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dReport: January 2019

Leaf through the regular overview of tax, legal and accounting news, get up to speed on subsidy and investment incentives developments.

Contents

The tax package approved by the Chamber of Deputies

The Chamber of Deputies has approved the tax package as part of third reading today.

The tax package has been approved in a wording reflecting several amending motions. Some of the approved changes in **income taxation** include:

- Change in research and development tax relief;
- Increase in the expense charge-off flat rate for sole traders (OSVČ);
- The possibility of reflecting IFRS impacts already in the 2019 taxation period (financial institutions); and
- Change in the withholding tax limit to an amount relevant for health insurance payments.

As part of the tax package, a technical **amendment to the VAT Act**, including a series of amending motions, has been approved. If no additional changes are made to the wording of the amendment in the follow-up legislation process, the key changes in the VAT Act are expected to affect the following areas:

- Guidance on taxing vouchers (single-purpose and multi-purpose vouchers);
- New provisions on the date of taxable supply (ancillary supplies to leases, long-term supplies);
- Rules for delivering tax documents;
- Finance lease definition (effective from 2020);
- Lease of real estate and taxation option restriction (effective from 2021);
- Guidance on VAT deduction in respect of real estate repairs;
- VAT deduction claim upon registration;
- Determination of the place of supply on electronically-provided services; and
- Decrease in the VAT rate upon heat delivery.

The tax package is to be subsequently voted on in the Senate and signed off by President. The **general effectiveness of these changes (with the exceptions noted above) will occur on the first day of the month following the month in which the amendment is published in the Collection of Laws (unless specifically stipulated otherwise).**

We keep monitoring the further development.

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Public Consultation on Virtual Currencies

We would like to draw your attention to an initiative of the Ministry of Finance (MF) which has raised the topic of cryptocurrencies, or virtual assets, and the blockchain technology.

We have received a document from the MF of approximately 30 pages summarising the MF's findings and views concerning blockchain and related topics. The document aims to solicit the opinions of experts as regards opportunities for the legal regulation of virtual assets and the use of blockchain technology for the record-keeping of book-entry securities. The document comprises a technical part, a summary of applicable legislation in the Czech Republic and abroad and an overview of the MF's further course of action. Each part summarises the MF's attitude, or expertise, including a question as to whether any objections have been raised by experts.

If you are interested in this topic or would like to comment on it, the respective document is available here.

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Amendment to the Act on the Residence of Foreign Nationals

The amendment to the Act on the Residence of Foreign Nationals has been under discussion since June 2018. We have previously informed you about the amendment to the Act on the Residence of Foreign Nationals submitted by the government and the essential changes proposed by the amendment.

The draft bill includes the transposition of the EU directive which simplifies the residence of foreign students and research workers on the territory of the individual member states and additionally regulates – among other things – the setting of quotas for economic migrants and obligatory adaptation-integration courses for certain foreign nationals in the Czech Republic. Now we bring you the latest news concerning the development of the legislative process and a summary of other changes proposed in the Chamber of Deputies.

In early December 2018, the last debate regarding the draft bill took place in the Lower Chamber, and at present we are waiting for the opinion of the relevant departments that focus on the matters of residence of foreign nationals, which is related to the delay of the entry into force. The **following changes to the Act have been proposed as part of the legislative process:**

- It has been proposed to strike out the institute of the so-called extraordinary work visa due to the foreign national's inability to settle in the Czech Republic and obtain certain rights here, inability to bring family to the Czech Republic (albeit temporarily), work uncertainty and due to the lack of guarantee from employers that they will be able to continue employing the trained and vetted foreign worker for more than one years.
- A fee has been proposed for the obligatory participation in the adaptation-integration course. The course should become obligatory from 2021; the Ministry of the Interior will be able to grant exemptions from the obligatory participation in the course for reasons meriting special consideration.
- The yearly number of visa applications for residence over 90 days for the purpose of business and for the employee card should be spread out evenly in each calendar month based on a Government Decree, in the category of government-approved programmes and in the category of other applications. If the maximum number of applications at the respective embassy is reached, the applications submitted beyond the limit set for the relevant category will be unacceptable, even if the maximum number of applications in another category has not been attained. The applicant will therefore be able to apply for a different kind of residence permit. The quotas will not concern the institute of the intra-company employee transfer card and the blue card, but the current functional projects of economic migration within the responsibility of the Ministry of Industry and Trade will be included.
- It has also been proposed to cancel the fee for processing requests for appointment for submitting an application for long-term visa and long-term residence in person at embassies, and to cap the fees for submitting an application both at embassies and in the Czech Republic.
- In addition, there is criticism for the proposal stipulating that required documents are to be submitted only in paper form, since this circumvents the case law of the Supreme Administrative Court (cf. e.g. ruling no. 1 Azs 339/2017–52) and encumbers the proceedings at embassies with requirements that go completely against the development of modern technologies and the e-government strategy.
- Another proposal requires the applicant for an employee card collecting the residence card to prove that they are already employed by a specific employer. The objective of this proposal is to prevent situations where the foreign national arrives in the Czech Republic and then fails to start working for the employer at the job position for which the employee card should be issued. It often happens in practice that the employer is unaware that the foreign national has arrived in the Czech Republic and the employer therefore cannot comply with the legal obligation of reporting the foreign national to the Labour Office. The foreign national subsequently uses the obtained employee card to transfer to another employer, or misuses it for other purposes (e.g. illegal work).
- The holder of an employee card should now be required to report a change of employer, work placement or employment at another job position with the same or different employer to the Ministry within 30 days before the change occurs, and no sooner than six months after the entry into force of the decision to issue an employment card. The Ministry shall inform the foreign national and the future employer within 30 days of the receipt of the announcement whether the conditions required for the change of employer, work placement or employment at another job position with the same or different employer have been met and whether the foreign national may be employed at this job position.
- The proposal also strikes out the item concerning the reported address location in the residence card. The foreign national would continue to be required to report

- changes in address, but the current address would be entered in information systems and travel documents. This would save administrative work related to the changes of biometric cards (including the fee).
- The obligation to keep copies of documents proving the existence of employment relation at the workplace in the Czech Republic would also concern a foreign employer that has assigned its employee to perform work in the Czech Republic, and the documents that fulfil this obligation have to be translated into Czech. The information and record-keeping obligation and the obligation to keep copies of documents proving the existence of employment relation at the workplace would thus be transferred to the foreign employer.
- The labour market test before the submission of an application for an employee card or a blue card should be shortened to 10 days.

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Complications in calculating the super-gross salary from January 2019

The President of the Czech Republic signed the amendment to the Income Taxes Act under which employers will have to distinguish a country in which an employee participates in a system of compulsory insurance (social security and health insurance) in calculating prepayments for employment income tax starting from 1 January 2019. The same procedure will apply to tax returns from the 2019 taxation period.

Nothing will change for those participating in the compulsory insurance system in the Czech Republic or a non-European country: the super-gross salary will be calculated as equal to the gross taxable income increased by the Czech compulsory insurance contributions paid by employers, or hypothetical Czech insurance contributions. If your employee is insured in another EU Member State, an EEA state or in Switzerland you will have to adjust the calculation: the super-gross salary will include the compulsory foreign insurance contribution paid by employers.

As Member States have different structures of insurance systems (often consisting of multiple sub-systems) it will be complicated to find out what amount of insurance contribution to include. Insurance rates and calculation methods are different as well. Therefore, the change in salary calculation will require much attention and effort.

This amendment is a draft proposed by deputies for which financial administration has not been prepared at all. Some of you may remember a similar situation, which occurred ten years ago; however, at that time, the method of calculation was so difficult to administer that the Ministry of Finance quickly unified determination of the super-gross salary into a form prevailing to date. Again, financial administration may have serious difficulties in reviewing accuracy of prepayments for employment income tax of employees insured abroad but employers should not rely on weaknesses on both sides. We recommend that you undertake all reasonable efforts to set up your tax prepayment calculations correctly.

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News round up

VAT Rates for public transport

The VAT rate for public transport (trains, buses, cableways) is to be reduced from 15% to 10% with effect from 1 February 2019.

Technical amendment to the VAT Act – passed by the Chamber of Deputies

The Chamber of Deputies passed a technical amendment to the VAT Act in the third reading.

The amendment is anticipated to become effective on the first day of the month following the one in which the amendment was published in the Collection of Laws (with the exceptions listed below). The wording of the amendment will be subsequently considered by the Senate and signed by the President, with the key changes in the VAT Act being expected to affect the following areas (as opposed to the original intentions, the amendment will not modify the existing VAT treatment of the remuneration of statutory executives and members of statutory bodies):

Guidance on taxing vouchers (single-purpose and multi-purpose vouchers)

In the event of single-purpose vouchers, the tax rate (or the fact that the supply is exempt from tax) and the place of supply are known at the date of issue. The issuance and any subsequent transfer of a single-purpose voucher mean the supply of goods or provision of a service to which the voucher relates. Contrarily, the issuance and any subsequent transfer of a multi-purpose voucher (ie a voucher that does not meet the characteristics of single-purpose vouchers) are not considered the supply of goods or provision of a service. The actual delivery of goods or a service on the basis of a multi-purpose voucher is only considered the supply of goods or provision of a service.

Rules for delivering tax documents

Within the deadline for issuing a tax document, the payer is obliged to make an effort which may be reasonably required to deliver the document to the customer. For credit notes, such an effort is directly a prerequisite for the taxpayer to report a decrease in the tax base and VAT (on the other hand, it is no longer necessary to demonstrate to the tax administrator that the credit note has truly been delivered).

New provisions on the date of taxable supply (ancillary supplies to leases, long-term supplies)

Pursuant to the amendment, the date of taxable supply in the event of ancillary supplies to leases (cleaning, security, reception desk services) may refer to the day on which the lessor identified the actual amount to be charged for the service provided. To a certain extent, this is parallel to determining the date of taxable supply for the supplies of heat, cool, electricity, gas and/or water.

In the event of long-term supplies, the date of taxable supply is no later than on the last day of each calendar year following the one in which the provision of such supply commenced.
The amendment additionally stipulates that this rule will not apply where a payment has been received in a 12-month period that gives rise to the payer's duty to declare tax.

Finance lease definition (effective from 2020)

Agreements with the option (rather than the obligation) to purchase the subject of the lease should also meet the finance lease definition on condition that such option actually represents the only economically favourable choice for the lessee.

Lease of real estate and taxation option restriction (effective from 2021)

The existing legislation allows the payer to apply VAT rather than a VAT exemption as regards the lease of any immovable property with the intent of performing the payer's economic activity. Nevertheless, after the amendment has taken effect, the tax will no longer be applicable to the lease of premises intended for permanent housing.

VAT deduction adjustment in respect of real estate repairs

If an immovable property on which a major repair has been completed is subject to a supply exempt from VAT within the deadline for VAT deduction adjustment (10 years), the payer will be required to adjust the VAT deduction which was originally claimed. A major repair is a repair for which the value of all received taxable supplies relating thereto net of tax exceeds CZK 200,000.

VAT deduction claim upon registration

The existing legislation enables a taxable person to utilise a VAT deduction claim in respect of taxable supplies acquired within 12 months prior to the VAT registration date. With respect to fixed assets, the amendment will also allow, inter alia, extending the period to up to five years before the VAT registration date.

Determination of the place of supply on electronically-provided services
Pursuant to the current legislation, the place of supply of services electronically provided to a non-taxable person means the place of establishment of the service recipient. The amendment stipulates that the above-specified rule shall not apply unless the value of such electronically-provided services exceeds EUR 10,000 in the relevant or immediately preceding calendar years. In such a case, the place of supply will be located in the state in which the service provider has its registered office or establishment.

Decrease in the VAT rate upon heat delivery (effective from 2020)

The VAT rate for heat supplies will decrease from 15% to 10%.

Ban on rounding VAT to fifty hellers (effective from the 6th month following the amendment's effective date)

Rounding the amount of VAT disclosed on a tax document to fifty hellers will not be allowed; instead, the amount will need to remain in hellers.

VAT adjustment in respect of bad receivables

The amendment should expand the opportunities of refunding VAT to creditors in the event of bad receivables. The amendment should predominantly remove the required 6-month-period that, according to the current wording, has to pass between the date on which the receivable originated and the date of the court decision on bankruptcy. Besides, it could also be helpful for creditors in practice that declaration of bankruptcy in respect of the debtor's property will no longer be required. It will be sufficient for the receivable to be the subject of an enforcement procedure.

Changing the person declaring VAT with regard to the supplies of goods with assembly

In general, persons not established in the Czech Republic but registered for Czech VAT purposes will newly have to impose tax on the supplies of goods with assembly when it comes to sales to Czech VAT payers.

General reverse-charge regime directive

In late 2018, a directive was ultimately approved, allowing EU Member States to generally apply the reverse-change regime to the local supplies of goods and services for a temporary period provided that specific conditions have been met. The Czech Republic has already applied for this option in a formal manner with the aim of introducing this tax treatment from mid-2020.

Court of Justice of the European Union

In judgments C-552/17 Alpenchalets Resorts and C-422/17 Skarpa Travel, the Court of Justice of the European Union defined surprising rules for applying a special scheme to a travel service. Apparently, the Czech VAT Act partially departs from those rules (taxation of received advances) but, partly, it may also be construed in line therewith (applying the special scheme to the purchase and sale of accommodation without supplementary services).

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Free Trade Between the EU and Japan

The Economic Partnership Agreement (EPA) concluded between the EU and Japan on 17 July 2018 will enter into force on 1 February 2019, which is surprisingly ahead of the planned date.

Based on the agreement, it will be possible to import to the EU the majority of products originated in Japan (almost 96% of the customs tariff sub-items) without any customs duties already from 1 February 2019. Similarly, it will be possible to import as many as 86% of the kinds of products originated in the EU to Japan without any customs duties. It is expected that the agreement will bring to the EU importers savings on customs costs namely in the area of import of chemical or electric products as well as cars and their parts.

The EPA is a comprehensive trade agreement. In addition to the free trading of goods, the agreement also focuses on the harmonisation of standards such as certification for personal vehicles and agricultural products, liberalisation and simplification of mutual trading with services, and enhancing investment opportunities between the EU and Japan by enabling mutual access to public contracts, protection of intellectual property rights, or the issue of medium sized enterprises.

The free trading of goods will be based on the **preferential origin of goods**, as is the case with other similar agreements. In this area, the agreement with Japan has numerous specifics related to both the evidencing of the preferential origin of goods and the wording of the rules of origin as such. Given those specific features we recommend that you pay appropriate attention to the given issue to ensure you can exploit the benefits arising from the agreement properly and in a timely manner. Incorrect application of the preferential origin may result in difficulties for EU exporters and subsequently, their Japanese customers. Analogically, an incorrect application of rules on the side of your Japanese supplier may have an adverse impact on your company importing the given goods to the EU.

Should you have any doubts in this respect, we recommend that you also focus on the tariff classification of goods as the assessment of the preferential origin of goods is mainly derived therefrom.

Should you need any clarification or assistance in this area we will be pleased to help you.

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Changes in the Implementation of Double Tax Treaties Applicable From 2019 Onwards

On 1 January 2019, the new Treaty for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital that the Czech Republic signed in 2016 with Turkmenistan will start to be implemented.

The principal concepts of the treaty include:

- A time limit for forming a permanent establishment of 12 months for construction projects and 6 months for services;
- Withholding tax on passive income of 10 % at maximum (exceptions apply to interest); and
- Application of the credit method in respect of double taxation.

Furthermore, from the New Year onwards, the most-favoured-nation clause treatment will be applied in relation to the Treaty for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital between the Czech Republic and Chile (specifically Section 11 (7) of the Treaty which makes it possible to apply more favourable terms based on the treaty signed at a later date between Chile and Japan). As a result, from 1 January 2019 onwards, **provided all the stipulated conditions are met, the rate of 10% of gross interest will be applied between the Czech Republic and the Republic of Chile** for the purposes of Section 11 (2) (b) of the above stated tax treaty.

In this context, the Ministry of Finance has also updated the Summary of Valid Treaties, which is available on its website.

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ECOFIN Discusses Digital Services Tax

One of the agenda topics discussed by the ECOFIN Council during its meeting of 3 December 2018 was the proposal on the taxation of digital services.

Earlier this year, on 21 March 2018, the concept for the taxation of digital services was presented by the European Commission. The concept was based around two directives, that is, 1) a directive stipulating taxable presence in the form of a digital permanent establishment, and 2) the collection of indirect digital services tax (DST) at 3% of the income arising from certain types of digital services.

The origination of a digital permanent establishment in the territory of a particular state could occur if the number of users of a specific digital technology exceeds 100,000 thousand, if the technology generates profits of over EUR 7,000 thousand, and at the same time, the number of contracts for the provision of the given technology concluded with businesses exceeds 3,000. The areas in which DST may be applied include income arising from the sale of online advertising space, income from the sale of data attained in the course of digital activity, and income arising from the mediation of digital activities that enable interaction with other users and that facilitate their trading. The collection of the provisional tax ought to include solely companies with global annual taxable income exceeding EUR 750 million, of which the portion taxable in the EU amounts to EUR 50 million. The aim of these limits is to ensure that the provisional tax does not affect newly established and fast growing companies.

ECOFIN's discussion reflects the proposal presented by Germany and France, according to which indirect DST would be solely a temporary solution effective up to the point at which international consent is achieved (principally at the level of OECD, G7 and G20 countries). Pursuant to Germany's and France's proposal, the directive introducing DST should be approved no later than in March 2019 so that it can become effective from January 2021, unless a multinational solution is identified by then. In the event that a mutual cross-country solution is found prior to 1 January 2021, the implementation of the directive introducing DST will be discontinued and the directive will become null and void starting 2025.

The Czech Republic has been supporting the full scope international solution at the OECD level. Nevertheless, it has also expressed its willingness to continue the negotiations of the motion raised by Germany and France, if DST gets introduced solely for a limited period of time. Conversely, Ireland is one of the countries opposing the proposal of introducing DST. On the other hand, the submitted proposals on taxing income from digital services provoke a number of

speculations as to how the one or the other system would work simultaneously with the currently-valid double taxation treaties and the rules stipulated by national legislations of individual states.

Moreover, the EU is not the only territory where the proposal to introduce an indirect tax on income arising from certain types of digital services has been considered. Similar proposals have been presented, for instance, by Mexico and the United Kingdom (which is soon going to cease being an EU member state). The next ECOFIN meeting is scheduled to take place on 22 January 2019.

We will keep you informed on the developments in the taxation of digital services.

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News round up

European Court upholds Spanish state aid decision

On 15 November 2018, the General Court of the European Union upheld the European Commission's decision in Deutsche Telekom AG that Spanish tax provisions allowing for the amortisation of financial goodwill of foreign acquisitions constituted illegal state aid, even though the advantage which they provide for is accessible to all undertakings liable for corporation tax in Spain.

OECD – BEPS Action 5 Harmful tax practice

On 15 November 2018, the OECD announced updates to the results of the preferential regime reviews of BEPS inclusive framework members carried out by the Forum on Harmful Tax Practices. A total of 246 regimes have now been reviewed by the FHTP, and the results reflect that work is continuing to eliminate harmful tax practices and ensure that preferential regimes are available only to substantial activities that do not pose risks of harmful competition to others. An updated set of conclusions on the reviews is available on the OECD website. OECD also announced a new global standard from the inclusive framework that aims to prevent business activities from being relocated to "no or only nominal tax" jurisdictions to avoid the "substantial activities" requirement that applies to preferential regimes for geographically mobile income.

OECD: MLI-synthesised tax treaty texts guidance

On 14 November 2018, the OECD released guidance on the development of synthesised texts to clarify the impact of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) on existing tax treaties. The OECD announcement on the new guidance notes that the MLI currently covers 84 jurisdictions and that it will enter into effect on 1 January 2019 for 47 tax treaties that have been concluded among the 15 jurisdictions that have deposited their MLI acceptance or ratification instruments thus far.
The "synthesised text" for a tax treaty that will be modified by the MLI (a "covered tax agreement") is intended to be a single document that includes the text of the covered tax agreement, including the text of relevant amending instruments; the elements of the MLI that affect the covered tax agreement as a result of the MLI positions taken by the contracting jurisdictions; and information on the dates on which the MLI's provisions will be effective in each contracting jurisdiction. The guidance sets forth a recommended approach for preparing synthesized texts, as well as some sample language that could be used in synthesised texts. It aims to ensure that governments that wish to clarify the interpretation and application of their covered tax agreements can produce synthesised texts in a consistent way.

UK consults on DST

On 7 November 2018, a consultation was launched on the detailed design and implementation of a DST to be introduced from April 2020. The consultation closes on 28 February 2019. The DST of 2% will be levied on the gross third-party revenues of in-scope digital business activities to reflect the value derived from UK users. The tax will apply to both UK and non-UK resident entities receiving relevant UK revenues. The UK government is committed to discussions at the OECD and international levels and will only apply the UK DST until an international solution is in place. The measure is targeted at businesses that, on a group-wide basis, generate more than GBP 500 million in global revenues from in-scope business activities; and GBP 25 million in revenues from in-scope business activities linked to the participation of UK users ("UK revenues".) Businesses will not pay UK DST on the first GBP 25 million of their UK revenues.

German: downstream merger with foreign shareholders is taxable

On 21 November 2018, Germany's federal tax court (BFH) ruled on the tax consequences of a downstream merger of a German corporation with foreign shareholders, confirming the position of the tax authorities that such a merger generally triggers a taxable capital gain. Tax neutral treatment of a merger is available upon request provided the following conditions are fulfilled: (i) the assets transferred are subject to German taxation at the level of the receiving entity; and (ii) future German taxation of the capital gains from the sale of the assets at the level of the receiving entity is not restricted or limited. Because the conditions for tax neutral treatment of the merger are not fulfilled, the downstream merger triggers German capital gains taxation with regard to the shares in the surviving entity, under which such gains should be 95% tax-exempt, with the remaining 5% subject to the general approximate 30% corporate income tax and trade tax rate.

Netherlands: new tax ruling practice

On 22 November 2018, the Dutch State Secretary of Finance announced significant changes to the international tax ruling practice to apply as from 1 July 2019. The new measures relate to the transparency, procedure and content of rulings of an international nature ("international tax rulings"). Information on rulings currently is exchanged between tax authorities under EU rules and the Netherlands' tax treaties. However, due to an increased emphasis on transparency, the State Secretary has announced that an anonymised summary of all international tax rulings will be made publicly available (modelled on the Belgian practice). It should not be possible to trace any summary back to a specific taxpayer, and the government will safeguard taxpayers' privacy and confidentiality of personal data.

US: new regulations

The US Internal Revenue Service released proposed regulations on 26 and 28 November 2018 respectively, on two provisions of the December 2017 tax reform legislation; the foreign tax credits for businesses and individuals, and limits on the deduction for business interest expenses for certain taxpayers for tax years beginning after 31 December 2017. The legislation made a number of modifications to the foreign tax credit rules for 2018 and subsequent years to reflect the new international tax rules. The deadline for comments on the proposed regulations will be 60 days after they are published in the federal register.

Switzerland: new rulings

As from 1 January 2019, no new rulings will be granted for Swiss principal company regimes that are governed by Circular Letter No. 8 and for Swiss finance branch regimes. Existing rulings for these regimes are scheduled to sunset on 1 January 2020 as part of the Swiss tax reform. In line with Swiss legislative procedures, the final Swiss Tax Reform and AHV Financing bill ("TRAF") bill is subject to a potential referendum (public vote). Such a referendum must be called if at least 50,000 voter signatures requesting a referendum be held are collected before the deadline of 19 January 2019. If a referendum is called, which currently seems likely, a popular vote is scheduled on 19 May 2019. If no referendum is required or the TRAF is approved by a popular vote in May, the Swiss Federal Council will enact all measures of the TRAF, including the sunset of all special tax regimes, as from 1 January 2020.

Ministers have Approved a Proposed Act in the Event of a No-deal Brexit

The proposed act that relates to UK nationals living in the Czech Republic has been approved by the government and sent to the parliament. The government will require that the deputies approve the act in a fast-track procedure during a single reading.

The proposed act introduces a transitional period until the end of 2020, during which the UK nationals would, in the event of a "hard Brexit" – ie, if the United Kingdom left the European Union with no deal in late March 2019 – retain their rights in the Czech Republic as EU nationals in respect of permanent residence permits, entering into marriage, applying for citizenship, supplementary pension insurance, work permits and recognising qualifications. The **proposed act stipulates that UK nationals wishing to lawfully reside in the Czech Republic during the transitional period should apply with the Czech Ministry of the Interior (the Asylum and Migration Policy Department) for a certificate validating their temporary residence in the Czech Republic no later than on 29 March 2019.**

The United Kingdom will leave the European Union on 29 March, following a deal with the EU, for which Prime Minister Theresa May has yet to find sufficient support.

We will keep you informed as the situation develops.

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Computerisation of contact with officials

The Department of Asylum and Migration Policy continues to work on improving the efficiency of electronic communication.

The Ministry of the Interior has already introduced an electronic system for requesting appointments at the Department of Asylum and Migration Policy and it currently strives for its expansion to include other tasks, such as monitoring the status of the application online and – within a few years – the electronic submission of applications, for which the Ministry of the Interior intends to obtain a grant from the European Union. **It will not be possible to use appointments arranged electronically for representing a foreign national based on a power of attorney, i.e. The foreign national will have to attend in person. The** number of officials responding to requests on the telephone information line and by email has unfortunately been reduced.

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Ruling of the Constitutional Court

The Constitutional Court cancelled certain provisions of the Act on the Residence of Foreign Nationals and the Act on Asylum. Following the proposal of a group of 18 senators, the ruling of the Constitutional Court of 27 November 2018, file no. Pl. ÚS 41/17, cancelled certain provisions of the Act on the Residence of Foreign Nationals and the Act on Asylum that were changed by Amendment Act No. 222/2017 Coll.

As for the Act on the Residence of Foreigners, the Constitutional Court has declared Section 169 (1) j) to be unconstitutional. According to this provision, it was possible to discontinue the administrative proceedings on residence permit, if the foreign national who is a family member of a Czech citizen requested the issuance of a temporary residence permit or a permanent residence permit despite not being authorised to stay on the territory of the Czech Republic, or despite having been ordered to leave the Czech Republic by a removal order. According to the legislature, the **objective of this provision was to improve the efficiency of administrative proceedings**, since it does not make sense to continue proceedings on residence permit if the foreign national without a residence permit has left the country.

An additional objective according to the legislature was supposed to be the **regulation of migration**, since this should allow foreign nationals to obtain a short-term residence option.

However, the Constitutional Court has concluded that that as a result of this change, foreign nationals were essentially deprived of the possibility of a court review of whether or not they met the conditions for residence, and they retained only the right to a court review of the materialisation of reasons for discontinuing the proceedings. The Constitutional Court therefore found this provision of the Act on the Residence of Foreign Nationals to be contrary to Article 36 (1) and (2) and Article 10 (2) of the Charter of Fundamental Rights and Freedoms.

In addition, the Constitutional Court cancelled Section 172 (6) of the Act on the Residence of Foreign Nationals and Section 46a (9) and Section 37 (8) of the Act on Asylum. According to these provisions, if the detention of a foreign national or asylum seeker has been terminated, the proceedings on administrative action could be discontinued, since the end of restriction (deprivation) of liberty fulfils the objective set by the action. As a result of this provision, foreign nationals and asylum seekers were deprived of the option to require compensation from the state for illegal deprivation or restriction of liberty and the possibility to require the performance of a full review of the encroachment on fundamental rights and freedoms. Referring in particular to the extensive case law of the European Court of Human Rights, the Constitutional Court cancelled the challenged provisions, especially due to their conflict with Article 36 (1) of the Charter.

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Tax liabilities – February 2019

February		
Monday, 11	Excise tax	Tax maturity for December 2018 (excluding excise tax on alcohol)
Thursday, 14	Intrastat	The Intrastat statement for January 2019, paper version
Friday, 15	Income tax	To make a taxpayer's statement of personal income tax from a dependent activity for the tax year 2019 and to file an application for the annual settlement of advance tax and the tax advantage for the tax year 2018
Monday, 18	Intrastat	The Intrastat statement for January 2019, electronic version
Wednesday, 20	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Monday, 25	Value added tax	Tax return and tax for 4th quarter and for January 2019
		Summary report for 4th quarter and for January 2019
		Control report for 4th quarter and for January 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for January 2019
	Excise tax	Tax maturity for December 2018 (only the excise tax on alcohol)
		Tax return for January 2019
		Tax return for claiming of refund of Excise tax for example on fuel oil and other petrol (benzine) for January 2019 (if applicable)
Thursday, 28	Income tax	Withholding tax payment based on special tax rate for January 2019

Tax liabilities – March 2019

March		
Friday, 1	Income tax	Submission of income tax from employment settlement for taxable period 2018
Tuesday, 12	Excise tax	Tax maturity for January 2019 (excluding excise tax on alcohol)
Thursday, 14	Intrastat	The Intrastat statement for February 2019, paper version
Friday, 15	Income tax	Quarterly advance payment on tax
Monday, 18	Intrastat	The Intrastat statement for February 2019, electronic version
Wednesday, 20	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
		E-submission of income tax from employment settlement for taxable period 2018
Monday, 25	Value added tax	Tax return and tax for February 2019
		EC Sales List for February 2019
		VAT control statement for February 2019
	Excise tax	Tax return for February 2019
		Tax return for claiming of refund of excise tax for example on fuel oil and other petrol (benzine) for February 2019 (if applicable)
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for February 2019
Wednesday, 27	Excise tax	Tax maturity for January 2019 (only the excise tax on alcohol)

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Latest Schedule of OP PIK Calls

The table below presents the latest schedule of the calls already announced under the Enterprise and Innovations for Competitiveness Operational Programme ("OP PIK"), including the deadlines for submitting applications for subsidy in individual programmes.

Programme name	Programme focus	Type of call	Subsidised territory	Types of recipients*	Planned deadline for submitting subsidy applications
'Property' Call III	Subsidy for modernising production premises and renovating the existing obsolete business infrastructure and brownfield sites	Ongoing	Czech Republic outside the capital city of Prague	SME	From 22 October 2018 to 22 May 2019
'Energy Savings in Heat Supply Systems' Call III	Subsidy for renovating and expanding heat supply systems and increasing the efficiency of cogeneration of heat and power	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 11 June 2018 to 31 March 2019
'Energy Savings' Call IV	Subsidy for activities related to final energy consumption savings	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 2 July 2018 to 29 April 2019
'Renewable Energy Sources' Call IV	Subsidy for projects relating to production and distribution of energy generated from renewable sources	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 3 August 2018 to 29 March 2019
'ICT and Shared Services – Establishing and Operation of Shared Service Centres' Call IV	Subsidy for establishing and operation of shared service centres	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 28 August 2018 to 28 May 2019
'ICT and Shared Services – Construction and Modernisation of Data Centres' Call IV	Subsidy for modernisation and establishment of data centres	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 31 August 2018 to 31 May 2019

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

2019 Schedule of OP PIK Calls

Concurrently, the schedule of OP PIK Calls for 2019 has been updated. The table below lists a number of anticipated calls, including the deadlines for submitting subsidy applications in individual programmes.

Programme name	Programme focus	Type of call	Subsidised territory	Types of recipients*	Planned deadline for submitting aid applications
'Innovation' Call VII	Subsidy for the purchase of production technology with the purpose of launching new or innovated products into production and on the market	Ongoing	Czech Republic outside the capital city of Prague	SME, LE with a relation to the environment	From 3 June 2019 to 30 August 2019
'Energy Savings in Heat Supply Systems' Call III	Subsidy for renovating and expanding of heat supply systems, and increasing the efficiency of cogeneration of heat and power	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 3 June 2019 to 27 December 2019
'Application' Call VII	Subsidy for conducting industrial research and experimental development	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 1 September 2019 to 31 December 2019
'Energy Savings' Call V	Subsidy for activities relating to final energy consumption savings	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 2 September 2019 to 30 April 2020
'Technology – Industry 4.0 ' Call XI	Subsidy for non-production technologies and their integration in the production process	Ongoing	Czech Republic outside the capital city of Prague	SME	From 6 December 2019 to 30 April 2020
'ICT in Enterprises' Call VI	Subsidy for acquiring new technology and services in the area of IS/ICT solutions	Ongoing	Czech Republic outside the capital city of Prague	SME, LE	From 1 November 2019 to 1 April 2020

Please find below detailed information on selected calls which are currently published.

Technology

In December, the Ministry of Industry and Trade of the Czech Republic published Call IX within the Technology programme.

Eligible applicants include small and medium-sized enterprises.

Activities subsidised within the call involve acquisitions of new machinery, technology equipment and integration of those technologies into the production process by means of autonomous two-way communication. The subsidy is not intended for pure renewals of the existing machinery with zero degree of innovation.

Subsidies cover tangible and intangible fixed assets.

The level of support per project:

- A maximum of 45% of eligible costs for small enterprises.
- A maximum of 35% of eligible costs for medium-sized enterprises.

The amount of subsidy per project ranges between CZK 1 million and CZK 20 million.

Subsidy applications may be sent from 11 March 2019 to 13 June 2019. This is an ongoing call.

Low-Carbon Technologies

On 30 November, the Ministry of Industry and Trade of the Czech Republic published four calls under the Low Carbon Technologies programme, specifically:

- Energy Accumulation;
- Secondary Raw Materials;
- Electromobility;
- Converting Biogas to Biomethane and injecting it into the network.

Eligible applicants include small and medium-sized and large enterprises and except for the "Electromobility" call also publically-owned entities.

Energy Accumulation – Innovative activities focused on introducing energy accumulation technologies are supported within this call. The aim relates to, for example, machinery and equipment, underground utilities, engineering activities and construction.

The support is provided in the de minimis regime. **The level of support per project is as follows:**

- A maximum of 80% of eligible costs for small enterprises;
- A maximum of 70% of eligible costs for medium-sized enterprises;
- A maximum of 60% of eligible costs for large enterprises.

Subsidy applications may be sent from 3 December 2018 to 31 May 2019. This is an ongoing call.

Secondary Raw Materials

Supported activities within this call include projects focused on introducing innovative technologies to extract secondary raw materials, introducing innovative technologies to produce products from secondary raw materials, effective extraction of valuable secondary raw materials from used products. The subsidy covers, for example, machinery and equipment, underground utilities, engineering activities and construction.

The amount of subsidy per project ranges between CZK 1 million and CZK 100 million. **The level of support per project is as follows:**

- A maximum of 45% of eligible costs for small enterprises;
- A maximum of 35% of eligible costs for medium-sized enterprises;
- A maximum of 25% of eligible costs for large enterprises.

Applications for subsidy may be sent from 3 December 2019 to 31 May 2019. This is an ongoing call.

Electromobility

Supported activities within this call include innovative technologies in the area of low-carbon transportation, ie purchasing an electromobile from supported road vehicle categories and acquiring non-public (rapid) charging stations with a possibility of adding an electromobile accumulator. The subsidy covers, for example, acquisitions of vehicles, machinery and equipment, underground utilities and engineering activities.

The amount of subsidy per project ranges between CZK 50 thousand and CZK 10 million. **The level of support per project is as follows:**

- A maximum of 75% of eligible costs for small enterprises;
- A maximum of 65% of eligible costs for medium-sized enterprises;
- A maximum of 55% of eligible costs for large enterprises.

Subsidy applications may be sent from 3 December 2019 to 31 May 2019. This is an ongoing call.

Converting Biogas to Biomethane and injecting it into the network

Activities supported within this call include technologies for converting biogas to biomethane and injecting it into the distribution network or filling it within the local infrastructure. The subsidy covers, for example, construction project documentation, underground utilities, technologies for converting biogas to biomethane, ancillary budget costs and engineering activities under construction.

The amount of subsidy ranges from CZK 500,000 to CZK 35 million. The provided support will correspond to the difference between eligible expenses and operating profits from investments.

Subsidy applications may be sent from 3 December 2019 to 30 September 2019. This is an ongoing call.

Marketing

In late December, the Ministry of Industry and Trade of the Czech Republic published Call IV within the Marketing programme.

Eligible applicants include small and medium-sized enterprises.

Activities supported within this call involve participation in foreign exhibitions and trade fairs aimed at facilitating the company's access of foreign markets and related services, such as transportation of exhibits, exhibition stand including equipment to and back from the trade fair or exhibition abroad, promotional marketing materials etc.

The subsidy may be provided to no more than 10 participations at foreign trade fairs and exhibitions.

The level of support per project amounts to no more than 50% of eligible expenses. The amount of subsidy ranges from CZK 200 thousand to CZK 4 million.

Subsidy applications may be sent from 1 March 2019 to 31 May 2019. This is an ongoing call.

New Innovative Programmes

TREND programme

The Research, Development and Innovation Council approved a new programme, "TREND", supporting industrial research and experimental development. The programme is patronised by the Ministry of the Industry and Trade of the Czech Republic but will be implemented by the Technology Agency of the Czech Republic.

The programme aims to support implementing the outcomes of industrial research and experimental development into practice and access new markets. New digital technology increasing the degree of automation and robotisation will rank among supported activities. **The programme budget is CZK 15 billion, with the programme duration of eight years.**

Environment for Life

Furthermore, the Research, Development and Innovation Council approved the Environment for Life programme, which is patronised by the Ministry of the Environment of the Czech Republic but will also be implemented by the Technology Agency of the Czech Republic.

The programme aims to respond to the current climate issues. Aid will be provided to projects focusing on air, soil and water protection as well as waste management. **The programme budget is CZK 5 billion, with the programme duration of nine years.**

Extending the effectiveness of regulations governing public support

In 2020, substantial parts of regulations defining the provision of public support shall become ineffective. These regulations contribute to a faster and simpler application of rules for providing public support by individual EU member states. Nevertheless, the European Commission shall extend the effectiveness of those regulations by two years.

Simultaneously, the assessment of those regulations will commence in the form of "fitness check", facilitating the European Commission's decision as to requiring further updates of those rules. The extension primarily relates to the General Block Exemption Regulation (GBER), the De Minimis Regulation and Guidance on State Aid for 2014-2020.

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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

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Recognition of bonuses for work and life jubilees in Czech accounting

Low unemployment and demand exceeding supply of certain professions mean that employers compete in introducing wide portfolios of newly structured benefits in the hope of obtaining the necessary reinforcements for their teams. Traditional benefits are experiencing a renaissance in many companies, helping retain existing employees and strengthen their loyalty. Employee bonuses for work anniversaries and major birthdays are starting to reappear and employers newly offer bonuses to mark the occasion of marriage, birth of a child etc. And questions resurface regarding the correct way to account for these traditional benefits.

Legal framework

Benefits mean compensation in addition to the salary that is regulated either in a collective agreement where a trade union organisation exists, or in an internal policy or the employment or other (e.g. management) contract. The provision of benefits is regulated especially by the Labour Code and their taxation by the Income Taxes Act.

The Labour Code stipulates that the employer can give the employee a bonus especially upon a major birthday or a work anniversary, the end of employment after the granting of third-degree disability pension or after becoming entitled to old-age pension, for the provision of help in the prevention of fire or during natural disasters, their elimination or removal of their consequences or during other extraordinary events where life, health or property may be in danger.[1] These bonuses are discretionary, the employer is not required to give them to employees.

The Income Taxes Act stipulates that the costs of the payment of bonuses for work and life jubilees, if the employees' right to their provision arises from the collective agreement, internal policy of the employer or the employment or other contract, can be included in tax deductible expenses of the employer.[2] Bonuses provided for work and life jubilees regulated by the collective agreement, internal policy or the employment or other contract and provided in monetary or non-monetary form represent taxable income of the part of the employee and insurance payments are levied on them, unless they are provided on occasions listed in Section 14 of Regulation No. 114/2002 Coll., on the Fund for Cultural and Social Needs ("FCSN"), or unless they are provided in non-monetary form as specified in Section 6 (9) d) of the Income Taxes Act. However, the exemption on the part of the employee is possible under the condition that the expenses on the part of the employer are not tax deductible, or that they are provided from the social fund or profit after tax.

Employers may give gifts to employees only from the FCSN, and employers that are not subject to the FCSN regulations may give gifts from the social fund, from profit after tax or as a charge to non-tax expenses. For employees, only non-monetary performance provided free of charge (gift) from the FCSN, from the social fund, from profit after tax or as a charge to non-tax expenses can be exempt from the income tax, in the aggregate amount of up to CZK 2,000 per year provided for: extraordinary activity to the benefit of the employer, for social or humanitarian help, on the 50th birthday and then every five years, on the 20th work anniversary and then every five years and on the first retirement with old-age pension or third degree disability pension.

Non-monetary gifts (listed in Section 14 of Regulation No. 114/2002 Coll., on the FCSN) exceeding the annual aggregate limit of CZK 2,000 for the employee, non-monetary gifts provided outside of the scope of this regulation (i.e. on other occasions) and all monetary gifts, regardless of the purpose for which they have been provided, represent taxable income of the employee.

Non-monetary performance free of charge (gifts) exempt from income tax is not included in the assessment base for the payment of insurance premiums and insurance premiums are not levied on them. Non-monetary and monetary performance free of charge (gifts) that is not exempt from income tax is included in full in the assessment base for the payment of insurance premiums and insurance premiums are levied on them. For example, if the employer provides an employee with a motivational bonus on the 10th work anniversary at the company, the gift will not be exempt from tax, since the respective FCSN Regulation mentions only gifts on the occasion of work anniversaries of at least 20 years of employment by the employer.

How to account for bonuses for work and life jubilees

During our discussions with clients we often come across questions of how to correctly account for bonuses arranged in collective agreements or other documents binding for the employer. Many companies account for these anniversary benefits when they are paid out to the employee. Is this treatment correct, or are thoughts of recognition of a reserve for existing payables of the employer floating around?

The Accounting Act [3] assumes that the entity uses double-entry bookkeeping to account for the balance and movements of property and other assets, payables including debts and other liabilities, as well as expenses and income and profit or loss in the period to which these facts relate on the accrual basis of accounting, and all expenses and income

are recognised regardless of the moment of their payment or receipt. This definition means that the origination of a payable should be recorded in accounting books.

Valuation at the end of the balance sheet date should include only profits that have been achieved as of the balance sheet date, and take into account all the foreseeable risks and possible losses concerning assets and payables known to the reporting entity by the time of preparation of the financial statements, as well as all impairment regardless of whether the result of the reporting period is profit or loss (principle of prudence). This provision is reflected in reserves, provisions and depreciation of assets. Reserves are intended to cover payables or expenses whose nature is clearly defined and that are, as of the balance sheet date, likely or certain to arise, but uncertain as to their amount or timing. As of the balance sheet date, the reserve has to represent the best estimate of the expenses that are likely to arise, or in the case of payables the amount necessary for settlement.[4]

In the event that a contract or a legal regulation gives the company an obligation to pay its employees pensions or other benefits if certain conditions are met, the company is required to report them under balance sheet item B. 1. "Reserve for pensions and similar liabilities".[5]

If the entity recognises a reserve in relation to the prudence principle, it is charged to expenses. Reserves are decreased, released or used based on inventorying. In such a case they are credited to expenses.

Reserve balances are carried forward to the next reporting period.

Reserve calculation

The reserve should represent the best estimate of the payable to employees who will become entitled to the bonus in the near future or later and the bonus will be paid out to them when they reach the respective jubilee. The amount of this payable depends on the specific conditions of the contract and on the internal situation of the entity as such. The calculation of the reserve should take into account in particular the size of the target bonus, the potential number of employees who will stay with the employer until the jubilee date etc. The estimation of the payable for the payment of bonuses is rather complicated and the services of an actuary are usually used for the calculation. The actuary uses actuarial methods, demographical data, statistical information (e.g. salary growth rate, development of the discounted interest rate), data of the specific reporting entity (e.g. average duration of employment) etc. And calculates the amount of the payable, i.e. The amount of future expenses (discounted cash flows) arising from the payable that should be reported in the form of a reserve. The reserve is measured at fair value, analogically to technical reserves.

The method of calculation and valuation of the reserve is not clear at first sight from the Accounting Act or from the Regulation, and many entities therefore forget about them and do not account for the reserve for bonuses on major birthdays, work anniversaries, retirement etc. Instead they account only for the actually incurred expenses during the reporting period with respect to the person to whom the benefits have been paid out. These reporting entities use cash accounting (i.e. at the time when the cash outflow occurs) and not accrual accounting (at the time when the payable originates).

Accrual accounting

In principle, we believe that payables agreed in collective or similar agreements create the obligation to recognise a reserve if there is an existing payable, in line with the accrual principle and the prudence principle. Traditional companies that have been active on the market for a long time often have a relatively stable employee base, especially in the regions, composed of local inhabitants. For such companies, the payable arising from the collective agreement could be significant and its omission from the financial statements would lead to their misstatement. However, even new start-ups that are trying to stabilise and retain their experts through the awarding of jubilee benefits will have to calculate this reserve in order to determine the materiality of this item and its reporting.

Cash accounting

In certain cases, a reporting entity may report the jubilee benefit on the cash basis of accounting without being in conflict with accounting regulations and the prudence principle or the accrual principle. This will be the case especially if the payable in the collective or similar agreement can be cancelled or significantly reduced by the management or if there are additional conditions for the payment (e.g. achieving a particular level of profit), high employee fluctuation where essentially only few people will be entitled to the benefits in the future, and last but not least, a disproportion between the costs of obtaining the information and the profit of such information. In any case, the entity should perform a calculation of the existing payable arising from the collective or similar agreement in order to discover the materiality of this item. If the amount identified is not material, it is naturally not necessary to report it in the financial statements.

Example

A company has concluded a collective agreement in which it has committed to paying a bonus of CZK 20,000 upon retirement to employees who have worked at the company for at least 20 years. The company is stable, the number of employees does not change significantly. Employees retire at the age of 60, the average age of an employee is 45, employees start employment on average at the age of 20. The analysis shows that 80% of employees stay with the company until retirement.

During the current period, two employees reached the personal jubilee and the bonus was paid out to them in the same period.

The process of reporting the company's payable from the collective agreement in the form of a reserve is shown the following tables:

Calculation – accrual basis (in CZK thousand)		Calculation
Number of employees	500	
Employees entitled to the bonus	80 %	
Bonus amount	20	
Start of employment	20 years	
Average age	45 years	
Retirement	60 years	
Anticipated total amount of bonuses	8 000	(20 * 80 % * 500)
Reserve amount	**5 000**	(45-20) / (60-20) * 500

** simplified calculation, does not include discounting*

Cash accounting (in CZK thousand)	Amount	Dr	Cr
Payment of a bonus on a life jubilee	40	528	331
Profit/(loss)	**- 40**		

Accrual accounting (in CZK thousand)	Amount	Dr	Cr
Recognition of reserve	5 000	554	452
Use of reserve	40	452	554
Profit/(loss)	**- 4 960**		

331 – Payables to employees

452 – Reserve for pensions and similar liabilities

554 – Creation and recognition of other reserves

The comparison of the two options shows a clear difference in the impact of the recognised reserve on the profit of the current year as well as on the amount of reported payables. While with cash accounting, the result is a loss of CZK 40 thousand, with accrual accounting the result in the year of creation of the reserve is a loss of CZK 4,960 thousand. The recognition of the reserve essentially "blocks" a part of the profit from distribution and saves it for the period when the actual payments of bonuses for work and life jubilees take place. Cash accounting may lead to the generated profit being prematurely distributed among the owners and in an extreme case, there would not be enough left to settle the company's payable to employees arising from the bonuses for work and life jubilees.

The company or its part may be subject to sale or transformation. If existing payables are accounted for only on a cash basis, due diligence will probably show the existence of a payable arising from bonuses for work and life jubilees. A potential investor may be unpleasantly surprised to discover the existence of the unreported payable. In our case, a payable of CZK 4,960 thousand would be missing in case of cash accounting, which would significantly misstate the financial position. In addition, the investor could reconsider the investment plan, and not just because of the amount of the payable but also because of decreased trust in the presented financial statements.

Conclusion

Recognition of employee benefits does not have to be a trivial accounting entry. We will not make a mistake if we carefully review collective agreements, internal regulations concerning employee benefits, management and other contracts during year-end inventorying at the latest, and check the correctness of their reporting in the company's financial statements. If we report an existing payable arising from bonuses for work and life jubilees on an accrual basis, our CFO can certainly rest easy. Reporting on a cash basis does not have to mean a mistake either, but such an approach has to be supported by valid arguments and it should be verified every year during the preparation of the financial statements that the arguments still apply and can be used in the next reporting period.

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1. Section 224 of Act No. 262/2006 Coll., Labour Code, as amended
2. Section 24 (2) j) of Act No. 586/1992 Coll., on Income Taxes, as amended
3. Section 2 and 3 of Act No. 563/1991 Coll., on Accounting, as amended
4. Section 25 and 26 of Act No. 563/1991 Coll., on Accounting, as amended
5. Section 16 of Regulation No. 500/2002 Coll., which provides implementation guidance on certain provisions of Act No. 563/1991 Coll., on Accounting, as amended, for reporting entities that are businesses maintaining double-entry accounting records

Closing Out 2018 in IFRS Financial Statements

This article provides a high-level overview of the new and revised Standards and Interpretations that are effective for December 2018 calendar year-ends and subsequent accounting periods. Entities are, however, generally permitted to adopt the new and revised Standards and Interpretations in advance of their effective dates (refer to individual Standards and Interpretations for additional details). This article provides a summary of IFRSs and interpretations that an entity may elect to apply for the year ended 31 December 2018.

A word of caution regarding early adoption of Standards and Interpretations in the case of entities that prepare financial statements according to IFRS as adopted by the European Union (EU). Standards, Interpretations and amendments to the existing standards, which were not endorsed for use in the EU, cannot be applied by the entities preparing their financial statements in accordance with IFRS as adopted by the EU.

Where applicable, we have made reference to past issues of Accounting News dealing with the specific Standard or Interpretation in greater detail. These past newsletters are also available at www.dReport.cz. As always, entities should refer to the Standards and Interpretations themselves to identify all of the changes that may affect their particular circumstances.

Where a Standard or Interpretation is adopted in advance of its effective date, disclosure of that fact is generally required.

Even where there is no intention to implement a Standard or Interpretation in advance of its effective date, entities need to be aware of new Standards and Interpretations as they are issued, in order to comply with the requirement included in IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* to disclose in their financial statements the potential impact of Standards and Interpretations in issue but not yet effective. This requirement is valid irrespective of whether a Standard or Interpretation have already been endorsed in the EU.

We therefore recommend reviewing further newly issued amendments to standards and interpretations that will be approved by the date of the issuance of a company's financial statements. We will be providing updates on these developments on www.iasplus.com and in our Accounting News.

The effective dates of IFRSs issued by the IASB and IFRSs as adopted by the EU can be different.

New and Revised Standards and Interpretations

The following tables provide a list of new and revised Standards and Interpretations in issue as of 30 January 2019 that are either effective, or available for early adoption, for 31 December 2018 calendar year-ends.

All of the newsletters referred to may be found at https://www.dreport.cz/en/blog/summary/

Effective for the 31 December 2018 year-ends

New Standards		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRS 9	*Financial Instruments*	1 January 2018	**1 January 2018**	December 2009 November 2010 September 2012 January 2014 September 2014 January 2017 November 2018
IFRS 15	*Revenue from Contracts with Customers*	1 January 2018	**1 January 2018**	July 2014 May 2016 December 2016 May 2017 September 2017 September 2018 October 2018

Amendments to Standards		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRS 2	Amendments to IFRS 2 *Classification and Measurement of Share-based Payment Transactions*	1 January 2018	1 January 2018	September 2016
IFRS 4	Amendments to IFRS 4 *Applying IFRS 9 Financial Instruments with IFRS 4 Insurance Contracts*	1 January 2018	1 January 2018	April 2018
IAS 40	Amendments to IAS 40 *Transfers of Investment Property*	1 January 2018	1 January 2018	October 2016
IAS 28	Amendments to IAS 28 (part of *Annual Improvements to IFRSs 2014-2016 Cycle)*	1 January 2018	1 January 2018	December 2016

Interpretation		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRIC 22	*Foreign Currency Transactions and Advance Consideration*	1 January 2018	Not endorsed for use in the EU yet	January 2017 May 2018

Available for early adoption for the 31 December 2018 year-ends

New Standards		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRS 16	*Leases*	1 January 2019	1 January 2019	February 2016 March 2016 April 2016 July 2016 December 2017
IFRS 17	*Insurance contracts*	1 January 2021	Not endorsed for use in the EU yet	July 2017

Amendments to Standards		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRS 3	Amendments to IFRS 3 *Definition of a Business*	1 January 2020	Not endorsed for use in the EU yet	December 2018
IFRS 9	Amendments to IFRS 9 *Prepayment Features with Negative Compensation*	1 January 2019	1 January 2019	November 2017 May 2018
IFRS 10 and IAS 28	Amendments to IFRS 10 and IAS *28 Sale or Contribution of Assets between an Investor and its Associate or Joint Venture*	The effective date was removed temporarily by the IASB	Not endorsed for use in the EU yet	October 2014
IAS 1 and IAS 8	Amendments to IAS 1 and IAS 8 *Definition of Material*	1 January 2020	Not endorsed for use in the EU yet	December 2018

Amendments to Standards		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IAS 19	Amendments to IAS 19 *Plan Amendment, Curtailment or Settlement*	1 January 2019	Not endorsed for use in the EU yet	March 2018
IAS 28	Amendments to IAS 28 *Long-term Interests in Associates and Joint Ventures*	1 January 2019	Not endorsed for use in the EU yet	November 2017
Various IFRS	*Annual Improvements to IFRSs 2015-2017 Cycle*	1 January 2019	Not endorsed for use in the EU yet	February 2018
Various IFRS	*Amendments to References to the Conceptual Framework in IFRS Standards*	1 January 2020	Not endorsed for use in the EU yet	June 2018

Interpretation		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRIC 23	*Uncertainty over Income Tax Treatments*	1 January 2019	1 January 2019	July 2017 December 2018

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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 14 January 2019.

As of 30 January 2019, 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 3 *Definition of a Business* (issued in October 2018)
- 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 1 and IAS 8 *Definition of Material* (issued in October 2018)
- 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)

Click here for the Endorsement Status Report

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FASB publishes Q&A Document on Estimating Credit Loss Reserves

Do you prepare any set of financial information or full set of financial statements based on the US GAAP? You may be considering how to apply provisions of the *Accounting Standards Update No. 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* which was issued in 2016.

You may find useful the newly published Q&A document from 10 January 2019 issued by the Financial Accounting Standards Board (FASB) staff.

The Q&A addresses mainly the weighted average remaining maturity (WARM) method and discusses if and how to use it to comply with the standard.

The FASB staff agrees that the WARM method is one of many methods that could be used to estimate an allowance for the credit losses for less complex financial asset pools and within this document they present several specific examples on how to apply it.

The Q&A also lists steps that shall be followed and how to proceed if qualitative adjustment of historical data for reasonable and supportable forecast is needed to create the best estimate of the credit losses for the remaining balances that are to occur until the end of the contractual term for a defined pool of financial assets.

The above mentioned document with Q&A's is accessible at FASB.org.

Source: www.fasb.org

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GDPR in practice or 11 pieces of advice and recommendations to get the better of the personal data protection regulation

The General Data Protection Regulation or the GDPR was one of the most discussed topics last year. Its compulsory implementation in practice, which occurred in May 2018, was preceded by stormy debates, careful preparations of stakeholders and uncertainty about the practical consequences the regulation would produce. At a business breakfast held at the end of the last week, we assessed the first six months of the GDPR's implementation. We have selected the 11 most interesting pieces of advice and recommendations to help you find out whether the steps you have taken are in line with the regulation and what to do to achieve compliance.

1. Initial analysis

Obtaining all relevant information from companies is the first important step for accurate GDPR implementation. "We meet with major companies, talk to them and inquire what data they collect, for what purpose and in what systems", explains Ján Kuklinca, attorney-at-law at Deloitte Legal, and adds: "Small companies sometimes prefer a more economical way of status mapping, such as completing questionnaires. The third option is a combination of the two previous alternatives". Based on the data collected, Deloitte provides its clients with its recommendations.

2. Documentation for individuals should be written understandably

Texts are often produced by lawyers, sentences are complex and long, sometimes taking ten lines. However, firms should try to express themselves briefly and provide understandable information. "A summary should be provided at the beginning to make it clear that a company wants to be transparent. Try to see yourselves in an addressee's place and make the information understandable for him or her. Images and pictograms are also recommended. When providing their consent, people should know what they are signing up to", advises Martina Heřmanová, attorney-at-law at Deloitte Legal.

3. Documentation distribution to separate categories

"We recommend dividing information on processing into separate categories of individuals, namely information for customers, suppliers and HR", says Ján Kuklinca. The format of any privacy policy (personal data protection principles/information) should always be adjusted depending on how a company communicates with the individual groups and when it contacts them.

4. Records on processing activities

Today, any controller should have a document containing records on personal data processing activities. Its form is not strictly defined; it depends, for example, on the size of the company. It is important that all activities performed by the company be recorded in the document. "The Office for Personal Data Protection considers such a document to be a 'Holy Grail': it is likely to be the first document to be examined during an audit", says Martina Heřmanová and highlights the need to update the records on an ongoing basis.

5. Controller's internal regulations

It is crucial for any controller to have internal regulations in place to treat personal data. All employees should know what to do with personal data, whom to address if something is not clear in a relevant company or how to solve any security incidents. "We also recommend introducing shredding and filing guidelines and plans", states Martina Heřmanová and adds: "A number of companies lack these documents although the rules on destroying, archiving and administering physical and data documents had been required by Czech legal regulations before the GDPR's effective date".

6. What other organisational measures to introduce?

It is well advised to arrange e-learnings or training sessions for employees to be aware of all measures relating to the GDPR. Setting up IT systems to facilitate the GDPR-related processes is another recommended step. Firms also appoint a Data Protection Officer (DPO) or a contact person. "In our experience, it should be a person knowledgeable of what is going on in a company and having unlimited access to records on processing activities rather than just a formally appointed individual", stated Ján Kuklinca.

7. Consent with personal data processing

Under certain circumstances, consents are necessary measures required for the company to process personal data. Before, consents with personal data processing were part of contracts. This approach is, however, not considered to be a voluntary consent. Consents thus cannot be part of contracts or business terms, they should always be provided separately. This relates to another topic, which is collecting excessive consents, ie even if there are other legal grounds, such as processing required to perform a contract, meeting statutory requirements or legitimate interest of a controller. "Obtaining consents should be the last option", recommends Martina Heřmanová, attorney-at-law at Deloitte.

8. Position of a third party processor

A processor is simply an entity to which the controller provides personal data to process it depending on the controller's authorisation and instructions. The relation between a controller and a processor is subject to a contract under Article 28 of the GDPR. "We often see that our clients have concluded this type of contract with another controller, which is not correct. The two entities provide data to one another but each controls it independently", explains Martina Heřmanová.

9. Call records

When recording calls, there are various situations. The first one is simply a call to an advice line. Although the call is recorded there is no systematic approach of searching the information on who the caller was and the tape is not used to improve the quality of services. This is not personal data processing and there is no need to obtain any consent with personal data processing. The second situation includes calls in which a company (often a financial institution) identifies the calling person by a phone number and allocates the record to that person. This is personal data processing and the issue whether and how to obtain the calling person's consent should be solved. The consent should be received through an active step taken by the calling person, such as pressing a button.

10. Cookies

In order to solve cookies under the Czech legal environment only, the Office for Personal Data Protection has stated that it is sufficient to inform on a company's website that the relevant company uses cookies and how it does so. However, if the company's owner is from abroad, this approach might not be sufficient. An active consent with the use of cookies is usually required.

11. Selection procedure

In practice, employers often keep CVs of job applicants who were not successful in selection procedures for an excessive period and address them to offer them other jobs. If a company wants to keep a CV in its records it should obtain an applicant's consent first.

Google Receives a Fine of EUR 50 Million for Violating the GDPR

On 21 January 2019, the French equivalent of the Czech Office for the Protection of Personal Data (the "OPPD"), Commission nationale de l'informatique et des libertés (the "CNIL"), imposed a fine of EUR 50 million on GOOGLE LLC for violating the General Data Protection Regulation (the "GDPR"). The fine was imposed for lack of transparency in processing personal data, for insufficiently informing data subjects, and for invalid consents relating to the personalisation of advertising.[1] This is by far the greatest sanction imposed to date since last May, when the Regulation came into effect.[2]

The CNIL started to look into the case at the instigation of two privacy rights organisations as the authority in Ireland, where Google's European headquarters are based, had insufficient decision-making powers.[3] the complaint was filed on behalf of several thousand Android users on the very day that the GDPR became effective.[4]

Google failed to provide information to users with sufficient transparency

The CNIL found that the information provided by Google to users was not sufficiently easy to access. The information that must be provided pursuant to the GDPR (eg, the processing purpose or period of storing personal data) was diluted across several documents that required five to six clicks or other actions if the user wished to obtain full information. The CNIL also concluded that the processing purposes as stated by Google were too vague and did not adequately explain the legal grounds for processing. Therefore, users may not have had clear information as to whether the processing was based on their consent or the protection of Google's legitimate rights.

The CNIL found the "pre-ticked" consents to be invalid

The consents which Google was granted for the purposes of ads personalisation were found to be invalid for two reasons. Firstly, as the information was fragmented, it was impossible for users to trace the actual scope of services and applications using the data and were thereby insufficiently informed.

Secondly, the consents were neither sufficiently clear nor specific (granted for each individual purpose). For users to be able to create an account, they had to tick off that they agreed with the terms of use and personal data processing "described above and explained in the personal data processing rules". In doing so, users gave their consent to all purposes such as ads personalisation or speech recognition. Neither was Google saved by the fact that it subsequently enabled users to click on the pre-ticked consent with ads personalisation. According to the CNIL, the correct treatment would be, for example, for the user to actively mark an empty field.

The amount of the fine was justified by a breach of basic principles

The CNIL justified the amount of the fine by the severity of the breach, which was related to the basic principles on which the GDPR is founded: transparency, information and consent. In addition, the CNIL stated that the breach had been committed on a large scale until the present day; therefore, it was not a one-off breach. The fact that Google's economic model is partially based on ads personalisation was also weighed against Google by the CNIL, therefore it was "of its utmost responsibility to comply with the obligations on the matter".

Last year, the Czech OPPD announced that until the GDPR adaptation act was adopted, it primarily wished to raise awareness of the GDPR rather than impose sanctions.[5]

However, as the Regulation is applied in the whole EU in the same manner[6], there is no reason to assume that the OPPD's assessment of the case would differ from that of the CNIL in the event of such extensive and systemic misconduct.

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1. The CNIL's restricted committee imposes a financial penalty of 50 Million euros against GOOGLE LLC [online, quoted on 23 January 2019]. Available on the following website: https://www.cnil.fr/en/cnils-restricted-committee-imposes-financial-penalty-50-million-euros-against-google-llc.
2. FORNEY, Mitchel. GDPR Fine Tracker – an Ongoing, Always-Up-To-Date List of Enforcement Actions [online, quoted on 23 January 2019]. Available on the following website: https://alpin.io/blog/gdpr-fines-list/.
3. These were the French organisation La Quadrature du Net (https://www.laquadrature.net/en/about/) and the Austrian organisation noyb (https://noyb.eu/concept/).
4. FOX, Chris. Google hit with £44m GDPR fine over ads [online, quoted on 23 January 2019]. Available on the following website: https://www.bbc.com/news/technology-46944696.
5. Do not fear GDPR-related sanctions, the Office wishes to explain things first [online, quoted on 23 January 2019]. Available on the following website: https://www.podnikatel.cz/clanky/pokut-u-gdpr-se-zatim-nebojte-urad-chce-zprvu-hlavne-vysvetlovat/.
6. Barring minor departures stipulated by national legislation.

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