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CONSOLIDATION PACKAGE

The so-called consolidation package - a bill amending more than 60 bills in connection with the consolidation of public budgets - has been approved. The bill introduces the following changes to accounting and tax legislation effective from 2024:

- corporate income tax increase – from 19% to 21%;
- personal income tax rate of 23% applicable to income exceeding three times the average salary (instead of the current threshold of four times the average salary);
- reduction or cancellation of certain personal income tax credits and deductions;
- exemption of employee benefits from personal income tax curbed;
- exemption of meal vouchers of excess value from taxes payable by employee cancelled;
- exemption of income generated by natural persons by sale of shares in commercial corporations from taxation capped at CZK 40 million per year (effective from 1 January 2025);
- social security payments for self-employed persons raised;
- employees' share in payment of sickness insurance reintroduced;
- exemption of income generated under work performance agreements (*DPP*) from social security payments capped;
- company accounts may be kept in functional currency (EUR, USD, GBP) and tax return may be filled and taxes paid in said currency;
- companies able to enter schemes to exclude unrealised exchange rate differences from their tax base;
- cost of acquisition of passenger cars deductible only up to CZK 2 million and input VAT paid on passenger cars deductible only up to CZK 420 thousand;
- deductibility of donations and expenses and exemption from income tax in connection with the war in Ukraine extended to also apply in 2023;
- number of VAT rates reduced to two – standard VAT rate of 21% and reduced VAT rate of 12%; certain goods and services moved from the reduced VAT rate to the standard VAT rate;
- increase in real estate tax rates;
- increase in alcohol, tobacco and tobacco products taxes; new taxes introduced on e-cigarettes and nicotine pouches;
- changes in taxation of gaming machines.



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FLAT REIMBURSEMENT OF EXPENSES INCURRED BY REMOTE EMPLOYEES

With effect from 1 October 2023, the amended Labour Code explicitly provides for reimbursement of expenses incurred by employees who work remotely.

The general principle which applies to reimbursement of expenses incurred by employees in relation to the performance of their work is that employers only reimburse actual expenses which employees are able to prove. This also applies to remote employees. However, the amendment to the Labour Code has introduced another possibility. The Labour Code now allows for flat reimbursement of expenses instead of reimbursement of proven actual costs. Flat reimbursement is possible only if agreed in writing between the employee and the employer or provided for in an internal regulation issued by the employer.

The flat reimbursement rate is set in a decree issued by the Ministry of Labour and Social Affairs. For 2023, the rate has been set at CZK 4.60 for each started hour of remote work.

Flat reimbursement – up to the statutory rate provided for by the decree – will not be subject to taxation on the part of the employee or to social security or health insurance deductions.

Private sector employees may be reimbursed at a higher rate than the one set forth by the decree. However, the excess amount will be subject to taxation on the part of the employee and to social security and health insurance payments. Employers may deduct the amount of flat reimbursement paid out to their employees from their tax base.

Flat reimbursement of expenses will be granted for each started hour of work. For this purpose, the total number of hours of work will be counted at the end of the period for which the reimbursement is provided. This means that the employee will ultimately be reimbursed for all the completed hours of work and for a maximum of one started and unfinished hour of work.

For the sake of completeness, please note that the employee and the employer may agree in writing that the employee will not be granted any reimbursement of expenses for remote work.

Employees who work under agreements to perform/complete work (DPP or DPČ) are only entitled to reimbursement of expenses incurred during remote work if it is expressly agreed

with the employer (i.e., they are not entitled to it automatically).



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VAT EXEMPTION FOR TRANSPORT SERVICES RELATING TO IMPORTATION OF GOODS

If you are involved in international carriage of goods, we recommend you pay attention to the recent judgment of the Court of Justice of the EU (CJEU) in case C 461/21 SC Cartrans of 7 September 2023, which addresses the evidence which taxable persons must provide in order to qualify for VAT exemption for transport services related to goods imported into the EU.

Until now, according to the opinion of Czech tax authorities published by the „Coordination Committee“, it was not necessary to provide evidence of the actual inclusion of the remuneration for transport during importation into the EU in the taxable amount for the imported goods in order to qualify for the VAT exemption.

Said judgment addresses the types of evidence required to prove the above. The CJEU explicitly ruled that the recording of an import operation and allocation of an MRN do not constitute sufficient evidence to prove that the transport service in question is included in the taxable amount for the imported goods. Inclusion in the taxable amount for imports is a condition for qualifying for the VAT exemption under both the VAT Directive 2006/112/EC and the Czech VAT Act.

As possible means of proof, the CJEU lists in particular the CMR and the accompanying transit document, the invoice and the contract of carriage.

It is therefore clear that the current lenient approach of Czech tax authorities should be considered outdated and tax subjects should not rely on it in the future. We recommend that you address the question of VAT exemption for transport services related to goods imported into the EU very cautiously. Worth of special attention are especially situations where the transport company is aware that the transport it provides is involved in the importation of goods into the EU, but the company is not directly stated on the transport documents and import documents.



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LESS KNOWN CHANGES TO THE LABOUR CODE 2023

A major amendment to the Labour Code came into force more than a month ago. However, in addition to the widely discussed changes to agreements to perform/complete work (*DPP* and *DPČ*), to remote work and to employers' notification duties, the Labour Code has also incorporated a number of other completely novel obligations for employers which must now be implemented in employer's everyday HR practice. We hope that our brief summary will help you navigate through these new duties:

Do you know that from 1 October 2023, employers are obliged to ...

- ...accommodate a request of a pregnant employee, employee caring for a child under 15 years of age or employee caring for a dependant to work shorter working hours or different working hours, unless serious operational reasons prevent it? The duty itself is not new. However, if you do not grant the request, you are now obliged to justify your rejection in writing.
- ...accommodate a request of employees listed above to return or partially return to their original weekly working hours? Again,

if you decline the request, you are required to justify it in writing. However, whether you accommodate the request or not is entirely at your discretion.

- ...accommodate a request of a pregnant employee, employee caring for a child under 9 years of age, or employee caring for a dependant to work remotely? If you decline the request, you must justify it in writing. In spite of that, employees do not have a statutory right to be allowed to work remotely.
- ...if an employee employed in your company under an agreement to perform/complete work (*DPP/DPČ*) for a cumulative period of at least 180 days in the preceding 12 months requests a regular employment contract, answer within 1 month from receiving the request and provide reasons for your answer?
- ... if you terminate a *DPP* or *DPČ*, inform the terminated employee about the reasons for the termination without undue delay after receiving their written request (although it is allowed to terminate a *DPP/DPČ* without giving any reason)? An employee may

request a justification if they believe that the employer has terminated their employment because they lawfully asserted one of their statutory rights: right to receive information upon establishment or change of their employment or upon being posted to another country, right to have their working hours scheduled in advance, right to professional development, right to request a regular employment contract (instead of a *DPP* or *DPČ*), right to request changes to the terms of their employment, right to ask for or take maternity, paternity or parental leave or to take leave to care for another individual.

- ... accommodate an employee's written request to provide information on the terms of the employment as set forth by the new regulation (even if you already provided the employee with information as was required by the previous regulation before the amendment came into force), within 7 days of receiving the employee's request? If you have automatically provided the information on the terms of the employment under the new regulation to all employees, then, of course, you do not need to inform the employee again.

LESS KNOWN CHANGES TO THE LABOUR CODE 2023

- ...accommodate a written request filed by an employee who is employed by you under a *DPP* or *DPC* for information about the terms of their employment within 7 days of the receipt of the request? If you have automatically provided the information on the terms of the employment established by a *DPP* or *DPC* to all employees, then, of course, no further action is necessary.
- ... accommodate a written request from an employee who has been posted to another country for information under the new legislation (which applies even if you provided the employee with information under the previous legislation before the amendment came into force) within 7 days of receiving the request? You do not have to comply with the request if the duration of the posting does not exceed 4 consecutive weeks or if the posting ended before 1 October 2023.

You have a right to expect that employees will apply for parental leave at least 30 days before the starting date of the parental leave and that the application will indicate the duration of the

leave. If the request does not specify the duration of the parental leave requested, the employee is deemed to be requesting parental leave of the maximum duration permitted by law. However, the employee may apply for parental leave repeatedly.



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PREVENTIVE RESTRUCTURING

On 23 September 2023, the Act on Preventive Restructuring came into force, which introduces a completely new concept of preventive restructuring into Czech insolvency law as a tool to address financial difficulties of corporate debtors. Preventive restructuring defines a procedure aimed at preventing bankruptcy and preserving or restoring a debtor's viability. This is different from the purpose of insolvency proceedings which is to achieve the highest possible satisfaction for the debtor's creditors.

A prerequisite for preventive restructuring is the company's good faith in maintaining or restoring the viability of the business and, at the same time, the company not being bankrupt or insolvent but, with regard to all relevant circumstances, the company's financial situation being of such severity that bankruptcy would ensue if the proposed restructuring measures were not adopted.

In order to initiate a preventive restructuring procedure, it is necessary to invite creditors to start negotiations on a restructuring plan and to submit a „recovery plan“, which will outline at least the essential features of the intended restructuring measures.

The Act also introduces a register of restructurings as an information system run by competent authorities, which serves the purpose of informing the parties about the most important procedural milestones. The register is not yet operational.

The Ministry of Justice supervises restructuring administrators and their compliance with obligations set out in the Act; the Insolvency Administrators Act applies *mutatis mutandis*. The Ministry is obliged to publish online a list of practical information and guidelines on how to draw up a recovery plan and a restructuring plan adopted for the needs of micro, small and medium-sized enterprises.



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SHARING EMPLOYEE PHOTOS FOR MARKETING PURPOSES

It is almost impossible to imagine a thriving business without well-managed online marketing, which often involves not only presentation of the company's business success, but also of employees who stand behind it. Before you post a photo of your employee, it is important to keep in mind that a photo that identifies a person qualifies as personal data within the meaning of Article 4 of the General Data Protection Regulation (GDPR). Therefore, if you work with such photos, you process personal data. Keep in mind that every processing operation requires one of the six lawful bases for processing listed in Article 6(1) a) to f) of the GDPR (contract, legal obligation, public interest, protection of vital interests, legitimate interest or consent of the data subject).

Clients often wrongly believe that they can freely use photographs that they received from their employees during the recruitment process or which they process in the employees' personnel files. This is a mistake. Each purpose of processing requires a specific lawful basis.

Sharing photographs on social networks

In most cases, photographs can be processed for marketing purposes with the consent of the person depicted. A typical example is posting employee photos on social media to spread awareness about the employer's business and showcase achievements of the team. For such use of photographs, consent is required from all the people shown in the photo. In order to share posts with photos on a regular basis, the employer can ask employees for general consent. The consent form must be drafted very carefully though. In particular, it is important to identify and clearly describe the purpose for which the consent is given and avoid vague formulations such as "marketing purposes" or "advertising". It is advisable to make the consent form as specific as possible in terms of the type of photographs which will be processed and location where the photographs will be shared. On the other hand, the wording should not be unnecessarily restrictive for the employer.

The most common mistake in personal data processing is requiring consent from data subjects in all possible situations (requiring consent "just in case"). Please note that consent

must be used exclusively where no other legal basis for processing exists (see above). For the sake of completeness, please note that consent may always be withdrawn, and the data subjects must be informed of this in advance.

Posting photographs on employer's website

An example of the use of employee photographs based on another lawful basis is posting of employee photos on the employer's website when introducing the team. The purpose of such processing is to showcase the excellency of the company's employees and to inform the visitors of the website about the employees' job positions and contact details. The employer usually has a legitimate interest in sharing the photos in such a way, as it may be important for many clients to know in advance who works for their business partner or whether there might be a conflict of interest. Please remember that if the processing of personal data is motivated by a legitimate interest, it is always necessary to do a balancing test before the processing begins. Its purpose is to show whether the employer's legitimate interest in processing photographs is not overridden by the rights and freedoms of the data subjects concerned.

SHARING EMPLOYEE PHOTOS FOR MARKETING PURPOSES

Employee as the face of the company

If an employer decides to use a photograph of an employee or another collaborator to such an extent that it essentially represents the face of the company, it is wise to consult the employee in advance and define the terms of the relationship in a contract and, if necessary, remunerate the employee for this. It is not advisable to subject such processing to mere consent which may be revoked at any time, as the employer might find itself in a situation where they would need to change a substantial part of their brand overnight.

There is no need to fear sharing employee photos for marketing purposes. However, it is important to treat photographs in a lawful manner and understand that photographs qualify as personal data. This is not the only thing we at LTA can help you with.



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THE END OF ANONYMOUS PROPERTY OWNERS

31 December 2023 is the deadline for insufficiently identified owners to lodge their rights to real property which is not registered in the Land Register in accordance with applicable legislation. Insufficiently identified owners are owners who are not known at all and the Land Register lacks any information about them, or owners who are not fully identified in compliance with the law, i.e., owners for whom the Land Register lacks important information such as their date of birth or their address.

On 1 October 2023, a total of 328,532 entries with insufficiently identified or unknown owners and a total of 115,779 insufficiently identified owners were registered in the Land Register. These numbers represent 142,074 unique properties, of which 139,752 are land plots, mainly arable land, meadows and forest land, and 2,322 are buildings.

Pursuant to the Civil Code, on 31 December 2023, the 10-year period after which real property will be deemed abandoned by the owner will expire. The Civil Code further provides that abandoned real property falls into the ownership of the state. In this context, it is

advisable to pay attention to the obligation of real property owners to keep the entries in the Land Register up to date.

Inaccuracies in the Land Register have their roots in the post-war regime in Czechoslovakia. During the first Czechoslovak republic, the land register was still meticulously maintained, entries were generally accurate, there was cooperation between the land registry office and the courts of registry, and landowners had a general obligation to report any changes. Maps were also of a high standard. It can therefore be said that until 1938 the land register was very reliable.

If you are an insufficiently identified owner, or, for example, your ancestors owned certain properties that you believe belong to you, but you are not registered as the owner in the Land Registry, you must register with the Office for Government Representation in Property Affairs ("UZSVM") by 31 December 2023 at the latest. UZSVM will then provide the necessary information and guide you through the respective registration process.

After 31 December 2023, it will be possible to claim ownership only by means of an action to determine the ownership or real property filed in civil court proceedings.



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WHAT SHOULD YOU NOT FORGET AS EMPLOYERS?

We have prepared a list of duties that you should definitely not forget. We have focused on the widely discussed amendment to the Labour Code and the Whistleblower Protection Act.

- Have you entered into written remote work agreements with all employees who work remotely, even if only on a casual or occasional basis? If not, you should rectify this as soon as possible, otherwise you risk a fine.
- Have you informed your employees about the possibility of having documents delivered to their private e-mail addresses? If not, you cannot deliver documents via an electronic communications service or network.
- Have you secured your employees' consent to have documents delivered to their private email addresses? If not, you cannot deliver documents via an electronic communications service or network.
- Have you updated your templates for informing employees about the conditions of their employment? If not, you should

rectify this as soon as possible, otherwise you risk a fine.

- Have you prepared templates for informing employees about the conditions of collaboration under agreements to perform work or agreements to complete work? If not, you should rectify this as soon as possible, otherwise you risk a fine.
- Have you updated your DPP and DPČ templates to comply with the amended Labour Code? If not, you should rectify this as soon as possible, otherwise you risk a fine.
- Have you modified your internal regulations to comply with the amended Labour Code? If not, you should rectify this as soon as possible, otherwise you risk a fine.
- Have you implemented an internal whistleblowing system for reporting breaches under the Whistleblower Protection Act? If not, If you have more than 50 employees or fall under another category prescribed by the law, you should implement the system by 15 December 2023, at the latest.

- Have you appointed a competent person to perform duties under Section 11 of the Whistleblower Protection Act? If not, If you have more than 50 employees or fall under another category prescribed by the law, you should appoint the responsible person by 15 December 2023, at the latest.
- Have you prepared an internal directive for reporting unethical or illegal conduct (whistleblowing directive) under the Whistleblower Protection Act? If not, If you have more than 50 employees or fall under another category prescribed by the law, you should draw up the directive by 15 December 2023, at the latest.

If you are unsure about any of the new duties listed above, please do not hesitate to contact us. We will be happy to help you get all the details in place to avoid any problems.



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- LTA has been selected as a **recommended firm in the prestigious Law Firm of the Year ranking**. We are very pleased to have defended our last year's ranking in the **tax law category**. This year, for the sixteenth time, EPRAVO.CZ announced the results of the awards for law firms in the Czech Republic, based on assessments of the host of the awards and independent experts under the auspices of the Ministry of Justice of the Czech Republic.
- On 14 December 2023, LTA is hosting a seminar on Tax and Accounting News 2024. You can register on our website.
- The tax team has been joined by Lucie Kretková. Lucie is an experienced tax advisor specialising in the taxation of natural persons.
- LTA prepared a half-day seminar on the Czech tax system and tax implications of cross-border transactions for the Commercial Department of the Austrian Embassy. The seminar addressed both income tax and value added tax aspects and was conducted in German.
- The legal team was joined by Renata Šindelářová. Renata is an experienced attorney specializing in employment law.



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HAVE YOU NOTED...

- The Council of the European Union has adopted the DAC8 Directive which will, from 2026, extend the scope of information automatically exchanged between the tax authorities of EU Member States to include cryptocurrency transactions.
- The Double Taxation Treaty existing between the Czech Republic and the Russian Federation has been suspended.
- The Extended Chamber of the Supreme Administrative Court issued a decision 2 Afs 363/2019-50 of 5 September 2023, according to which it is possible to file an additional tax return for lower tax even after the statutory subjective deadline has expired (the statutory subjective deadline being the end of the month following the month in which the tax subject discovered that there are reasons for filing an additional tax return).

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Please note that the information in this Newsletter may be subject to further developments. This newsletter does not contain all legislative aspects of the matters discussed and does not replace professional advice given in relation to a particular situation.