LTA
LEGAL TAX AUDIT

NEWSLETTER
December 2024

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LEGAL - TAX – AUDIT - ACCOUNTING

YOUR SAFE HARBOUR

AMENDMENT TO VAT ACT

The extensive amendment to the VAT Act passed through the Senate and is now expected to be signed by President and published in the Collection of Laws before the end of this year.

Most of the provisions of the amendment are expected to come into force on 1 January 2025, but some provisions will only start applying on 1 July 2025, 1 January 2026 or 1 January 2028.

The amendment introduces, among other things, a number of changes relating to VAT registration, determination or correction of the tax base and rules for claiming VAT deductions or application of VAT to supply or lease of real estate.

Main changes

- A taxpayer's turnover which is decisive for mandatory VAT registration will now be tracked on the basis of a calendar year. If the annual turnover exceeds CZK 2 000 000, the taxpayer will become a VAT payer as of 1 January of the following year. However, when the turnover exceeds CZK 2 536 500 within a calendar year, the taxpayer will become a VAT payer immediately on the following day.
- The application for registration to VAT will have to be submitted within 10 working days of the date on which the turnover threshold was exceeded.
- The turnover threshold which enables taxpayers to choose a quarterly VAT reporting period will be CZK 15 000 000 per calendar year.
- The right to claim a VAT deduction will have to be exercised no later than at the end of the second calendar year following the year in which the right to claim the deduction arose. This limit does not apply to supplies which also give rise to a tax liability (e.g., acquisition of goods from another Member State).
- In most cases, the time limit for correcting the tax base will be extended until the end of the 7th calendar year following the year in which the transaction or the receipt of payment took place. The same time limit will apply to the customer's obligation to correct a previously claimed deduction if the supplier's correction of the taxable amount results in a reduction of the taxable amount. In case of a correction of the tax base leading to an increase in the VAT deduction which the taxpayer may claim, the deduction claimed may be corrected only until the end of the second calendar year following the year in which the correction of the tax base is deemed to have taken place.
- The range of bad (uncollectable) debts in relation to which creditors may adjust their tax bases will be expanded.
- Borrowers will be required to return the deduction claimed if their debt is not paid in full by the end of the sixth calendar month following the month in which it became due.
- If the intermediary in a triangular transaction does not indicate on the tax invoice "the customer pays the tax", they will be obliged to pay the VAT on the supply of goods.
- If real property is transferred to employees or certain family members and relatives, the tax base will be the fair market value of the property.
- According to § 71i of the VAT Act, supply of leaflets will also be exempt from VAT if it meets other conditions set out by the legislation.

AMENDMENT TO VAT ACT

We will inform you about the changes concerning taxation of real estate that will take effect on 1 July 2025 in one of our future newsletters.

Before the end of the year, please, pay attention especially to the correct set-up of your accounting software so that it tracks the duration of any delay on the payment of due debts. In the case of entities who are not VAT payers yet, it is important to keep a close track of the turnover as the time limit for mandatory registration for VAT has been reduced.

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TAXATION OF NATURAL PERSONS' TRANSACTIONS IN SECURITIES AND BUSINESS SHARES

From 2025, the rules which apply to tax exemption of income generated by individuals from transactions with securities and shares in corporations will in some respects become stricter.

In 2024, an individual's income generated from transactions with securities and business shares is exempt from taxation if either the time test or the value test is met. As for the value test, all such income whose total amount does not exceed CZK 100,000 in one year is exempt. As for the time test, transactions with securities and shares are exempt from personal income tax after three and five years of possession of the security or the share respectively, regardless of the amount of the income thus generated.

From 1 January 2025, it will be possible to exempt income generated from the sale of securities and business shares, if the time test is met, only up to CZK 40 million (which applies to the total income generated from the sale of both shares and securities) per calendar year. If the limit of CZK 40 million is exceeded, the income from the sale will be only partially exempted, but it will be possible to reduce the taxable income by a market valuation of the security or the share made in accordance with the Valuation Act as of 31 December 2024. Therefore, only the increase in the value of the security or the share after 31 December 2024 will be subject to taxation. If the limit of CZK 40 million is exceeded, the income will be divided into exempted (up to CZK 40 million) and taxable (exceeding CZK 40 million) income, and the market valuation of the security or the share as of 31 December 2024, prorated to correspond to the ratio of the taxable income to the total income generated from the sale, may be deducted as an expense.

For transfers of securities and shares effected in 2024 for which the income is received only in 2025, the value of the security or the share determined under the Valuation Act as at the date of the actual transfer, i.e. a date in 2024, will be deductible as an expense.

In practice, the taxpayer may decide whether to deduct the market value as determined by an expert or the actual price paid for the security or the share. The market value as determined by an expert will most likely be closer to the income generated from the sale of the security or the share, however, the taxpayer will have to pay the costs of an expert evaluation.

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PUBLIC COUNTRY-BY-COUNTRY REPORTING

Public Country-by-Country Reporting (pCbCR) is one of the many new reporting obligations. It is based on EU Directive 2021/2101, which was transposed to Czech legislation by an amendment to the Accounting Act adopted as part of the consolidation package at the beginning of 2024.

The EU Directive requires selected multinational groups of companies with consolidated revenue exceeding EUR 750 000 000 to draw up and make accessible reports on income tax information which should contain information on the amount of income tax and other related economic information which apply to the group.

Although, at first glance, it might seem that this new reporting obligation will have much in common with the similar (non-public) CbCR reporting, the pCbCR is a completely new reporting obligation that will likely apply to more Czech companies. It will apply not only to large multinational groups but also to other companies with a cross-border element. The reporting obligation is divided into two forms, namely:

- consolidated report on income tax information,
- report on income tax information.

Consolidated report on income tax information

The consolidated report is to be drawn up by the consolidating entity, i.e., the ultimate parent undertaking, provided that its consolidation group does not comprise only Czech entities. Another requirement is that the total consolidated net turnover of the group has exceeded CZK 19 000 000 000 in two consecutive financial years.

The obligation to draw up and make accessible a consolidated report on income tax information may also apply to certain medium and large enterprises as well as branches located in the Czech Republic whose aggregated net turnover has exceeded CZK 200 000 000 in two consecutive financial years. The unifying element of both these scenarios is that the ultimate parent undertaking is not established under the laws of a Member State and its consolidated revenue has exceeded EUR 750 000 000 in two consecutive financial years.

Report on income tax information

The report on income tax information is to be drawn up and made accessible by a Czech company that has had a foreign permanent establishment or a foreign branch in the course of a financial year and its annual aggregate net turnover has exceeded CZK 19 000 000 000 in two consecutive financial years. Other entities who may be subject to the obligation to report on income tax information are branches of foreign companies located in the Czech Republic founded by companies not established under the law of a Member State, whose revenue has exceeded EUR 750 000 000 in two consecutive financial years. The requirement that the branch must have exceeded a net turnover of CZK 200 000 000 in two consecutive financial years also applies here.

Deadlines

Companies which will be subject to this new reporting obligation will be required to draw up the reports and make them accessible for financial periods beginning after 22 June 2024. Thus, for companies whose financial year equals the calendar year, the first reporting period will be the year of 2025 (if the respective requirements giving rise to the reporting obligation have been met in 2024 and 2025). The reports must be first made accessible within 12 months of the end of the financial year for which they were drawn up and must be published for a period of 5 years.

PUBLIC COUNTRY-BY-COUNTRY REPORTING

Publication and penalties

The reports will be made accessible in the same way as financial statements, i.e., they will be published in the collection of documents of the public register. In addition, they should be published at the company website, or the website should at least provide a link to the publication of the reports in the public register.

The reports should be filed electronically via a standardized form which has not been published yet.

If a company fails to draw up and publish the report on income tax information, it faces penalties which can be up to 3% of the company's net assets, or up to 3% of the consolidated net assets in the case of a consolidating entity.

If you are not sure whether the new obligation applies to you, please do not hesitate to contact the author of this article.

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STRICTER CONDITIONS FOR TRANSFER PRICING DOCUMENTATION IN GERMANY

1 January 2025 is the effective date of certain changes in German legislation on transfer pricing which is relevant to any company which enters into intragroup transactions with German entities.

Under currently applicable German law, taxpayers who carry out cross-border intra-group transactions are required to draw up a transfer pricing documentation (hereinafter the "Documentation"). The tax authority may request the Documentation during a tax audit; however, it is not obliged to do so. The requirement to submit the Documentation is at the discretion of the individual tax officer conducting the audit. If he/she requests the Documentation, the taxpayer has 60 days from the date of receipt of the request to submit it. If the Documentation is not submitted within this period, the tax authority may, essentially at its own discretion, impose a penalty or adjust the tax base reported on the intra-group transactions.

The current legislation has caused many German companies to not have the Documentation ready in advance and to wait until the tax authority requests it. It is very difficult or rather impossible to draw up the Documentation within 60 days.

The new German legislation therefore significantly tightens the tax authority's approach to taxpayers' transfer pricing obligations from 1 January 2025. The main changes include:

- The tax authority may request the Documentation at any time, not only during a tax audit. The deadline for the submission of the Documentation is counted from the date of receipt of the request.
- Submission of the Documentation is mandatory during every tax audit without the need for a specific request from the tax authority. The deadline for submission starts running on the starting date of the tax audit.
- The deadline for submission of the Documentation is reduced from 60 days to 30 days, which applies to both cases mentioned above.

What are the practical implications of this change?

- If the taxpayer does not have the Documentation ready, which is still the case at some companies, it is almost impossible to draw it up and submit it within the reduced deadline of 30 days.
- The new regulation does not apply only to periods starting from 1 January 2025, but to all periods subject to the tax audit carried out after that date. Therefore, if the audit focuses, for example, on the years 2020–2024, it will be necessary to submit the Documentation for all these periods within the deadline of 30 days.
- The requirement to submit the Documentation can be expected even after filing a regular tax return if the company declares conspicuous items, such as significant loss, tax base adjustments related to pricing in intra-group transactions, etc.

This change in German legislation may have a significant impact on those Czech companies which are members of multinational German based groups and conduct business transactions within the group. If this is the case for you, please, discuss the new rules with your German colleagues and consider preparing or updating your transfer pricing documentation accordingly. Our transfer pricing team will be happy to assist you.

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NEW RULES ON SERVICE OF PAYMENT ORDERS

The rules on service of payment orders underwent major changes on 1 July 2024, which have significantly affected both creditors and debtors. These changes were introduced by an amendment to the Civil Procedure Code and aim to make debt collection more efficient and faster.

One of the main changes is the introduction of two types of service of payment orders depending on whether the debtor has a digital mailbox (*datová schránka*) or not.

If the payment order is sent to the debtor's digital mailbox, a legal fiction of service applies. This means that if the debtor does not log in to their digital mailbox within 10 days of the delivery of the payment order into the digital mailbox, the payment order will be deemed to have been served, regardless of whether the debtor has logged in to the digital mailbox and is aware of the payment order or not.

If the payment order is not served via a digital mailbox, the rules have not changed. This means that if the addressee fails to accept the order, the court will cancel it.

For creditors, the new rules make it easier to collect debts, especially if the debtor is unresponsive despite having an active digital mailbox. Previously, even in cases where the debtor had an active digital mailbox, the court was required to send the debtor a 'qualified notice' asking the debtor to file a written statement of defence and provide evidence supporting the defence. Only where the debtor remained unresponsive even after this notice, did the court issue a judgment for acknowledgement of the claim by the debtor.

It is now sufficient for the court to deliver the payment order to the defendant’s digital mailbox. If the defendant does not respond within the deadline given by the court, the payment order will be deemed to have been served on the defendant even if the defendant never logs into their digital mailbox. In such a case, the deadline to file an appeal will start running 10 days after the payment order is delivered into the digital mailbox and may expire without the debtor being aware of the payment order. The creditor will then be able to initiate enforcement of the claim, as the final payment order will be an enforceable title. The new legislation will therefore significantly reduce the time which the creditor needs to be able to obtain a final and enforceable order if the debtor is unresponsive.

This change also poses certain risks, especially for those debtors who have digital mailboxes but do not actively use them. If debtors do not check their digital mailboxes regularly, they may not even learn about the delivery of a payment order, which will be deemed delivered after 10 days. Similarly, the deadline for filing an appeal may expire without the debtor even being aware of the payment order. A debtor may therefore face an undesirable situation where they will only learn about the process when enforcement proceedings are initiated against them. Anyone who has a digital mailbox should therefore check it regularly.

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CASE LAW: CHALLENGING AWARD CRITERIA IN PUBLIC TENDERS

In its judgment of 3 October 2024, no. 62 Af 2/2024-144, the Regional Court in Brno dealt with a public contract for the digitalization of the building permit process. Specifically, one of the potential contractors challenged the award criteria announced by the Ministry for Regional Development of the Czech Republic.

The gist of the dispute was that the Ministry reserved the right to decide whether to accept standard software without being clear in advance under what conditions it would accept it (if it did, the contractor was expected to be able to perform the contract at a lower cost). Further, the Ministry reserved the right to decide whether to accept the contractor's deliverables without specifying how long its decision would take (if the decision took long, the contractor was at risk of being late with performance of the contract).

The ministry argued that the potential contractor who challenged the conditions was not actually capable of performing the public contract (as it, among other things, had too few employees and too low revenues) and argued that its attempt to challenge the award criteria qualified as a malicious abuse of its right to do so. The Ministry implied that the potential contractor was not actually seeking to win the contract but rather to delay the process either in its own interest or acting on behalf of someone else. With regard to the reservations concerning the acceptance of standard software and the time limits for acceptance of deliverables, the Ministry argued that it needed to ensure that it would have sufficient flexibility to proceed as the circumstances required.

The Regional Court ruled against the Ministry. On the question of the extent to which a potential contractor must be able to perform the public contract, the Regional Court stated that even a theoretical chance to perform only a part of the public contract is sufficient to give the potential contractor the necessary standing to challenge the award criteria. In that connection, the Regional Court quoted the possibility of several contractors joining forces or the contractor using subcontractors. Thus, even a potential contractor who would not be able to perform the public contract on its own could challenge the tender conditions.

As regards the need for flexibility, the Regional Court argued that this would lead to a high degree of uncertainty for potential contractors as to the financial and temporal requirements for the performance of the contract. This distorts competition and unlawfully shifts responsibility from the Ministry to the contractors.

The ruling of the court articulated a generally applicable principle that the law should be interpreted in a way that promotes the widest possible competition between potential contractors and that it should ensure that they have ample opportunities to challenge the tendering process.

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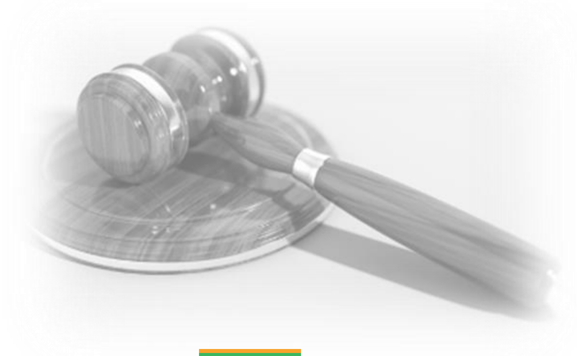

CASE LAW: POTENTIAL SECONDARY LIABILITY OF MANAGING DIRECTORS FOR TAX DEBTS OWED BY COMPANIES

The Supreme Administrative Court ruled in its decision no. 10 Afs 4/2024-38 that secondary liability for a breach of the duty of care as set out in Section 159(3) of the Civil Code, i.e. secondary liability of a company director for the debts of the company up to the amount of uncovered damages owed to the company by the director, also applies to tax debts. The Court also ruled on the conditions under which such secondary liability of company directors applies.

In the case at hand, the sole managing director of a company, acting together with other persons, was convicted of tax evasion committed by knowingly claiming VAT deductions on behalf of the company in excess of CZK 13 million even though the company did not carry out any economic activities.

The company was subsequently dissolved and liquidated, but the tax authority did not receive any proceeds from the liquidation and called upon the managing director, in accordance with Section 171 of the Tax Code, to cover the company's tax debt (return of excessive VAT deductions and payment of penalties) on the grounds that secondary liability of company directors arose under Section 159(3) of the Civil Code, which reads as follows:

„If a member of an elected body of a legal entity fails to compensate the legal entity for damage caused to it by a breach of the duty of care in relation to the performance of duties owed to the company, despite being obliged to do so, such a member of an elected body will be liable to the creditors of the legal entity for the debts owed to said creditors by the legal entity up to the amount that the member of an elected body failed to pay to the company as damages, provided that the creditors are unable to enforce payment directly from the legal entity.“

The Court established that the managing director had breached the duty of care owed to the company by, among other things, failing to keep proper accounts, allowing access to the company's bank accounts to third parties and allowing for the money received as excessive VAT deductions to be withdrawn from the company's accounts, so that the company did not have the means to pay its tax debts to the tax authority.

It is important to note that the managing director in the present case did not cause damage to the company by illegally enriching it with excessive VAT deductions. He only caused damage to the company by allowing this, albeit illegally acquired, financial benefit to be transferred outside the company, which subsequently caused damage to the company as it was obliged to return the excessive VAT deductions, which it no longer had at its accounts, and, in addition, to pay penalties imposed by the tax authority.

A less dramatic but a more common situation can be imagined where, for example, a company director accepts that the company charges less than the fair market value for the supply of goods or services to its parent company or another affiliate. Even such conduct may, in certain circumstances, be seen as a breach of the duty of care and, where appropriate, may cause damage to the company, for example in the form of lost profits.

CASE LAW: POTENTIAL SECONDARY LIABILITY OF MANAGING DIRECTORS FOR TAX DEBTS OWED BY COMPANIES

If a tax audit later results in the assessment of additional tax and in a penalty imposed by the tax authority, the managing director will not be liable for the additional tax assessed (which cannot be perceived as damage caused to the company, since the payment of such a tax is the company's legal duty), but may be held liable for the penalty imposed, as the company would not be obliged to pay the penalty if the managing director had performed his/her responsibilities with due care. This may occur for example where the company is unable to meet its payment obligations to the tax authority, because available finances have been distributed to the shareholders in the past.

Although the conclusions described above cannot be perceived as applying universally to all similar situations, the main legal finding of the judgment and the arguments articulated by the Supreme Administrative Court are of such general nature that their importance cannot be underestimated. We therefore recommend that you pay extra attention to the duty of care owed to the company in relation to the performance of responsibilities as a member of corporate bodies and also to the compliance with all applicable tax-related duties, ideally with the involvement of experts in the field.

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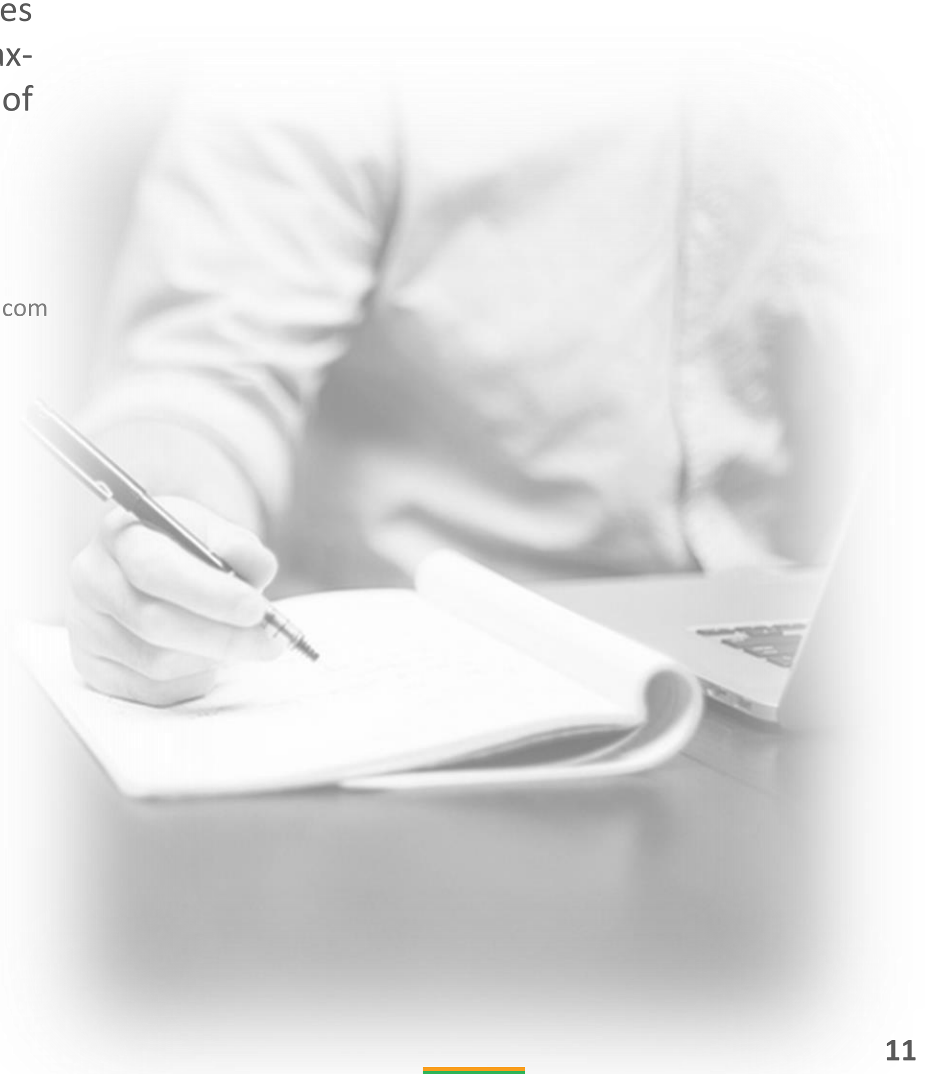

NEW PRODUCT SAFETY RULES

On 13 December 2024, a new Regulation (EU) 2023/988 of the European Parliament and of the Council on general product safety (hereinafter the "Regulation") will come into force, replacing the existing product safety legislation.

The Regulation applies to products which are intended for or may be expected to be used by consumers. In particular, the Regulation introduces certain obligations for manufacturers and importers who place such products on the EU market via all sales channels, including online marketplaces and online shops. These obligations include notification duties, product safety duties and duties related to the introduction of an EU-wide alert system for dangerous products.

In connection with the upcoming effective date of the Regulation, the Parliament of the Czech Republic has approved a bill on general product safety to adapt the new Regulation, which has already been signed by President and takes effect on 13 December 2024. The new legislation determines the powers of individual supervisory authorities such as the Czech Trade Inspection, the State Agricultural and Food Inspection and others. It also extends the powers of the Ministry of Industry and Trade of the Czech Republic.

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DID YOU KNOW, THAT..

- The Ministry of Finance has published an updated working draft of the new Accounting Act. It has been confirmed that the effective date of the new legislation is expected to be in January 2026 at the earliest.
- A taxpayer who has in 2024 been a payer of exempt income derived from sources in the Czech Republic or income that is not subject to taxation in the Czech Republic under an international treaty is obliged to submit a notification of such income paid abroad by 31 January 2025.
- In November 2023, the DAC 8 Directive on new reporting obligations for providers of crypto-assets services will come into force. It will apply to most EU Member States from 1 January 2026.
- By 31 December 2024, the ultimate Czech parent entities are required to file a CbCR report for 2023 if the multinational group exceeds the consolidated revenue of EUR 750 million. Czech subsidiaries that have already filed a CbCR report in the past and the reported data have not changed do not need to do anything. Otherwise, a new report must be filed within 15 days from the date of the occurrence of any change. Czech subsidiaries that have in 2024 become members of multinational groups whose financial year corresponds to the calendar year must file the report by 31 December 2024.
- From January 2025, the minimum wage will be increased to be CZK 20 800 a month and CZK 124,40 an hour and the guaranteed wage will no longer apply in the private sector.

LTA NEWS

LTA was again named one of the recommended law firms in the Tax Law category in the **Law Firm of the Year 2024** competition for the third year in a row. The success is due to the joint work of the various groups of our firm and all our colleagues are to be thanked!

We are growing! In recent months, we have welcomed new colleagues, whom we hope will enjoy their time at our company and we look forward to working together.

Our newcomers are: **Yauheni Haidukevich**, Assistant auditor ◇ **Martina Halperin**, Assistant auditor ◇ **Aleksandr Lifashin**, Assistant auditor ◇ **Jitka Mrázová**, Tax advisor ◇ **Václav Paťha**, Junior Associate ◇ **Milada Švecová**, Accountant ◇ **Olga Trančíková**, Tax advisor ◇ **Liliia Yefimova**, Assistant auditor

We are pleased to be part of the **Lawyers to Children's Homes** initiative, which is organized by the Czech Bar Association in cooperation with Tereza Maxová Foundation for Children and the "You Can Make It" project. Its intention is to help children and young people from children's homes to have an easier start at the labour market. The impulse to cooperate came from CzELA - Czech Employment Lawyers Association, which offered the Czech Bar Association its help with the project.

The first session with children's home workers regarding labour law took place in November, where LTA was represented by our colleague and partner Alice **Mlýnková** who, together with other labour law experts, answered many questions.

LTA was founded in 2011. Its uniqueness lies in its close cooperation across all service areas thanks to which it provides its clients with comprehensive solutions taking in account legal, tax and accounting aspects.

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LTA is a member of the international MGI Worldwide network, one of the 20 biggest networks of tax, auditing, accounting and consultancy firms. MGI Worldwide has over 9,000 specialists at more than 260 offices all over the world. Through MGI Worldwide, we provide qualified consultancy abroad and attend to cross-border transactions.

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KLIDNÉ SVÁTKY VÁNOČNÍ
A SPOKOJENÝ ROK 2025

PEACEFUL CHRISTMAS HOLIDAY
AND HAPPY YEAR 2025

FRIEDLICHE WEIHNACHTEN
UND EIN ZUFRIEDENES JAHR 2025