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dReport: September 2018

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News in the application of the research and development deduction …are better days ahead?

2016 saw the first drop in the use of the research and development ("R&D") deduction in the entire 13-year-long existence of this business support. Taxpayers and the expert public noticed increased activity of tax authorities during tax audits focused on the area of R&D. In the last three years, several court rulings have been issued that established the practice of certain unclear legal provisions, but not all the key ones by far. Taxpayers have become reluctant to use the deduction and the Financial Administration has often been accused of targeted attacks. The Financial Administration responded with allegations of abuse of the support for tax planning, antedating of legally required documents and contesting of activities that companies considered R&D. In this whirl of ill-will where there were essentially only minor changes made to the Income Taxes Act ("ITA") and the explanatory Decree D-288 throughout the period of availability of the support, the Ministry of Finance even considered removing the deduction from the law. As a consequence of this situation, the Government Council for Research, Development and Innovation created a working group whose activity resulted in the presentation of conclusions that appear viable for all stakeholder groups, i.e. representatives of the business and expert sphere, the Ministry of Finance and the General Financial Directorate ("GFD").

The representatives of the working group gathered a large amount of data, expert studies, rulings of the Supreme Administrative Court ("SAC") and international comparisons. At present, the ball is in the court of the Financial Administration, which should present the Chamber of Deputies with a draft amendment during the third quarter of 2018 so that the amendment could be approved by the end of 2018. The change in the ITA would also require an amendment to Decree D-288.

So what changes are coming?

The current letter of the law requires taxpayers to prepare and sign an R&D Project before starting work on R&D activities. This causes distortions in practice and the disputes between taxpayers and the tax administration regarding whether the R&D Project was really created before the beginning of activities or later often end in a court case. And as confirmed by certain rulings of the SAC (e.g. "ELEKTROPOHONY" or "TRANSYS"), an unsigned or formally unfinished R&D Project is a reason for not recognising the full amount of the deduction and for imposing all sanctions from the additionally assessed tax liability allowed by the Tax Code.

The proposed solution assumes that the taxpayer would have an **obligation to send a notification** to inform the Financial Administration that it performs R&D activities and will claim the R&D deduction in the future. Based on the latest information, the notification would be sent to the Financial Administration, i.e. it would not be information included e.g. In public registers. The reported information should be limited to (a) the name of the tax payer, (b) name of the R&D project, (c) identification of the statutory representative (or the statutory representative's authorised representative).

The proposed provision assumes that the Financial Administration would consider the project (activities and expenses) to be initiated as of the effective moment of sending the notification. Activities performed (and expenses incurred) before the sending of the notification would not be investigated by the Financial Administration and the taxpayers would not be able to include them in the deduction. This would solve one of the major and crucial disputes in the current system, i.e. The preparation of the R&D Project before starting the work on it.

The R&D Project as we know it today would have to be **prepared no later than by the day of filling the tax return** where the taxpayer first claims the R&D deduction. This provision reacts to the practice abroad and to the criticism from business and the expert public that a great deal of information is unknown before the beginning of development activities, which leads to disputes with tax administrators regarding the sufficiency and correctness of the description included in the R&D Project.

According to the Financial Administration, taxpayers also often make errors in the method and sufficiency of the description of project assessment. The conclusion of the draft is to eliminate the set-up of the frequency and method of required audits. It will be completely up to the taxpayer to set up the audit system and the tax authorities will be able to audit compliance with the set rules only based on the specification determined by the taxpayer in the R&D project.

The draft amendment presupposes that a person responsible for signing the R&D project would still be required. The proposed amendment of the current wording of Section 34c of the ITA expects the introduction of a possibility of having the **project approved also by the authorised representative**.

As for the **indication of place of signing** the project, it is proposed to omit this requirement due to its strictly formal nature, and only the date of approval of the R&D Project would therefore be included.

In September 2017, the Information issued by the GFD stated that "*The taxpayer is required to include a list of names of all persons who will provide expert management of the project*". *The* issued Information deepened the doubts of businesses even further. In today's turbulent times characterised among other things by a high level of employee fluctuation, it is impossible to have a complete list of employees who will take part in the development in the following year(s) before the beginning of activities. The amendment suggests amending Decree D-288 to **allow changing the number of persons and changing the list of names of** persons providing expert management of the project.

The historically often debated **(non-)inclusion of vacation compensation** in the R&D deduction (e.g. The proposed conclusions of our colleagues' contribution to the Coordination Committee no. 451/22.04.15 that was not approved by the GFD) is not expected to be allowed in the amended text. An open (and in the opinion of this article's authors a fair) option is for the taxpayer to include the vacation compensation only in the percentage in which the employee was involved in R&D in the relevant period compared to the total number of hours worked.

The authors of the article believe that the proposed measures could be the first essential step towards reducing the tax uncertainty of taxpayers that want to increase their competitiveness and use tax deduction for this purpose. It is clear that the changes will require a more detailed expert interpretation for the individual cases occurring in practice. We will bring you more information as soon as any development of the planned amendment is known.

Luděk Hanáček
lhanacek@deloittece.com

Jakub Vrkoč
jvrkoc@deloittece.com

Demonstrating the Receipt of Intragroup Services: Are you Prepared?

A large number of Czech businesses that are part of multinational groups already have first-hand experience that the Czech tax administration's approach has undergone a fundamental change in recent years as regards tax audits focusing on related party transactions. The lack of any form of communication with the tax administrator (such as on-the-spot inspections) concerning related party transactions is rather an exception at present. Contrarily, regular contact with tax payers or directly a tax audit of intragroup transactions is becoming common practice.

With the information which is available to the Czech tax administration, either based on statutory reporting as part of income tax returns, information exchange with foreign tax administrations or disclosures made by the tax payer itself, the tax administrator already has a wealth of data and a clear objective prior to initiating the tax audit. Our advisory practice indicates that it is very often the audited taxable entity which is taken by surprise by the tax administrator's approach and requirements.

Tax administrators being cautious about "management services"

Among other things, tax offices pay increased attention to intragroup services rendered by the parent or another group company which are referred to as (usually not entirely accurately) "management services". These may involve a broad variety of advisory and ancillary services, ranging from general administrative, financial and legal services to technical and more specialised ones. Such services are frequently ensured for most group entities in a centralised manner. Even though the provision of such services in multinational groups has economic substantiation, tax administrators are rather cautious and distrustful in respect of them in tax audits. An increasingly greater emphasis is given to the detailed demonstration of all relating facts. Tax administrators place demanding requirements on means of evidence, primarily as regards their convincingness, formal elements and authenticity. What was accepted by the tax administrator in the past is usually no longer sufficient at present.

In assessing the tax deductibility of expenses relating to intragroup services, it is usually initially demonstrated that the expenses were incurred by the tax payer in achieving, ensuring and retaining taxable income (Section 24 (1) of Act No. 586/1992 Coll., on Income Taxes). It is the taxable entity that must bear the burden of proof in this discovery stage. Only subsequently, when the evidence supplied by the taxable entity is successful, the transfer pricing of the respective transaction is tested. It is, however, no exception that in the event of the tax payer's failure to bear the burden of proof, the second stage will not take place.

Example: Legal dispute concerning the deductibility of expenses

As an example, a legal dispute has been recently closed which dealt with, *inter alia*, the deductibility of expenses for advisory services provided by the parent company and expenses for legal services provided by an external law office whereby 50% of those expenses was allocated to the taxable entity. The Supreme Administrative Court (the "SAC") rejected the taxable entity's cassation complaint (8 Afs 216/2017-75) and thus acknowledged the previous decision of the Regional Court in České Budějovice (10Af 5/2016-80) confirming an additional tax assessment exceeding CZK 14 million, which was assessed by the tax administrator using auxiliary tools, due to a failure to demonstrate the services received from a related party.

Although the taxable entity provided the tax administrator with a great deal of evidence including hundreds of various documents, the tax administrator rejected the presented means of evidence emphasising that the taxable entity only provided a general description of services, does not show the specific time spent, the actual cost of provided services or in which amount the respective service contributes to the aggregate value invoiced. The SAC agreed with the tax administrator's course of action and, similarly as the Regional Court, has not found any deficiencies in this respect.

Nevertheless, it may be more important for taxable entities in a similar situation as the tax payer in the above-specified legal dispute that neither the Regional Court nor the SAC give any indication in their decisions as to which means of evidence would be sufficient in such a case.

Thorough preparation a necessary prerequisite

Although tax payers may be considered to show uncertainty as to which document will or will not serve as sufficient evidence in a tax audit, the situation is not entirely hopeless. It is highly advisable to prepare for the tax administrator's potential questions in advance. How?

- Collect regularly, already in providing services, all paper documents demonstrating facts relating to the services provided, starting from orders of particular services (including the relevant communication concerning the scope and costs of services and anticipated outputs);
- Collect all outcomes of the services provided (such as presentations, analyses, overviews, calculations etc);
- Collect all documents confirming the receipt of outcomes and the recipient's feedback as regards the services provided;
- Identify specific persons on the part of the provider who are rendering the services to the specific taxable entity, including, for example, as a list of tasks or an overview of the time spent with respect to the services in question;
- Collect all means of evidence demonstrating who prepared the outputs and individual documents and when; and
- Review or reset processes with regard to the circulation and archiving of documents.

It should also be noted that in the event of intragroup services, it is possible or advisable to draw inspiration from similar relations among independent entities. In such situations, business relations are not established automatically. Services without orders or agreements and a pre-arranged scope and cost would not be provided. In return for payment, recipients expect required, previously agreed outputs. This should also be the case of services rendered within a group. It is therefore necessary that the service provider (eg a parent or another service company) already cooperate with the taxable entity before and during the provision of services. Such cooperation is an essential prerequisite of success.

Linda Scharingerová
lscharingerova@deloittece.com

The financial administration has easy access to information. "Big Brother" can see the income of natural persons too

The times when the financial authorities could discover "forgotten" income of taxpayers only during a specific tax audit are long gone. Thanks to digitalisation and the use of technologies in many areas of activities, the tax office can now find what it needs much more easily – or even receive the information automatically.

An example of an active approach of financial authorities is the case of additional taxation of income generated through Airbnb. Thanks to the data received from Airbnb, the financial administration can easily find out what income taxpayers should tax, and if they have not done so, it can ask them to remedy that. Uber also promises direct cooperation; for both electronic platforms, the tax office profits from the fact that the platforms **record all the information necessary for additional tax assessment**. We could continue in this way in many other areas, including e.g. The mediation of trade via Aukro and similar companies or portals facilitating paid car sharing.

However, sometimes all the financial administration has to do is wait and the information will come on its own: thanks to international initiatives such as FATCA (from the US), the Common Reporting Standard (adopted by the OECD) and the directive on administrative cooperation of the European Union, the financial administration suddenly **receives specific information about the income of natural persons**. Based on practical experience, it then asks employees who have forgotten e.g. about income from an option programme of their Czech employer's parent company to file a tax return and pay the tax owed, including a penalty for additional tax assessment and default interest for late payment.

It therefore becomes increasingly worthwhile not to forget about any kind of income arising from any source – if you are not sure about the correct way to tax your income, we recommend seeking advice from a tax advisor before the tax office contacts you.

Lucie Rytířová
lrytirova@deloittece.com

The echoes of tax inspections on one-crown bonds

The discussion concerning one-crown bonds is continuing. As repeatedly debated in the media, the Financial Administration continues to carry out tax inspections of the companies which issued so-called one-crown bonds through the end of 2012. Proceeds from these bonds issued through the end of 2012 are not subject to effective taxation due to the rounding down to the whole Czech crown. Although at the time it was a routine form of financing, nowadays, the tax authorities in many cases challenge the economic reasons for placing one-crown bonds, treating the issuance of such securities as an abuse of law with all the related tax consequences.

The first ruling of the Supreme Administrative Court on one-crown bonds

In August 2018, the Supreme Administrative Court dealt with the tax inspection of the one-crown bonds for the first time. In this case, the complainant did not contest the amount of the additionally-assessed tax liability but claimed the illegality of the tax inspection as such. The illegality of the tax inspection was inferred by the complainant based on the fact that it had not been initiated on the basis of a "free decision" of the Director-General of the General Financial Directorate, but on the basis of political pressure. According to the complainant, it was not the Financial Administration, but the Chamber of Deputies (especially its Budget Committee) that decided to examine the placements of the one-crown bonds made in 2012.

The Supreme Administrative Court did not concur with this conclusion on the illegality of tax inspections. The Court admitted that the question of one-crown bonds and related inspections was intensively publicly debated and individual political leaders also expressed their opinion. However, according to the court, it was not proved that the Financial Administration had acted directly on the order of the Chamber of Deputies or because of political pressure. On the contrary, the court noted that it is normal for the Financial Administration to initiate a tax inspection not only on the basis of its own activities but also on the basis of public inquiries and facts obtained from other state authorities (e.g. from the Police of the Czech Republic). The conceptual decisions on what issues the Financial Administration will focus in its inspection activity is fully within the remit of the Director-General of the General Financial Directorate.

Up to now, this ruling of the Supreme Administrative Court does not address the correctness of the conclusions of the tax authorities regarding one-crown bonds. Therefore, we will still have to wait for the answer of whether and in which cases the issuance of one-crown bonds can be considered an abuse of law.

Bonds may be subject to taxation in the future

In the context of the tax inspections on one-crown bonds, the Ministry of Finance is also coming back to the proposal to amend the Income Taxes Act, according to which proceeds arising from the one-crown bonds should be subject to taxation regardless of when the bonds were issued. According to the most recent information, this legislative amendment should become part of the governmental package, which will come into effect by 2020 at the earliest.

In early 2017, the government supported the proposal to amend the Income Taxes Act, but even then, it was clear that the then Chamber of Deputies would not be able to pass this amendment before the election. According to the governmental proposal, taxation was supposed to apply on the one-crown bonds purchased by natural persons from their own companies or otherwise linked to the issuers of one-crown bonds.

The proposal for the current legislative amendment is not available yet. However, preliminary information from the Ministry of Finance indicates that, in addition to the one-crown bonds, the taxation should also extend to other types of bonds.

It may be assumed that, in the context of the planned legislative amendments, the following question will arise: to what extent the proposed taxation can be retroactively applied to the already issued bonds. Retroactive application of tax regulations may run counter to basic legal principles and relevant investment protection treaties.

Therefore, it is apparent that the debate regarding the one-crown bonds will be continuing. We will inform you about further developments in the practice of the Financial Administration and administrative courts.

If you have any questions about tax inspections on bonds, we will be happy to answer them also in person.

Jiřina Procházková
jprochazkova@deloittece.com

Věra Paštiková
vpastikova@deloittece.com

Guidance Note of the General Financial Directorate

On its website, the General Financial Directorate (the "GDF") has made comments on the issue of **correcting the tax base in respect of supplies made for debtors in bankruptcy that is addressed in the form of reorganisation under the Insolvency Act**. It has confirmed the opinion that if the creditor's receivable has been reduced under the reorganisation plan, this represents a change in the tax base resulting in a correction under Section 42 of the VAT Act. In our view, the GFD's Guidance Note is inaccurate and restrictive in certain aspects as it does not fully reflect the judicature of the Court of Justice of the EU.

Judicature of the CJEU

In Case C-5/17 DPAS, the Court of Justice of the EU (the "CJEU") addressed the **rules of exempting services consisting of the provision of transfers of funds**. Pursuant to a direct debit mandate, DPAS issued an order to a financial institution to deduct a certain amount of funds from the applicant's bank account. The CJEU held that the transaction constituted a taxable supply. It appears that, in practice, exemption is often incorrectly applied in similar situations, for example by card payment companies.

In Case C-414/17 Arex, the Advocate General of the CJEU comments on the **rules of assigning transport in respect of an international chain trade in goods subject to excise duty**. She univocally rejected the opinion of Arex, according to which transport should be assigned to the supply that is associated with excise duty suspension arrangements under the Excise Duty Directive. In addition, she also rejected the opinion of the Tax Administration according to which transport should be assigned to the commercial chain participant that physically transports the goods. According to the Advocate General, it is necessary to always review who holds the rights to handle goods similar to those of owners during transport. In our view, this is the generally correct approach as stipulated by the EU's VAT Directive; nevertheless, in its deliberation, the Advocate General eventually arrived at a conclusion that contradicts the Directive. It will be interesting to see whether the CJEU will adopt her deliberation or whether it will uphold the existing interpretation of the EU's VAT Directive.

In Case C-320/17 Marle Participations SARL, the CJEU specified how the position of **holding companies should be treated from the VAT perspective** and when they may claim tax deductions.

EU VAT Legislation

The European Commission has prepared another of the series of proposals to change the functioning of **intra-Community trade in goods**. Starting from 2020, member states will be obliged, among others, to transpose fairly detailed (and contradictory to the present wording of the Czech VAT Act) rules for applying the call-off stock simplification.

Tomáš Brandejs
tbrandejs@deloittece.com

News round up

CJEU rules in favour of foreign UCITS and investment funds in Danish case

On 21 June 2018, the Court of Justice of the European Union (CJEU) issued its decision in Fidelity Funds vs. Skatteministeriet (Case C-480/16), concluding that Danish tax legislation that provides for an exemption from Danish withholding tax on dividends distributed by a Danish resident company to Undertakings for the Collective Investment of Transferable Securities (UCITS) resident in Denmark, but not to non-resident UCITS established in other EU member states, is a violation of the free movement of capital principle in article 63 of the Treaty on the Functioning of the European Union (TFEU). Following the decision, the Danish tax authorities' general practice would be to issue a "reopening circular" that sets out the conditions for obtaining a refund based on the CJEU decision. Claims for refunds would have to be submitted within six months following the decision, i.e. by 21 December 2018.

CJEU overturns decision against German loss carry-forward rules

In its June 28 decision in Dirk Andres (Case C-203/16) the CJEU said the General Court incorrectly found in 2016 that the German scheme for the carry-forward of tax losses for companies in difficulty amounted to illegal state aid. In December 2017 Advocate General Nils Wahl recommended that the CJEU overturn the General Court's decision. Under German law, the losses of undertakings subject to corporation tax over the course of a tax year may be carried forward to later tax years, with the losses being subtracted from taxable income in those years.

CJEU rules PE losses may be used to offset profits in Danish joint taxation companies

On 4 July 2018, the Court of Justice of the European Union (CJEU) issued a decision concluding that a Danish anti-avoidance rule designed to prevent the double deduction of losses violates EU law. The rules at issue primarily provide for losses of a Danish resident permanent establishment (PE) of a non-resident company to be deducted from the taxable income of the non-resident company in the jurisdiction in which that company is a resident. Where that jurisdiction does not permit the offset of losses, they may be deducted in Denmark from the taxable income of affiliated companies under the Danish joint taxation regime. According to the court, this rule is incompatible with the freedom of establishment principle in the Treaty on the Functioning of the European Union (TFEU). The court followed the Advocate General's opinion released on 21 February 2018.

Dutch AG opinion on currency loss deduction

In a 29 June 2018 opinion, a Dutch Advocate General (AG) agreed that the CJEU had correctly held that treating foreign currency gains and losses symmetrically ensures consistency with freedom of establishment. The CJEU decision wrongly states that currency losses on an interest in a domestic subsidiary are generally impossible for entities taxed on a consolidated basis because the subsidiary could also operate through a foreign permanent establishment.

EU Code of Conduct group concludes on Luxembourg IP regime

On 6 July 2018, the Code of Conduct Group (the Group) published its decision 10931/18 under the standstill review process regarding Luxembourg's draft law relating to the tax regime for intellectual property. The Group concluded that the Luxembourg IP regime in light of the Code of Conduct criteria should be considered overall not to be harmful.

EU publishes overview of preferential tax regimes

On 20 July 2018, the Code of Conduct Group (Business Taxation) published an overview of the preferential tax regimes it has examined since it was created in March 1998. The overview is available here.

Germany recommends changes to RETT

On 21 June 2018, the finance ministers of the German federal states announced an initiative to propose changes to the Real Estate Transfer Tax (RETT) code that would significantly tighten the rules. Under current rules, RETT is triggered on direct transfers of real estate and where 95% or more of the shares in a German real estate-owning company are directly or indirectly transferred to a new owner, or where 95% or more of such shares are directly or indirectly combined for the first time in the hands of a new shareholder (or if there is a 95% or greater change either directly or indirectly of the partners in a partnership). Changes to the RETT rules are specifically mentioned in the current coalition agreement between the governing parties, so it is likely that some form of the above measures will be approved and possibly could be implemented during 2018. It also is possible that the measures would apply retroactively from the date the first draft law becomes publicly available.

Indian tribunal rules that franchisee does not create PE

On 29 June 2018, the Mumbai Income Tax Appellate Tribunal (ITAT) ruled that a franchisee in India did not constitute a dependent agent permanent establishment (DAPE) of a US franchise-owner under the India-US tax treaty. As a result, the US company's income from franchising in India could not be subject to tax as business income in India. The ITAT's decision was based on the following facts and circumstances: the Indian company did not in any manner act on behalf of the US company, although 3% of sales revenue was payable to the US company as consideration for the rights granted under the MFA, all the profits and losses from the stores belonged only to the Indian company and the sub-franchisees, while certain clauses within the MFA entitled the US company to examine the accounts, approve suppliers and exercise some control over advertising, neither the Indian company nor the sub-franchisees retained any stock or goods on behalf of the US company, the Indian company did not enter into sub-franchise agreements or other agreements on behalf

of the US company; all agreements were independently negotiated, entered into and executed by the Indian company.

Indian tribunal rules on fees from technical services

The Mumbai Income Tax Appellate Tribunal (ITAT) ruled on 8 June 2018 that consideration received by a Dutch tax resident company for conducting training programs in India and providing Indian entities with access to computer systems does not qualify as "fees for technical services" (FTS) under article 12(5) of the India-Netherlands tax treaty.

Luxembourg submits draft bill to implement ATAD I to parliament

The draft bill that would implement the EU Anti-Tax Avoidance Directive (ATAD I) into Luxembourg's domestic law, as well as some unrelated measures, was published on 20 June 2018. The ATAD I, which is part of the anti-tax avoidance package presented by the European Commission in 2016, aims to provide a minimum level of protection for the internal market and ensures a harmonised and coordinated approach in the EU to the implementation of some of the recommendations under the OECD base erosion and profit sharing (BEPS) project. The draft law now must go through Luxembourg's legislative process where parliament will debate, possibly amend and ultimately vote on the proposed measures. If enacted, the measures would apply as from fiscal years starting on or after 1 January 2019, except for the proposed exit taxation rules, which would apply as from fiscal years starting on or after 1 January 2020.

Luxembourg tax authorities clarify treatment of virtual currency

The Luxembourg tax authorities released a circular on 26 July 2018 that addresses the direct tax treatment of virtual currency, particularly income generated through the creation or disposal of cryptocurrency. Income derived from a cryptocurrency will be considered "commercial income" where it falls within the definition of such income under article 14 of the Income Tax Law. This typically would be the case for the mining of virtual currency, or the operation of an online stock exchange or vending machines with virtual currencies. Operating expenses, such as costs of electricity related to virtual currency mining or conversion fees of virtual currency exchange platforms, are deductible only if the expenses were incurred exclusively by the enterprise and they are not related to any tax-exempt income. The same applies to the depreciation of computer infrastructure. In the absence of a commercial enterprise, it must be determined whether income derived through virtual currency falls within the category of other income in article 99 of the Income Tax Law. This can be the case, for example, where a mining activity does not fulfil all the criteria to qualify as a commercial undertaking in Luxembourg.

Multilateral Instrument (MLI) ratified by Slovak Republic

On 30 July 2018, the Slovak Republic ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI). The Slovak Republic submitted its MLI position at the time of signature, listed its reservations and notifications and included 64 tax treaties that it wishes to be covered by the MLI.

OECD/G20 Inclusive Framework on BEPS publishes progress report

The 22 July 2018 report covers the period from July 2017 to June 2018 and provides an update on the major developments in dealing with the tax challenges of the digitalised economy and the entry into force of the multilateral instrument (MLI), and how countries are progressing in the implementation of the BEPS package. The progress report is available for downloading here.

UK consults on registration of overseas entities that own UK property

The UK Department for Business, Energy and Industrial Strategy (BEIS) on 23 July 2018 launched a consultation on provisions in a draft bill, the "Registration of Overseas Entities Bill," to establish a new beneficial ownership register of overseas entities that own UK property. Overseas entities that own UK property when the requirements come into force, as well as any overseas entities that subsequently acquire UK property, will be required to register (and regularly update) their beneficial ownership information before they can undertake certain transactions with that property, such as selling or leasing the land, or creating a legal charge over the land, such as a mortgage. The consultation closes on 17 September 2018.

Kateřina Krchnivá
kkrchniva@deloittece.com¨

Tereza Tomanová
ttomanova@deloittece.com

Digital currencies and their issues in the tax and legal world

With the increasing popularity of digital currency, also called cryptocurrencies, there is a growing number of issues related to their legal definition, accounting and taxation. Recently, some indications have appeared which may be helpful in this respect, but the fact is that current Czech tax legislation does not specifically address this issue; therefore, every owner of a digital currency is left in some uncertainty.

From the legal point of view, it is especially important to identify under which of the existing categories the particular cryptocurrency can be included, refer, for example, to the opinions of the Czech National Bank (ČNB) or the Ministry of Finance below. This identification then overlaps tax, accounting and other legal areas. With regard to the developments abroad, it is also possible that the cryptocurrencies will ultimately be *sui generis* and will be given a separate legal regulation.

You can read about the accounting for and recognition of the digital currency in the June edition of d-Report. According to the current opinion of the Ministry of Finance as of 15 May 2018, the digital currency is considered an intangible asset and it is recommended that a digital currency be accounted for and recognised as inventory "of its kind". This information can be used as a guideline for income tax of legal entities (and natural persons who keep accounting records) arising from digital currency transactions, such as transactions in which a legal entity uses the digital currency as a means of payment, in digital mining or when issuing a new digital currency.

Since the digital currency is not a currency from the ČNB's point of view, but an intangible asset, in case of exchange or mining of the digital currency, the income can be assessed under Section 7 (for natural persons-entrepreneurs) or Section 10 (for other natural persons) of the Income Taxes Act.

Value Added Tax ("VAT") regulation of the digital currencies is affected primarily by the judgment of the Court of Justice of the European Union, which treats the exchange of cryptocurrencies as a financial service, i.e. exempt performance without the right to deduct, while the mining of a digital currency as such does not fall within the scope of VAT.

Eduard Hájek
ehajek@deloittece.com

Jan Novotný
jnovotny@deloittece.com

The Czech Ministry of the Interior has Issued Brexit-Related Recommendations to UK Citizens

In relation to the upcoming exit of the United Kingdom of Great Britain and Northern Ireland from the European Union in spring 2019, the Ministry of the Interior of the Czech Republic has issued recommendations addressed to the citizens of the United Kingdom residing in the Czech Republic.

The recommendation proposes a procedure to the UK citizens who are interested in preserving their rights related to their residence in the Czech Republic until the end of the transitional period (i.e. until the end of 2020) after Brexit.

In its call, the Czech Ministry of the Interior strongly recommends that all UK citizens who are not holders of the *Certificate of Temporary Residence of an EU National* apply for the issuance of the *Certificate and* thereby avoid any more complex administrative procedures in the future.

We will keep you informed as the situation develops.

Jana Michálková
jmichalkova@deloittece.com

Sugar tax as a tool in the battle against obesity

In the spring of this year, the United Kingdom introduced the so-called sugar tax, which it hopes will decrease the production and consumption of sweet drinks while increasing income into the state budget.

The tax has been introduced for sweet non-alcoholic drinks containing more than 5 g of sugar per 100 ml of liquid; in this case the tax amounts to 18 pence (approx. CZK 5) per litre of liquid. Drinks exceeding 8 g of sugar per 100 ml of liquid (e.g. Coca-Cola) incur tax of 24 pence (approx. CZK 7) per litre of drink. The new tax is estimated to increase the fiscal income by up to GBP 240 million (approx. CZK 7 billion) per year, which should be subsequently distributed to programmes supporting physical activity and balanced diet of school children. The British government announced the plan of imposing this tax already at the beginning of 2016, so that producers would have enough time to lower the sugar content of their drinks. Based on the calculation of the British Treasury, the introduction of the tax will lead to a decrease in sugar consumption in sweetened drinks by 45 million kg per year and the sugar content of up to 50% of all drinks in the United Kingdom will decrease as a result.

This tax does not concern producers of sweet foods, such as cakes or pastries. The tax was accepted by a part of the British public as the right step, but opponents object to its selective imposition only on a limited component of problematic diet and instead they call for stimulation to consume healthy food by making it more affordable.

A similar 10% tax was imposed in 2014 in Mexico as part of a solution for the increased obesity levels in the population (statistics stated that up to 70% of the population was overweight or obese). A year after the imposition of the tax, the consumption of sweetened drinks had decreased by 12%, the largest contribution to the decrease was made by low-income households. The conclusions of the research also confirmed that the decrease in the consumption of sweetened drinks coincided with an increased consumption of drinks not subject to the tax, especially bottled water. Another success story concerns the situation in Hungary, where the imposition of the so-called "fat tax" led to a decrease in the use of unhealthy ingredients for 40% of producers and the sale of products categorised as unhealthy decreased by 25%.

Statisticians agree that the effect of the introduction of the regulatory measures will be reflected in the decrease in obesity and diseases caused by excessive sugar consumption only in the long term. These measures can only achieve the maximum economic and medical effect if they are implemented at the EU-wide level, e.g. In the form of a directive or regulation. Otherwise, certain countries could find themselves in a situation similar to the one of Denmark, which cancelled a similar tax in 2013 because Danes reacted to the increase in prices of selected foods and drinks by purchasing them in Germany and other nearby countries, which suppressed the anticipated health and fiscal impacts of the tax. Based on available information, the Czech Republic is not planning to introduce a similar tax at present.

Jakub Vrkoč
jvrkoc@deloittece.com

Meeting of the Working Group on Economic Migration

On 20 June 2018, Deloitte participated in the meeting of the working group on economic migration along with the representatives of individual ministries as well as economic and business entities involved in formulating migration policy in the Czech Republic. Various topics were debated at the meeting, including an amendment to the Act on the Residency of Foreigners, economic migration projects and possible manners of facilitating immigration processes.

Transposition of the EU directive and an amendment to the Act on the Residency of Foreigners

The amendment to the Residency Act, which is undergoing legislative procedure, and a part of the Act, which is anticipated to take effect already in 2019 (with the other part becoming effective in 2020), shall introduce a number of changes in processes as regards handling requests for the right of residence for third-country nationals.

Changes defined by the EU transposition directive should allow foreign university students and scholars to stay in the Czech Republic for up to nine months after having completed their study or research activity.

Introducing a special long-term work visa valid for a maximum of one year is a welcome change, facilitating the acquisition of foreign employees in selected professions facing the lack of labour in the long term. The acceptance of applications for this type of visa is expected to commence in line with a special governmental decree, ensuring a flexible response to the situation on the labour market, probably without the possibility of extension.

Furthermore, the amendment shall introduce a duty for new foreign nationals residing in the Czech Republic to complete an adaptation and integration course. The foreign national

(unless being subject to an exception) will be required to complete the course within the first year after entering the Czech Republic, otherwise a penalty (of up to CZK 10,000) will be imposed. The course will not be completed with any examination. It is considered that the duty to pay a fee for the course will be imposed directly on the foreign national (or their employer). As a consequence, the capacity of integration centres will be expanded, including accreditation to be also granted to private institutions to offer integration courses.

The amendment shall also introduce a quota for the number of applications received at the Czech Republic's representative offices abroad. On one hand, this may be considered an attempt to control economic migration in the Czech Republic but, on the other hand, it may also serve a basis for increasing the funding provided to representative offices as well as the Department for asylum and migration policy, which handle a constantly increasing number of applications for residence in the Czech Republic. For the time being, the quotas should only apply to the number of applications received abroad rather than to those filed in the Czech Republic.

Economic migration projects

Since 1 July 2018, the Ministry of Industry and Trade has increased the quota for the Fast Track project to 300 applications per year (i.e. 25 applications per month).

With regard to the Ukraine Regime, the period between the inclusion in the regime and filing an application for the employee card at a Czech Republic's representative office abroad has shortened significantly. In June 2018, this period was 52 days.

The Regime for Other Countries intended for applicants from Mongolia and the Philippines, who are a long-term target of Czech employers, will newly include applicants from Serbia from 1 September 2018. The Regime for Other Countries is a combination of the Ukraine Regime in terms of the criteria for including companies and the Ukraine Project as regards the manner of implementation. The annual capacity is 1,000 applicants from Mongolia, 1,000 applicants from the Philippines and 2,000 applicants from Serbia.

Decreasing the administrative burden in immigration processes

The Ministry of the Interior intends to expand the digitalisation of migration projects, including the launch of an online reservation system for making appointments at the Department for Asylum and Migration Policy. The system should be available in additional language versions and enable, in the future, filing applications (especially for EU citizens), finding a reference number, application status etc. Nevertheless, the implementation of this system will take a while (at least five years according to the estimates of the Ministry of the Interior).

Another proposal for improvement relates to either cancelling the disclosure of registered residence address on the foreigner's residence permits completely or replacing it with a designation in travel documents, or a sticker on the residence card. This would release foreign nationals from a duty to apply for a new residence card after each registration of a new address, which would save the applicant's time and money while also reducing the administrative burden of the Department for Asylum and Migration Policy. We anticipate that this issue will be further debated and believe that a balance will be struck between maintaining proper foreigner records and a reasonable administrative burden.

Unfortunately, the Ministry of the Interior stated that a proof of accommodation cannot be excluded from the requirements concerning the first residence permit proceedings as the proof of accommodation is a fundamental security prerequisite protecting the applicant as such and ensuring that the applicant has accommodation immediately after their arrival.

The Ministry further indicated that the possibility of filing the application in the Czech Republic will be available to a limited number employers (no more than 100) and in specific circumstances. The number of employers has not yet been expanded due to the lack of personnel capacities.

The Ministry of Labour and Social Affairs also asserted that testing the labour market does not pose an obstacle in handling employee cards whereby the potential cancellation of the labour market testing would result in modifications of the Employment Act.

Other

In addition, we would like to inform you that on 19 July 2018, the Czech government temporarily discontinued the acceptance of applications for a long-term stay to perform employment and applications for long-term visa to perform business for Vietnamese citizens. According to Jan Hamáček, the Minister of the Interior, this measure was taken for security and administrative reasons.

We will keep you updated on the future developments of the issues discussed above.

Maria Shkaruppa
mshkaruppa@deloittece.com

Jana Michálková
jmichalkova@deloittece.com

European Travel Information and Authorization System

The European Parliament has approved the final agreement to implement ETIAS (European Travel Information and Authorization System) which will primarily affect visa-free visitors to the Schengen area (e.g. tourist or business travelers from US, Canada, Japan, etc.). It is estimated that the new scheme will become operational in 2021. The aim of ETIAS is to strengthen security in the region and to streamline the process of issuing travel authorization to enter the Schengen Area.

Once ETIAS becomes operational, travelers going to the Schengen Area will need to enroll with ETIAS by completing an online form. The information they provide will be cross-checked against several security databases. ETIAS will pre-screen visa-free visitors for potential security problems.

The next step towards the implementation of ETIAS will be for the Council to give official approval. The President of the European Parliament and the rotating Presidency of the Council shall sign the texts into law.

After the implementation of ETIAS, all non-EU citizens will need to enroll with ETIAS before traveling to any of the 26 Schengen countries. The application process will take a matter of minutes and, if approved, the ETIAS travel authorization will be send to the applicant electronically. Travelers will then be able to enter any of the Schengen countries by presenting their ETIAS document along with their passport.

Inka Joslová
ijoslova@deloittece.com

Tax liabilities – September 2018

September		
Monday, 10	Consumption tax	Tax maturity for July 2018 (except the consumption tax on alcohol)
Friday, 14	Intrastat	Submission of statements for intrastat for August 2018, paper form
Monday, 17	Income tax	Quarter tax advance payment
Tuesday, 18	Intrastat	Submission of statements for intrastat for August 2018, electronic form
Thursday, 20	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Tuesday, 25	Value added tax	Tax return and tax for August 2018
		EC Sales List for August 2018
		VAT control statement for August 2018
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for August 2018
	Consumption tax	Tax maturity for July 2018 (only the consumption tax on alcohol)
		Tax return for August 2018
		Tax return for claiming of refund of consumption tax, for example on fuel oil, other petrol (benzine) for August 2018 (if applicable)

Tax liabilities – October 2018

October		
Monday, 1	Value added tax	Deadline for submission of application VAT refund from/to other member state to sec. 82 and sec. 82a VAT Act
	Income tax	Payment of special-rate withholding tax for August 2018
Wednesday, 10	Consumption tax	Tax maturity for August 2018 (except the consumption tax on alcohol)
Friday, 12	Intrastat	Submission of statements for intrastat for September 2018, paper form
Tuesday, 16	Road tax	Advance payment of tax for 3rd quarter 2018
	Intrastat	Submission of statements for intrastat for September 2018, electronic form
Monday, 22	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
Thursday, 25	Lotteries and other similar games	Submission of statement to advanced payment on lotteries and other similar games and payment of advanced payment for 3Q quarter 2018
	Value added tax	Tax return and tax due date for 3Q and September 2018
		EC Sales List for 3Q and September 2018
		VAT control statement for Q3 and September 2018
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for September 2018
	Consumption tax	Tax maturity for August 2018 (only the consumption tax on alcohol)
		Tax return for September 2018
		Tax return for claiming of refund of consumption tax, for example on fuel oil, other petrol (benzine) for September 2018 (if applicable)
Wednesday, 31	Value added tax	Last day of term for submission of application, changes or cancellation of VAT group according to § 95a based on VAT Act with effectiveness of change of group on 1 January 2019
	Income tax	Payment of special-rate withholding tax for September 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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Announcement of the Fourth Public Competition under the TRIO Programme

The already fourth public competition under the TRIO programme supporting applied research and experimental development will be announced on 3 September 2018. The anticipated period for filing applications will be two months and applicants may file a maximum of two applications.

The TRIO programme is designed to support activities in the field of industrial research and experimental development for the purpose of increasing the use of results in these fields. The individual projects are to be realised within one of the following six technology fields:

- Photonics.
- Micro- and nano electronics.
- Nanotechnology.
- Industrial biotechnology.
- Advanced materials.
- Advanced production technologies.

Necessary project requirements include achieving at least one of the following results:

- F – Utility or industrial design.
- G - Prototype, functional sample.
- P – Patent.
- R – Software.
- Z – Pilot operation, proven technology.

The programme supports projects realised in cooperation between enterprises and research organisations. In case the applicant is a large enterprise, it has to be proven in the project plan that the anticipated support will contribute to a realisation of the project in a larger scale or with a higher financial participation of enterprises in the project, or that the support will lead to resolving the project in a shorter time as compared to a situation without provided support. The project duration is limited to 48 months and its solution must not be started prior to the submission of the project plan.

What does the subsidy cover:

- Staff costs or expenses.
- Costs or expenditures on machines, devices and equipment.
- Costs or expenditures on services.
- Additional overheads.

Subsidy provided for one project:

- Max. CZK 20 million.

Aid intensity for one project:

- Maximum 70% of eligible expenses on the whole project and all participants, depending on the type of activities and size of the enterprise.

In comparison with prior public competitions, point scores have changed: the level of the fulfilment of effective cooperation between the enterprise and the research organisation, the incentive effect and professional and economical qualification of applicants will no longer be assessed. However, these criteria will be assessed within binary criteria. On the other hand, point criteria will focus on the technical and utility parameters of the anticipated project results.

Newly Announced Calls under OP PIK 2018

In early August, the Ministry of Industry and Trade released an updated schedule of calls under the Operational Programme Enterprise and Innovations for Competitiveness (OP EIC) for 2018. Compared to the preceding schedule, the dates for announcing calls and deadlines for submitting applications have been specified.

This applies to an earlier date of announcing the Renewable Energy Sources call and the planned deadline for submitting applications for aid. Furthermore, the dates of announcing the Technology for Emerging Entrepreneurs, Cooperation – Clusters, Infrastructure Services – activity a) calls, including the planned deadline for submitting applications for aid, have been moved to a later date. The changes have also affected the Advisory calls – in the regime of the *de minimis* aid for the Science and Technology Park – Integrated Territorial Investments in Brno, Olomouc and Hradec Králové, which have been cancelled, and the ICT and Shared Services – ICT in Enterprises call, which has been cancelled for now. In contrast, Potential – a Technical Call has newly been added.

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 Renewable Energy Sources	Grants for projects for the production and distribution of energy from renewable sources	Ongoing	Czech Republic, outside the capital city of Prague	SME, LE	3 August 2018	From 3 August 2018 To 29 March 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 or in cooperation with SME	15 June 2018	From 1 October 2018 To 15 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 2018 To 27 November 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 or in cooperation with SME	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

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

Please find below a more detailed description of the terms of selected calls in respect of which the period for submitting applications commenced in July or August 2018.

Energy Savings Call IV

Energy Savings – Call IV supports projects focusing on reducing the energy performance of enterprises. Subsidised activities include, for example, reconstructing and modernising facilities generating power for own consumption, reconstructing and modernising power, gas and heat distribution systems with the aim of increasing their efficiency, modernising lighting systems in buildings and on industrial premises, modernising and introducing measurement and regulation systems, installing renewable sources of energy, accumulation of electrical power or cogeneration units using electrical and thermal energy or cold for own consumption.

Who can apply for the subsidy:

- Small, medium-sized and large enterprises.

What the subsidy applies to:

- Tangible fixed assets.
- Intangible fixed assets necessary for the operation of tangible fixed assets.
- Energy assessment.
- Project documentation.
- Costs of organising the tender.

The amount of subsidy per project:

- CZK 300 thousand – CZK 400 million; however, maximally EUR 15 million.
- The subsidy for the energy assessment may amount to CZK 350 thousand at maximum.
- The subsidy for organising the tender may amount to CZK 200 thousand at maximum, depending on the scope of the contract.

The rate of subsidy per project:

- Maximally 50% of eligible expenses for small enterprises.
- Maximally 40% of eligible expenses for medium-sized enterprises.
- Maximally 30% of eligible expense for large enterprises.

The rate of subsidy in respect of the energy assessment, project documentation and organising the tender:

- Maximally 80% of eligible expenses for small enterprises.
- Maximally 70% of eligible expenses for medium-sized enterprises.
- Maximally 60% of eligible expense for large enterprises.

Applications are accepted in the period from:

- 2 July 2018 – 29 April 2019.

It is an ongoing call. The project must be realised in the territory of the Czech Republic, outside the capital city of Prague, whereby the actual place of the project realisation is decisive.

Renewable Energy Sources Call IV

Renewable Energy Sources – Call IV supports projects comprising the generation and distribution of energy from renewable sources. Subsidised activities include the construction and reconstruction of sources of combined production of electricity and heat from biomass and subsequent conducting of heat into a heat exchanger station, the construction, reconstruction and modernisation of small hydropower plants or conducting heat from the existing electricity generating plants.

Who can apply for the subsidy:

- Small, medium-sized and large enterprises.

What the subsidy applies to:

- Tangible fixed assets.
- Intangible fixed assets necessary for the operation of tangible fixed assets.
- Energy assessment.
- Project documentation.

The amount of subsidy per project:

- CZK 250 thousand – CZK 100 million.
- The subsidy for the energy assessment may amount to CZK 350 thousand at maximum.

The rate of subsidy per project, in respect of the energy assessment and project documentation relating to the extraction of heat and biogas from biogas stations:

- Maximally 50% of eligible expenses for small enterprises.
- Maximally 45% of eligible expenses for medium-sized enterprises.
- Maximally 40% of eligible expense for large enterprises.

The rate of subsidy per project, in respect of the energy assessment and project documentation relating to small hydropower plants, cogeneration from biomass and biomass heating plants:

- Maximally 80% of eligible expenses for small enterprises.
- Maximally 70% of eligible expenses for medium-sized enterprises.
- Maximally 60% of eligible expense for large enterprises.

Applications are accepted in the period from:

- 3 August 2018 – 29 March 2019.

It is an ongoing call. The project must be realised in the territory of the Czech Republic, outside the capital city of Prague, whereby the actual place of the project realisation is decisive.

ICT and Shared Services Call IV – Activity: Construction and Modernisation of Data Centres

This call is designed to support projects that aim to modernise or build data centres. This supported activity may be realised maximally in four different places of the project realisation.

Who can apply for the subsidy:

- Small, medium-sized and large enterprises.

What the subsidy applies to:
- Tangible and intangible fixed assets.
- Costs of acquisition of land and structures or their lease.
- Costs of services of advisers, experts, and studies.
- Project documentation costs.

The amount of subsidy per project:
- CZK 1 million – CZK 150 million.

The rate of support per project:
- Maximally 45% of eligible expenses for small enterprises.
- Maximally 35% of eligible expenses for medium-sized enterprises.
- Maximally 25% of eligible expenses for large enterprises.

Applications are accepted in the period from:
- 31 August 2018 – 31 May 2019.

It is an ongoing call. The project must be realised in the territory of the Czech Republic, outside the capital city of Prague, whereby the actual place of the project realisation is decisive. Projects realised in districts with a rate of unemployment higher than the average in the Czech Republic receive bonus points.

ICT and Shared Services Call IV – Activity: Establishment and Operation of Shared Services Centres

The aim of the call is to support projects focusing on the establishment and operation of shared services centres. This supported activity may be realised only in one place of the project realisation.

Who can apply for the subsidy:
- Small, medium-sized and large enterprises.

What the subsidy applies to:
- Labour costs.
- Costs of lease of land and buildings.
- Costs of services of advisors, experts, and studies (applies only to small and medium-sized enterprises).
- Tangible and intangible fixed assets in the "de minimis" regime.

The amount of subsidy per project:
- CZK 3 million – CZK 100 million.

The rate of subsidy per project:
- Maximally 45% of eligible expenses for small enterprises.
- Maximally 35% of eligible expenses for medium-sized enterprises.
- Maximally 25% of eligible expense for large enterprises.

Applications are accepted in the period from:
- 28 August 2018 – 28 May 2019.

It is an ongoing call. The project must be realised in the territory of the Czech Republic, outside the capital city of Prague, whereby the actual place of the project realisation is decisive. Projects realised in districts with a rate of unemployment higher than the average in the Czech Republic receive bonus points.

Application Call VI

Call VI Application supports projects focusing on the realisation of activities related to industrial research and experimental development that result in specific outcomes in the form of prototypes, industrial design or utility models, tested technologies or software.

Who can apply for the subsidy:
- Small, medium-sized and large enterprises. However, large enterprises may only apply if the project has a positive impact on the environment, or if the main aim of the project is a cooperation of the large company with a small or a medium-sized company on a specific project.

What the subsidy applies to:
- Personal costs (costs related to wages and insurance contributions of researcher employees, technicians etc.).
- Costs of tools, machinery and equipment, in the form of depreciation of tangible fixed assets for the whole period of the project realisation.
- Costs of contractual research.
- Non-investment costs of licences bought or acquired from third parties for the whole period of the project realisation.
- Costs of advisory services related to research and development provided specifically for the purposes of the project.
- Additional overhead and production costs.

The amount of subsidy per project:
- CZK 1 million – CZK 40 million.

The rate of support per project:
- Maximally 70% of eligible expenses for the whole project depending on the size of the enterprise and the type of its activity.

Applications are accepted in the period from:
- 28 August 2018 – 17 December 2018.

It is a call in rounds. The project must be realised in the territory of the Czech Republic, outside the capital city of Prague, whereby the actual place of the project realisation is decisive. Projects realised in districts with a rate of unemployment higher than the average in the Czech Republic receive bonus points.

New Calls of the Operational Programme Environment 2014–2020

The Ministry of the Environment of the Czech Republic together with the State Environmental Fund of the Czech Republic have announced two calls aimed at the support of projects that increase the share of utilisation of material and energy waste. Specifically, these are calls nos. 104 and 114 of the Operational Programme Environment 2014–2020, from priority axis 3 focusing on waste processing.

The aim of call no. 104 is to support projects focusing on building and modernising systems enabling energy recovery of waste, and related infrastructure. The activities supported by the programme include building or modernising systems for hazardous waste management, waste collection yards, sorting lines and crossing lines for the separation of municipal waste and similar waste, modernisation and building of systems and technologies for draining sewage sludge, systems for waste processing, building and modernisation of biogas stations, systems for energy recovery of other waste unsuitable for material use, and systems for heat processing of sludge from sewage water management plants or the production of fuels derived from other waste.

The aim of call no. 114 is to support projects focusing on building and modernising systems for material utilisation of waste.

Applications may be sent by public as well as private entities. The rate of support per project amounts to a maximum of 85 % of the total eligible expenses. The amount of subsidy per project is then limited, extending from CZK 500 thousand (net of VAT) to EUR 50 million (including VAT).

The eligible expenses to which the subsidy applies include:

- Costs of construction work, supplies and related services.
- Acquisition of tangible (equipment) and intangible assets.
- Promotional materials aimed at raising the public awareness of the projects focusing on the systems of separate waste collection.
- Tests and documents related to putting the acquired assets into permanent operation.
- Comprehensive analyses of costs and benefits – for large projects.
- Preparation of an analysis of the potential of waste production.

Applications are accepted in the period:

- From 3 September 2018 to 28 February 2019 – Call no. 104.
- From 3 September 2018 to 2 December 2019 – Call no. 114.

Call no. 104 is a call in rounds with a one-round model of evaluation. Call no. 114 is an ongoing call with a quarterly model of evaluation. Projects realised in the whole territory of the Czech Republic will be supported.

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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New Interpretation of the National Accounting Council on Accruals and Deferrals and Foreign Currency

Today's issue of Accounting News will briefly summarise the main points of Interpretation I-37 of the National Accounting Council 'Accruals and Deferrals and Foreign Currency'.

About the National Accounting Council

The National Accounting Council (the "NAC") is an independent specialist institution promoting professional competencies and ethics in the development of the accounting professions and in respect of the accounting and financing methods. Its members include representatives of significant professional organisations (Czech Chamber of Auditors, Czech Chamber of Tax Advisors, Accountants' Union) and academia (University of Economics).

Its primary mission is to cooperate with the Ministry of Finance, and governmental, legislative and other institutions in drafting legislation and related norms focused on accounting, and to create, update, publish and distribute Czech Accounting Standards and interpretations of the National Accounting Council.

Interpretations of the National Accounting Council

Interpretations express the expert opinions of the National Accounting Council on the practical application of Czech accounting rules. Interpretations are not legally binding. Their aim is to contribute to forming optimal and unified accounting and reporting procedures. They namely concern issues that are not addressed by Czech accounting regulations or not addressed sufficiently, and areas that the accounting practice does not treat in a unified way.

Interpretation I-37 Accruals and Deferrals and Foreign Currency

Interpretation I-37 (hereinafter the "Interpretation") was issued in May 2018 in response to the question whether balances on accruals and deferrals accounts denominated in a foreign currency should be translated to Czech crowns using the exchange rate effective at the balance sheet date.

The Interpretation is based on the presumption that under the Accounting Act, the balances of receivables and payables primarily denominated in a foreign currency are translated to Czech crowns at the balance sheet date using the Czech National Bank's exchange rate effective as of that date, which results in the elimination of any foreign exchange risks.

Accrued expenses and accrued income

The Interpretation stipulates that balances on the accrued expenses and accrued income accounts denominated in a foreign currency must be **translated at the balance sheet date** using the Czech National Bank's exchange rate effective as of that date. This is substantiated in the conclusions of the Interpretation as follows:

"Given that the balance on the Accrued expenses account has a character of a foreign currency payable (an expense denominated in a foreign currency will have to be paid in future periods) and the balance on the Accrued income account has features of a foreign currency receivable (an income denominated in a foreign currency will be collected in future periods), these balances will be subject to the same rules as other foreign currency receivables and payables."

Deferred expenses and deferred income

Balances on the deferred expenses and deferred income accounts **are not translated** at the balance sheet date as the respective cash flows have already been realised. Therefore, these balances are not considered foreign currency receivables and foreign currency payables and do not entail any foreign exchange risk.

Furthermore, the Interpretation includes two illustrative examples demonstrating the recognition of foreign currency transactions on accruals and deferrals accounts.

The complete text of the Interpretation can be found on the National Audit Committee website – www.nur.cz

Source: www.nur.cz

Jitka Kadlecová
jkadlecova@deloittece.com

Invitation to a Seminar

News in Czech Accounting

Prague, Brno, Ostrava, Pilsen and Hradec Kralove

We would like to invite you to Deloitte's traditional autumn seminar focusing on the possible obstacles in preparing financial statements. The seminar will comprise practical examples and tips in the areas where, as advisors and auditors, we come across the most findings. Furthermore, we will discuss the changes to the Czech Accounting Legislation effective as of 1 January 2018. The programme will also include new tax developments and their impact on companies' financial statements.

The seminar is predominantly intended for accountants, economists and financial managers preparing or involved in the preparation of financial statements under Czech accounting legislation and the related tax and legal regulations, and for all of you who want to learn more about Czech accounting and the most recent tax and legal developments.

The seminar is not intended for the employees of companies engaged in accounting advisory.

Seminars will be held in Czech in November and December in Prague, Brno, Ostrava, Pilsen and Hradec Kralove and will be delivered by our professionals.

Dates

Prague:	14 November 2018 and 11 December 2018
Brno:	27 November 2018
Ostrava:	28 November 2018
Pilsen:	5 December 2017
Hradec Kralove:	28 November 2018

More information on:
www.akce.deloitte.cz

Everything You Wanted to Know about IFRS 15 but Were (Not) Afraid to Ask – Part 3

IFRS 15 *Revenue from Contracts with Customers* became effective on 1 January 2018. As the new standard introduces significant changes in revenue recognition in comparison to the existing regulation, we would like to resume our series of articles focusing on IFRS 15 in greater detail.

Our Accounting News of May 2017 discussed the issues relating to the sequence of revenue steps and the application of the portfolio approach.

In September 2017, the Accounting News elaborated on the requirements of IFRS 15 relating to the identification of contracts with customers.

By way of reminder, please note that detailed articles focusing on IFRS 15 were published in the Accounting News of July 2014, October 2014 and December 2016.

Today's issue will look into the **transition provisions of IFRS 15** in greater detail, the reason being that we are often asked what method of transitioning to the new standard is better, what practical expedients may be applied during the transition and how to deal with completed or ongoing contracts.

Transition to the new standard

Appendix C of IFRS 15 provides detailed guidance for entities transitioning to the Standard for the first time. Entities have two options in transitioning to IFRS 15 – a full retrospective approach and a modified approach. Both options are fairly detailed but helpful in providing some relief on the initial application of IFRS 15.

For the purposes of the transition provisions, the **date of initial application** is the start of the reporting period in which an entity first applies IFRS 15. For example, the date of initial application in respect of entities applying IFRS 15 for the first time in the financial statements for the year ending 31 December 2018 will be 1 January 2018.

Method 1 - Full retrospective approach

Entities can apply IFRS 15 retrospectively to each prior reporting period presented in accordance with IAS 8 *Accounting policies, Changes in Accounting Estimates* and *Errors*. Under this option, prior year comparatives are restated, with a resulting adjustment to the opening balance of equity in the earliest comparative period.

IFRS 15 provides the following **optional practical expedients**:

1. For completed contracts (i.e. contracts for which the entity has transferred all of the goods or services identified in accordance with *IAS 11 Construction Contracts*, IAS 18 *Revenue* and related Interpretations), entities are not required to restate contracts that begin and end within the same annual reporting period. For example, entities first applying IFRS 15 as of the 31 December 2018 year end will not need to restate contracts entered into and completed in 2017.
2. For completed contracts**,** entities are not required to restate contracts that were completed at the beginning of the earliest period presented. For example, for an entity first applying IFRS 15 for a 31 December 2018 year end and presenting comparative information for the year ended 31 December 2017 only, contracts completed by 31 December 2016 do not need to be evaluated.
3. For completed contracts that have variable consideration, an entity may use the transaction price at the date the contract was completed rather than estimating variable consideration amounts in the comparative reporting periods. This means, in particular, that if the consideration had ceased to be variable by the time the contract was completed (which is the case for many, but not all, contracts), the transaction price can be based on the amount that was ultimately payable by the customer. For example, for contracts completed prior to 31 December 2017, entities first applying IFRS 15 as of the 31 December 2018 year end may base earlier revenue figures on the consideration (including any variable consideration) that was ultimately payable (or at least the estimate of the variable consideration as of the date on which the contract was completed) rather than estimate the variable consideration at earlier dates.
4. For contracts that were modified before the beginning of the earliest period presented, an entity is not required to apply the requirements for contract modifications separately to each earlier modification. Instead, an entity shall reflect the aggregate effect of those modifications when
   (i) Identifying the satisfied and unsatisfied performance obligations;
   (ii) Determining the transaction price; and
   (iii) Allocating the transaction price to the satisfied and unsatisfied performance obligations.

   For example, entities first applying IFRS 15 as of the 31 December 2018 year end and presenting comparative information for the year ended 31 December 2017 only, will, in respect of each of the requirements listed above, account for a contract that was modified one or more times before 1 January 2017 as though all modifications had been part of the contract as originally agreed. Please note that any modifications after 1 January 2017 would need to be accounted for individually.
5. For all reporting periods presented before the date of initial application, an entity need not disclose

the amount of the transaction price allocated to the remaining performance obligations and an explanation of when the entity expects to recognise that amount as revenue. For example, entities first applying IFRS 15 as of the 31 December 2018 year end will not be required to make any disclosures about the performance obligations remaining as of 31 December 2017 in respect of contracts yet to be completed as of that date.

If used, the practical expedients should be applied consistently to all prior periods presented and disclosure should be made as to which expedients have been used. To the extent reasonably possible, a qualitative assessment of the estimated effect of applying each of those expedients should be provided.

Method 2 - Modified approach

Under the modified approach, entities can apply IFRS 15 only from the date of initial application. If they opt to do so, they will need to adjust the opening balance of retained earnings (or another component of equity, as appropriate) at the date of initial application (i.e. 1 January 2018), but they are not required to adjust prior year comparatives. This means that they do not need to consider contracts that had been completed prior to the date of initial application. In broad terms, the figures for comparative periods will remain on the previous basis. When using this approach, entities can elect to apply IFRS 15 retrospectively only to contracts that are not completed contracts at the date of initial application.

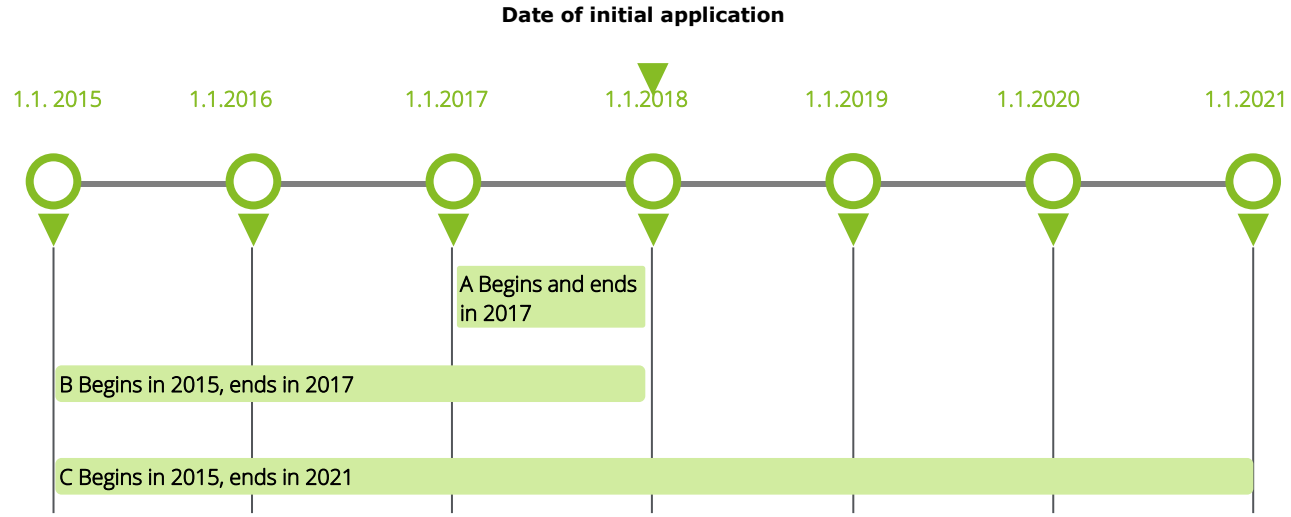
Additionally, entities applying the modified approach may use the practical expedient in respect of contract modifications that is available for entities applying the full retrospective approach either for:

- All contract modifications that occur before the beginning of the earliest period presented; or
- All contract modifications that occur before the date of initial application.

If the modified approach is used, entities must disclose the amount by which each financial statement line item is affected in the current reporting period as a result of applying IFRS 15, including an explanation of the reasons for the significant changes between the results reported under IFRS 15 and the previous revenue guidance followed.

Example

Assume December 31 Y/E. Assume 1 year of comparatives only.



Method 1	Full retrospective approach
Contract A	Begins and ends in same annual reporting period and completed before the date of initial application - Practical expedient available
Contract B	Adjust opening balance of each affected component of equity for the earliest prior period presented (1January 2017)
Contract C	Adjust opening balance of each affected component of equity for the earliest prior period presented (1January 2017)

Method 2	Modified approach
Contract A	Contract completed before the date of initial application - Do not apply IFRS 15
Contract B	Contract completed before the date of initial application - Do not apply IFRS 15
Contract C	Adjust opening balance of each affected component of equity at date of initial application. Disclose information per paragraph 134.2

Source: Deloitte's guide to IFRS 15
www.iasplus.com

Jitka Kadlecová
Jkadlecova@deloittece.com

IFRS EU Endorsement Process

The European Financial Reporting Advisory Group (EFRAG) updated its report showing the status of endorsement of each IFRS, including standards, interpretations, and amendments, most recently on 15 August 2018.

As of 27 August 2018, the following IASB pronouncements are awaiting European Commission endorsement for use in the EU:

Standards

- IFRS 14 *Regulatory Deferral Accounts* (issued in January 2014) - the European Commission has decided not to launch the endorsement process of this interim standard and to wait for the final standard
- IFRS 17 *Insurance contracts* (issued in May 2017)

Amendments

- Amendments to IFRS 10 and IAS 28 *Sale or Contribution of Assets between an Investor and its Associate or Joint Venture* (issued in September 2014)
- Amendments to IAS 19 *Plan Amendment, Curtailment or Settlement* (issued in February 2018)
- Amendments to IAS 28 *Long-term Interests in Associates and Joint Ventures* (issued in October 2017)
- *Annual Improvements to IFRS Standards 2015–2017 Cycle* (issued in December 2017)
- *Amendments to References to the Conceptual Framework in IFRS Standards* (issued in March 2018)

Interpretation

- IFRIC 23 *Uncertainty over Income Tax Treatments* (issued in June 2017)

Click here for the Endorsement Status Report

Jitka Kadlecová
Jkadlecova@deloittece.com

Invitation to Autumn Seminars

IFRS News 2018

We would like to invite you to Deloitte's autumn webcast on International Financial Reporting Standards (IFRS).

From the comfort of your office, you will gain a full and lightning-quick overview of new and amended standards. We will give you a short summary of the nature of changes to enable you to identify whether the changes affect your company. You will also learn how much time is left for their potential implementation.

In the webcast, you will have an opportunity to ask questions.

This on-line seminar will not cover in detail the new IFRS 9 *Financial Instruments*, IFRS 15 *Revenue from Contracts with Customers*, and IFRS 16 *Leases*, which will be the topics of specialised seminars organised in the autumn.

The webcast is predominantly intended for accountants, economists and financial managers working on projects relating to IFRS and for all who want to know more about IFRS.

The webcast will be held in the Czech language and will be delivered by our professionals.

Date

- 16 October 2018 from 10 to 11 a.m.

More information is available at:
www.akce.deloitte.cz

IFRS 16 for Advanced Users

We would like to invite you to Deloitte's autumn seminar on International Financial Reporting Standards, this time dedicated to new IFRS 16 *Leases*. IFRS 16 replaces IAS 17 *Leases* and the related interpretations and will be effective for the reporting periods starting on 1 January 2019. The new standard introduces major changes in terms of lessees as operating leases will newly be recognised in the balance sheet.

We will follow up on our seminar *IFRS 16 – the New Leases* Standard, which was held last December and this May. This time, we will place a greater focus on the problematic areas that will require a greater degree of judgement in applying the new standard. More detailed attention will also be given to the different expedients that may be used during the transition to the new standard.

You will learn how to prepare for the implementation of the standard and what new disclosures will need to be made in the notes.

We will be happy to answer any of your questions, for which there will be sufficient time.

The seminar is predominantly intended for accountants, economists and financial managers of projects relating to IFRS and for all who want to know more about IFRS.

The seminar will be held in Prague in the Czech language and will be delivered by our professionals.

Date

- Prague: 6 November 2018

More information is available at:
www.akce.deloitte.cz

Most Frequent Errors in Financial Statements Prepared under IFRS

We would like to invite you to Deloitte's autumn seminar on International Financial Reporting Standards (IFRS), this time dedicated to the errors that we most frequently encounter in auditing the annual accounts of our clients and that often recur in the financial statements. We will also focus on missing disclosures in the notes.

In addition, we will provide you with an overview of the standards and interpretations effective for reporting periods starting on or after 1 January 2018. We will address how the implementation of the new standards IFRS 9 *Financial Instruments* and IFRS 15 *Revenue from Contracts with Customers* should be reflected in the financial statements for the year ended 31 December 2018.

We will also present the possible approaches to the transition to IFRS 16 *Leases*, which will become effective on 1 January 2019.

We will be happy to answer any of your questions, for which there will be sufficient time.

The seminar is predominantly intended for accountants, economists and financial managers of projects relating to IFRS and for all who want to know more about IFRS.

The seminar will be held in Prague in the Czech language and will be delivered by our professionals.

Date

- Prague: 21 November 2018

More information is available at:
www.akce.deloitte.cz

FASB issued two amendments to the new leasing standard

On 30 July 2018, the FASB issued ASU 2018-11 to provide entities with relief from the costs of implementing certain aspects of the new leasing standard, ASU 2016-02 (codified as ASC 842). In addition, on 19 July 2018, the FASB issued ASU 2018-10, which made 16 separate minor amendments to ASC 842.

Key Provisions of ASU 2018-11

Scope

The scope of the amendments in the ASU is as follows:

- **Transition Relief (Issue 1)** — These amendments, which allow entities to report the comparative periods presented in the period of adoption under ASC 840, affect all entities with lease contracts that elect not to restate their comparative periods in transition.
- **Lessor Relief (Issue 2)** — These amendments, which give lessors the option of electing, as a practical expedient by class of underlying asset, not to separate the lease and nonlease components of a contract, only affect lessors whose lease contracts meet certain criteria (discussed below).

Note that while the Issue 1 amendments may benefit both lessees and lessors, the Issue 2 amendments will benefit only lessors.

Transition Relief (Issue 1)

ASC 842 originally required all entities to use a "modified retrospective" transition approach that is intended to maximise comparability and be less complex than a full retrospective approach. (See A Roadmap to Applying the New Leasing Standard for further discussion of the effective date and transition guidance in ASC 842.)

Under the modified retrospective approach, ASC 842 is effectively implemented as of the beginning of the earliest comparative period presented in an entity's financial statements. That is, a public business entity for which the standard becomes effective on January 1, 2019 would first apply ASC 842 and recognise an adjustment for the effects of the transition as of January 1, 2017 (i.e., the date of initial application).

ASU 2018-11 amends ASC 842 so that entities may elect not to recast their comparative periods in transition (the "Comparatives Under 840 Option"). The ASU allows entities to change their date of initial application to the beginning of the period of adoption. Therefore, a public business entity with a calendar year-end could elect to have a date of initial application of January 1, 2019.

In doing so, the entity would:

- Apply ASC 840 in the comparative periods.
- Provide the disclosures required by ASC 840 for all periods that continue to be presented in accordance with ASC 840.
- Recognize the effects of applying ASC 842 as a cumulative-effect adjustment to retained earnings as of January 1 2019.

The entity would not:

- Restate 2017 and 2018 for the effects of applying ASC 842.
- Provide the disclosures required by ASC 842 for 2017 and 2018.
- Change how it applies the transition requirements, only when it applies the transition requirements.

> *Note: ASC 840 Disclosures Required in the Comparative Periods*
> *In response to the discussion at its March 7, 2018 meeting, the Board revised the language in ASU 2018-11 to clarify that an entity must provide the ASC 840 disclosures for all periods that are presented in accordance with ASC 840. As part of this requirement, the entity must apply the guidance in ASC 840-20-50-2(a) (commonly referred to as the "five-year table") as of the latest balance sheet presented. Further, the ASU indicates that the latest balance sheet date presented should be the latest balance sheet date presented under ASC 840 (e.g., December 31, 2018, for a public business entity with a calendar year-end). Therefore, for a public business entity with a calendar year-end, the ASC 840-20-50-2(a) five-year table as of December 31, 2018, will be presented in the annual financial statements for the year ended December 31, 2019. Also, paragraph BC14 of ASU 2018-11 indicates that the ASU does not change, or create additional, "interim disclosure requirements that entities previously were not required to provide."*

Effective Date and Transition of Issue 1

The transition relief amendments (Issue 1) in the ASU apply to entities that have not yet adopted ASC 842. Entities that have early adopted ASC 842 cannot elect the Comparatives Under ASC 840 Option.

Lessor Relief (Issue 2)

ASU 2016-02, as initially issued, required lessors to separate lease and nonlease components in all circumstances. Under this requirement, once separate components are identified, lessors are required to use the relative stand-alone selling

price allocation method in ASC 606 to allocate the consideration in the contract to the separated components. ASC 842 (including the presentation and disclosure guidance) applies to the lease component, while other guidance, typically ASC 606 (including the presentation and disclosure guidance), applies to the nonlease component.

As a result of stakeholder feedback indicating that the costs of complying with the separation and allocation requirements for lessors outweigh the benefits, ASU 2018-11 amends ASC 842 to include a practical expedient under which lessors are not required to separate lease and nonlease components.

> *Note: Practical Expedient Creates Greater Alignment Between Lessee and Lessor Accounting*
> *ASU 2018-11 aligns the lessor's accounting for the separation of lease and nonlease components with that for lessees. Unlike lessors, lessees have always been able, under ASC 842, to elect a practical expedient under which they can choose not to separate (and allocate consideration to) lease and nonlease components (see ASC 842-10-15-37). However, lessees do not have an option of accounting for the combined component under ASC 842 or other U.S. GAAP. A lessee's combined component must always be accounted for under ASC 842. Both lessors and lessees may now elect to account for the nonlease components in a contract as part of the single lease component to which they are related. Note that this election is an accounting policy election that must be made by class of underlying asset.*

Criteria for Combining Lease and Nonlease Components

A lessor may elect to combine lease and nonlease components provided that the nonlease component(s) otherwise would be accounted for under the new revenue guidance in ASC 606 and both of the following conditions are met:

- Criterion A — the timing and pattern of transfer for the lease component are the same as those for the nonlease components associated with that lease component.
- Criterion B — the lease component, if accounted for separately, would be classified as an operating lease.

The ASU also clarifies that the presence of a nonlease component that is ineligible for the practical expedient does not preclude a lessor from electing the expedient for the lease component and nonlease component(s) that meet the criteria. Rather, the lessor would account for the nonlease components that do not qualify for the practical expedient separately from the combined lease and nonlease components that do qualify.

Determining Which Component Is Predominant

As with the lessee practical expedient, the FASB originally proposed that a lessor should always be required to account for the combined component as a lease under ASC 842. However, on the basis of feedback it received, the Board revised the final ASU to require an entity to perform another evaluation to determine whether the combined unit of account is accounted for as a lease under ASC 842 or as a revenue contract under ASC 606. Specifically, an entity should determine whether the nonlease component (or components) associated with the lease component is the predominant component of the combined component. If so, the entity is required to account for the combined component in accordance with ASC 606. Otherwise, the entity must account for the combined component as an operating lease in accordance with ASC 842.

Disclosure Requirements

A lessor must disclose the following by class of underlying asset:

1. that it has elected the practical expedient,
2. the class(es) of underlying asset for which the election was made,
3. the nature of the items that are being combined and any nonlease components that were not eligible for the practical expedient, and
4. which standard applies to the combined component (i.e., ASC 842 or ASC 606).

Effective Date and Transition of Issue 2

For entities that have not yet adopted ASU 2016-02, the effective date of the lessor relief practical expedient (Issue 2) is aligned with the new leasing standard's effective date and transition requirements. That is, the expedient's effective date is as follows:

- *Public business entities* — Fiscal years beginning after December 15, 2018, and interim periods within those fiscal years.
- *All other entities* — Fiscal years beginning after December 15, 2019, and interim periods within fiscal years beginning after December 15, 2020.

Entities that early adopted ASU 2016-02 before the issuance of ASU 2018-11 may apply the lessor practical expedient to all new and existing leases either retrospectively or prospectively and may elect to apply it as of either (1) the lessor's first reporting period after the issuance of the ASU or (2) the mandatory effective date of ASC 842 (i.e., January 1, 2019, for calendar-year-end public entities). For example, an entity that has early adopted ASU 2016-02 and elects the practical expedient may decide not to recast past periods already presented under ASC 842, thereby choosing prospective application.

Upon transition to ASU 2018-11, a lessor electing the practical expedient would be required to apply it to all new and existing transactions within a class of underlying assets that qualify for the expedient as of the date elected. That is, a lessor would not be permitted to apply the practical expedient only to new or modified transactions within a class of underlying assets.

Key Provisions of ASU 2018-10

ASU 2018-10 (issued on July 19, 2018) makes 16 narrow-scope amendments (i.e., minor changes and clarifications) to certain aspects of the new leasing standard (i.e., ASC 842). For more information on these amendments, see the IASPlus website.

The effective date of the amendments in ASU 2018-10 is aligned with that of ASU 2016-02. For entities that have early adopted ASC 842, the ASU is effective upon issuance and has the same transition requirements as those in ASC 842.

Zdroj:www.iasplus.com

Gabriela Jindřišková
gjindriskova@deloittece.com

Contacts

Should you have any questions regarding the matters outlined in this publication, please reach out to your contact person from Deloitte's Audit function, Deloitte's technical desk at CZ_TechnicalDesk@deloittece.com or one of the following specialists:

Czech Accounting
Jarmila Rázková
jrazkova@deloittece.com

IFRS and US GAAP
Martin Tesař
mtesar@deloittece.com
Soňa Plachá
splacha@deloittece.com
Gabriela Jindřišková
gjindriskova@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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The Expiry of the Deadline for Entries to Be Made in the Register of Data on Beneficial Owners is Approaching

The Amendment to Act No. 304/2013 Coll., on Public Registers of Corporate Entities and Natural Persons effective from 1 January 2018 has introduced the Register of Data on Beneficial Owners (hereinafter the "Register"). Pursuant to the Amendment, all corporate entities recorded in the Commercial Register shall record their beneficial owners in this Register by 1 January 2019. Other corporate entities recorded in other public registers (including trusts) are obliged to make an entry in the Register by 1 January 2021. As such, what are the particular steps to be taken, how complicated is the procedure and what issues can be caused by this?

Who is the Beneficial Owner?

Pursuant to Section 4 (4) of Act No. 253/2008 Coll., on Certain Measures for the Prevention of Money Laundering and Terrorist Financing (hereinafter the "**AML Act**"), the beneficial owner is defined as a natural person who is factually or legally enabled to directly or indirectly exercise controlling influence over a corporate entity, a trust, or another legally-organised entity without a legal personality status. As such, the beneficial owner is always a specific natural person (or multiple natural persons). Moreover, the AML Act stipulates matters that may indicate the beneficial owner. However, the fulfilment of these matters does not necessarily have to mean that a particular individual is a beneficial owner. Therefore, it shall always be assessed whether the given individual is enabled to exercise a controlling influence or not.

Companies are obliged to identify their beneficial owners and record topical information that enables the identification and verification of the identity of the given beneficial owner, including information on matters establishing the position of the beneficial owner and/or other types of substantiation as to whether the given individual is deemed a beneficial owner.

Keeping Records on Beneficial Owners

The Register was established pursuant to a requirement arising from the Fourth AML Directive on maintaining beneficial ownership data in central registers, the goal of which is having in place up to date and accurate information on the ultimate recipients of funding. Such data shall be principally accessible for government authorities, financial intelligence units and liable parties when implementing measures for client verification purposes. This is due to the fact that under complex corporate relationships, beneficial owners can be easily disguised.

The Register is a non-public one. The information on beneficial owners is neither disclosed in addition to copies of statements from public registers, nor is it made publicly available. The Register can be accessed by a limited, yet relatively broad group of parties. In addition to governmental bodies, this principally includes the representatives of so called liable parties who are obliged under the AML Act to ensure the verification of beneficial owners (this particularly means banks and other financial institutions).

It shall be noted that by having made the first entry in the Register, the whole process is definitely not completed. The Register records shall be up to date and accurate.

What Are the Consequences of Failing to Record Beneficial Owners in the Register?

Corporate entities which fail to record and provide evidence on the information on their beneficial owners in the Register by 1 January 2019 are currently not facing any direct sanctions. However, they may face problems when applying for financial services, as pursuant to the AML Act financial institutions are obliged to verify their clients, which also includes identifying and verifying beneficial owners. Therefore, in the event of performing the verification procedures and revealing information discrepancy (or non-availability) by financial institutions, obtaining a particular banking product or service may become complicated.

The corporate entities in question may face additional issues when bidding for public contracts or when applying for EU grants.

According to Act No. 134/2016 Coll., on Public Procurement, the ordering parties under public tenders should be able to obtain information on beneficial owners from the Register. Therefore, if no information is in place in the Register or if it contradicts the beneficial owner information declared in another way, the chances of succeeding in the tender will be lower for the given corporate entity.

Pursuant to the notice published on the website of the Czech Ministry of Industry and Trade by the managing body of the Operational Programme "Entrepreneurship and Innovation for Competitiveness", the calls published since June 2018 have included a criterion requiring that the applicants for grants under individual programmes exclude entities whose beneficial owner has not been recorded in the Register as of the date on which the grant application is filed.

Is It Hard to Make an Entry in the Register?

For some corporate entities with simple ownership structures, it will not be complicated to define the beneficial owner and record it in the Register. However, in our day-to-day business we encounter ownership structures, adjustments in voting rights of corporate bodies, and the like, which make it hard even for the companies themselves to define their beneficial owners seamlessly (this does not necessarily have to apply solely to large companies). This is due to the fact that the definition of the beneficial owner, which is very clear at first sight, bears many problems in legal terms.
For instance, this may typically include companies with ownership structures in which foreign corporate entities participate.

Attention shall be paid by companies operating in multiple countries, as similar registers and obligations may exist abroad (principally in the EU), where however, the definition of the beneficial owner may vary, due to which also other types of entities may be recorded in such registers.
For instance, according to US legislation, entities holding no less than 10% of voting rights qualify as beneficial owners, whereas in most EU countries, this applies to entities holding 25% of voting rights.

Radek Musílek,
Advokát, Ambruz & Dark Deloitte Legal, s.r.o., advokátní kancelář
rmusilek@deloittece.com

Vladimír Cupal,
Forensic, Deloitte Advisory, s. r. o.
vcupal@deloittece.com

Contacts

If you are interested in obtaining additional information regarding the services provided by Deloitte Czech Republic, please contact our legal specialists:

Ambruz & Dark Deloitte Legal, s. r. o., advokátní kancelář
Nile House Karolinská 654/2
186 00 Prague 8 - Karlín
Czech Republic
Tel.: +420 246 042 100
www.deloittelegal.cz

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