LEGAL TAX AUDIT

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NEWSLETTER
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LEGAL, TAX, ACCOUNTING AND AUDIT SERVICES

CHANGES IN TAXATION OF PERSONAL INCOME

The government's proposal for measures and laws aimed at reducing the state budget deficit over the next two years, collectively referred to as the consolidation package or recovery package, is currently being debated in the Chamber of Deputies. Most of the measures proposed are expected to apply from 1 January 2024. We informed you about the most important tax-related changes in detail in our June newsletter. On 23 August 2023, the parties of the governing coalition agreed on several changes to the consolidation package. Although opposition deputies have major reservations about the proposals, it is likely that most of these changes will be approved by the Chamber of Deputies.

Below is a summary of the most significant proposed changes to the Income Tax Act relating to the taxation of employees:

- Non-financial benefits listed in Section 6(9)d) of the Income Tax Act (contributions to cultural or sporting events, health services, kindergartens, libraries, books, etc.), which employers now provide to their employees under tax-advantaged terms will undergo certain changes. The tax advantage will not be completely abolished, but the total value of benefits that will be exempt from taxation on the employee's part will be significantly reduced (up to a maximum of half of the average wage per year, which corresponds to CZK 20,162 in 2023). According to the explanatory memorandum for the bill, said limit for exemption from the income tax for an employee with multiple employers will be assessed separately for each employer. The costs of benefits listed in Section 25(1)(h) of the Income Tax Act (e.g., contributions to cultural or sporting events or recreation) which will not be exempt from taxation on the part of the employee will qualify as tax-deductible expenses for the employer if the benefits are provided for in a collective agreement, internal regulation or an agreement with the employee. These rules will apply to benefits provided from 1 January 2024 on.
- Tax exemption of non-monetary gratuitous benefits provided by employers from the social and cultural fund or under similar conditions from the social fund or from the employer’s profits will be abolished (until now, such income was exempt up to a total of CZK 2,000 per year).
- The abolition of tax exemption of social assistance provided by the employer to the employee (Section 6(9)o) of the Income Tax Act) has no practical impact, as the income defined here will continue to be able to be exempted under the still valid Section 4a k) of the Income Tax Act.
- As for employer's contribution to employees' meals, the conditions for tax exemption of such contributions on the part of the employee and for tax deductibility of the corresponding expenses by the employer will be unified. Irrespective of the form in which such contributions are provided (cash meal allowance, meal voucher, company meals or other non-monetary benefits), the value of the meals will, in principle, be exempt only up to an amount equivalent to 70% of the meal allowance for a work trip of 5-12 hours, with the length of the shift and the period of time the employee has worked also playing a role in determining the amount of the exempt income. This will, among other things, result in reduction of the tax exemption of meal vouchers whose value is above said limit. On the employer's part, the costs of providing all types of meal allowances will be considered tax-deductible expenses regardless of the amount spent, provided that the meal allowance is provided for in a collective agreement, internal regulation or an agreement with the employee. The new rules will apply to meal allowances to which employees become entitled after 1 January 2024.

CHANGES IN TAXATION OF PERSONAL INCOME

- Tax exemption concerning purchases of flats or houses by employees from their employers for lower than regular price (where the difference between the sale price and the regular price was not considered the employee's income if the employee had resided in the flat or house for at least 2 years before the sale) has been abolished. However, these rules to not apply to employees who were already residing in such property before 1 January 2024.

- Pension and life insurance contributions are not affected by the changes proposed in the consolidation package.

- The determination of the amount of non-monetary income in the case of the free provision of a motor vehicle to an employee for private use is being changed to:
  - 0,25% from the entry price for emission-free vehicles,
  - 0,5% from the entry price for low-emission vehicles,
  - 1% from the entry price for other vehicles.

The following proposed changes will also affect the taxation of personal income:

- reducing the threshold for 23% tax rate from 48 times to 36 times the average wage,
- introduction of a limit for the exemption of income generated from a sale of a security or a share in a company when the time test has been met to max. CZK 40 million per taxpayer per calendar year,
- limiting the dependent spouse tax credit to spouses caring for children under 3 years of age,
- cancellation of the student tax credit,
- cancellation of the kindergarten tuition fees tax credit,
- cancellation of deductibility of membership fees paid to trade unions,
- costs of examinations verifying the results of further education will no longer be tax-deductible,
- reintroduction of the employee's participation in sickness insurance (at 0.6% of the assessment base),
- introduction of limits for participation in social and health insurance for persons working on the basis of work performance agreements (*dohoda o provedení práce*),
- increase in social security contributions for self-employed persons resulting from an increase in the assessment base.

We will continue to keep you informed about any further changes which may occur during the consolidation package approval process.

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LIMITATION OF VAT DEDUCTION FOR CARS

The consolidation package includes a proposal to cap the VAT deduction for passenger cars at CZK 420,000, which, given the VAT rate of 21%, corresponds to a tax base of CZK 2 million. The new regulation should apply only to M1 passenger cars which qualify as fixed assets.

Ambulances, funeral vans and vehicles used under a road motor transportation concession will not be affected by the cap. According to the current version of the draft amendment, the new regulation should also apply to passenger cars purchased by leasing companies.

Unfortunately, the amendment does not provide for any special rules for the sale of cars for which the VAT deduction was capped. It may therefore happen that the taxpayer will pay VAT on the sale in excess of the deduction claimed, while the buyer will again only be able to claim a deduction of CZK 420,000.

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FOREIGN CURRENCY ACCOUNTING AND TAXATION OF UNREALISED EXCHANGE DIFFERENCES

The consolidation package which is currently under debate in the Chamber of Deputies includes an amendment to the Accounting Act and amendments to the Income Tax Act, which should allow companies to keep their accounts in a different currency than the Czech crown. Other changes which are expected to be introduced by the amendment concern taxation of unrealised exchange rate differences. These changes, if approved, should be effective from 1 January 2024.

Foreign currency accounting and calculation of corporate income tax

Companies that meet certain criteria will be able to choose to keep their accounts in a foreign currency, namely in EUR, USD or GBP. This option will apply only to entities for which one of these currencies is a 'functional currency', i.e., the currency of the principal economic environment in which the entity operates. The specific criteria for determining the functional currency will be set by the Ministry of Finance in an implementing regulation; it is expected that these criteria will include a requirement that the company should carry out more than half of its transactions in a given foreign currency.

The change to a foreign accounting currency will be at the entity's discretion and may be done on the 1st day of the accounting period. However, once an entity decides to keep accounts in its functional currency other than CZK (i.e., in EUR, USD or GBP), it will only be able to change the currency again if the currency of its principal economic environment changes (e.g., if it starts to operate predominantly in a market with a different currency).

Companies that choose to keep their accounts in a foreign currency will be required to calculate their corporate income tax in that currency. Other taxes, such as withholding taxes, retention of taxes payable by non-residents, windfall taxes or employment-related taxes will not be affected by the change in the currency - they will continue to be calculated in Czech crowns.

For technical reasons, it is not yet possible to administer the collection of income tax in a foreign currency, which means, that although the tax will be calculated in a foreign currency, it will be assessed in Czech crowns. This means that the calculation of the tax due in the tax return will be made in a foreign (functional) currency, but the individual entries and the resulting tax or tax loss will also be stated in Czech crowns, the conversion to Czech crowns being made at the exchange rate announced by the Czech National Bank on the last day of the tax period. It will also be possible to pay the tax in a foreign currency; however, the tax will be recorded in the taxpayer's personal tax account converted into Czech crowns in the amount in which it was credited to the account of the competent tax authority.

Exclusion of exchange rate differences from the tax base

According to the newly proposed legislation, payers of income tax who keep double-entry books and are not in insolvency or voluntary liquidation will be able to submit a notification to the tax authority that they want to exclude exchange rate differences from their tax base. They will then be able to exclude from their tax base all unrealised exchange differences (both gains and losses), i.e., exchange differences which typically arise upon valuation of the companies' foreign currency assets and liabilities as of the date as of their financial statements. Exchange differences will only be included in the tax base when they are realised. Said notification must be sent to the tax authority no later than three months after the beginning of the current tax year, i.e., for 2024 by the end of March 2024. A taxpayer entering the scheme will exclude unrealised exchange differences relating to all assets and liabilities it accounts for from its tax base, regardless of when they arose.

FOREIGN CURRENCY ACCOUNTING AND TAXATION OF UNREALISED EXCHANGE DIFFERENCES

In order to prove the accuracy of the amount that will be included in the tax base on the date of realisation of the exchange rate differences, it will be necessary to keep records of how the exchange rate differences are being dealt with on an ongoing basis.

The exchange rate exclusion scheme may be left either voluntarily, or the taxpayer may be required to do so. A voluntary opt-out will take place at the end of two tax periods following the tax period in which the taxpayer notifies the tax administration of it leaving the scheme. Mandatory exclusion from the scheme occurs in case of insolvency, voluntary liquidation, dissolution without liquidation (for example due to a merger), and in several other situations. If the exchange difference exclusion scheme is terminated for any reason, all previously excluded unrealised exchange differences that have not yet been reflected in the company's net income, because they have not yet been realised, must be included in the tax base.

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TOP-UP TAX

On 16 August 2023, the government approved a top-up tax bill which applies to large-scale multinational enterprise groups and large-scale domestic groups. The reason for implementation of the new law is to prevent corporate profit shifting to low-tax jurisdictions. The bill is based on Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation of multinational enterprise groups and large-scale domestic groups in the Union. The minimum level of taxation should be 15%. The top-up tax will be paid for each jurisdiction in which the group is located, regardless of whether that country implemented the European Directive or not. It is not yet clear from the bill how the top-up tax will be applied to entities that report or claim tax losses or are recipients of investment incentives in the form of tax credit.

Although the aim of the new bill is to prevent tax avoidance practices, it should not affect smaller or less risky groups operating in the internal market. The law therefore targets only large-scale multinational and domestic groups whose consolidated annual revenues have exceeded EUR 750 million (approx. CZK 18 billion) in 2 out of the 4 preceding accounting periods.

At the same time, entities that generally do not engage in business activities or their activities are in the public interest, such as publicly owned entities (public health care and educational institutions), non-profit organizations, pension funds, investment funds, and other entities defined in the bill, do not fall under the scope of the new legislation.

The bill defines two types of top-up tax, namely:

i) Allocated top-up tax, and

ii) Czech top-up tax.

These top-up taxes have their own rules, and the bill itself declares that the top-up tax is not an income tax. Jurisdictions that introduce a top-up tax may apply their domestic top-up tax first. In those jurisdictions that do not implement a top-up tax in their legislation, the parent company will have to pay a minimum amount of tax in its jurisdiction or allocate the amount of tax to other entities in the group.

In order to ensure compliance with the principle of proportionality, the bill recognizes situations where certain groups are exempted from top-up tax for a period of 5 years, which is in line with the Directive. Such situations include:

i) large-scale multinational enterprise groups in the initial phase of their international activity which do not have constituent entities in more than six jurisdictions, or

ii) large-scale domestic groups.

A *de minimis* rule has also been introduced for groups with average revenues of less than EUR 10 million and average qualifying income or loss of less than EUR 1 million in a given jurisdiction. Under these conditions, these groups will not be subject to the top-up tax even if their effective tax rate in a given jurisdiction is below the minimum tax rate.

According to the requirement of the European Directive, the law should become effective from 31 December 2023. The time remaining until the expected effective date of the law does not give companies much room to prepare for this complex and administratively demanding tax change.

Please, find a summary of the most important elements of the new legislation below.

Taxpayers

With the exception of companies that do not reach the above-defined valuation threshold, Czech companies that are members of large-scale domestic groups or large-scale multinational groups and permanent establishments of foreign companies that are members of large-scale domestic groups or large-scale multinational groups are subject to both the allocated top-up tax and the Czech top-up tax.

Income subject to top-up tax and calculation of top-up tax

Allocated top-up tax

Excess profits of low-taxed constituent entities within a large-scale domestic group or a large-scale multinational group are subject to top-up tax, irrespective of in which jurisdiction and by which constituent entity the excess profits were generated.

In the context of calculation of the allocated top-up tax, it is necessary to determine the effective tax rate of the group separately for each tax period and for each jurisdiction where the group has constituent entities. The effective tax rate shall be calculated as the quotient of the amount of adjusted covered taxes of the constituent entities in a given jurisdiction and the net qualifying income of the constituent entities in the same jurisdiction. The basis on which the tax rate will be computed is the financial information provided by the individual entities to the ultimate parent entity for consolidation purposes, which will need to be subjected to a number of adjustments in order to achieve comparable results.

If the effective tax rate calculated for a large-scale multinational or domestic group in a given jurisdiction falls below the minimum tax rate, a top-up tax will be allocated to individual jurisdictions, which will be obliged to pay the tax so that taxation reaches the minimum level of 15%.

Under the income inclusion rule, tax burden is primarily allocated to the ultimate parent entity, or another parent company; if the tax is not assessed under the income inclusion rule, or if the jurisdiction from which those entities come have not made equivalent arrangements, the undertaxed profit rule will apply.

This means that the remaining amount of the allocated top-up tax will be distributed among all the jurisdictions in which the group operates, and, in the Czech Republic, among all the Czech constituent entities of the group.

Czech top-up tax

The subject of the tax is the excess profits of low-taxed Czech constituent entities of a large-scale domestic group or a large-scale multinational group, regardless of which Czech entity generated the excess profits. In determining the amount of the Czech top-up tax for an individual taxpayer, a jurisdictional top-up tax calculated for a given group in relation to the Czech Republic (i.e., for all Czech constituent entities in the group) will be used. The value of the jurisdictional top-up tax is then allocated to individual Czech constituent entities based on the qualifying income and the effective tax rate of each of these taxpayers.

Simply put, if the effective tax rate for the entire group in the Czech Republic is lower than 15%, it will be necessary to verify the rate for each Czech entity separately. If the Czech entity achieves an effective tax rate below 15%, it will be obliged to pay the local top-up tax.

It is clear that for the purposes of calculating the top-up tax, it will be necessary to reinforce cooperation within the group and apply the knowledge of not only Czech accounting legislation, but also IFRS, US GAAP and similar standards in order to be able to draw up the consolidated financial statements for the ultimate parent entity.

Tax period

The bill defines the tax period as either:

i) the accounting period in which the ultimate parent entity of the large-scale multinational group or large-scale domestic group draws up its consolidated financial statements (on the basis of the ultimate parent entity's accounting period); or

ii) the calendar year, if the ultimate parent entity does not draw up consolidated financial statements (i.e., the tax year of the allocated top-up tax coincides with the calendar year).

This provision allows for flexibility in determining the tax period, which may be useful for large-scale multinational groups or large-scale domestic groups with different accounting cycles

Administration

A specialised tax authority will administer and collect the top-up tax, while investigative activities and control procedures may also be carried out by other tax authorities.

Taxpayers are required to register to the tax within 15 days of meeting the group membership requirement. Under the current bill, this means that some companies will have to register as early as 15 January 2024.

Allocated top-up tax

The taxpayer of the allocated top-up tax is obliged to submit an information report on the allocated top-up tax no later than 15 months after the end of the given tax period, whereas if the tax period is the first period of the group, the taxpayer is obliged to submit the information report no later than 18 months after the end of the tax period. The taxpayer must file the tax return for the allocated top-up tax no later than 22 months after the end of the tax year.

There is an exception to the obligation to file an information report for the allocated top-up tax which applies if the information report for the given tax year was timely filed by the ultimate parent entity or another designated filing entity. In both cases, the submission must be made to tax authorities in a jurisdiction with which the Czech Republic has a tax information exchange agreement.

If the aforementioned exception applies, the taxpayer will inform the tax authority and provide the tax authority with identification details of the company that filed the information report within the time limit prescribed for filing the information report.

Czech top-up tax

The taxpayer is obliged to submit the information report for the Czech top-up tax within the same deadline as the tax return, i.e., no later than 10 months after the end of the tax period. A Czech taxpayer is not obliged to file an information report for the Czech top-up tax if the report for the tax period in question is filed by another Czech taxpayer who is a constituent entity in the same group and, at the same time, the report meets the requirements set out in the law for the information report for the Czech top-up tax.

If the above conditions are met, the taxpayer will inform tax authorities in a similar way as in the case of allocated top-up tax.

In both cases, the deadline for filing the tax return cannot be postponed. There is no obligation to file a tax return for a part of the tax year. All submissions are to be made electronically only, via a digital data mailbox, a digital tax mailbox app or through the EPO portal.

TOP-UP TAX

The Czech top-up tax cannot be determined once the period for determining the tax has expired; this period begins on the date on which the tax becomes payable and ends when 4 tax periods immediately following the tax period in which the tax became payable have passed.

Failure to file the information report or the tax return on time may be penalized by a fine of up to CZK 1,500,000 imposed for failure to comply with a non-monetary obligation related to the administration of the top-up tax.

In order to be enacted, the bill must be passed by both chambers of the Parliament and signed by the President. We will inform you about any developments immediately when new information, comments or changes to the bill have been made public.

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AMENDMENT TO ACT ON TRANSFORMATIONS

The main purpose of this important amendment to the Act on Transformations, which is now being debated in the Chamber of Deputies (as parliamentary print no. 459), is the transposition of an EU Directive into Czech law. Its key areas of regulation concern cross-border mergers, the hitherto non-unified cross-border divisions, cross-border conversions and transfers of company's assets to shareholders. The amendment also deals with some aspects of domestic transformations. The aim of this article is not to provide a comprehensive analysis of the amendment, but to briefly summarize those changes which are likely to have a significant impact on the every-day practice of domestic corporate transformations.

Separation as a new form of division

First of all, the amendment introduces a new form of division which did not previously exist under Czech law (as opposed to for example German law) and as a result of which the company to be divided does not cease to exist and the separated part of its assets is transferred (i) to one or more newly formed companies, or (ii) to one or more existing companies, or (iii) a combination of the above.

The difference between the new institution of division by separation and the already known form of division by spin-off is that in the case of separation, the company being divided becomes the sole shareholder of the newly formed successor company (separation with the formation of a new company) or acquires a share in the already existing successor company (separation by acquisition). In contrast to a spin-off, in case of a separation, the shares in the successor company are acquired by the company subject to division and not by its shareholders. Until now, the same result could have only been achieved by setting up (or purchasing) an SPV as a subsidiary, followed by a spin-off by acquisition or by a contribution in kind into the registered capital of the SPV.

Creditor protection

According to the amendment, there will also be a change in the protection of creditors of entities participating in the transformation in case the enforceability of their claims is affected by the transformation. According to the current wording of Section 36(c) of the Act on Transformations, creditors whose claims arose after the registration of the transformation in the Commercial Register are not entitled to protection. However, this rule does not sufficiently protect creditors of claims arising from long-term contractual relationships, typically leases. Therefore, it is proposed to extend the scope of protected claims to future or contingent claims, provided that such claims arise from obligations which existed before the transformation project has been made public by the company. On the other hand, the time limit for creditors wishing to exercise their right to adequate security will be reduced quite significantly from 6 months to 3 months. These 3 months will start running on the date of publication of the transformation project in the collection of documents of the Commercial Register and not on the date of registration of the transformation in the Commercial Register, as has been the case until now.

Publishing information about transformation

The provisions of Section 33 and Section 33a of the Act on Transformations, which provide for notification of persons who may be affected by the transformation, are also likely to be amended. So far it has been mandatory to publish a notice of the filing of the transformation project in the collection of documents of the Commercial Register and to notify creditors of their rights in the Commercial Bulletin. It should now be sufficient to file the transformation project, together with a notice to creditors, employees and shareholders, in the collection of documents of the competent court at least one month before the date on which the transformation is to be approved by the general meeting or the sole shareholder. This change is welcome, as it removes the need for publication of information in the Commercial Bulletin, a platform that is not typically followed by potentially affected subjects.

AMENDMENT TO ACT ON TRANSFORMATIONS

Mandatory appointment of valuation expert by court cancelled

It should no longer be necessary that a valuation expert tasked with valuing the assets of the companies involved in a transformation be appointed by court. In future, the valuation expert should be selected by the company participating in the transformation in a similar way as in the case of an increase in registered capital by a contribution in kind.

Multiple transformations with the same accounting effective date

In addition to the above-mentioned already partially publicized changes, the amendment will introduce some partial changes, which have been requested by legal professionals. For example, it will be expressly stated in the law that a company can participate in multiple transformations with the same accounting effective date, i.e., in a combination of transactions, which is quite common in practice but has not yet been regulated by legislation.

Most of the above changes are welcomed by legal professionals and are expected to make the process of company transformation easier, more efficient, and therefore more attractive.

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VAT AND AMENDMENT TO BUILDING REGULATIONS

At the beginning of August, the Coordination Committee of the General Financial Directorate and the Chamber of Tax Advisors of the Czech Republic published a memorandum which offers an interpretation of the amendment to the VAT Act adopted as a follow up to amendments to building regulations. This VAT Act amendment, which was originally intended to take effect on 1 July 2023, which was later postponed to 1 January 2024, brought certain interpretative ambiguities concerning the impact of the amendment on the definition of the terms "apartment building" and "family home“.

The meaning of these terms is essential for the application of the reduced VAT rate to the construction and installation works performed on such types of buildings. The amendment removes the reference to the definition of said terms in land registry regulations and replaces it with a reference to the Building Act.

A family home should be defined by reference to the Building Act, and not to the land registry regulations as hitherto, also for the purposes of exemption from output VAT on rental of such property to another VAT payer. The new Building Act defines an apartment building as a residential building in which more than half of the floor area serves housing purposes. A family home is a residential building in which more than half of the floor area serves housing purposes, and which has no more than three separate apartments and no more than two above-ground and one below-ground storeys and an attic or a third storey set back from the outer face of the perimeter wall of the building oriented towards the street line by at least 2 metres.

This new regulation could be interpreted in such a way that the actual use of the building should be relevant for its classification, even if such use is not compliant with the occupancy permit. However, the General Financial Directorate opted for an interpretation that the amendment does not bring any substantial changes to the existing definition of the terms and that the *de iure* qualification of the building and its registration in the land registry continue to be crucial for the definition of these terms.

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SUPREME ADMINISTRATIVE COURT ON FOREIGN ENTITIES DOING BUSINESS IN THE CZECH REPUBLIC

The free movement of persons, which includes the freedom of establishment, is one of the four fundamental freedoms of the European Union. In its decision of 15 June 2023, case no. 2 As 193/2022, the Supreme Administrative Court touched upon this issue and confirmed that legal entities established in other EU member states do not have to establish branch offices in the Czech Republic in order to register a free trade and do business here. The Trade Licensing Act does not contain any such requirement.

The Supreme Administrative Court ruled on an incorrect interpretation of the Trade Licensing Act, where the administrative authority – the Trade Licensing Office – incorrectly applied the same conditions to legal entities established in an EU member state and to legal entities established outside the EU. In particular, the Court emphasized that "entities exercising the right of establishment in another EU member state must be treated in the same way as domestic entities. Member states may require that such entities meet the same conditions as domestic entities in order to start a business in the country. Therefore, EU entities cannot be subjected to stricter requirements than domestic entities. The Supreme Administrative Court further ruled that the right to do business in the territory of an EU member state arises out of the right of establishment guaranteed by the Treaty on the Functioning of the European Union.

By this judgment, the Supreme Administrative Court has clearly confirmed that the previous practice of trade licensing offices, which required the establishment of branch offices in the Czech Republic in the case of legal entities established in another EU member state in order to be granted a trade license in the Czech Republic, was incorrect. Since such entities enjoy the right of establishment in the EU, they cannot be forced to do so.

In addition to the above, the Supreme Administrative Court judgment may also have an impact on the taxation of foreign entities in the Czech Republic. In practice, it is assumed that the establishment of a branch office more or less automatically leads to a permanent establishment of the foreign entity in the Czech Republic. A permanent establishment is a legal fiction created for taxation purposes and its existence gives right to the Czech Republic, under double taxation treaties, to tax the income of the foreign entity in the Czech Republic. If, as a result of the Supreme Administrative Court's decision, foreign entities from other EU member states are not obliged to set up branch offices in the Czech Republic, this may mean that in some cases, they will not be obliged to pay income tax in the Czech Republic. The final answer will depend on the specific circumstances of the given case.

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INJURIES SUFFERED DURING STUDENT WORK PLACEMENT

Secondary vocational education could hardly exist without practical training. Practical training is often provided by the schools themselves, however, some practical skills are difficult to be practiced, let alone learned, in a training setting. For this reason, some secondary schools collaborate with employers who provide students the opportunity to use their skills in a professional setting.

The terms of collaboration between a secondary school and an employer must be agreed in a contract, ideally a written one. The minimum which must be agreed with regard to the scope and terms of student work placement is set forth in Section 12 of Act no. 13/2005 Sb. Although students who participate in practical training at an employer's are not considered employees, they are subject to certain provisions of the Labour Code, namely those governing working hours, occupational health and safety, employee care, working conditions of female and juvenile workers, as well as to other occupational health and safety regulations (Section 65(3) of the Education Act).

Work performed by students during their work placement with an employer can generate income for the employer. In such a case, employers are obliged to pay the students for such work, the minimum remuneration being at least 30% of the minimum wage (Section 122(1), sentences 2-5, of the Education Act). However, even though students may be paid for the work performed, they do not qualify as employees, because they do not enter into any employment contracts or other employee-employer contracts (*dohoda o pracovní činnosti* or *dohoda o provedení práce*) with the employer.

Student work placement may cause certain issues. Students may damage or destroy the employer's property or they themselves may get injured. Both these cases are provided for in Section 391(1) and Section 391(3) of the Labour Code. The former is usually less risky for the employer, since the employer is usually insured against property damage caused by its employees and other persons working for the employer and does not rely on these persons being adequately insured for such situations. What may cause problems is if a student gets injured during his or her work placement at the employer's.

Such an injury is not considered an occupational injury, because the student, as already mentioned and emphasised above, does not qualify as an employee. That means that the student is not covered by the employer's statutory insurance taken out pursuant to Decree No. 125/1993 Sb., which covers only employees. If a student suffers an injury during his or her work placement at the employer's, the employer will be fully liable (pursuant to Section 391(3), sentence 2, of the Labour Code) for such an injury, but the injury will not be covered by the employer 's statutory insurance.

That may have severe consequences for the employer. In case of a serious injury, compensation payable by the employer may amount to hundreds of thousands or millions of Czech crowns, unless the employer is (at least partially) released from its liability under Sections 270 and 271 of the Labour Code. An effective defence against such situations is (in addition to compliance with occupational health and safety rules) taking out insurance which will also cover students placed at the employer. Only in this way can the employer effectively mitigate the risks described above.

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NO-POACH AGREEMENTS

Effective competition or, in other words, economic environment based on healthy competition between businesses, is an ideal which every society strives to achieve, even though it is not always possible as the market economy is not perfect. In any case, what are the advantages of an effective economic competition?

Competitive markets benefit consumers and other users of goods or services as they usually result in lower prices and higher quality of the products on offer. In economics, it is generally accepted that a lower price of a good leads to a higher demand for it, i.e., higher consumption. This also applies vice versa. Hence, higher consumption leads to a higher gross domestic product and thereby brings greater wealth to the entire society. Effective competition is therefore also desirable from the fiscal perspective. For this reason, countries and international organizations seek to prevent and penalize market disruptions caused by agreements between competitors whose objective or effect is the distortion of competition.

In the last few years, labour market, which had previously not been in the focus of competition law, came to the attention of regulatory authorities. The reason is that there have been attempts by various groups (organizations) of employers or other contractual partners not to compete against each other in the labour market for employees (and contract workers in similar positions who depend economically on one client). Such agreements, whether made within employer organizations or between independent employers, were aimed at wage-fixing, i.e., they essentially prohibited increase in employees' wages above an agreed limit, and restricted solicitation or recruitment of employees working for another member of the organization or another employer.

This practice did not escape the attention of the Office for the Protection of Competition, which has issued an information sheet on the subject, which describes these unlawful and undesirable practices. According to the information sheet, such schemes do not only result in lower wages for workers, but their indirect consequence is lower employee mobility and subpar allocation of labour and productivity resulting in fewer innovations. The information sheet may be downloaded at the Office for the Protection of Competition's website.

The Office for the Protection of Competition identified industries which are most prone to such agreements between employers. They include business sectors where high or specific demands are placed on employees in terms of their expertise, qualification, etc., as well as sectors where there is a long-term shortage of qualified workers, where the costs of recruiting employees are high or where there are only a few large and important employers (see page 10 of the information sheet). Workers likely to be affected by anti-competitive agreements on the labour market include professional athletes, IT experts, healthcare professionals, transportation workers (automotive and rail), franchise workers, educators, agency employees, specialized construction workers, electrical installation workers and employed (or similarly positioned) licensed professionals (see page 10 of the information sheet).

Employers should be very careful when entering into the type of agreements described above. The safest way to avoid potential problems and eliminate risks is not to enter into such agreements at all.

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FROM THE LIFE OF LTA

- Our legal team has been joined by Mr. Vojtěch Boldys, who, thanks to his wealth of experience and excellent knowledge of English and Polish, will be an important addition to our firm.

- LTA participated in the charity Goodwill Run organized by Olga Havlová Foundation. Mirka Ernestová took a close 4th place in the individual race, while the mixed relay team took 7th place.

HAVE YOU NOTED…

- The Ministry of Labour and Social Affairs has responded to the decrease in fuel prices by reducing the average price of 1 litre of diesel fuel for the purpose of travel allowances to CZK 34.40 with effect from 1 July 2023 (before 30 June 2023, the price was set at CZK 44.10).

- In June 2023, Coordination Committee 610/21/2023 was published to clarify some interpretation ambiguities regarding the creation of a reserve for repair of tangible property. In particular, this Coordination Committee addressed the obligation to transfer funds corresponding to the amount of the reserve attributable to one tax year to a separate bank account, and the possibility of creating this reserve in order to use it to repair property used for generation of electricity from solar power.

- 30 September is the last date for submitting an application for VAT refund on supplies received in another EU country by persons registered to VAT in the Czech Republic.

- As of 1 July 2023, blue cards can be issued for up to 3 years, which extends their validity by one year.

- On 12 September 2023, the Chamber of Deputies approved the long-awaited amendment to the Labour Code, which had been returned to it by the Senate.

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