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**TAX news**

**Grants & Incentives news**

# dReport: July 2018

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# Intercompany Services as a Tax Deductible Expense

**Management services or marketing support are the most common types of intercompany services. However, although it is economically justified, the provision of these services presents certain tax challenges that need to be taken into account. Namely given the fact that tax authorities focus more and more of their attention on the issue of intercompany transactions.**

The majority of discussions held to this day on the tax consequences have primarily related to the transfer pricing setup. As a result, the intercompany pricing setup in line with the arm's length principle has become the norm and it has become customary for many groups to adhere to it.

Therefore, the major issue is the allocation ratio among individual entities and proving the actual provision of the services and whether they serve the purpose of attaining, securing and retaining taxable income generated by the company. These days, only a small portion of companies have a robust and perfect "defence file" in place that would serve as detailed evidence of what services were specifically provided (eg preparation of budgets, acquisition-related advisory etc), in what scope (number of days, hours, when specifically etc), by whom (a specific employee the company providing the service) and with what deliverables (meeting minutes, e-mails, comments etc).

The precedent as to the scope in which the services received should be documented was set by a ruling of the Regional Court in České Budějovice (No. 10 Af 5/2016). In the ruling, the Regional Court sided with the tax administrator, confirming an additional tax assessment in excess of CZK 14 million including fines for failing to substantiate services from a related party.

However, the dispute has two levels. On the one hand, the tax audit contested the tax deductibility of the costs of advisory services received from the parent company. On the other hand, it contested the tax deductibility of legal services provided by a third party through the parent company, which subsequently rebilled the costs to the taxable entity.

As part of its defence, the taxable entity submitted a large amount of evidence which was intended to substantiate the provision of services by the parent company. For example, the evidence included presentations from training sessions, action plans, e-mail discussions and other records of communication with the parent company's representatives. Furthermore, the company submitted a series of invoices in respect of which the taxable entity also submitted, following the tax authority's call, the calculation of remuneration including a summary of the monthly payroll costs of the parent company's employees participating in the provision of the service.

However, the tax administrator ruled that the evidence contained *but a general description of the services, with none of the evidence submitted by the taxable entity showing the specific number of hours worked or the actual fee for the services provided and with individual appendices only referring to the specific invoice received without quantifying what proportion of the total amount invoiced is represented by the specific service*. Furthermore, the tax administrator argues that it is primarily impossible to allocate a specific expense (the fee for the service) to a specific service provided and, as a result, to deduct the expense for tax purposes.

In respect of the calculation of remuneration to the parent company's employees, submitted additionally as appendices to the invoices, the court agreed with the tax administrator's conclusion in that the ***calculations submitted were prepared by the tax entity retrospectively, for which reason they are not credible and eligible evidence of the facts presented in them. The*** court also made similar comments on the retrospective conclusion of contracts, recalling the conclusion of Ruling of the Supreme Administrative Court Ref. No. Afs 8/2014-174, according to which it is insufficient to retrospectively assert that the entity's past actions were in line with a contract concluded later without substantiating the specific expenses relating to the specific provision of services.

As for the rebilling of costs for legal services, the court agreed with the tax administrator's opinion in that the ***taxable entity failed to prove that it had ordered the legal services, what individual meetings specifically addressed, in what manner work was assigned and what deliverables were produced for it.***

Although the entity provided, during the audit, for example a memorandum prepared by the external provider of the legal services which showed that certain services were explicitly related to the activities of the given entity, the tax administrator stated that the **entity failed to bear the burden of proof in substantiating what specific contribution was made by the deliverable to the entity's activities and what benefits it had. The** ruling specifically refers to a legal service relating to a change to the entity's repayment schedule in respect of the bank which did not result in any changes to the schedule. The tax administrator argues that if the service were to be acknowledged as a tax-deductible expense, the repayment schedule would actually have to have been changed.

In its ruling, the regional court notes that it is only up to the taxable entity what evidence it submits to substantiate its assertions; however, at the same time, it points out that **if, on the one hand, the cost incurred is not specified, and, on the other hand, it is not associated with a precisely specified provision of a service, the expense cannot be assessed to be tax deductible.**

So far, this has only been stipulated by a regional court ruling. As the dispute has been advanced to the Supreme Administrative Court, there are still several months before we will know the ruling. However, other rulings on the provision of intercompany services have already been issued, containing similar arguments as the ones described above.

If the trend is upheld by the Supreme Administrative Court, it is high time for businesses to carefully prepare for this new era. It seems that contracts, invoices, samples of e-mail communication or unsigned meeting minutes will not be sufficient in substantiating services from related parties and it will be necessary to have many more documents at your disposal.

*Tereza Gebauer*
*tgebauer@deloittece.com*

# Tax Changes in the Taxation of Investment Funds

**In the March issue of dReport, we informed you about the planned change in the taxation of basic investment funds. The Senate proposed narrowing down the definition of the basic investment fund, excluding the funds the shares of which were listed for trading on a European regulated market but that failed to meet other conditions stipulated by law. The funds would be subject to the corporate income tax of 19% rather than being taxed at the current 5% rate.**

The reason for the change was the Senate's effort to remove from the definition of the basic investment funds the funds that are only registered on a regulated market without actually performing investment activities. Pursuant to the amendment, the benefits of lower taxation should only be drawn by the funds that are active in making investments on financial markets.

During the legislative process, the Chamber of Deputies made an amendment to the draft stipulating that the basic investment funds include the funds listed for trading on a European regulated market with no corporate income taxpayer having any investment of 10% or more in the registered capital of the relevant investment fund; in order to meet the condition, investments of related parties that are corporate income taxpayers are considered to be investments of a single taxpayer; the condition is considered to be met even if the permitted investment in the registered capital is exceeded over a period shorter than a half of the taxation period or a period for which a tax return is filed or a period shorter than six months if the taxation period is longer than 12 months and if the fund is not involved in a trade under the conditions stipulated by the Trade Licensing Act.

The above-specified restriction will thus relate to the funds that are only considered to be basic investment funds under the Income Taxes Act due to the fact that they are listed for trading on a European regulated market and at the same time, they are owned within a group or by a limited number of owners, whereby the share of each owner is 10% or more.

The amendment will apply to tax obligations arising after the effective date of the Act, ie from 1 January 2019 as expected. We will keep you informed about any changes.

*Tereza Gebauer*
*tgebauer@deloittece.com*

*Minh Tú Lai*
*mlai@deloittece.com*

# Making Insurance Contributions on Behalf of "Outsourced" Employees

*It is not necessary to have a legal relationship to make insurance contributions*

**The Regional Court in Hradec Králové has addressed the issue of making social security and health insurance contributions from performances provided to employees of a different company. As the Income Taxes Act and contribution-related legislation treat these types of supplies differently, it is worth remembering the individual differences so that you do not make a mistake in remunerating "outsourced" employees.**

According to the Income Taxes Act, an "employer" with the obligation to make personal income tax prepayments is (to put it simply) anyone who provides supplies related to the performance of dependent activities to anyone; however,

according to contribution-related legislation, the statutory payment of insurance contributions on behalf of an employee

was previously based on the legal relation between the entity that pays the income and the person who performs the activities.

Since January 2014 in respect of social security contributions and since 2009 in respect of health insurance contributions, it has been sufficient for an individual to perform activities for you that give rise to income from dependent activities regardless of whether you have entered into a legal relationship with the person or not: you become an employer for the purposes of social security and health insurance contributions and you are obliged to make relevant insurance contributions and increase the base for calculating the tax prepayment on dependent activities to include the social security and health insurance contributions made by the employer.

To illustrate, imagine the situation where a car repair shop employee sells car care products, among others, as part of their employment relation with the car repair shop. The producer of the car care products rewards selected employees for good results with a watch worth CZK 3,000. According to the Regional Court's ruling, the producer of the car care products becomes an "employer" of these employees for the purposes of income tax prepayments on dependent activities and must be ready to deal with the extensive red tape related to tax payments.

It may not be clear whether the "outsourced employee" performs activities for you or whether it merely fulfils the instructions of its legal employer; however, in providing supplies to "outsourced employees", we recommend that you check whether you are subject to these potential other obligations.

*Lucie Rytířová*
lrytirova@deloittece.com

# The Amendment to the Investment Incentives Act in Preparation

**In a relatively short time after the major amendment (from 2015), another draft of the Investment Incentives Act has been prepared. It originated in response to the current economic situation, taking into account the requirement to amend the structure of projects so far funded by the government by way of investment incentives.**

The purpose of the amendment is to increase the low number of projects which have attracted support in the area of technology and shared services centres. In respect of manufacturing projects, the goal is to focus on supporting production with greater added value. With regard to projects not fulfilling the greater added value criterion, solely those located in the territories of governmentally-supported regions are likely to obtain support; moreover, the beneficial treatment already applies to these projects under the current investment incentive regime. The amendment also seeks to respond to the unavailability of investment incentives for small and medium-sized enterprises, which was subject to criticism in the past. As such, the amendment significantly minimises the required amount of investments in order to be eligible for the support. The legal obligation introduced by the previous amendment of having to create job positions under manufacturing investment projects is planned

to be eliminated. This step appears to be logical, under the condition that projects generating greater added value will lower their requirements on the number of employees, and, on the other hand, will require greater professional qualifications and skills of employees.

A significant change introduced by the amendment involves distributing the criteria and obligations related to investment incentives among the Act itself and a governmental regulation. As such, the governmental regulation is supposed to determine in particular the minimum value of the required investment, the required number of newly-created job positions, and a particular method of providing evidence on the added value that is to be generated. The authors of the draft amendment have decided to make this change in an effort to maintain flexibility in amending the Act and the need to be responsive to the given economic developments. However, there is a question as to whether potentially frequent changes made by way of the governmental regulations will be sufficiently transparent for investors.

Finding the criteria based on which greater added value of manufacturing projects could be defined was a complicated task for the authors of the draft. Finally, the criterion was determined so that for 80% of employees of the investor aspiring to obtain the investment incentive, the salary has to be minimally equal to the average salary for the given region.

In addition to this general criterion, the investors in question need to have (at least 2% of) employees engaged in research and development, or cooperate with a college/university or a research institute in terms of research and development. An alternative to performing research activities is employing minimally 10% of employees with a college/university degree. Currently, this parameter is inaccessible for most manufacturers.

The amendment is currently subject to interdepartmental comments by individual ministries. A number of the comments are material, such as that all investment incentives shall be approved by the Czech government (so far, this only has applied to strategic investments). Judging by other comments on the defined criteria for monitoring greater added value, a follow-up debate and additional changes in the amendment draft can be expected.

The Amendment to the Investment Incentives Act is anticipated to come into effect in spring 2019. At the moment no changes in the criteria applicable to investment incentives recipients defined by the Act on Income Taxes are foreseen. We will keep you informed on the developments.

*Daniela Hušáková*
dhusakova@deloittece.com

# Changes in VAT legislation

The Government approved an amendment to the VAT Act with the proposed effective date from January 2019. Compared to the original wording, the change in the taxation of grants from public sources has been postponed so that the new rules will become valid only in 2021. The same deferral is suggested for the prohibition on applying VAT to the lease of construction sites and construction premises originally intended for housing. The amendment will be assessed by the Chamber of Deputies as part of the next stage of the approval process.

In addition, the Government of the Czech Republic approved the expansion of the 10% VAT rate to include selected supplies of goods and services that are currently subject to the 15% tax rate. This amendment has also been handed over to the Chamber of Deputies for consideration.

At the level of EU legislation, certain changes that should have a significant impact on the method of functioning of intracommunity trade with goods will probably be postponed once again. At present, the suggested year of introduction of the changes is 2022.

*Tomáš Brandejs*
tbrandejs@deloittece.com

# Judicature of the Court of Justice of the EU (CJEU)

In judgement C-660/16 Kollross, the CJEU assessed the possibility of refunding a VAT deduction on a prepayment made if the supply will no longer take place and the anticipated supplier is insolvent. The opinion of the CJEU may be, in certain situations, contrary to the rules set by the Czech VAT Act.

In case C-295/17 MEO, the Advocate General of the CJEU assessed the compensation regime in the event of a premature termination of a service level agreement for a predefined period of time. Based on the analysis, the compensation should be subject to value added tax in many cases. However, the practice in the Czech Republic is markedly different in this respect. It remains to be seen whether the CJEU will follow the opinion of the Advocate General.

*Tomáš Brandejs*
tbrandejs@deloittece.com

# Introduction of Additional Tariffs on US Goods

In March 2018, the US introduced, for an unlimited period of time, additional tariffs on the import of certain aluminium (10%) and steel (25%) products in order to protect domestic goods. The exception to goods coming from the EU, Canada and Mexico valid through 31 May 2018 was not successfully extended during negotiations with the US. In response to the fact that, from 1 June 2018 onwards, imports from the EU to the US are also subject to additional tariffs, the EU has started introducing retaliatory business measures.

As the US trade policy is incompliant with WTO principles, the EU commenced dispute proceedings as part of the WTO on 1 June 2018. In their course, the EU will introduce additional tariffs on selected US goods.

At the first stage, ie from 20 June 2018 onwards, the import of the goods defined in Appendix I to Commission Regulation 2018/724 will be subject to an additional duty of up to 25%.

These include, for example, foodstuffs such as corn, beans, peanut butter, orange juice, bourbon and whisky, tobacco products, cosmetic products, t-shirts, jeans, bed linen, footwear, motorcycles, boats, yachts and, most importantly, an **extensive list of selected iron, steel and aluminium products.**

At the second stage (after the WTO decides about the violation of rules by the US), the EU intends to introduce additional duties in the range of 10-50% on a further series of products listed in Appendix II to the above regulation.

We recommend that you carefully review whether the upcoming measures will affect your portfolio of imported goods.

If you need additional information on this topic, we would be happy assist you.

*Petra Závalová*
pzavalova@deloittece.com
*Olga Kalousová*
okalousova@deloittece.com

# News round up

### Austria: Draft bill includes measures to transpose EU ATAD into domestic law

Austria's Ministry of Finance issued a draft bill on 9 April 2018 for the Annual Tax Act 2018 that contains measures that would make significant changes to the tax treatment of corporations, and includes new controlled foreign company (CFC) rules and amendments to the existing general anti-avoidance rule (GAAR) that would transpose the relevant provisions in the EU anti-tax avoidance directive into Austrian law. New CFC rules would be introduced to attribute all low-taxed passive income of CFCs and foreign permanent establishments to an Austrian parent company. Control would be deemed to exist if an Austrian parent entity holds directly or indirectly more than 50% of the voting rights or capital of the foreign company, or is entitled to more than 50% of its profits. Low taxation would exist for purposes of the CFC rules if the tax rate in the country of the CFC is not higher than 12.5%. The CFC rules would apply to tax years beginning on or after 1 October 2018. Changes that would be made to the GAAR include a specific definition of "abuse of law" to address concerns about the interpretation of the GAAR expressed by the Austrian Supreme Administrative Court. The bill clarifies that abuse of law includes "unusual and unreasonable legal structures" the main purpose of which is to save tax, except where sound business reasons that reflect economic reality exist for a particular structure.

### Denmark: Bill amending Corporate Income Tax Act and other tax laws presented to parliament

On 4 May 2018, Bill No. L. 237 amending the Corporate Income tax Act and other tax laws (the bill) was presented to the parliament. The main provisions of the bill include the following: adjusting the rules for performing a business activity in Denmark by means of a permanent establishment; introducing rules on the taxation of commission that banks pass on to customers from Units for Collective Investments in Transferable securities (UCITS); introducing the possibility for mutual funds to merge tax free with a public limited company authorised to conduct banking activities; adjusting the taxation of foreign pension institutions' investments in real estate in Denmark; amending the thin capitalisation rules; adjusting the rules for refunding of VAT on reimbursed energy taxes; adjusting the rules for VAT exemption for independent groups; clarifying the rules for taxation of severance payments; and introducing rules to prevent conversion of taxable gains into tax-free equity gains.

### Finland; European Union: Directive and explanation of required legislative measures to introduce digital PE submitted to parliament

On 3 May 2018, the Directive text and an explanation of the legislative measures required to implement a European Commission proposal on the introduction of a digital permanent establishment (PE) was submitted to the Finnish parliament. A digital platform will be deemed to have a taxable digital presence or a virtual PE in a Member State if it fulfils one of the following criteria: it exceeds a threshold of EUR 7 million in annual revenues in the Member State; it has more than 100,000 users in the Member State in a taxable year; or over 3,000 business contracts for digital services are drawn up between the company and business users in a taxable year.

### Luxembourg to examine transactions with EU non-cooperative jurisdictions

On 8 May 2018, Luxembourg's direct tax authorities published a circular that sets out "defensive measures" that Luxembourg is taking with respect to the EU non-cooperative jurisdiction list. Based on the new circular, the Luxembourg tax authorities will require companies to list in their Luxembourg tax returns all transactions with related entities located in listed jurisdictions. The applicable version of the EU list to be taken into account is the one available at the time of the financial year-end of the Luxembourg company, and the reporting requirement will apply for the first time in the Luxembourg tax returns to be filed in 2019 covering fiscal year 2018. Additionally, as part of the review of tax returns and/or any subsequent investigation, the Luxembourg tax authorities can request the taxpayer company to provide details of relevant transactions, including the total amount involved, a statement of income and expenses and a statement of claims and debts owed to enterprises located in listed jurisdictions.

### Netherlands issues draft beneficial ownership regulations

The regulation provides a fall-back option for cases in which the actual beneficial owner, who has an ownership interest of more than 25 percent, cannot be traced. In these cases, the beneficial owner could be designated as "senior management personnel." According to the Dutch government, this would ensure that at least one beneficial owner with ultimate ownership or control can always be appointed.

### Sweden: Bill to limit interest deduction and reduce corporate income tax rate submitted to parliament

On 3 May 2018, a bill to limit interest deduction and to reduce the corporate income tax rate was submitted to the parliament. The main aspects of the proposal, which should enter into force on 1 January 2019, include the following: corporate income tax will be reduced in two steps to 20.6% by 2021; the introduction of a general limitation of interest deductions for companies according to an Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA) rule with a deduction of 30% and a safe-harbour which is set at SEK 5 million; the introduction of hybrid rules under which interest is no longer deductible in certain cross-border situations; a narrowing of the existing rules limiting interest

deductions for certain internal loans that counteract aggressive tax planning, as a result the rules should no longer apply to cases for which they are not intended; and the introduction of tax rules for financial leasing.

### Switzerland exchanges first advance tax rulings information

The Federal Tax Administration has for the first time transmitted information on advance tax rulings to spontaneous exchange of information partner states. The first batch of 82 reports on rulings effective on 1 January 2018 have been submitted to 41 states including France, Germany, Netherlands, Russia and the UK.

### EU updates list of non-cooperative jurisdictions

On 25 May 2018, the European Council announced that it had removed the Bahamas and Saint Kitts & Nevis from the list of non-cooperative tax jurisdictions. The EU's list is contributing to on-going efforts to prevent tax fraud and promote good governance worldwide. It was established in December 2017. The Bahamas and Saint Kitts and Nevis have made commitments at a high political level to remedy EU concerns. EU experts have assessed those commitments. As a consequence, the two jurisdictions are moved from annex I of the conclusions to annex II, which cites jurisdictions that have undertaken sufficient commitments to reform their tax policies. As a result, 7 jurisdictions remain on the list of non-cooperative jurisdictions: American Samoa, Guam, Namibia, Palau, Samoa, Trinidad and Tobago and the US Virgin Islands.

### UN releases update to model tax treaty

The 2017 update to the United Nations Model Double Taxation Convention between Developed and Developing Countries was released on 18 May 2018 and reflects changes to the 2011 model treaty approved in April 2017 by the UN Committee of Experts on International Cooperation in Tax Matters.

### EU, Ireland – Apple state aid case update

On 18 May 2018, Ireland's Department of Finance confirmed that the first payment of alleged state aid from Apple had been paid into the escrow account and that full recovery is expected by the end of September 2018. In a related development, the Vice-President of the Court of Justice of the European Union has rejected an appeal by the US against a decision of the General Court that the US could not intervene in the case. The US' appeal was rejected on the grounds that the US lacks a direct interest in the result of the case brought by two Apple subsidiaries. The whole appeal is available here.

*Tereza Tomanová*
ttomanova@deloittece.com

*Kateřina Krchnivá*
kkrchniva@deloittece.com

# Tax administrations in Central Europe tighten their procedures

**Tax authorities across Central Europe have significantly tightened their procedures both in relation to the number of audits performed and the manner in which the audits are performed. The primary areas that tax authorities focus on include VAT and transfer pricing. In most Central European countries, tax administrators require taxable entities to provide an increasing amount of evidence during tax audits and they have also begun to focus on the set-up of processes within the companies.**

In certain Central European countries, tax administrators also try during or after the tax audit to derive criminal liability of taxable entities. This raises a question whether criminal law consequences of tax disputes could materialise more frequently in the Czech Republic as well.

The above questions were some of the topics of the colloquium organised in late May 2018 by the specialised tax litigation team of the law firm Ambruz & Dark Deloitte Legal with the participation of colleagues of the same specialisation from Slovakia, Poland, Germany, Hungary and Romania. The objectives of the seminar included sharing current trends in the tax administrations of the individual countries, comparison of key institutes of tax law and sharing of experience in this area.

A variety of facts concerning tax administration differ in the individual countries (e.g. The three-year statute of limitations for the possibility of opening a tax audit in the Czech Republic is one of the shortest in the Central European countries), but certain similarities can also be observed (e.g. The VAT area in relation to carousel fraud, which is one of the harmonised tax areas, or the length of court proceedings).

Like most other Central European countries, the Czech Republic has seen an increasing tendency of the tax administrator to tighten its tax audit procedures in recent years. This trend is confirmed by the statistics from the area of additional tax or imposed fines. On the other hand, compared to other countries the Czech Republic recorded a lower increase in the number of cases where the tax administrator derived criminal liability of the taxable entity.

However, the experiments from Central European countries clearly confirm that success in the tax area can often be achieved in administrative justice. Aside from a relatively high probability of success, an increasingly motivating factor for taxable entities is the possibility of obtaining compensation, in case of success, for the incurred detriment or interest on the tax administrator's unjustified actions. However, a fact that continues to discourage entities from entering into a dispute with the tax administrator is the length of the court proceedings, which represents approximately to 2 – 5 years in the Czech Republic.

**The following matters are worth mentioning with respect to the individual countries:**

- Poland achieved major success before the Court of Justice of the European Union (CJEU) in the matter of Kompania Piwowarska (C-30/17). The dispute concerned the excise tax on flavoured beer. The CJEU confirmed in its ruling that in the collection of excise tax on flavoured beer, the tax administrator is not entitled to take into account the aromatic substances/sugar syrup added after the end of fermentation.
- With respect to the repeated cases of prosecution and criminal liability of the management of companies operating in Germany where law enforcement authorities were involved during and after a tax audit, there has been an increase since 2015 in interest of these companies in legal services consisting in legal supervision of the design and implementation of processes and audits that are intended to prevent tax fraud and at the same time protect the company's management and the company itself from potential sanctions (Tax Compliance Management System).
- In Romania, the tax administrators often challenge the evidence provided by taxable entities during tax audits. Legal disputes in the tax area are common in Romania and taxable entities prepare for them diligently, including for example a simulated court hearing with their advisor. Courts correct the decisions of the tax administrator in many cases.
- In Hungary, tax audits often focus on transfer pricing. The tendencies of the tax administration in this area lean towards the conclusion that if a taxable entity has not prepared transfer pricing documentation, the tax administrator is entitled to calculate the price freely using its own techniques. However, the Hungarian Administrative Court has not upheld this strict opinion of the tax administrator.
- In Slovakia, the tax administrators' methods are similar to the Czech Republic. The most common area of additional tax assessment is VAT (carousel fraud and exemption of international transactions) and the area of transfer pricing.

*Alena Dugová*
adugova@deloittece.com

# Some Types of Tax Savings to Be Disclosed

**Council Directive (EU) 2018 /822 - also referred to as DAC VI – was promulgated in the Official Journal of the European Union on 5 June 2018 and is set to come into force on 25 June 2018.**

The Directive introduces the obligation to disclose to the relevant tax administrator, among other things, such cross-border arrangements, the ultimate goal or one of the main goals of which is achieving expectable tax advantages. The Directive will have retroactive effect to a certain extent: although the first disclosures should be made as late as in August 2020, the disclosure obligation will also relate to all arrangements the implementation of which will be commenced by tax payers between 25 June 2018 and 1 July 2020.

The member states are obliged to transpose the directive into their legal systems to ensure that the new rules become effective on 1 July 2020, at the latest. Some states, however, have been preparing the relevant regulations to come into effect earlier.

## Subject of Disclosure

The directive introduces a new disclosure obligation and subsequent automatic exchange of information among the EU member states for arrangements with the following features:

(i) The arrangement has cross-border elements defined by the directive; and
(ii) The arrangement has some of the elements defined in the annex to the directive, and at the same time, the main or one of the main benefits of the arrangement involves gaining "expectable" tax benefits; or
(iii) The arrangement is of a specific type and has at least one of the elements set forth in the annex to the directive (eg certain elements related to transfer pricing, elements that point to a possible violation of the disclosure obligation and automated exchange of information regarding financial accounts, or lack of clarity in terms of the beneficial owner).

## Entities Obliged to Report Cross-Border Arrangements

- The disclosure obligation to the relevant tax administrator will principally apply to so-called '**intermediaries**'.
- The directive defines intermediaries as any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement. However, the disclosure obligation will be borne by all persons that knew or could have known that they undertook to provide direct or indirect support, help or advisory in respect of the above-defined activities related to cross-border arrangements.

  In the event that the intermediary is prevented from meeting the disclosure obligation due to its legal confidentiality obligation (which, in the Czech Republic, applies to tax advisors and attorneys-at-law), the **disclosure obligation shifts to the tax payer** who intends to benefit from the relevant arrangement.
- The **tax payer** will also bear the disclosure obligation in the following cases:
  (i) In the event that no intermediary took part in the reported cross-border arrangement (eg if the tax payer creates the arrangement itself or with the help of a party that cannot be denoted as an intermediary); or
  (ii) In the event that the intermediary itself is not subject to the disclosure obligation (eg the intermediary provides its services completely outside the territories of the EU member states).
- The tax payer will also be obliged to submit information to the tax administrator on the utilisation of the relevant arrangement for every year in which the arrangement is applied.
- The member states will be obliged to define effective **sanctions** for non-compliance with the obligations set out by the directive.
- **Protection of good faith**: It will not be possible to impose penalties for non-compliance with the disclosure obligation on entities that prove that they did not know they were engaged in a cross-border arrangement to which the disclosure obligation applies.

## Deadlines to Submit Reports

- Cross-border arrangements affected by the directive, the implementation of which will be commenced between 25 June and 1 July 2020 are to be reported by the relevant entities by 31 August 2020.
- In other cases, the reporting deadline is defined as 30 days (i) from the day on which the draft arrangement was prepared and the support, help or advisory therefor was provided, (ii) from the day on which the arrangement was prepared for implementation, or (iii) from the day on which the implementation of the arrangement began. The deadline start will be determined based on which of the events referred to above occurs earlier for the entity obliged to report.

## Silence of the Tax Administrator Does not Mean Its Agreement

The directive explicitly states that the tax administrator's not responding to notifications does not automatically mean that it agrees with the reported cross-border arrangement.

### Retroactive Effectiveness

The disclosure obligation also applies to cross-border arrangements, the implementation of which was commenced by the tax payers between the day the directive entered into force (25 June 2018) and the day it was effectively transposed into the legal systems of individual member states (ie by 1 July 2020, at the latest).

### Automatic Exchange of Information among the Member States

The member states will automatically exchange the information collected as part of the compliance with the disclosure obligation. The first set of information is to be submitted by 31 October 2020.

We will keep track of the process of transposing the Directive into the Czech legal system and will address this issue in greater detail in one of our regular webcasts.

*Do not hesitate to contact us if you would like to know in which scope the duties specified above will specifically apply to you.*

*Hana Erbsová*
herbsova@deloittece.com

# Tax liabilities – July 2018

July

| | | |
|---|---|---|
| Monday, 2 | CRS (GATCA) report | Submission of announcement according to Section 13k of Act No. 164/2013 Coll., as amended |
| | FATCA report | Submission of announcement according to Section 13k of Act No. 164/2013 Coll., as amended |
| | Income tax | Submission of tax return and payment of tax for 2017, if the taxpayer has obligatory audit or the tax return is elaborated and submitted by the tax advisor |
| | | Payment of special-rate withholding tax for May 2018 |
| Tuesday, 10 | Consumption tax | Tax maturity for May 2018 (except the consumption tax on alcohol) |
| Monday, 16 | Road tax | Advance payment of tax for 2nd quarter 2018 |
| Tuesday, 17 | Intrastat | Submission of statements for intrastat for June 2018, paper form |
| Thursday, 19 | Intrastat | Submission of statements for intrastat for June 2018, electronic form |
| Friday, 20 | Value added tax | Tax return and maturity of the MOSS VAT |
| | Income tax | Monthly payment of deducted advance payments on personal income tax from employment |
| Wednesday, 25 | Lotteries and other similar games | Submission of statement to advanced payment on lotteries and other similar games and payment of advanced payment for 2nd quarter 2018 |
| | Value added tax | Tax return and tax for Q2 and for June 2018 |
| | | EC Sales List for Q2 and June 2018 |
| | | VAT control statement for Q2 and for June 2018 |
| | Energy taxes | Tax return and tax maturity on gas, solid fuels and electricity for June 2018 |
| | Consumption tax | Tax maturity for May 2018 (only the consumption tax on alcohol) |
| | | Tax return for June 2018 |
| | | Tax return for claiming of refund of consumption tax, for example on fuel oil, other petrol (benzine) for June 2018 (if applicable) |
| Tuesday, 31 | Income tax | Payment of special-rate withholding tax for June 2018 |

# Tax liabilities – August 2018

| August | | |
|---|---|---|
| Thursday, 9 | Consumption tax | Tax maturity for June 2018 (except the consumption tax on alcohol) |
| Tuesday, 14 | Intrastat | Submission of statements for intrastat for July 2018, paper form |
| Thursday, 16 | Intrastat | Submission of statements for intrastat for July 2018, electronic form |
| Monday, 20 | Income tax | total monthly payment of employment personal income tax prepayments withheld |
| Friday, 24 | Consumption tax | Tax maturity for June 2018 (only the consumption tax on alcohol) |
| Monday, 27 | Value added tax | Tax return and tax for July 2018 |
| | | EC Sales List for July 2018 |
| | | Tax control statement for July 2018 |
| | Energy taxes | Tax return and tax maturity on gas, solid fuels and electricity for July 2018 |
| | Consumption tax | Tax return for July 2018 |
| | | Tax return for claiming of refund of consumption tax, for example on fuel oil, other petrol (benzine) for July 2018 (if applicable) |
| Friday, 31 | Real estate tax | Tax maturity of 1st tax payment (tax payers engaged in agricultural production and fish farming with tax greater then CZK 5,000) |
| | Income tax | Payment of special-rate withholding tax for July 2018 |

## Contacts

If you have any questions concerning the items in this publication, please contact your regular Deloitte Tax contact or one of the following experts:


### Direct Taxes

**Jaroslav Škvrna**
jskvrna@deloittece.com

**Zbyněk Brtinský**
zbrtinsky@deloittece.com

**Miroslav Svoboda**
msvoboda@deloittece.com

**Marek Romancov**
mromancov@deloittece.com

**LaDana Edwards**
ledwards@deloittece.com

**Tomas Seidl**
tseidl@deloittece.com

### Indirect Taxes

**Adham Hafoudh**
ahafoudh@deloittece.com

**Radka Mašková**
rmaskova@deloittece.com

### Local Sales / Purchases Report

**Jaroslav Beneš** jbenes@deloittece.com

**Deloitte Advisory, s. r. o.**

Nile House, Karolinská 654/2,
186 00 Prague 8 - Karlín,
Czech Republic
*Tel.: +420 246 042 500*


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# Updated call timetable of the Operational Programme Enterprise and Innovations for Competitiveness 2018

The Ministry of Industry and Trade has published the updated call timetable of the Operational Programme Enterprise and Innovations for Competitiveness valid from 25 May 2018. Compared to the previous timetable, the dates of announcement of calls and deadlines for applications have been specified. The table below provides information on selected calls and bellow are described several currently announced calls:

| Programme name | Programme focus | Type of call | Supported location | Type of recipient* | Anticipated date of call announcement | Planned period for support applications |
|---|---|---|---|---|---|---|
| Call III Property | Grants for the modernisation of production plants and reconstruction of existing outdated business infrastructure and brownfield-type areas | Ongoing | Czech Republic, outside the capital city of Prague | SME | 22 June 2018 | From 22 October 2018 To 22 May 2019 |
| Call III Energy Savings in Heat Supply Systems | Grants for the reconstruction and development in heat supply systems, increasing the CHP efficiency | Ongoing | Czech Republic, outside the capital city of Prague | SME, LE | 11 June 2018 | From 11 June 2018 To 31 March 2019 |
| Call IV Energy Savings | Grants for activities related to savings of final energy consumption | Ongoing | Czech Republic, outside the capital city of Prague | SME, LE | 29 June 2018 | From 2 July 2018 To 29 April 2019 |
| Call IV ICT and Shared Services - Establishment and Operation of Shared Service Centres | Grants for the establishment and operation of shared service centres | Ongoing | Czech Republic, outside the capital city of Prague | SME, LE | 25 June 2018 | From 28 August 2018 To 28 May 2019 |
| Call IV ICT and Shared Services – Construction and Modernisation of Data Centres | Grants for the building and modernisation of data centres | Ongoing | Czech Republic, outside the capital city of Prague | SME, LE | 28 June 2018 | From 31 August 2018 To 31 May 2019 |
| Call V Potential | Grants for the establishment or development of centres of industrial research, development and innovation | Rounds | Czech Republic, outside the capital city of Prague | SME, LE related to the environment | 15 June 2018 | From 1 October 2018 To 3 January 2019 |
| Call V Innovation | Grants for the purchase of production technology to launch new or innovated products into production and on the market | Ongoing | Czech Republic, outside the capital city of Prague | SME, LE related to the environment | 15 June 2018 | From 26 September 201 To 27 September 2018 |
| Call VI Application (even without effective cooperation) | Grants for the performance of industrial research and experimental development | Rounds | Czech Republic, outside the capital city of Prague | SME, LE related to the environment | 15 June 2018 | From 28 August 2018 To 17 December 2018 |
| Call IV ICT and Shared Services – Creation of New IS/ICT Solutions | Grants for the creation of new IS/ICT solutions | Ongoing | Czech Republic, outside the capital city of Prague | SME, LE | November 2018 | From December 2018 To July 2019 |
| Call V ICT and Shared Services - ICT in Enterprises | Grants for the creation of new IS/ICT solutions and acquisition of new technologies | Ongoing | Czech Republic, outside the capital city of Prague | SME, LE | November 2018 | From December 2018 To July 2019 |

** SME – small and medium-sized enterprise, LE – large enterprise*

# Newly announced calls of the Operational Programme Enterprise and Innovations for Competitiveness

## Call III Energy Savings in Heat Supply Systems

In early June 2018, **Call III Energy Savings in Heat Supply Systems** was announced, which supports projects focused on the reconstruction and development of heat supply systems and increasing the efficiency of energy and heat cogeneration. Supported activities include construction, expansion or connection of existing heat supply systems in order to increase the use of production of electricity and heat to achieve savings of primary energy, install and upgrade of technological equipment related to the distribution of heat, installation and reconstruction of high-performance gas cogeneration units.

- **Who can ask for the grant**:
  - Small, medium-sized and large enterprises.
- **What the grant applies to**:
  - Costs of construction and technological equipment needed to achieve primary energy savings.
  - Tangible fixed assets.
  - Intangible fixed assets necessary for operating tangible fixed assets.
  - Energy report.
- **Grant amount per project**:
  - CZK 0.5 million – CZK 500 million, but no more than EUR 20 million.
  - The support for the energy assessment amount to no more than CZK 350 thousand.
  - In case of de Minimis support, support per project amounts to CZK 0.5 million – EUR 200 thousand.
- **Grant percentage per project**:
  - No more than 50% of eligible expenses for small enterprises.
  - No more than 45% of eligible expenses for medium-sized enterprises.
  - No more than 40% of eligible expenses for large enterprises.
- **Application acceptance**:
  - 11 June 2018 – 31 March 2019.

This is an ongoing call. The project must be realised in the Czech Republic outside of the territory of the capital city of Prague, depending on the actual place where the project is realised.

## Call V Innovation (Innovation Project)

In mid-June, **Call V Innovation (Innovation Project)** was announced, which focuses on the support of projects introducing new or innovated products, technologies or services in production and on the market. Supported activities include e.g. product innovation activities such as increasing technical and use values of products, technologies and services, process innovation activities such as improving the efficiency of the production process or the provision of services.

- **Who can ask for the grant:**
  - Small, medium-sized and large enterprises. Large enterprises only under the condition that the project has a positive impact on the environment.
- **What the grant applies to:**
  - Project documentation costs.
  - Construction costs.
  - Costs of production technology, machinery and equipment.
  - Software and data costs.
  - Costs of the rights to use intellectual property.
  - Product certification costs.
  - Marketing innovation costs.
- **Grant amount per project:**
  - CZK 1 million – CZK 40 million.
- **Grant percentage per project:**
  - No more than 45% of eligible expenses for small enterprises.
    - No more than 35% of eligible expenses for medium-sized enterprises.
    - No more than 25% of eligible expenses for large enterprises.
- **Application acceptance:**
  - 26 September 2018 – 27 November 2018.

This is an ongoing call. The project must be realised in the Czech Republic outside of the territory of the capital city of Prague, depending on the actual place where the project is realised. Projects realised in districts with a higher share of unemployed persons than the Czech Republic average receive bonus points.

### Call V Potential

In mid-June, Call V Potential was announced, which supports projects focused on the establishment or development of centres of industrial research, development and innovations. Supported activities include the purchase of land, buildings, machinery and other equipment of the industrial centre that is necessary for the performance of the centre's activities.

- Who can ask for the grant:
  - Small, medium-sized and large enterprises. Large enterprises only under the condition that the project has a positive impact on the environment or the primary intention of the project is the cooperation of a large enterprise with a small or medium sized enterprise on a specific research and development ("R&D") project.
- What the grant applies to:
  - Costs of tangible fixed assets necessary for the performance of R&D activities and furnishing of the R&D centre such as the purchase of land, buildings, machinery and other equipment. However, the assets have to be depreciable (except for land).
    - Costs of the purchase of land only up to the amount of 10% of total actual eligible investment expenses.
    - Costs of acquiring a construction/new construction up to 40% of total eligible investment expenses.
  - Intangible fixed assets meeting the conditions of the call, up to 50% of total eligible investment expenses of the project.
  - Costs of obligatory publicity.
- Grant amount per project:
  - CZK 2 million – CZK 30 million.
- Grant percentage per project:
  - No more than 50% of eligible expenses for all enterprise sizes.
- Application acceptance:
  - 1 October 2018 – 15 January 2019.

This is a call in rounds. The project must be realised in the Czech Republic outside of the territory of the capital city of Prague, depending on the actual place where the project is realised. Projects realised in districts with a higher share of unemployed persons than the Czech Republic average receive bonus points.

### Call VI Application

In mid-June, Call VI Application was announced, which supports projects focused on the realisation of industrial research and experimental development activities leading to specific results in the form of prototypes, industrial or utility models, verified technology or software.

- Who can ask for the grant:
  - Small, medium-sized and large enterprises. Large enterprises only under the condition that the project has a positive impact on the environment or the primary intention of the project is the cooperation of a large enterprise with a small or medium sized enterprise on a specific project.
- What the grant applies to:
  - Personal costs (wages and insurance of research personnel, technicians etc.).
  - Costs of tools, devices and equipment in the form of depreciation of tangible fixed assets, during the time of work on the project.
  - Costs of contractual research.
  - Non-investment costs of licences purchased or acquired from third parties throughout the realisation of the project.
  - Costs of R&D advisory used exclusively for project purposes.
  - Additional overheads and operating expenses.
- Grant amount per project:
  - CZK 1 million – CZK 40 million.
- Grant percentage per project:
  - No more than 70% of eligible expenses of the whole project based on the type of activity and size of enterprise.
- Application acceptance:
  - 28 August 2018 – 17 December 2018.

This is a call in rounds. The project must be realised in the Czech Republic outside of the territory of the capital city of Prague, depending on the actual place where the project is realised. Projects realised in districts with a higher share of unemployed persons than the Czech Republic average receive bonus points.

# Update of Rules for Applicants and Recipients in the Operational Programme Enterprise and Innovation for Competitiveness

In early June, updated *Rules for Applicants and Recipients in the Operational Programme Enterprise and Innovations for Competitiveness – General Part* was issued with effect from 11 June 2018.

The updated rules bring one change, namely the elimination of chapter 5.2 *Information on project realisation progress* concerning the regular monitoring of progress in the individual projects. This type of monitoring report that had to be filed once every calendar year, always by 31 August, is thereby cancelled.

# Update of the document Applicant Change and Demonstrating the Compliance with the Condition of the Applicant's Accounting, Economic and Tax History

In early June, updated document *Applicant Change and Demonstrating the Compliance with the Condition of the Applicant's Accounting, Economic and Tax History* was issued with effect from 8 June 2018.

The change in the document consisted in the addition of paragraph requiring the presentation of a guarantor's declaration for applicants under controlling influence (ownership interest of more than 50%) of an entity meeting the history condition. A new document related to this document was also issued, entitled *Guarantor's Declaration*, which states that the guarantor will satisfy the creditor if the debtor does not meet its obligation towards the creditor.

# Announcement of the sixth public competition of the DELTA programme

On 6 June, the Czech Technology Agency announced the sixth public competition of the Programme for the support of collaboration in applied research and experimental development through joint projects and technological innovation agencies (DELTA programme). The objective of the DELTA programme is to support projects of international cooperation of enterprises and research organisations in order to increase the amount of specific results of applied research that are expected to be subsequently put into practice. The anticipated results are e.g. an industrial and utility model, functional sample, verified technology, patent or software etc.

Applicants in this public competition may be enterprises and research organisations. However, one of the partners has to be from the country where the foreign partner agency is based (specifically, the countries include the Republic of Korea, the Socialist Republic of Vietnam, the Federal Republic of Germany, the State of Israel, the People's Republic of China – provinces of Jiangsu and Zhejiang, Republic of China – Taiwan).

The maximum grant percentage per project is 74% total eligible expenses, and the maximum amount of support per project throughout the period of project work is CZK 25 million. The competition takes place from 7 June 2018 until 7 August 2018.

# New grant programmes DELTA 2 and KAPPA

On 16 May the Czech government approved two new programmes of the Czech Technology Agency for the support of applied research and experimental development and innovation. The programmes are DELTA 2 and KAPPA.

The DELTA 2 programme follows the previous successful DELTA programme and it is intended for international cooperation with other countries such as the USA, Canada or Japan. The objective of the DELTA 2 is to support international cooperation projects in the area of applied research, experimental development and innovation with the objective of increasing the amount of new products, services and processes contributing to the increase of competitiveness of Czech enterprises and research organisations and their entry in new markets.

The KAPPA programme focuses on the support of international cooperation projects of Czech enterprises and research organisations with foreign partners in the area of applied research, experimental development and innovation.

The funding of the programme is provided from the resources of the Norway and the European Economic Area Financial Mechanism. The cooperation is therefore planned with partners from these countries, i.e. from the Kingdom of Norway, the Principality of Liechtenstein and Iceland. The objective of the programme is to expand knowledge through international cooperation in the area of applied research and to increase the amount of new unique results applicable in practice and contributing to the increase in competitiveness of Czech enterprises and research organisations and to their entry in new markets.

The anticipated support amount per project in the programme KAPPA throughout the period of project work is expected to range between EUR 500,000 and EUR 5,000,000. The programme is expected to last from 2019 till 2024.

# Change of the wording in the TRIO programme

As of 30 April 2018, the applied research and experimental development programme "TRIO" has a new wording approved by the government of the Czech Republic. It is a programme focused on supporting activities in the area of applied research and experimental development in order to increase the use of results of this area. The individual projects should use and support further development of the potential in the following key technologies:

- Photonics;
- Micro- and nanoelectronics;
- Nanotechnology;
- Industrial biotechnology;
- Advanced materials; and
- Advanced production technologies.

The main changes in the wording of the programme include an extension of the duration of the programme by one year, i.e. until 2022 (inclusive), and an increased budget has been approved that brings the opportunity to announce a fourth public competition. Its announcement is planned for September 2018 with the anticipated competition period in September/October 2018. The basic conditions of the programme remain unchanged.

# News in the future Horizon Europe programme

The European Commission published the official proposal of the ninth research, development and innovation EU framework "Horizon Europe". As part of this programme it will be possible in 2021-2027 to draw funds for the support of research and innovation, for example via the development of prototypes or transfer of knowledge and technology. The programme will allocate almost EUR 100 billion.

Compared to its predecessor, the Horizon Europe programme will place more emphasis on open access to publications and research data.

The programme's structure will be composed of three pillars: Open Science, Global Challenges and Industrial Competitiveness and Open Innovation.

The first pillar, entitled Open Science, will be focused on supporting researchers through fellowships and the support of exchanges, and project managed by the researches themselves will also be supported by the European Research Council and the Marie-Skłodowska-Curie Aactions.

The second pillar, Global Challenges and Industrial Competitiveness, will support research related to social challenges and everyday problems such as the fight against cancer. The second pillar is composed of five priority areas/clusters including:

- Health;
- Inclusive and Secure Society;
- Digital and Industry;
- Climate, Energy and Mobility; and
- Food and Natural Resources.

The third pillar, Open Innovation, will focus on innovation. A unified contact point will be created for potential and breakthrough technologies and innovative companies.

## Contacts

If these issues relate to your company, we would be happy to provide you with more detailed information.
Feel free to contact us at any time


### Grants CZ

**Luděk Hanáček**
lhanacek@deloittece.com

**Antonín Weber**
antoweber@deloittece.com

### Grants and Incentives SK

**Martin Rybar**
mrybar@deloittece.com

### Incentives

**Daniela Hušáková**
dhusakova@deloittece.com

**Deloitte Advisory, s. r. o.**
Nile House, Karolinská 654/2,
186 00 Prague 8 - Karlín,
Czech Republci
*Tel.: +420 246 042 500*


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