of eligible costs** depending on the specific activity. Support is available for expenses incurred for a comprehensive system of equipment that will produce hydrogen by electrolysis, i.e., a water treatment system, an electrolyser, power and control electronics, an electrolyser support system, hydrogen refining subsystems, hydrogen storage equipment, and hydrogen bottling equipment.

The project must be completed no later than 60 months after a decision to grant the subsidy is issued. It may be implemented throughout the Czech Republic.

If you are interested, we will be happy to provide you with more information and help you with the preparation of your application.

Subsidies for energy production from biomass

The Ministry of Industry and Trade in cooperation with the Agency for Enterprise and Innovation has started accepting applications for Call I - Renewable Energy Sources - Biomass. The aim of the call is to support the production of electricity and heat from biomass and thus increase the share of renewable sources.

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Applications for support will be accepted from **9 January 2025 to 9 January 2026**. The funds for allocation amount to CZK 500 million and may be increased in the event of an overhang of good-quality projects. Large enterprises can also apply for support but must have a licence to produce electricity and/or produce and distribute thermal energy at the date of submitting the last application for payment. Specifically, support can be obtained for the following activities:

- the construction of heat sources from biomass and the distribution of heat through heat distribution systems to the point of consumption
- the construction of combined electricity and heat sources from biomass and the distribution of heat through heat distribution systems to the point of consumption
- the distribution of heat from existing power plants (biogas plants) through heat distribution systems to the point of consumption.

Total eligible expenses must be at least CZK 8 million and must not exceed CZK 300 million. The aid intensity for **large enterprises** is 30-45 % of eligible expenses depending on the activities carried out under the project. Eligible expenses may include expenses for tangible fixed assets, intangible fixed assets if necessary for the operation of tangible fixed assets, engineering, and project documentation.

The project can be implemented in the entire territory of the Czech Republic except for the capital city of Prague and must be completed by 31 October 2027 at the latest.

Case law

Constitutional Court strengthens legal entities' right to reputation protection

In its recent ruling, the Constitutional Court significantly strengthened the protection of reputation for legal entities. In the event of unlawful interference with their reputation, legal entities may now seek adequate satisfaction for non-pecuniary damage. This interpretation of the Civil Code applies to all pending and future litigations.

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Under currently valid legislation, when defending themselves against unlawful interference with their reputation, commercial corporations, associations, and other legal entities can only demand the perpetrator refrain from the unlawful act or remove its consequences. However, these remedies have often proved inadequate, particularly considering how fast any misleading or false information can spread in today's digital age. Another option legal entities had was to seek compensation for pecuniary damage or restitution of unjust enrichment but they had to prove the occurrence and amount of damage and the causal link between the unlawful interference and the damage, which often proves very difficult, especially for non-profit organisations. However, unlike natural persons, legal persons have not yet been able to seek adequate satisfaction for non-pecuniary damage caused by interference with their reputation.

In its landmark ruling Pl. ÚS 26/24 of 15 January 2025, the Constitutional Court declared this situation unconstitutional because it did not provide legal entities with sufficiently effective means to protect their reputation. In this context, the Constitutional Court noted that reputation is not just an abstract value but a fundamental prerequisite for a legal entity's functioning in commercial and legal relations. The Constitutional Court emphasised that the right to adequate satisfaction for non-pecuniary damage, such as an apology or financial compensation, is a key instrument for the protection of reputation and can contribute significantly to its effectiveness when other means fail.

Please note that the Constitutional Court did not abolish the relevant provisions of the Civil Code but allowed for their constitutionally compliant interpretation. Legal entities now may seek **satisfaction for non-pecuniary damage** analogously with the rules of protection against unfair competition.

The Constitutional Court also warned of the risk of abusing the protection of reputation by strategic lawsuits against public participation (SLAPP) aiming to limit freedom of speech and participation in public debate. It is therefore up to the courts to carefully consider in each individual case whether the action is justified or vexatious.

Case law

CJEU: Can VAT be deducted on unnecessary shared services

In Weatherford Atlas Gip SA (C-527/23), the Court of Justice of the European Union held that the tax authority cannot deny a VAT deduction solely on the grounds that the services purchased were not necessary or appropriate for the company's economic activity. If the services received were used for the purpose of carrying out taxable transactions, the right to deduct VAT must be accepted.

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Weatherford Atlas Gip specialised in the extraction of oil and gas. The tax authority refused to accept the company's VAT deduction on administrative services the company purchased. These services were also used by other companies in the group (not a VAT group) and benefited the group as a whole. Although the costs of the services were shared between the companies, the tax authorities argued that they should not have been invoiced to Weatherford Atlas Gip as they were not necessary for the company. According to the tax authorities, the company had not demonstrated a link between the purchased services and its taxable activities.

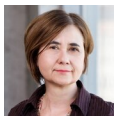
In its judgment, the CJEU reiterated that if a taxable person uses the acquired services for the purposes of its taxable supplies, it has the right to deduct the paid tax. There must be a direct and immediate link between the purchased services and the output supplies, which is indicated, e.g. by the price of the purchased services being included in the price of the output supplies. The price of the purchased services may also be part of general (overhead) costs that are directly related to the company's overall economic activity.

According to the CJEU, the question whether the acquisition of administrative services was appropriate or necessary for the company is irrelevant. The right to deduct does not depend on the economic profitability of the supply received, nor is it affected by the same administrative services being provided simultaneously to several companies in the group. However, it is for the referring court to satisfy itself that the part of the costs relating to those services incurred by the company actually corresponds to the services supplied to that company for the purposes of its taxable supplies.

Therefore, to claim a VAT deduction, it is necessary that **the company use the received administrative services for the performance of its taxable supplies** and that there is **a direct and immediate link** between the received services and the taxable supplies, or that the costs are part of the company's general (overhead) costs.

News in Brief, February 2025

Last month's news in one or two sentences.



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DOMESTIC NEWS

In January, the Ministry of Finance issued several Financial Bulletins with the following content:

- GFD's Instruction No. D-66 setting uniform FX rates for the 2024 taxable period pursuant to Section 38 of Act No. 586/1992 Coll., on Income Taxes, as amended until 31 December 2024. This instruction replaces the original GFD's Instruction No. D-65 issued on 13 January 2025, which incorrectly stated the exchange rate for the Turkish lira.
- A list of contracting states applying the common reporting standard and decisive days and a list for the purpose of fulfilling the information obligation pursuant to Section 13s(1) of Act No. 164/2013 Coll., on International Cooperation in Tax Administration and on Amendments to Other Related Acts, as amended ("List of Contracting States").
- A list of countries exchanging country-by-country reports (CbCR) pursuant to Act No. 164/2013 Coll., on International Cooperation in Tax Administration and on Amendments to Other Related Acts, as amended.
- The Ministry of Finance draws attention to the change in the definition of net turnover as a result of an amendment to the Accounting Act and the impact of this change on an appendix to the income tax return. The Ministry of Finance considers the procedure under Section 4(7) of the decree, i.e., not disclosing the net turnover for the previous accounting period in the income statement in the financial statements for 2024, to be justified and at the same time the best solution. Therefore, it has been made possible not to include this information in the appendix to the corporate income tax return without the EPO application issuing an error message. The tax administrator's information system has been similarly adapted.
- In its communication, the Ministry of Labour and Social Affairs reminds that from January, maternity allowances have been paid automatically based on an electronic certificate of the date of birth issued by a doctor. In addition, clients can process more applications from home thanks to the ePortal of the Czech Social Security Administration (CSSA). It is already possible to apply for a pension online, and from January the CSSA is moving to a fully digital form of communication between treating doctors, employers and insured persons for sickness insurance allowances. Further sickness insurance allowances are thus being digitised. More information can be found here.

FOREIGN NEWS

Developments in Pillar 1

- The OECD has advanced negotiations on the Multilateral Convention (MLC), which will introduce the redistribution of profits of multinational companies (Amount A). Although the text of the MLC has received broad support, discussions about Amount B, intended to standardise the transfer prices of routine distribution and marketing activities in the country of sale, are still ongoing. For some countries, concerns remain about the appropriateness of the profit margins set. The OECD is considering a compromise that would apply Amount B only to smaller distributors, while larger ones would be subject to individual assessment.

Developments in Pillar 2 (minimum tax)

- Cyprus, Spain, and Gibraltar have adopted implementing laws for Pillar 2.
- Italy has issued ministerial decrees on the application of transitional safe harbours and tax allocation under blended CFC tax regimes.
- We summarise the developments at OECD level in a separate article.

Under the new US administration, commitments negotiated under global tax agreements are not binding on the US without Congressional approval. The US will also assess whether any countries are violating tax treaties with the US or implementing tax rules that harm US companies (e.g., certain aspects of the global minimum tax or unilateral digital taxes), which could lead to the application of double taxation or trade measures against persons from those countries.

The KPMG EU Tax Center regularly monitors changes in direct taxes in the EU and internationally. For a complete overview of the latest news, please see their latest issue.

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