LTA
LEGAL TAX AUDIT

NEWSLETTER
June 2024

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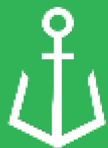
LEGAL - TAX – AUDIT - ACCOUNTING



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AMENDMENT TO VAT ACT

The Ministry of Finance has prepared a major amendment to the VAT Act for 2025. The amendment is currently at the beginning of the legislative process and its final wording is not certain yet. Most provisions are planned to take effect on 1 January 2025, but some changes will only become effective on 1 July 2025 (changes in real estate taxation) or 1 January 2026 (changes in tax refunds to foreign tourists, VAT exemption of financial services, etc.). In this article we would like to introduce you to the most important changes that this amendment is expected to bring in 2025 (or later, as will be specified in detail in the text).

Return of VAT deductions on unpaid liabilities

Customers will be obliged to return the VAT deductions claimed if they fail to pay for the taxable supply by the last day of the 6th calendar month immediately following the calendar month in which the due date of the payment for the taxable supply occurred.

Extension of deadline for correcting tax base

The period for correcting the VAT payer's tax base is planned to be extended from 3 to 7 years from the original transaction. However, the period will no longer be stayed by court, arbitration or insolvency proceedings.

Uncollectable debts

The possibility to claim relief from the VAT on bad debts is planned to be extended. The process is to be significantly simplified for debts up to CZK 10,000 that are more than 6 months overdue, provided that the total amount due to one debtor does not exceed CZK 20,000. In such a case, it should be sufficient if the creditor sends the debtor at least two written demand letters and makes effort to ensure that the demand letters reach the debtor.

Shorter time limits for claiming VAT deductions

The time limit for claiming VAT deductions is planned to be shortened from 3 years to 2 years. After two years, the taxpayer will only be entitled to claim VAT deductions if reverse charge applies to acquisition or importation of goods from another Member State.

Changes in VAT payer registration

The threshold of CZK 2,000,000 for mandatory VAT registration will be tracked per calendar year. Entities from other EU Member States who do not exceed that threshold will not become Czech VAT payers if they register as small businesses in the Czech Republic. Czech entities in other Member States will have a similar option. The purpose is to reduce the administrative burden consisting in VAT registration in multiple Member States for small businesses with annual turnover below EUR 100,000.

Businesses will become VAT payers as of 1 January of the year following the calendar year in which the domestic turnover exceeds CZK 2,000,000 and remains below CZK 2,536,500. If the turnover exceeds CZK 2,536,500 (equivalent to EUR 100,000) in a given calendar year, the business will become a VAT payer as of the date on which said limit was exceeded.

Real estate

Changes in real estate taxation are, except for the abolition of the category of self-created property, planned to become effective only on 1 July 2025.

AMENDMENT TO VAT ACT

The current five-year time limit for claiming tax exemption on the supply of real property is planned to be abolished. Only the first supply after the completion of the property within 23 months of the completion or substantial alteration of the property should be subject to tax. The limit for substantial alteration is planned to be reduced from 50% to 30% of the actual cost of the alteration.

The legal definition of building land will be modified and should be based on the spatial planning documentation issued by the municipality.

The possibility to apply a reduced 12% VAT rate on construction and installation works related to alteration or construction of social housing should be almost exclusively subject to the use of the land as registered in the land register.

With effect from 1 January 2025, the application of output VAT on the activation of self-created assets and the rules pertaining thereto will be abolished.

If adopted as proposed, the amendment will extend the category of taxable supplies for which VAT is levied on the supply's fair market value to include transfer of real estate to employees and members of employees' household.

VAT exemption of financial services

Due to a conflict with the Directive and applicable case law, tax exemption will no longer apply to:

- direct debiting,
- management of customer's assets under a contract with a customer if the assets include an investment instrument, except for administration and custody of investment instruments,
- keeping records of investment instruments,
- collection of TV and radio licence fees,
- payment of pension benefits and collection of regular payments from the public.

The effective date of these changes is planned to be 1 January 2026 except for the change in taxation of management of customer's assets, which will be treated as a taxable supply already from 1 January 2025.

Export of goods in accompanied baggage by passengers from third countries

From 1 January 2026, information on the sale of goods to third country nationals should be communicated to the customs administration electronically immediately after the sale via a public administration information system.

Refund of unjustified tax

The amendment will, with effect from 1 January 2026, implement changes reflecting the case law of the CJEU and establish the right of a recipient of a supply to request refund of unjustifiably paid tax. The refund may be requested directly from the tax authority only in exceptional cases where it is impossible or excessively difficult to get the refund from the provider of the supply.

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AMENDMENT TO TOP-UP TAX ACT

Act no. 416/2023 Sb., on top-up tax for large-scale multinational enterprise groups and large-scale domestic groups has been effective only since 31 December 2023 and the Ministry of Finance has already proposed a bill to amend it. The primary aim of the bill is to reflect interpretation guidelines published in the OECD's December 2023 guidance document.

Below is a summary of the most important of the proposed changes:

- The amendment introduces a new concept of a „reporting period“ as a period for which consolidated financial statements are drawn up. If the fiscal period/taxation period of the constituent entity is not aligned with the reporting period, the constituent entity should apply the method used in the consolidated financial statements to collect data used to determine the top-up tax.
- The EUR 750 million threshold for consolidated annual group revenues is specified in more detail.
- Safe harbour rules based on simplified calculations (ordinary profit, small scale or effective tax rate) should only apply to non-material constituent entities (constituent entities with less than EUR 50 million in revenue).
- The definition of an „investment entity“ is clarified, when the condition of „multiple investors“ is replaced by the condition of „at least 2 investors“.
- The amendment introduces the option of a medium-term decision on the inclusion of all profit shares.
- The domestic top-up tax return will be filed by the taxpayer who is the ultimate parent entity, provided that there is no low-taxed Czech entity in the group or no low-taxed Czech member entity has made excess profits.
- The information return will be required to be filed by the payer of the Czech top-up tax and/or the allocated top-up tax, regardless of whether there is a low-taxed constituent entity within a large-scale domestic group or a large-scale multinational enterprise group or whether this constituent entity makes excess profits.
- Corrective and additional information returns are introduced.
- The four-year period for determining the top-up tax will apply only to the Czech top-up tax and not to the allocated top-up tax.
- Mixed tax regime provisions concerning controlled foreign companies will be extended.

Although the amendment is only at the beginning of the legislative process, it will take effect from 31 December 2023 if approved.

If you have any questions about top-up taxes, please do not hesitate to contact us.

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SUSPENSION OF CZECH-RUSSIAN DOUBLE TAXATION TREATY

Following the announcement of the Ministry of Finance in the Financial Bulletin No. 10/2023 regarding the suspension of virtually all provisions of the double taxation treaty between the Czech Republic and Russia, the financial administration has published detailed information on the issue. An important aspect of the problem is that Russia suspended the Czech-Russian treaty from 11 August 2023, while the Czech Republic suspended it only from 29 September 2023.

According to the information published by the financial administration, the following rules apply:

1. Avoidance of double taxation of income generated by Czech tax residents from sources in Russia

For this purpose, the calendar year of 2023 can be divided into three parts:

- 1 January to 10 August, when the Czech-Russian double taxation treaty applies,
- 11 August to 28 September, when the Czech taxpayer may either apply the Czech Income Tax Act or the Czech-Russian double taxation treaty; according to the GFŘ, the choice of the (more favourable) option is fully at the taxpayer’s discretion,
- 29 September to 31 December, when the Czech-Russian double taxation treaty no longer applies, and the taxpayer is subject to the Czech Income Tax Act.

2. Taxation of income received by Russian tax residents from Czech tax residents (who are payers of withholding tax / who secure tax payable by Russian tax residents)

For this purpose, the calendar year of 2023 can be divided into two parts:

- If the obligation to withhold tax / secure tax occurred between 1 January and 28 September, the Czech-Russian double taxation treaty applies,
- If the obligation to withhold tax / secure tax occurred between 29 September and 31 December, the Czech-Russian double taxation treaty does not apply and the transaction will be subject solely to the Czech Income Tax Act; however, the special tax rate of 35% (which applies to states with whom the Czech Republic has no double taxation treaty) will not apply.

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SUSPENSION OF DOUBLE TAXATION TREATY WITH BELARUS

From 1 June 2024 until 31 December 2026, it will be no longer possible to avoid double taxation of dividend income, interest income and income from sale of property received and taxed in Belarus. The Belarusian side has announced that the application of certain articles of the Czech-Belarusian double taxation treaty is suspended from 1 June 2024 to 31 December 2026.

The Czech Republic agreed and announced the suspension in the Financial Bulletin No. 4/2024. This means that if the tax has been or is, in the future, withheld in Belarus on the above income received after 1 June 2024, double taxation in the Czech Republic can no longer be avoided. This is because such income is not taxed in Belarus "in accordance with the provisions of a double taxation treaty".

Therefore, double taxation of dividend or interest income may occur since under Czech law, when determining the tax base for capital income, expenses cannot be deducted from such income, not even the amount of tax withheld in Belarus (as would be the case, for example, with respect to income received from employment).

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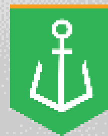

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"VIDA" OR VAT IN DIGITAL AGE

On 14 May 2024, the Economic and Financial Affairs Council (ECOFIN) debated a proposal to amend the European VAT Directive in order to introduce a significant expansion of e-invoicing and digital VAT reporting. The package introducing the new rules for the "digital age" is referred to as ViDA (VAT in Digital Age).

Proposed changes are based on three pillars which, once implemented into national legislation, will significantly affect all EU-based businesses. The original ViDA timetable proved to be too ambitious and will not be met. The second and third pillars are expected to be implemented in Member States' national legislations in 2027, while the first pillar, introducing, among other things, mandatory digital reporting, is expected to be implemented between 2030 and 2035.

Pillar 1 – E-invoicing and digital reporting

Implementation of the first pillar is still a long way ahead, but it will have the most significant impact on European VAT payers. In addition to the expansion of e-invoicing, which will have to meet a set European standard, the timeframe for issuing tax documents and their reporting to tax authorities will be significantly reduced to occur almost in real time.

The main changes planned to be implemented with regard to invoicing and reporting:

- e-invoicing should become the standard system for issuing invoices,
- invoices should be issued in a structured electronic format that meets set standards, which means that the now widely used pdf format will no longer be possible,
- Member States should continue to be able to allow paper documents for domestic supplies of goods and services,
- e-invoicing should not be subject to customer's consent,
- time limit for issuing invoices for cross-border transactions should be two working days after the date of taxable supply,
- electronic invoices should allow for automated transmission of data required by tax authorities for tax audit purposes,
- possibility to issue summary tax documents should be abolished,
- digital reporting requirements („DRR“) should replace summary and control reports for intra-community transactions,
- DRR should occur almost in real time, within 2 days of the date of the invoice which should be issued electronically within 2 days of the transaction.

Pillar 2 – VAT changes in platform economies

The second pillar will affect platforms which facilitate short-term accommodation services, rental services or passenger transport services. These platforms should be treated as deemed suppliers of services and should be liable to pay VAT, unless the obligation to pay VAT arises directly for the provider of the service.

The aim is to level the market playing field between traditional accommodation providers (hotels, guesthouses, etc.), which always pay VAT on their services, and providers of services using digital platforms (Booking, etc.).

"VIDA" OR VAT IN DIGITAL AGE

Pillar 3 – Single VAT registration in EU

Single VAT registration in the entire EU based on enhancement and expansion of the existing One Stop Shop (OSS) and Import One Stop Shop (IOSS) systems and reverse charge mechanism is aimed at minimizing the need for multiple VAT registrations in the EU.

The extension of the OSS to include reporting of transfers of own goods between Member States should result in removal of the current simplified call-off stock scheme.

Mandatory reverse-charge for local supply of goods by a non-established person if the buyer is registered for VAT in a Member State has been proposed. Unlike in many other EU Member States, the Czech Republic already applies this option.

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FINES FOR FAILURE TO PUBLISH FINANCIAL STATEMENTS

According to Section 21a of the Accounting Act, accounting units are obliged to publish their financial statements in the collection of documents of the Commercial Register. This obligation is often taken lightly by companies. Few are aware that failure to comply can result in significant penalties.

- According to Section 37(2)(b) of the Accounting Act, a fine of up to 3% of the net asset value of the company may be imposed for failure to publish financial statements. The fine is imposed by the competent tax authority, and we can confirm from our clients' experience that tax authorities are beginning to actively address the issue and penalize non-compliance.
- A fine of up to CZK 100,000 imposed by the registry court (Section 104 of the Act on Public Registers of Legal and Natural Persons).
- Repeated non-compliance and failure to respond to notices of the registry court may result in court-initiated dissolution of the company.

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CASE LAW: IS A FORMER EMPLOYEE ENTITLED TO A BONUS?

In a recent judgment, case no. 21 Cdo 2392/2023, the Supreme Court addressed the interplay between payment of discretionary salary components and principles of equal treatment of employees. The dispute which ended up before the Supreme Court concerned a former employee's claim for payment of an extraordinary one-time bonus which was granted to employees as a reward for contributing to the profit made by the company in 2021. The claimant’s employment lasted throughout 2021, but she was no longer employed by the company at the time the decision to pay the bonus was made.

The claimant was employed by the company under an employment contract dated 3 August 2020 and her employment lasted until 31 December 2021. After evaluating the company‘s performance in 2021, the employer decided to pay employees the extraordinary one-time bonus to thank them for their excellent work in 2021 and to motivate them to continue the good work. The condition for receiving said bonus was not only to have worked in the company for at least 3 months in 2021, but also to be employed there as of 31 May 2022.

The claimant argued that she was also entitled to the bonus, even though she met only one of the two conditions. She argued that the extraordinary bonus for 2021 constituted a form of salary for the work done by employees in 2021 and that the second condition which required that the employment must last as of 31 May 2022 was in conflict with the Labour Code, namely the principle of equal treatment of employees in terms of remuneration. The defendant argued that the conditions were clear, comprehensible and equal for all employees. The aim of the criteria for eligibility for the bonus was not only to reward employees for the work done in 2021, but also to motivate them to achieve the same or similar results in the next year. The bonus was therefore not designed as an annual performance bonus, but as a discretionary bonus introduced to motivate employees to continue the excellent work.

The Supreme Court investigated whether the conditions set by the employer for the payment of the bonus were legitimate or whether they constituted unequal treatment. Finally, the Court concluded that if the extraordinary bonus was

CASE LAW: IS A FORMER EMPLOYEE ENTITLED TO A BONUS?

intended not only as a reward for the employees‘ performance in 2021, but also as an incentive for the following year, the requirement that the employment must continue until a certain date in 2022 was justified. The court emphasized that the employer has the right to set the terms and conditions of discretionary salary components as it sees fit, provided that such conditions are transparent and non-discriminatory. Since in the present case the conditions were clearly defined and applied equally to all employees, the Court found no conflict with the Labour Code.

There are several important takeaways from the Supreme Court’s decision:

- employers may decide to grant an extraordinary bonus even if it has not been agreed or determined in advance,
- extraordinary bonuses must be distinguished from annual bonuses, which are paid to reward employees for the work done in the previous calendar year,
- the decision to grant an extraordinary bonus is fully at the employer’s discretion, provided that all employees are treated equally.

The decision of the Supreme Court not only clarifies the legal framework for payment of discretionary salary components, but also reinforces trust in transparent and fair treatment of employees at the workplace.

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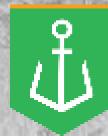

CASE LAW: CONCLUSION OF CONTRACTS VIA WHATSAPP

The High Court in Olomouc recently addressed the question whether it is possible to conclude an agreement to enter into a share purchase agreement in the future via WhatsApp (judgment of 21 February 2024, case no. 8 Cmo 251/2023). The claimant petitioned the court to determine the terms of a share purchase agreement as a binding agreement to enter into a share purchase agreement in the future was allegedly concluded between the parties on WhatsApp.

A person who, among other things, served as the claimant's managing director and the defendant negotiated, both in person and by phone, email and WhatsApp, for a purchase of shares in a company. During a conversation on WhatsApp the claimant's managing director made an offer to the defendant. The claimant's initial offer and the defendant's final acceptance did not follow immediately after each other and several other messages were exchanged in between about the parties' whereabouts, their feelings about the negotiations, etc. According to the claimant, the agreement to enter into a share purchase agreement in the future was concluded during the WhatsApp conversation when the defendant replied "Yes", which the claimant interpreted as the defendant expressing their acceptance of the claimant's offer.

Both the Regional Court in Ostrava and the High Court in Olomouc dismissed the claim and stated the following reasons:

- The WhatsApp conversation was conducted between formally different entities than those who were supposed to conclude the agreement to enter into a share purchase agreement in the future – the person allegedly acting on behalf of the claimant did not state that he was acting on behalf of the claimant as its managing director;
- The essential element of the contract, i.e. the consideration to be exchanged between the parties in the transaction, was not agreed even in a general way, since the offer did not state clearly who should transfer the share (and if they should transfer the share at all), what the purchase price should be or how the purchase price should be determined;
- several other messages were exchanged in between the offer and the acceptance, i.e., the claimant failed to prove that the defendant immediately accepted the offer of an agreement to enter into a share purchase agreement in the future.

The courts have also addressed the question of whether a certain form is required for an agreement to enter into a share purchase agreement in the future, as the law requires a written form with notarized signatures for a share purchase agreement to be binding. The courts have held that no special form is required. The courts have ruled that given the fact that WhatsApp messages are transferred by electronic means that allow the messages to be captured and the person sending the messages (i.e., the person legally acting) to be identified, messages sent in a WhatsApp conversation should be deemed to satisfy the requirement of written form. Therefore, if the offer had been made with sufficient clarity and then accepted by the defendant immediately upon receipt, the agreement to enter into a share purchase agreement in the future could have been concluded via WhatsApp.

CASE LAW: CONCLUSION OF CONTRACTS VIA WHATSAPP

Although said conclusions have not yet been confirmed by the Supreme Court or the Constitutional Court, it is good to remember that WhatsApp conversations do, at least according to lower courts, comply with the requirement of written form.

Should you deal with a similar situation in your business, we will be happy to help you.

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DID YOU KNOW, THAT...

- according to the recent judgment of the Court of Justice of the EU in Case C-627/22 (Finanzamt Köln-Süd), Member States may not deny employees a tax relief simply because the employees’ residence is in another Member State?
- from 23 May 2024, employers and self-employed persons can apply for a grant from the governmental National Recovery Plan to improve employees' digital skills? Employers and self-employed persons can receive up to CZK 42,888.80 per each employee who successfully completes digital skills training.

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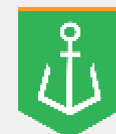

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