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Editorial

Dear readers,

Even though in the last little while laws are passed more with respect to the government's extraordinary measures connected to the fight against the coronavirus, there have also been other important changes in the area of taxes in the recent past that we would like to inform you about in this newsletter.

In this issue we will introduce you to the expansive amendment to the Business Corporations Act, which will come into effect on 1 January 2021. You will learn what changes came with the tax package in the area of VAT, which include "quick fixes" in cross-border transactions. We would also like to introduce you to an act that cancels the real estate transfer tax and the related changes in the area of personal income tax.

Elsewhere you will read about the position of the Financial Administration on the expenses to employers for Covid-19 tests. We would also like to draw your attention to the change in the deadlines for the reporting of cross-border arrangements according to the DAC 6 Directive, which we informed you about in detail in past issues.

I trust that our articles will be helpful and I wish you a pleasant read.

Pavel Klein
Tax Leading Partner
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VAT News

On 1 September 2020, a tax package that introduces changes to the area of VAT in cross-border transactions (Quick Fixes) was implemented in the VAT Act. Other areas affected by the amendment to the VAT Act include changed rules for the application of exemptions when exporting goods, specifying the moment of reporting the delivery of goods to another EU member state and last, but not least, changes concerning the special regime for travel services. The last of the aforementioned changes does not come into effect until 1 January 2022.

1. Quick Fixes

The amendment to the VAT Act introduced changed rules for cross-border transactions with goods within the European Union in the four following areas:

a) Assignment of transport for chain deliveries of goods within the EU

b) Tightening of conditions during delivery of goods to another member state of the EU

c) Demonstrating the transport of goods to another member state of the EU

d) Introduction of harmonised "call-off stock" regime

Please note that it is mandatory to proceed according to these rules starting from 1 September 2020 (until the amendment to the VAT Act came into effect, it was possible to apply the rules voluntarily with a reference to the "direct effect of the VAT Directive").

a) Assignment of transport for chain deliveries of goods

The goal of the new rule is to simplify the assignment of transport for the specific delivery of goods in situations where there is one movement of goods within the EU between multiple business partners. This rule is very important since only the delivery of goods that is connected with its transport to another EU member state can be exempt from VAT.

The new rule can only be applied to situations where the transport is arranged in the name of a subject that is not the first or last link in the chain (this subject is designated as the "intermediary operator"). The basic rule is configured so that the transport is automatically allocated to the supplier of the goods that invoices the intermediary. This basic rule will primarily be problematic if the other conditions for the application of the VAT exemption (e.g. the intermediary operator is not assigned a VAT ID No. in any other EU member state) are not fulfilled in this stage of the supply chain.

Situations where the intermediary operator submits a VAT ID No. assigned by the EU member state from where the goods were transported to its supplier represent an exception to the aforementioned rule. In such a case the transport is assigned to the supplier of the goods invoiced between the intermediary operator and its customer.

b) Tightening of conditions during delivery of goods to another EU member state

Exemption from VAT when delivering goods to another EU member state can now not be applied if the customer's valid VAT ID No. has not been received at the defined moment. The expanded condition regarding the VAT ID No. is newly-conceived as substantive and thus its non-fulfilment leads to a loss of the exemption. According to the Financial Administration, the VAT ID No. should be known no later than when the obligation to declare the delivery of the goods to another EU member state arises, i.e. the latest date is the 15th day of the month following the month in which the goods were delivered, unless the tax document (VAT invoice) is issued earlier, of course.

The second substantive condition for VAT exemption is the obligation to report the delivery of the goods in EC Sales List. According to the financial governance, the non-fulfilment of this condition can also be remedied later than in the taxation period in which the obligation to report the delivery of the goods to another EU member state in EC Sales List arose, specifically in the form of the submission of a subsequent EC Sales List. This area is especially a matter of dispute as to whether the Financial Administration's position is in compliance with the purpose of the given provision in the VAT Directive.

c) Demonstrating the transport of goods to another EU member state

The method of demonstrating the transport of goods to another EU member state is left up to the VAT payer, though now it is possible to use the "fiction of the demonstration of transport", if it will be approached in accordance with Implementing Regulation No. 2018/1912 of the Council (Regulation). If this approach is applied, the burden of proof is transferred to the Tax administrator. In this case, the demonstration is based on the existence of at least two items of proof explicitly specified in the Regulation, whereas the proof cannot be provided by the supplier or the customer and each of these items of evidence must be provided by a different entity that is independent in relation to the supplier and the customer.

d) Call-off stock arrangements

The new call-off stock regime represents an opportunity for all VAT payers who, after fulfilling defined conditions, can distribute their goods in any EU member state, without having to register for VAT there and bear the related costs. The given approach is generally possible under the condition that the owner transfers the goods to another EU member state for the purpose of the future delivery of these goods to a specific customer registered for VAT in the given EU member state. Of course, it is necessary to fulfil several other conditions, e.g. the transfer must be specifically recorded and reported in EC Sales List (for more information see MTV for 6/2020), the goods must be delivered within 12 months from the date the goods are placed in the warehouse in the given EU member state and others.

If the call-off stock regime is used, the actual removal of the goods from the stock is the subject of VAT, which the owner reports in its VAT return as goods delivered to another EU member state and the buyer, on the contrary, as goods acquired from another EU member state.

2. Clarification of moment of reporting delivery of goods to another EU member state

The legislative imprecision of the Czech VAT Act was remedied and it defined that the delivery of goods to another EU member state is considered to have been completed no later than on the 15th day of the month following the month when the goods were supplied and not after the month when the goods were transported to the other EU member state.

Thus, if the supplier delivers the goods with the customer arranging its transport to another EU member state, there is no doubt that by the 15th day of the following month it will be necessary to report the delivery of the goods to another member state regardless of whether the customer has already transported the goods to another member state at that time or not.

3. Exemption from VAT when exporting goods

In reaction to the decision of the Court of Justice of the European Union in the matter of C-275/18 Milan Vinš, it was clarified that the export of goods is understood to mean the exit of goods from the territory of the European Union and thus the connection to the release of the goods to the relevant customs procedure has been dropped.

The release of the goods to the export procedure does not have any influence on the application of the exemption from VAT and thus the custom's declaration for which the exit of the goods from the territory of the EU is confirmed to the customs office is only one designated as one of the possible means of evidence.

4. Travel operator's margin scheme (TOMS)

The new amendment concerning the special regime for travel agencies reacts to the current jurisprudence of the CJEU, though it does not come into effect until 1 January 2022.

a) Calculation of VAT base

The current legislation (effective until 31 December 2021) enables the calculation of tax base on the basis of a surcharge determined cumulatively from travel services provided for the entire tax period. Now it will be necessary to calculate the surcharge for each provided travel service separately, i.e. only this method of determining the VAT base will remain preserved.

b) Obligation to declare VAT from deposits

Now the obligation to declare VAT is introduced from the date a deposit is received for a clearly-defined travel service (the provided travel service must be known with sufficient certainty).

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If you have any questions concerning the VAT amendment or interest in more detailed information, please do not hesitate to contact our experts from the Indirect Tax Department.

Markéta Vávrová
Tax Senior,
Mazars

Shift of deadlines for the notification of cross-border arrangements

Directive DAC 6 (Council Directive (EU) 2018/822, which amends Directive 2011/16/EU), from which the mandatory notification obligation for cross-border arrangements ensues, should originally have been transposed into local laws of the EU member states and come into effect from 1 July 2020.

In the Czech Republic there was a delay and the DAC 6 Directive was ultimately implemented in Act No. 164/2013 Coll., on International Cooperation in Tax Administration (the "Act") from 14 August 2020, effective from 29 August 2020. According to the wording of the amended Act, the first notification should have been submitted by 31 August 2020 for all the arrangements for the implementation of which the first step was taken in the period between 25 June 2018 and 1 July 2020.

Thanks to the current situation caused by the COVID-19 pandemic, however, the entire legislative process of the implementation of the DAC 6 rules was not only delayed in the Czech Republic, but on the European level overall. For this reason, the member states proposed to move the beginning of the notification obligation generally by 6 months. It was up to the decision of the individual member states whether to move the deadline or not. Some countries surprisingly did not move it.

The Czech Republic decided to accept the delay of the deadlines and in this context issued, on the basis of authority established by Act No. 299/2020 Coll., a Government regulation, which was approved at the government session on 7 September 2020 and announced in the Collection of Laws on 10 September 2020.

According to the current wording of the Act and the related Government regulation (regarding postponement of the deadlines), the notification obligation should be fulfilled in relation to:

- cross-border arrangements whose first step was implemented in the period from 25 June 2018 until 30 June 2020 (inclusive) no later than by 28 February 2021;

- cross-border arrangements that were made available or prepared for implementation, or their first step was realised in the period from 1 July 2020 until 31 December 2020 (inclusive) no later than by 30 January 2021;

- cross-border arrangements that were made available or prepared for implementation, or their first step was realised from 1 January 2021 no later than within 30 days from such a decisive fact.

Cross-border arrangements can be understood to mean arrangements concerning more than one member state of the EU or a member state of the EU and a third country, featuring at least one characteristic feature defined in the annexe to the DAC 6 Directive. A characteristic feature is understood to mean a characteristic or feature that is an indicator of potential risk of tax avoidance. For some characteristic features a main benefit test is also verified; this is fulfilled if obtaining a tax advantage is the main or one of the main benefits. A specific arrangement concerning, for example, transfer pricing, a possible breach of the notification obligation and the automatic exchange of information or concealment can also be qualified as a cross-border arrangement, plus the main benefit test is not performed for these fulfilled characteristic features.

The Financial Administration already has the relevant forms available for announcing the cross-border arrangement.

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If you have any questions on the issue of the notification obligation for cross-border arrangements, please do not hesitate to contact our experts.

Jana Hlaváčová
Tax Advisor,
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A revolution in corporate law, part II.: the large BCA amendment effective from 1 January 2021

There were huge changes to civil law in 2014: the new Civil Code came into effect, as did the Business Corporations Act (hereinafter the "BCA") as the second important pillar in the reform of private law, regulating the law for business

corporations and the conditions under which they are acting.

After nearly six years of practical application, the lawmakers approved an amendment to the BCA, which came into force in February 2020 and will be in effect from January 2021. The lawmakers intentionally took their time with the first significant amendment and are trying to resolve multiple complicated areas on the basis of the application difficulties to date. The common denominator is the correction of those provisions for which there are interpretation uncertainties, controversies and errors, especially where there is no solution in practice without legislative intervention. The obligation to fulfil newly-defined conditions, e.g. to modify the instrument of organisation, is with a yearly deadline by 1 January 2022. We will focus on those changes that have an effect on accounting and tax obligations.

Now it will be possible for registered equity contributions of up to CZK 20 000 into a limited liability company to also be paid in cash to the contribution administrator (e.g. a notary).

In the spring of 2019, the Supreme Court issued a decision in which it admitted the possibility to use the final or extraordinary financial statements as a base for the payment of a share in the profit until the end of the following accounting period. This breached the six-month period of use of the financial statements as a document for the payment of profit sharing as defined until that time on the basis of jurisprudence. The BCA amendment defines this conclusion as definitive. The amount to be distributed cannot exceed the sum of the economic results of the accounting period and the economic results of previous accounting periods s and other funds that can be used upon the company's discretion, decreased by allocations to reserves and other funds in accordance with the BCA and the articles of incorporation. If the allocation is contrary to the law, the profit shares or other own resources are not paid out and it is also assumed that, in such a situation, the members of the statutory body that agreed with the payment contrary to the law did not act with due care and diligence.

The amendment also brings new restrictions of the distribution and payment of profit shares or other own resources. Profit or other own resources cannot be distributed if the equity would drop below the amount of the subscribed capital increased by the funds that cannot be freely distributed or even if the equity would be negative. There is also a new provision inserted originally in the Act on Accounting and now moved to BCA, according to which if development expenses are reported in the balance sheet as recognized assets, the profit or other resources cannot be distributed if the available resources then do not remain at least equal to the non-depreciated part of such assets. It is also not possible to pay out the share of the profit or other resources if this would make the company bankrupt. In this context, fulfilment without consideration to shareholders is now prohibited (with small exceptions) by the BCA amendment so that the rules for the distribution and payment of profit sharing are not circumvented.

In the report on related parties, it will now not be obligatory to present information subject to protection or secrecy, though it is important to state that the report is not complete and to explain why; it is still requested to mention commercial secrets in an appropriate degree of generalisation. The audit is also explicitly enshrined here, where the agreement or non-misrepresentation will be assessed compared to other information (on the basis of significance).

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If you would like to discuss the BCA amendment and the related accounting-tax themes, please do not hesitate to contact our specialists.*

Kateřina Havlínová
Tax Manager,
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Employer's expenses for COVID-19 tests

With regard to the current pandemic situation, we are seeing more and more questions by employers if the expenses spent on the employee's tests for COVID-19 can be considered as tax-deductible expenses. Below we will summarise the position of the Financial Administration published on their web pages.

Mandatory testing

In accordance with Section 102 of Act No. 262/2006 Coll., the Labour Code, the Employer is obliged to create a safe and healthy work environment and working conditions through the appropriate organisation of occupational safety and health and measures to prevent risks. Mandatory COVID-19 tests for employees are considered to be tax-deductible expanses for employers pursuant to Section 24 (2) (p) of Act No. 586/1992 Coll., on Income Tax (hereinafter the "ITA").

As far as the obligatorily tested employees are concerned, this is considered to be income that, according to the provisions of Section 6 (7) (e) of the ITA, is not subject to tax.

Non-mandatory testing - prevention and benefit

Tax-effective expenses

In accordance with Section 24 (2) (j) (1) of the ITA, expenses for occupational safety and health and the hygienic equipment of the workplaces are tax-deductible expenses for employers. The employer is obliged, for example, to continually evaluate the health risk to employees when overcoming extraordinary events and to cooperate to this end with the relevant providers of occupational medical services.

Since it is not precisely specified what these measures should be like, the employer must, in accordance with the statement of the Financial Administration, assess the given risk individually and document the justification of these measures.

In the event of COVID-19 tests for employees, the Financial Administration admits that if an employer performs preventative measures with regard to the threat of the spread of the coronavirus among the employees at the workplace, including the preventative testing of employees, the expenses spent with this in mind can be considered to be tax-deductible expenses. The burden of proof in the matter of the justification of the given measures in the specific case is borne by the employer, however.

It does not clearly ensue from the wording of the ITA whether this preventative test for COVID-19 is taxable income for an employee or not. In similar cases in the past, however, the Ministry of Finance expresses the opinion that it is not taxable income for the employee. Thus, we are of the opinion that the procedure for preventative testing should be similar to mandatory testing and thus should be income for employees that is not subject to tax.

Tax-ineffective expenses

P If the employer provides its employees with COVID-19 testing as an employee benefit, the expenses spent on this testing will be tax non-deductible in accordance with Section 25 (1) (h) of the ITA. As an example, the Financial Administration gives the situation where the test is paid by an employee before his/her departure to a country that requires a negative test for COVID-19 from Czech citizens upon their arrival, or upon an employee's return from a holiday.

For employees, this would be tax-exempt income pursuant to Section 6 (9) (d) of the ITA.

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If you are interested in further information on this issue, please do not hesitate to contact our experts.

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Cancellation of real estate transfer tax

On 15 September 2020, the Government of the Czech Republic officially approved the cancellation of the real estate transfer tax. The real estate transfer tax was paid by the buyer of the property and was calculated as 4% of the tax base, which in most cases equals the purchase price or the "comparative tax value", an artificially calculated amount that generally represents 75% of the market value of the real estate. The tax base was usually the higher amount. In some special cases specified by law, the tax base for the calculation of the real estate transfer tax was specified differently from the aforementioned rules, though these are a bare minimum of the cases.

The real estate transfer tax was cancelled retroactively for cases where the property was acquired (i.e. the new owner was entered into the land register or the property was acquired in another manner) on 1 December 2019 or later. Current purchases of real estate are thus no longer subject to this tax.

According to a government declaration, the reason for the cancellation of the real estate transfer tax was the support of a significant group of property purchasers, specifically those individuals who resolve their housing need by purchasing real estate and also use a mortgage loan or building savings loan to purchase the real estate. The concrete plan was to move the current gradually usable tax relief in the form of the deduction of interest from the loan from the tax base to the immediate tax relief when purchasing the property. A property owner who uses the property for his permanent residence or for the permanent residence of one of his statutory family members (spouse, children, parents, etc.) has the right to deduct the interest paid on the building savings loan or mortgage loan from the tax base, though such a deduction does have a maximum limit: CZK 300 000 per calendar year. The government's plan was to cancel the possibility of this deduction and replacing it with the cancellation of real estate transfer tax. The finally-approved amendment to the Czech legislation ultimately leaves the possibility of deducting interest from the tax base, but the maximum annual amount of such a deduction was lowered to CZK 150 000. There are, however, some timing discrepancies: the lower limit for the deduction of the interest from mortgages should only relate to real estate acquired after 1 January 2021.

Thus, individuals who acquire real estate for their own permanent residence or for the permanent residence of close family members by the end of 2020 and use a mortgage loan or building savings loan for the purchase can profit from a combination of both of the aforementioned tax benefits: even though the purchase of the real estate will not be subject to a real estate transfer tax, they will still be able to deduct interest in the current maximum amount of CZK 300 000 per year.

The information about the deduction of interest from mortgages given above is not relevant, however, for individuals who acquire real estate for the business purposes or for leasing. In such a case, the interest can be applied without any limitation as a tax-deductible expense against the income from independent activities or income from rent on condition that also the other statutory conditions are fulfilled.

For all individuals, however, there is a change to the time test for the tax exemption of the income from the sale of the real estate. The necessary period of ownership after which the income from the sale of the real estate will be exempt from personal income tax without the necessity of fulfilling other conditions was extended to ten years from the current five years. Nevertheless, just like the decrease of the limit for the deduction of interest, this new time test applies to real estate acquired from 1 January 2021 on.

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If you have any question related to the information provided above, please do not hesitate to contact our specialists.

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