Deloitte.

Accounting news

Tax news

Legal news

Grants & Incentives news

dReport: April 2019

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

Contents

2020 Tax Package Proposal

Shortly after this year's tax package was approved (with effect from 1 April 2019 – detailed information is available here), the Ministry of Finance has prepared a draft bill to amend the following tax legislation with effect from 1 October 2020:

- As we have already informed you here, an EU directive has been transposed into the Value Added Tax Act aimed at improving the existing system of intra-Community supply of goods, affecting, *inter alia*, the rules for supply of goods to another EU member state, the call-off stock regime as well as a special regime for travel services.
- The already-completed transposition of the ATAD Directive into the Income Taxes Act has been extended to include the borrowing costs restriction to be also applicable to private corporation owners as well as the taxation of controlled foreign entities in the case of basic investment funds. These matters are not specifically addressed in the current wording of the Act.
- Introducing the reporting duty of selected cross-border arrangements for intermediaries (advisors) and taxpayers in the Act on International Cooperation in Tax Administration and the Act on Special Court Proceedings.
- A change in the European Union's customs territory has been reflected in the Excise Tax Act; specifically, the Italian municipality of Campione d'Italia and the Italian waters of Lugano Lake were added.

Circulation of the draft bill for external comments is underway, with numerous comments aimed at specifying the forthcoming changes presented by the Chamber of Tax Advisers of the Czech Republic. We will keep you informed on the future developments of the legislative process.

Catherine Slavíčková
cslavickova@deloittece.com

Tereza Tomanová
ttomanova@deloittece.com

New Reporting Duty for Tax Payers

The amendment to tax legislation, which is effective from 1 April 2019, introduces a new reporting duty for tax payers. Income that is generally subject to withholding tax in the Czech Republic but is exempt or not subject to taxation in the Czech Republic based on the applicable double taxation treaty will need to be reported to the tax authority.

Payments that exceed CZK 100,000 and that are exempt or not subject to taxation by withholding tax (e.g. dividends, interest, licence fees) will be reported on a monthly basis. If such income is paid off during April 2019, the first report should be filed as early as in May 2019. The **Ministry of Finance has already released the relevant form on the financial administration's website.**

It is also possible to apply for an exemption from the reporting duty with the tax authority for up to 5 years. The application should be submitted to the relevant tax office; however, it has not been specified what reasons will be considered by the tax administrator to be relevant for the exemption of the tax payer from the reporting duty.

We recommend analysing whether your company pays off any income that is subject to the reporting duty and consider taking additional steps in this regard, if relevant.

Tereza Gebauer
tgebauer@deloittece.com

Markéta Kulmová
mkulmova@deloittece.com

News round up

"April" amendment to the Vat Act

In relation to an amendment to the VAT Act effective (with certain exceptions) since 1 April 2019, the Czech Tax Administration ("TA") published on its website a detailed overview of the majority of relevant changes. Furthermore, the TA drew attention to the fact that the amended VAT Act also updated selected names and descriptions of the items in the form as well as instructions for completing the VAT return (the content and structure of the VAT return remain unaffected). The TA also emphasised that the xml structure of the Local Sales/Purchases Report was going to be updated as well (however, the existing xml structure of the Local Sales/Purchases Report is to be unchanged until 30 September 2019).

Information as to the treatment of vouchers in line with the updated VAT rules is anticipated to be published by the TA in the near future.

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

Case C-201/18 Mydibel assessing sale and lease back transactions in terms of VAT, may have significant impacts on the lease market in the Czech Republic. The CJEU concluded that in general terms, such transactions solely constitute financing rather than a supply of goods and their leaseback to the supplier. At first sight, the case at hand could also affect other lease financing structures; nevertheless, we believe that its effect is relatively limited.

In case C-275/18 Milan Vinš, the CJEU assessed a potential exemption from VAT in the exports of goods. Apparently, not all conditions in Section 66 of the Czech VAT Act applicable to the supply of goods for exports exempt from VAT are in line with the EU's VAT Directive. The CJEU opines that a failure to comply with the formal requirement for placing goods under the "Exports" customs procedure cannot result in the exporter forfeiting the right to the VAT exemption applicable to exports. It will be sufficient to prove that the goods in question have actually exited the territory of the European Union.

Tomáš Brandejs
tbrandejs@deloittece.com

International taxes in brief

Austria: proposal of 5% digital advertising tax

In a 3 April 2019 statement, the Austrian government announced a package of proposals to tax the digital economy comprising a 5% digital advertising tax and tax compliance measures targeting online booking and retail platforms.

European Commission: UK CFC rules constitutes illegal state aid

On 2 April 2019, the European Commission announced the results of its state aid investigation into the group financing exemption in the UK's controlled foreign company (CFC) rules. The Commission found that the exemption granted a selective advantage to certain multinational groups that is illegal under EU state aid rules. The UK now must take steps to recover the illegal state aid from the multinational companies that benefitted.

European Commission: paper on impact of CCTB

On 15 March 2019, the European Commission published "The Impact of the CCTB on the Effective Tax Burden of Corporations: results from the Tax Analyzer Model" that attempts to evaluate the impact of the introduction of the common corporate tax base (CCTB) on the effective corporate tax burdens in EU member states.

German: exemption of merger gain in upstream merger

Germany's Federal Tax Court has ruled that the general 5% add-back rule of the domestic participation exemption, under which 5% of gains on a merger are deemed to be non-deductible business expenses for German tax purposes, will not apply in fiscal unity cases where an entity is merged upstream into a controlled subsidiary.

Italian Supreme Court: different positions on dividend WHT exemption

Italy's Supreme Court and the tax authorities have taken conflicting positions on whether dividends that are granted an income tax exemption under the domestic law of the dividend recipient's jurisdiction may be granted a withholding tax exemption by Italy.

Kateřina Krchnivá
kkrchniva@deloittece.com

CJEU interpretation of beneficial ownership

On 26 February 2019, the Court of Justice of the European Union (CJEU) issued decisions in six cases (joined cases C-116/16 and C-117/16 and joined cases C-115/16, C-118/16, C-119/16 and C-299/16) concerning the Danish withholding tax treatment of dividends and interest and the concept of beneficial ownership in the context of the EU parent-subsidiary directive (PSD) and interest and royalties directive (IRD).

The CJEU held that EU member states should deny the tax relief provided in the directives in situations where taxpayers use the directives for abusive or fraudulent purposes, even when there is no domestic law targeting such abuse and that it is up to the Danish courts to determine whether the arrangements in the cases involve abuse or fraud.

Tax authorities denied taxpayers's requirement

All of the cases involve situations where a Danish company distributed dividends or paid interest to a company resident in another EU member state. The EU company subsequently redistributed or repaid the amounts received to shareholders that were either private equity funds or companies resident outside the EU (jurisdictions like Bermuda, the Cayman Islands or Jersey). Subsequently, final payments were made to the ultimate owners that generally were resident in jurisdictions that had concluded a tax treaty with Denmark. The taxpayers in all six cases requested exemptions from withholding tax under the PSD or the IRD, which were denied by the Danish tax authorities on the grounds that the interposed EU companies were not the beneficial owners of the income.

In fact, the PSD does not contain a beneficial ownership requirement, but the IRD requires the beneficial owner of the interest or royalties to be a company or permanent establishment in another EU member state. Even though Denmark's domestic law did not explicitly require beneficial ownership for dividends, it did apply such a requirement to prevent abuse (even before the general anti-avoidance rule (GAAR) was introduced in the amendment to the PSD in 2015). In practice, the Danish tax authorities applied the same beneficial ownership test to both interest and dividends.

CJEU's perspective

The CJEU was asked to interpret the phrase "beneficial owner of the interest" in the IRD. The court stated that the beneficial owner for these purposes is the entity that actually benefits

economically from the interest and has the power to determine the use to which the interest is put.

Another issue addressed in the cases was whether a member state—to combat abuse of the PSD or IRD—must have adopted a specific provision transposing that directive into its domestic law. The CJEU stated that it is up to the national courts to determine whether an arrangement constitutes an abuse of rights. The facts of a case must be analysed to determine whether the parties have carried out purely formal or artificial transactions lacking any economic and commercial justification to benefit from an improper advantage. An absence of actual economic activity must be inferred from an analysis of all of the relevant factors relating to the management of the company, its balance sheet, the structure of its costs and expenditure actually incurred, its staff and the company's premises and equipment.

Danish case as a precedent for other EU member states

In general, the CJEU decisions provide specific guidance regarding the constituent elements of an abuse of rights in relation to the benefits under the PSD and IRD. In this connection, it should be noted that the CJEU requires the member states to deny rights where abuse is present. As the CJEU applies a general EU anti-abuse principle, the decisions in the Danish cases may be regarded as an interpretation of the GAAR rule implemented in all EU member states based on the EU anti-tax avoidance directive.

The CJEU has referred the cases back to the Danish court for an interpretation on whether the six individual cases involve fraud or abuse. If an abusive nature can be established, the withholding tax exemption for dividends/interest paid is to be denied.

Kateřina Krchnivá
kkrchniva@deloittece.com

Tereza Tomanová
ttomanova@deloittece.com

A new crime of obstruction of justice and its impact on submitting means of evidence

With effect from 1 February 2019, a new provision of Section 347a was introduced in the Criminal Code[1] stipulating a crime of obstruction of justice. Its substance is the effort to prevent obstruction of just decisions of a court or another body by proceedings participants supporting their statements by submitting forged or modified evidence.

What does obstruction of justice mean?

The crime of obstruction of justice may be committed in two ways.[2] Our article will only focus on the state of facts in Section 347a (1) of the Criminal Code that is quite controversial for both the professional and general public. This state of facts introduces the punishability of submitting forged or modified evidence as authentic in proceedings before court or an international body of justice or in criminal proceedings.

For committing this crime, perpetrators may be punished by a prison sentence with a term of up to two years. If additional conditions stipulated by the Criminal Code are met, perpetrators may be subject to a stricter sentence with imprisonment of up to ten years.[3]

Before the crime of obstruction of justice was introduced, only submitting a false expert opinion or public deed was punishable with respect to submitting evidence. From now on, submitting practically **any forged or modified means of evidence (both documentary or material) that has a substantial impact on a decision** as if it were authentic may be punished. It will be up to the court to decide whether the evidence has a substantial impact on the decision.

At the same time, the perpetrator has to act **with the intention** to submit forged or modified evidence as authentic. An act of a person submitting forged or modified means of evidence without having any reason to doubt its genuineness and authenticity is thus not relevant in terms of criminal law.

The last legal condition is that such evidence must be submitted **as part of court proceedings, in proceedings before an international body of justice or law enforcement authority**. The crime of obstruction of justice thus does not relate to submitting forged or modified means of evidence in, for example, administrative or tax proceedings. This brings us to the question of how the courts will interpret a situation in which a plaintiff in court proceedings following immediately after administrative proceedings refers to forged or modified means of evidence submitted in administrative proceedings and filed with an administrative body in order to support the plaintiff's statements. In our opinion, there is a chance that these means of evidence may be understood in the future as being "submitted" by the plaintiff in proceedings before court and the plaintiff may become a perpetrator of the crime of obstruction of justice.

How will this issue be treated in practice?

In our opinion, a crime may be constituted typically in situations in which a plaintiff in proceedings before court intentionally submits a purposive backdated contract in order to simplify supporting legitimacy of the plaintiff's claim raised as part of the legal action. If there is any suspicion that the evidence was forged there is a threat of criminal prosecution of the plaintiff on the grounds of a crime of obstruction of justice. The prosecution may be started, for example, at the initiative of a judge who advances the case to the police or a public prosecutor. In this situation, the court proceedings may be suspended until it is resolved whether forged or modified means of evidence were submitted by the plaintiff. A **situation in which court proceedings are extended by months or years may easily occur.** There is also a chance that a defendant against whom the plaintiff's claim is raised may use this approach to cause delay in the proceedings.

In addition to the example above, a similar approach may be easily applied to submission of backdated invoices, fictitious acceptation of debts or falsified transport documentation.

Will the introduction of the new crime effect the relation between a client and an attorney at law or a tax advisor?

An attorney at law is bound by the Code of Ethics that prevents him from verifying whether the client's statements are true or complete.[4] Attorneys at law are not authorised to ask clients whether a deed (or any other means of evidence) submitted by clients is authentic or forged/modified. Clients thus do not have to worry that attorneys at law will cast doubts on any deeds submitted by their clients.

On the other hand, an attorney at law is a client's representative who in fact submits the evidence. Thus, attorneys at law may ask their clients to sign amendments to agreements on the provision of legal services by which clients will be informed about the possible consequences of submitting forged or modified means of evidence.

The situation of tax advisors may be rather different as

[1] Act No. 40/2009 Coll., the Criminal Code, as amended.
[2] In a simplified explanation, the first way is submitting forged or modified evidence as authentic; the other way is providing, offering and promising benefit in order to commit a crime of false accusation, false testimony or false expert opinion, or false interpreting.
[3] This will typically include situations in which the crime will be committed on the grounds on certain qualified motives, in connection with the performance of certain qualified activity, as a member of an organised group or if such a member causes damage in a qualified amount.
[4] Refer to Section 6 (3) of Resolution of the Board of Directors of the Czech Bar Association No. 1/1997 of the Bulletin dated 31 October 1996 stipulating the rules of professional ethics and the rules of competition of attorneys at law in the Czech Republic (the Code of Ethics).

the above rule does not apply to tax advisors and the Chamber of Tax Advisers of the Czech Republic does not bind its members to follow any such rule. Although tax advisor's activities will be more typical in administrative and tax rather than court proceedings as stated above, certain circumstances may occur in which the crime of obstruction of justice may be constituted by submitting forged or modified evidence in the pre-trial part of proceedings (administrative or tax proceedings). In the absence of the above-described rule, tax advisors may start reviewing documents submitted by their clients more carefully for prudence reasons.

In our opinion, the most probable consequence of the situation will be that clients will be asked by their attorneys at law or tax advisors to sign a declaration that the evidence provided to the attorneys at law or tax advisors to be submitted is authentic and the client has no doubt of its authenticity. **We believe that the preventive measures adopted by attorneys at law or tax advisors will not have (and may not have in issues such as confidentiality) any effect on their relations with clients. Clients thus do not have to worry that their relations with their legal and tax advisors will be substantially altered in the forthcoming future.**

Tomáš Brožek
tbrozek@deloittece.com

Lívia Kulhová
lkulhova@deloittece.com

Expansion of exemption from real estate acquisition tax

The Chamber of Deputies approved a legal provision amendment that will allow exempting from real estate acquisition tax also the first acquisition of an apartment unit in a detached house against payment, not just in an apartment building.

At present, exemption from real estate acquisition tax applies to the first acquisition against payment of ownership title to the construction of a detached house, to a plot of land or the right to construction including the construction of a detached house, and to a unit including an apartment and a garage, cellar or storeroom used together, which are found in an apartment building.

However, there are an increasing number of cases where apartment units are delimited in detached houses as well. This occurs for various reasons, for example, because certain areas allow only the construction of detached houses. The first acquisition of such an apartment unit against payment is currently not exempt from real estate acquisition tax.

Financial administration vs. taxpayers

Although certain tax administrators have admitted the exemption from tax even for apartment units in detached houses in the past, the Financial Administration[5] objected against such treatment and emphasised that the legislative objective was indeed to exempt only apartment units in apartment buildings, whether to prevent the construction of "horizontal panel buildings" or due to stricter regulation of apartment buildings. However, taxpayers disagreed with this interpretation as they perceived this exemption as a motivational element for the acquisition of a new apartment regardless of whether it was found in a detached house or an apartment building.

Deputies agreed with taxpayers

The Chamber of Deputies has granted the requests of taxpayers who pointed out the discrepancy in the exemption from real estate acquisition tax in the case of a new apartment unit in a detached house, and it approved an amendment to Senate Ordinance No. 340/2013 Coll., on Real Estate Acquisition Tax, within the terms of Act No. 254/2016 Coll. The amendment will also allow the exemption of the first acquisition of an apartment unit in a detached house against payment.

The amendment will come into force on the first day of the calendar month following its publication in the Collection of Laws. The exemption will apply only to apartment units in detached houses acquired after the effective date of the amendment.

Daniela Kovalová
dkovalova@deloittece.com

Tereza Gebauer
tgebauer@deloittece.com

[5] 6 mýtů o zdanění nabytí bytové jednotky v rodinném dome [6 myths about the taxation of acquisition of an apartment unit in a detached house]. In: Finanční správa [online]. 2019 [cit. 2019-04-05]. Available from here.

Tax liabilities – May 2019

May		
Friday, 10	Excise tax	Tax maturity for March 2019 (excluding excise tax on alcohol)
Thursday, 16	Intrastat	The Intrastat statement for April 2019, paper version
Monday, 20	Intrastat	The Intrastat statement for April 2019, electronic version
	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Monday, 27	Value added tax	Tax return and tax for April 2019
		EC Sales List for April 2019
		Tax control statement for April 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for April 2019
	Excise tax	Tax maturity for March 2019 (only the excise tax on alcohol)
		Tax return for April 2019
		Tax return for claiming of refund of excise tax, for example on fuel oil, other petrol (benzine) for April 2019 (if applicable)
Friday, 31	Real estate tax	Full tax maturity (tax payers with tax liability to CZK 5,000; including)
		Tax maturity of 1. tax payment (tax payers with tax greater then CZK 5,000 (excluding taxpayers engaged in agricultural production and fish farming)
	Income tax	Payment of special-rate withholding tax for April 2019

Tax liabilities – June 2019

June

Monday, 10	Excise tax	Tax maturity for April 2019 (excluding excise tax on alcohol)
Friday, 14	Intrastat	The Intrastat statement for May 2019, paper version
Monday, 17	Income tax	Quarter or half-year tax advance payment
Tuesday, 18	Intrastat	The Intrastat statement for May 2019, electronic version
Thursday, 20	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Monday, 24	Excise tax	Tax maturity for April 2019 (only the excise tax on alcohol)
Tuesday, 25	Value added tax	Tax return and tax for May 2019
		EC Sales List for May 2019
		Tax control statement for May 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for May 2019
	Excise tax	Tax return for May 2019
		Tax return for claiming of refund of excise tax, for example on fuel oil, other petrol (benzine) for May 2019 (if applicable)

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.
Churchill, Italská 2581/67,
120 00 Prague 2 – Vinohrady,
Czech Republic
Tel.: +420 246 042 500

Subscribe to dReport and other newsletters.

The Latest Schedule of the OP PIK Calls

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

Programme name	Programme focus	Type of call	Types of recipients*	Planned date for accepting grant applications
Property Call III	Subsidy for modernising production operations and reconstructing the existing outdated corporate infrastructure and brownfield structures	Ongoing	SME	From 22 Oct 2018 To 22 May 2019
Property Call II – Integrated Territorial Investment Hradec-Pardubice	Subsidy for modernising manufacturing premises and reconstructing the existing obsolete business infrastructure and brownfield structures	Ongoing	SME	From 2 May 2019 To 2 May 2020
ICT and Shared Services Call IV – Establishing and Operation of Shared Services Centres	Subsidy for the formation and operation of shared services centres	Ongoing	SME, LE	From 28 Aug 2018 To 28 May 2019
ICT and Shared Services Call IV – Construction and Modernisation of Data Centres	Subsidy for modernising and building data centres	Ongoing	SME, LE	From 31 Aug 2018 To 31 May 2019
Energy Savings in Heat Supply Systems Call III	Subsidy for reconstructing and developing heat supply systems, and increasing the efficiency of cogeneration	Ongoing	SME, LE	From 3 June 2019 To 27 Dec 2019
Technology – Integrated Territorial Investment Ostrava Call II	Subsidy for start-up businesses for the acquisition of new machinery, technology devices and equipment	Ongoing	SME	From 30 Aug 2019 To 30 June 2020
Technology – Integrated Territorial Investment Olomouc Call II	Subsidy for start-up businesses for the acquisition of new machinery, technology devices and equipment	Ongoing	SME	From 30 Aug 2019 To 30 June 2020
Energy Savings Call V	Subsidy for activities related to final energy consumption savings	Ongoing	SME, LE	From 2 Sept 2019 To 30 April 2020
Technology – Industry 4.0 Call XI	Subsidy for non-production technologies and their connection to the production process	Ongoing	SME	From 6 Dec 2019 To 30 April 2020
ICT in Enterprises Call VI	Subsidy for acquiring new technologies and services in IS/ICT solutions	Ongoing	SME, LE	From 1 Nov 2019 To 1 April 2020

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

Petra Chytilová
pchytilova@deloittece.com

New Programmes for Research Support

On 25 March, the Czech government approved three new programmes to support research. Specifically, the programmes are as follows: TREND, Prostředí pro život (Environment for Life) and DOPRAVA 2020+ (TRANSPORTATION 2020+).

TREND

The TREND programme is provided under the auspices of the Ministry of Industry and Trade of the Czech Republic (MPO). The programme is implemented by the Technology Agency of the Czech Republic (TAČR).

The primary focus of the programme is to support the implementation of the outcomes arising from industrial research and experimental development into day-to-day business and to enable expansion to new markets, as well as to increase the international competitiveness of businesses. For instance, support will be provided to projects for enhancing the utilisation of advanced manufacturing, production planning and management, and product distribution under the Industry 4.0 principles in key implementation branches. **The programme budget is set to amount to CZK 10 billion for the period 2020-2027.**

Prostředí pro život (Environment for Life)

The Prostředí pro život – Environment for Life programme is provided under the auspices of the Ministry of the Environment of the Czech Republic (MŽP). The project is implemented by the Technology Agency of the Czech Republic (TAČR).

The programme seeks to respond to the current climate issues and to support projects securing a healthy and high-quality environment, sustainable use of resources, and mitigation of negative impacts of human activity on the environment. **The programme budget is set to amount to CZK 3.8 billion for the period 2020-2026.**

DOPRAVA 2020+ (TRANSPORTATION 2020+)

The DOPRAVA 2020+ (TRANSPORTATION 2020+) programme is provided under the auspices of the Ministry of Transportation of the Czech Republic (MD). The project is also implemented by the Technology Agency of the Czech Republic (TAČR).

The major goals of the DOPRAVA 2020+ (TRANSPORTATION 2020+) programme include the development of the transportation industry in a method reflecting the actual needs of the society and the support of technology and knowledge development in the transportation sector. For instance, support will be provided to projects focusing on sustainable and intelligent transportation. **The programme budget is set to amount to CZK 2 billion for the period 2020-2026.**

Petra Chytilová
pchytilova@deloittece.com

Announcement of the M-ERA.NET 2 CALL 2019

The Technology Agency of the Czech Republic announced a public call focused on material research. The primary addressees of the call are Czech partners of international syndicates which consist both of research organisations and enterprises.

Support will be provided to international projects in the area of material research, including material serving for low-carbon energy technology and the relating manufacturing technology. The key topics are as follows:

- Multiscale modelling for materials engineering and processing (M3PP);
- Innovative surfaces, coatings and interfaces;
- High performance composites;
- Functional materials;
- New strategies for advanced material-based technologies in health applications; and
- Materials additive manufacturing.

The maximum support obtainable under one project as part of this public procurement initiative is up to 80% of the aggregate eligible costs, depending on the type of research activity and the applicant.

The deadline to submit abbreviated project drafts is 18 June 2019.

Petra Chytilová
pchytilova@deloittece.com

Simplified Administration of OP PIK

The Ministry of Industry and Trade of the Czech Republic has decided to simplify the procedure for issuing the Rulings on Subsidy Provision and Ruling Amendments under the Business and Innovations for Competitiveness Operational Programme ("OP PIK"). Subsequent to the change, applicants/recipients no longer have to sign these documents electronically.

It will be possible to approve the documents by way of special messages. As such, in the next step, the relevant Authority will forward the messages to the relevant subsidy provider for electronic signing. The signed documents will be loaded into the MS2014+ system and will neither be sent by mail or via data boxes.

Petra Chytilová
pchytilova@deloittece.com

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.
Churchill, Italská 2581/67,
120 00 Prague 2 – Vinohrady,
Czech Republic
Tel.: +420 246 042 500

Subscribe to dReport and other newsletters.

Outstanding Vacation Days – a reserve or an estimated payable?

Opinions as to the period in which costs of outstanding vacation days should be accounted for and how have changed over time. At first, they were not accounted for at all, then through estimated payables and eventually through the recognition of reserves. As many reporting entities still hesitate how to proceed in accounting for outstanding vacation days, let us remind you of the origin of the doubts and subsequently answer the question.

How to correctly interpret the "matching" concept? According to the existing principle of accrual accounting, reporting entities maintain double-entry accounting records about facts subject to accounting in the period to which the facts relate on an accruals basis (hereinafter the "reporting period"). If it is impossible to apply this method, they may also account for them in the reporting period in which they identified the facts. In the reporting period, reporting entities account for the facts in line with accounting policies, recognising all expenses and income regardless of when they were incurred or received.

In determining the type of accruals/deferrals, the following simplified rules are observed:

- Known amount, known period – deferred expenses, deferred income (accrued expenses and accrued income)
- Known period, unknown exact amount – estimated receivables or payables
- Unknown period and/or unknown exact amount, other uncertainty/other risk – reserves

Tour of the past

Many of us still remember the time when the Labour Code[1] made it impossible to carry forward a vacation entitlement to subsequent years. Employees were forced to use up their time off no later than by the end of the subsequent year, otherwise their vacation entitlement expired, and if the operating or other conditions on the part of the employer or employee made it impossible to use up the time off in the subsequent year, the employer refunded the entitlement.

Accounting regulations before the amended Labour Code

In practice, the above-described situation meant that the time off taken by the employee in the current year was ordinarily accounted for through payroll costs and the outstanding entitlement (which had to be used up or refunded no later than in the subsequent year) was accounted for as an estimated payable. Therefore, the entitlement to the outstanding vacation days refund was recognised in the reporting period in which the entitlement actually originated, whereby the method of matching expenses and income was observed: ie, expenses and income were reported in the period in which they originated rather than in the period in which they were paid. The vacation entitlement is related to the calendar-year period and is stipulated by law – ie, it is entitlement-based.

This accounting treatment complied with the definition of the substance of estimated payables stipulated by the **Regulation**[2], according to which these estimated balances contain payables arising, for example, from contracts that are not substantiated by all necessary documents and, as a result, their exact amount is unknown. Accounting for estimated payables is also expressly governed by Section 3.11.7. Of **Czech Accounting Standard** No. 017 "Accounting Relations": If the employee becomes entitled to the refund of the wage or salary for outstanding vacation days under a different legal regulation and if it is paid in the subsequent reporting period, it will also be accounted for through the relevant "Estimated Payables" accounts. In the period until the Labour Code was amended, this applied to all entitlements to outstanding vacation days of both "continuing" employees and those in respect of whom it was known as of the balance sheet date that their employment would terminate either based on a notice, agreement or retirement, or that it would be refunded owing to their taking maternity leave etc. Both categories of employees were entitled, as of the balance sheet date, to a "compensation" for outstanding vacation days, whether in the form of taking time off in the subsequent reporting period or through a payment.

Accounting regulations between the Labour Code amendment and 31 December 2015

The Labour Code amendment introduced a fundamental change in the issue of the employee's right to time off. As has been described in the introduction, the Labour Code has stipulated since 1 January 2016 that the employee's right to time off does not expire.

Accounting regulations did not immediately respond to this change or, to be precise, they started to be interpreted so as to be applicable to the new situation.

[1] Act No. 262/2006 Coll., the Labour Code, as amended

[2] Regulation 500/2002 Coll., which provides implementation guidance on certain provisions of Accounting Act No. 563/1991 Coll., for reporting entities that are businesses maintaining double-entry accounting records, as amended

The General Financial Directorate has issued a statement[3], according to which the Labour Code amendment did not have an impact on accounting or the Income Taxes Act.

According to the GFD's opinion, the compensation of the salary for time off is supposed to be accounted for in the employer's costs as late as in the year in which the time off (for the current or prior period) is taken – ie, when the employee becomes entitled to a refund of the salary for the time off taken.

In the GFD's view, the entitlement to the compensation of the salary for time off that originated in the given year yet was untaken in that same year cannot be charged to expenses through a tax-deductible estimated payable. Instead, it is appropriate to recognise a reserve, which is excluded from the tax base.

The only exception when the compensation of the salary for outstanding vacation days is accounted for through an estimated payable is the situation when the employee becomes entitled to a compensation of the salary for outstanding vacation days that will be paid in the subsequent reporting period. According to the applicable wording of the Labour Code, this entitlement originates in respect of the employee only if his or her employment terminates, provided the employee did not take the time off to which he or she was entitled: ie, in terminating employment based on an agreement, notice, retirement, maternity leave etc.

However, at the time of issuing the statement, reserves were defined and their substance determined in an enumerative manner in Section 26 of the Accounting Act[4]: "Under this act, reserves include a reserve for risks and losses, income tax reserve, reserve for pensions and similar liabilities, reserve for restructuring. Furthermore, reserves include technical reserves or other reserves under special legal regulations." the enumerative list of reserves in which a reserve for outstanding vacation days was absent resulted in a portion of experts from among the public incorrectly believing that the recognition of such a reserve was in violation of this provision of the Accounting Act.

Given the non-deductibility of the reserve, many reporting entities (tax payers) hesitated in accounting for the payable on this basis.

Let us add that the GFD's statement was supported by the wording of Section 3.11.7. Of Czech Accounting Standard No. 017 "Accounting Relations": If the employee becomes entitled to a refund of the wage or salary for outstanding vacation days under a different legal regulation and if it is paid in the subsequent reporting period, it will also be accounted for through relevant "Estimated Payables" accounts, although it had originally been designed for a different legal situation (the expiry of the employee's right to time off).

At this point, please note the accounting fundamentals applicable to Czech financial statements as well as reporting under foreign accounting standards, eg IFRS or US GAAP: the entitlement to time off is stipulated by law and is related to the reporting period: ie, no doubts exist as to the recognition of outstanding vacation days as a payable relating to the reporting period, whether in the form of an estimated payable or reserve – in other words, if the employee did not use up his or her time off in the current period and the entitlement does not expire, it constitutes a payable that is used or refunded in the subsequent period.

Amendment to the Accounting Act as of 1 January 2016

The central problem of using the reserves account for recognising the entitlement to outstanding vacation days – an enumerative definition of reserves – was eliminated by the amendment to the Accounting Act effective as of 1 January 2016, revising the wording of Section 26. Instead of the previous enumerative list, Section 26 of the Accounting Act newly stipulated that reserves are intended to cover the payables or costs the nature of which is clearly defined and that are likely or certain to be incurred as of the balance sheet date but are uncertain as to their amount or the date on which they will arise. As of the balance sheet date, a reserve must represent the best estimate of costs that are likely to be incurred or, in respect of liabilities, an amount needed for their settlement.

The definition of estimated payables according to the Regulation as well as the wording of Section 3.11.7 of Czech Accounting Standard 017 remained unchanged.

Current Situation

The answer to the question as to how the compensation of outstanding vacation days should be accounted for has been, according to a vast majority of experts from among the public, found following the amendment to Section 26 of the Accounting Act.

Reporting entities should, always no later than as of the balance sheet date, identify the existence of employees' entitlements to time off and measure their value. If the resulting value is immaterial (eg, start-ups with a small number of employees, small reporting entities, traditional enterprises with compulsory company vacation, businesses affected by the seasonal taking of time-off prior to the year-end etc), the option of not reporting the payable may be considered. In other situations, the payable arising from the entitlement to outstanding vacation days must be undoubtedly accounted for.

[3] http://www.financnisprava.cz/assets/cs/prilohy/d-prispevky-kv-kdp/2013KV_KDP_23_1_2013.pdf

[4] Act No. 563/1991Coll., on Accounting, as amended

How? Take inspiration from this reasoning:

Employee entitlements to outstanding vacation days which are certain to be refunded as of the balance sheet date, i.e. entitlements of employees whose employment will terminate, who are about to take maternity leave or retire, will be accounted for through estimated payables. The exact amounts of these entitlements are not yet known and neither are all necessary supporting documents ready in respect of them; nevertheless, the employer's payable exists and the requirements imposed on this category by both the Accounting Act (Section 26) and the Regulation (Sections 17 or 18) as well as Standard No. 017 have been met.

The amendment to Section 26 of the Accounting Act helped resolve the issue of accounting for the remaining portion of entitlements of "continuing" employees to outstanding vacation days. The employee's entitlement to outstanding vacation days representing an existing payable of the employer that originates in the current period and will be settled at some point in the future has the attributes necessary for accounting for reserves. The nature of the payable is clearly defined and the costs of outstanding vacation days are likely or almost certain to be incurred as of the balance sheet date but uncertain as to their amount. In our view, it is correct to account for the payable as a reserve, regardless of whether the employees will have a future possibility of taking the time off and having their salary compensated or the entitlement will be refunded if their employment terminates or they take maternity leave etc.

Jarmila Rázková
jrazkova@deloittece.com

ESMA publishes a report on the activities of accounting enforcers and their findings within the EU in 2018

On 27 March 2019, the European Securities and Markets Authority (ESMA) published a report on the enforcement and regulatory activities of accounting enforcers within the European Union in 2018. ESMA is an independent EU authority that was established on 1 January 2011. ESMA's mission is to enhance the protection of investors and promote stable and well-functioning financial markets in the European Union (EU).

ESMA and the accounting enforcers in the EU regularly examine compliance of financial information provided by listed issuers on regulated markets with the applicable financial reporting framework (IFRS).

In 2018, European enforcers examined the financial statements of about **950 issuers** representing an average examination rate of **16% of all IFRS issuers** with securities listed on regulated markets (2017: 19%). These examinations resulted in 296 actions taken to address material departures from IFRS (2017: 328). As in 2016 and 2017, the main deficiencies were identified in the areas of financial statements presentation, impairment of non-financial assets, and accounting for financial instruments.

In 2018, ESMA and European enforcers evaluated the level of compliance with IFRS in the areas identified as common enforcement priorities for **2017 annual IFRS financial statements** on a sample of 260 IFRS financial statements examined by European enforcers. This assessment related to:

- Disclosure of the expected impact of implementation of major new standards in the period of their initial application (IFRS 9, IFRS 15 and IFRS 16);
- Specific recognition, measurement and disclosure issues of IFRS 3; and
- Specific issues relating to IAS 7 such as reconciliation of liabilities arising from financing activities.

In 2018 European enforcers also examined 819 issuers for the purpose of assessing the nonfinancial disclosures prepared in accordance with Articles 19a and 29a of the Accounting Directive, thus covering approximately 31% of the total estimated number of issuers subject to the requirement to publish the non-financial statement.

Furthermore, ESMA, together with European enforcers, identified a set of common enforcement priorities highlighting topics significant for European issuers when preparing their **2018 IFRS financial statements**. ESMA included:

- Specific issues related to the application of IFRS 15 *Revenue from Contracts with Customers*;
- Specific issues related to the application of IFRS 9 *Financial Instruments*; and
- Disclosure of the expected impact of implementation of IFRS 16 *Leases*.

ESMA identified the following areas of particular focus for the 2018 non-financial statements:

- The disclosures relating to environmental and climate change-related matters; and
- The requirements to disclose a reasoned explanation in case an issuer has not pursued a policy relating to a certain non-financial matter and the importance of disclosing complete information regarding nonfinancial key-performance indicators.

ESMA and European enforcers furthermore urged issuers to continue to provide high quality, entity-specific disclosures, including, amongst other things, with regard to the impact of the decision of the United Kingdom to leave the European Union (Brexit) and to the consequences of Argentina being classified as a hyperinflationary economy.

The ESMA Report on Enforcement and Regulatory Activities of Accounting Enforcers in 2018 is available on the ESMA website.

Source: www.esma.europa.eu

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 28 March 2019.

As of 20 April 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 References to the Conceptual Framework in IFRS Standards* (issued in March 2018)

Click here for the Endorsement Status Report

Jitka Kadlecová
jkadlecova@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 Audit s. r. o.
Churchill, Italská 2581/67,
120 00 Prague 2 – Vinohrady,
Czech Republic
Tel.: +420 246 042 500

Subscribe to dReport and other newsletters:

Personal Data Processing News

In March 2019, the most important event in personal data protection was undoubtedly the adoption of the GDPR Adaptation Act and the relevant accompanying act. In doing so, the Czech Republic remedied one of its legislative shortcomings as it was one of the last EU states lacking the Adaptation Act. Following France, another EU state that has fined a higher fine for violating the GDPR is Poland.

The Czech Parliament has Adopted the GDPR Adaptation Act

On 12 March 2019, the Chamber of Deputies approved two drafts of what are referred to as "GDPR Adaptation Acts", which the Senate had previously returned with comments primarily directed against the extension of the competencies of the Office for Personal Data Protection (the "**OPDP**") in respect of the right to information and against the mere decrease in fines for some public entities.

The Personal Data Processing Act (the "**PDPA**"), which will replace the existing Act No. 101/2000 Coll., on Personal Data Protection, had been adopted in the Senate's version. In contrast, in the Accompanying Act amending certain acts in relation to the adoption of the Personal Data Processing Act (the "**Accompanying Act**"), the Deputies upheld their original proposal. On 10 April 2019, the new rules governing personal data protection were signed by the President.

Besides the enactment of exceptions admitted by the GDPR and the specification of certain GDPR definitions, the objective of the PDPA and the Accompanying Act is also the implementation of two criminal-law directives.

The adoption of the act will affect, for example, the following:

- The Internet age of consent (finally stipulated at 15 years);
- The term 'legitimate interest' under the GDPR and relating exceptions;
- The exception from assessing the impact on personal data protection;
- The obligation of certain public authorities to appoint a Data Protection Officer;
- The impossibility of fining certain public entities;
- The accreditation of the GDPR certification authorities;
- Personal data processing for journalistic purposes; and
- The amendment to almost 40 acts, which will be primarily reflected in criminal law.

As a result of the adaptation package, Act No. 106/1999 Coll., on Free Access to Information, will newly include a provision introducing the institutes of what is referred to as an 'information order', based on which the liable entity will be obliged to provide the applicant with the requested information under the above-stated legislation. The new provisions of the Information Act will apply with effect from 1 January 2020.

No Fines for Selected Public Entities

The final wording of the PDPA fully abolishes the possibility of imposing administrative sanctions for the misuse of personal data on some public entities (municipalities not having extended powers in the scope of the municipal authority of a municipality with extended powers, and educational facilities established by municipalities) as requested by the Senate, which had argued that this would merely result in the transfer of funds as part of public budgets. According to the original proposal, only the maximum limit to fines should have been decreased.

For the consolidated wording of the Adaptation Act, follow this link.

The First Fines for Violating the GDPR Abroad

The Polish Personal Data Protection Office released information that it had imposed a sanction of PLN 943,000 (approximately EUR 220,000). The fine was imposed for a failure to comply with the reporting duty. According to the Office's information, up to six million data subjects were unaware of processing and thereby were unable to exercise their rights as stipulated by the GDPR. The company, on which the fine was imposed, collected the data from a publicly accessible register similar to the Czech Trade and Commercial Registers. In the case, it argued by saying that it would be extremely costly to comply with the reporting duty in relation to the persons in respect of whom it did not have e-mail addresses. Given that the company had the telephone numbers and postal addresses of the subjects, the Office did not accept the argument.

In Denmark, the relevant office seeks to impose a fine on a taxi service operator for storing personal data for an excessive amount of time, specifically for storing telephone numbers for five years without sufficient justification. The proposed sanction corresponds to EUR 160,000; however, it has yet to be approved by Danish courts.

For the Polish Office's information about the imposed fine follow this link.

Václav Filip
vfilip@deloittece.com

Ján Kuklinca
jkuklinca@deloittece.com

Matúš Tutko
mtutko@deloittece.com

Marriage? Marriage!

On 26 March 2019, the Chamber of Deputies continued the discussion in the first reading of the draft of the so-called Equal Marriage Act, i.e. An act that changes individual provisions of, among others, the Civil Code (No. 89/2012 Coll.), Pension Insurance Act (No. 155/1995 Coll.), Act on Specific Healthcare Services (No. 373/2011 Coll.), and revokes Act No. 115/2006 Coll., on Registered Partnership. The draft bill remained in the first reading and it looks like it will stay that way for a while. Nevertheless, let us have a look at what led us to this act and what it will bring. Or take away?

Same-sex couples have had the possibility of entering into registered partnerships in the Czech Republic since 1 July 2006. Act **No. 115/2006 Coll., on Registered Partnership** and on changes in certain related acts, as amended, is the result of a relatively short legislative process (the draft bill was sent to the deputies on 2 May 2005 and the Chamber of Deputies approved it at their meeting of 16 December 2005) despite the fact that at the time it aroused contradictory reactions from its supporters and opponents alike.

What did the act bring then?

- Concluding an institutionalised union of two persons of the same sex (becoming partners).
- Right and obligation of the partners to make common decisions on matters related to their life together (and if they fail to reach an agreement, the possibility to seek a decision in court).
- Representing the other partner in ordinary matters (receiving ordinary supplies).
- Automatic origination of rights and obligations of both partners as a result of the acts of one of them (in ordinary matters).
- Mutual maintenance obligation, even after the dissolution of the registered partnership.

Is it too little? Certainly not. Additionally, the Czech Republic was very progressive 13 years ago (the first country of the former Eastern Bloc) in officially acknowledging unions of same-sex couples. Aside from that, the current Civil Code grants a partner the same rights and obligations as a spouse in all provisions, with the exception of rights and obligations of Part Two (family law, i.e. for example the origination of kinship, affinity, guardianship and foster care remain a separate category where there was no place for registered partnership in the opinion of the proposers and lawmakers at the time).

What same sex-couples are asking for?

So what is missing? the driving force and motto of the entire campaign is the effort to grant equal rights to the unions of same-sex and opposite-sex couples, that is, the end of differences and end of the disparity between marriage and registered partnership. The probably most pressing matters include the possibility to take care of a child together (whether in the form of adoption or fostering), the entitlement to various social allowances (widow's/widower's pension) or the origination of community property (at present, registered partners are only co-owners holding separate shares). However, it is also worth mentioning the practical matters, such as the possibility to take paid and unpaid time off to conclude the partnership (there is no legal entitlement), the presence of witnesses during the ceremony (the conclusion takes place without witnesses), the option to choose the same last name, and last but not least the fact that registered partnerships may be concluded only at 14 designated registry offices in the Czech Republic (13 for the regions and one for the Capital City of Prague). And the approaches of the registry offices also differ very much, from "we will certainly not go anywhere because of you, let alone on the weekend" to "certainly, no problem, even on the weekend, wherever you wish". From a purely practical standpoint, people wishing to enter into a registered partnership first have to carefully select the right region that will be willing to accommodate them with respect to the time and place and only then choose the venue.

Marriage as a union of a man and a woman, or equal marriage?

Thanks to the initiative of two groups of deputies, the Chamber of Deputies now faces a decision on two completely different draft bills related to marriage. The first, from my perspective a rather backwards one, is an amendment to the Charter of Fundamental Rights and Freedoms (ruling no. 2/1993 Coll.) consisting in the addition of the words "and **marriage as a union between a man and a woman**" in Article 32. This slight change has two consequences: only marriage (not registered partnership) is under the protection of the law (moreover anchored at the constitutional level), and that is only marriage concluded between a man and a woman. In the event of acceptance of this amendment to the constitutional law, which requires the approval of a three-fifths majority of all deputies and three-fifths majority of senators in attendance, the possibility of marriage for persons of the same sex will be lost until another change to this article is made, since any legal provision allowing this possibility would be contrary to the constitutional order of the Czech Republic.

The second proposal is an amendment to the Civil Code (and other related acts), which is somewhat poetically but fittingly called "**marriage equality**" and which consists in replacing the words "a man and a woman" in Section 655 by the words "two people". As a result, any two people, of the opposite or same sex, could marry, and the content of marriage as a set of rights and obligations arising from it would remain unchanged. Marriage would bring in particular the following

new additions for same sex couples: (i) origination of kinship and affinity, which in fact exists between one partner and the relatives of the other partner, since in most cases a partner usually interacts with the family of the other partner and they consider each other to be relatives; (ii) origination of community property, which simplifies the handling of property, including subsequent inheritance; (iii) adoption of the other partner's child, joint adoption of a child (from an institution), joint fostering, regulation of relationships to children in the event of a divorce; and last but not least, (iv) the actual method of entering into matrimony – with two witnesses, in a ceremonial way and at almost any registry office.

Will the Czech Republic join the ranks of progressive countries?

Regardless of the sociological understanding of marriage and any kind of populism, it certainly should be mentioned that with the second option above the legislature does not interfere in any way with the current model of marriage of a man and a woman (it merely opens it to the model of man-man or woman-woman) and it most definitely does not open the option of concluding polygamous marriages or marriages with a child, animal or thing, as has been alleged by certain opponents.

As is often the case with delicate topics, it now depends on which lobby (or reason?) will win. Whether the fear that same-sex couples would ruin "traditional" family will prevail, or whether the Czech Republic will join the ranks of rather progressive western democracies such as the Netherlands, Belgium, Norway, Sweden, Portugal, Iceland, Denmark, France, the United Kingdom, Spain, Luxemburg, Ireland, Finland, Germany, Malta, the United States of America, Canada, New Zealand and Australia, but also Argentina, Brazil, Columbia, Uruguay or South Africa, and allow same-sex couples to marry. And thus have marriage equality.

Petr Turek
pturek@deloittece.com

Contacts

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

Deloitte Legal s. r. o
Churchill, Italská 2581/67,
120 00 Prague 2 – Vinohrady,
Czech Republic

Tel.: +420 246 042 100
www.deloittelegal.cz
Subscribe to dReport and other newsletters.

Deloitte.