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Contents

What should you not underestimate in preparing the corporate income tax return?

For a whole series of entities, this year's deadline for filing a due corporate income tax return is 1 July. The article below summarises the areas where, in our experience, entities frequently make mistakes, highlights the existing judicature and also provides a brief summary of the selected areas that you should not neglect in relation to the most recent amendment to the Income Taxes Act (the "ITA").

1. Areas where mistakes are frequently made

Provisions against receivables and write-off of receivables
One of the frequently debated issues is whether it is possible to release a statutory provision against a receivable as of the balance sheet date and write off the receivable through tax-deductible expenses if the receivable became time-barred during the year. The existing wording of the ITA does not make this possible and, in the event of a tax audit, the tax-deductibility of this expense could be contested by the tax administrator.

For the correct utilisation in compliance with the ITA, it is necessary to have an internal system in place that will enable you to write off the receivable and release the tax provision before the receivable itself becomes time-barred.

Rental versus leases including the issue of technical improvements
The tax consequences of the termination of a lease contract may significantly increase the cost of a tax situation that is not overly complicated (eg, a move into new premises, termination of a lease contract, expiry of the period for which the lease contract was concluded etc). Even as early as in concluding a lease contract where technical improvements will be made on the leased premises and you, as a lessee, will be entitled to depreciate them, the situation also necessitates a tax analysis in addition to proper legal treatment.

If, for example, you, as a lessee, terminate the lease contract, do not remove the technical improvements and do not receive any compensation for the costs incurred from the lessor, the undepreciated portion of technical improvements will irrevocably become a tax non-deductible expense. Therefore, it is necessary, as early as in concluding the contract, to bear in mind the tax implications that may materialise years later. Adverse impacts may also apply to the lessor itself, for which the undepreciated portion of technical improvements may represent taxable income.

Holding an equity investment in a subsidiary
The appropriate treatment of exempt income in the form of a profit share paid by a subsidiary usually does not cause much trouble for entities. Where they sometimes make mistakes is the issue of relating expenses. In line with the ITA, it is necessary to treat all direct expenses relating to the holding of an equity investment in a subsidiary as tax non-deductible and, in respect of indirect expenses, you must be able to prove that they are lower than 5% of the dividend paid, or treat the value of 5% of the dividend paid as a tax non-deductible expense. In line with the ruling of the Regional Court (29 Af 53/2016 – 88), it is necessary to consider the circumstances of indirect expenses in a broader context and exercise caution if you expect them to be zero. This is for the reason that you may easily lack sufficient evidence and face an additional assessment of indirect expenses in line with the above-stated fiction of 5% of dividend paid, including relating sanctions.

Combination of Deductions, Gifts, Discounts and Tax Offsetting
If the tax return of your company is more complex, including, for example, tax-deductible items (research and development deduction, deduction of support for specialised education, tax loss), provided gratuitous supplies (gifts), discounts (eg, arising from an investment incentive or the employment of people with disabilities) or, for example, crediting of tax paid abroad, it is highly important to pay attention to the rules of their utilisation and the mutual interconnection of the relevant provisions. As, for example, gifts cannot be transferred to subsequent years, giving preference to them in decreasing the tax base over a transferred tax loss (transferrable for up to five taxation periods) automatically comes into consideration; however, such treatment would be a major mistake.

2. From the existing judicature – intercompany services

Ruling file ref. 8 Afs 216/2017 – 75 debated the situation where support services are provided by the parent company to the subsidiary (eg, management, service, technology and other services). Even though the payer (subsidiary) had a whole series of supporting documents demonstrating the provision of services (contract, invoice, presentation, telephone conferences etc), the tax administrator contested the entitlement to the tax deductibility of the services. In fact, according to the court, the tax payer failed to demonstrate for what portion of the total invoiced amount the specific services accounted. According to the court, the condition for the tax deductibility of these cases is, on the one hand, the clear specification of costs incurred and, on the other hand, their relation to the clearly specified provision of the service.

3. ITA amendment

In relation to the most recent ITA amendment, we consider it to be appropriate to point out, well ahead of time, the first two below-listed areas which will be relevant for a majority of companies from the next year onwards, and the new reporting duty, which has already come into effect.

Excessive Borrowing Costs
Besides the standard limits for the tax deductibility of loan interest within the group (the "thin capitalisation test"), the limits to the deductibility of interest are extended for taxation periods beginning on or after 1 April 2019 to include the newly introduced institutes of excessive borrowing costs. If what are referred to as excessive borrowing costs exceed the higher of the limits stipulated by law (30% of EBITDA or CZK 80 million), the positive difference will become a tax non-deductible expense. Excessive borrowing costs represent tax-deductible expenses (ie, borrowing costs that passed the thin capitalisation test as tax-deductible) following the deduction of borrowing income.

Exit charge
With effect from 1 January 2020, the ITA will introduce the obligation to treat the relocation of assets as part of a single tax payer from the Czech Republic abroad as constituting taxable income. The cost of the transaction must increase the tax base and will be carried at the amount that it would have in the event of a transfer between unrelated entities subject to a charge. In essence, the provision may apply to situations where assets are relocated by a Czech resident to its permanent establishment abroad, when assets are relocated by a non-resident from a permanent establishment in the Czech Republic abroad or when residence is relocated from the Czech Republic abroad.

Reporting Income Paid Off Abroad
The newly introduced reporting institute stipulates the obligation to also report payments that are not subject to taxation or exempt from withholding tax (eg, dividends, interest, royalties) on a monthly basis if they exceed CZK 100,000. Given the transitional provisions, please note that if such income is paid in April 2019, it will need to be reported as early as in May 2019. The Ministry of Finance has already released the relevant report on the financial administration's website. It is also possible to apply with the tax authority for an exemption from the reporting duty for up to five years.

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Finance Leases and Real Estate Acquisition Tax

The acquisition of ownership title to real estate subject to a finance lease by its user is, according to the Ordinance on Real Estate Acquisition Tax, exempt from this tax. However, the Ordinance does not define finance leases in any way and, in this regard, the Income Taxes Act is referred to. As the definition had changed over time (namely between 2014 and 2015), it was not fully clear what wording is effective in assessing the exemption.

In a recent ruling, the Supreme Administrative Court has confirmed that the wording of the Income Taxes Act applicable on the date of the transfer of the ownership title to the real estate, ie the date of purchasing the real estate, is effective in assessing the definition of a finance lease. The date of concluding the lease contract has no effect on assessing the tax treatment for the purposes of the real estate acquisition tax, even though the Income Taxes Act makes it possible to refer back to the original wording of the act for the purposes of the tax deductibility of lease payments.

Therefore, if the real estate subject to a finance lease was purchased in 2014, it is possible to apply the exemption provided the conditions stipulated by the then definition of a finance lease are met, ie the owner left the real estate to the user for use in exchange for consideration and, in concluding the contract, it was agreed that following the agreed period, the owner will transfer the title to it to the user, without any restrictions as to the duration of the lease contract or purchase price (the duration is merely decisive in determining the tax deductibility of lease payments for income tax purposes).

Different conditions since 2015

In contrast, since 1 January 2015, the conditions applicable to the definition of a finance lease have been extended in the Income Taxes Act, among others, to include the introduction of minimum duration (ie, at least 30 years for the majority of apartments, building and structures, and 50 years for administrative buildings, large department stores, hotels etc). Therefore, for the purposes of applying an exemption from real estate transfer tax, the purchase of real estate subject to a finance lease implemented after 1 January 2015 will only have to meet the new extended definition of a finance lease, regardless of when the finance lease contract was concluded.

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The Supreme Administrative Court on (in)dependence and (non)creation of permanent establishment

The Supreme Administrative Court cancelled a rather disputable decision of the Regional Court in České Budějovice issued at the beginning of last year on the grounds of its unreviewability. It also stated several significant facts in its ruling (ruling 2 Afs 103/2018 – 46) regarding the approach to assessing the criterion of an agent's dependence, ie, the role of commentary in interpreting the Double Tax Treaty.

The case dealt with quite a complicated situation. The tax administrator deduced that the Czech company ES (which considered itself to be a German tax resident based on its place of actual management in Germany and taxed the income achieved from the business activity in Germany in compliance with the provisions of the Double Tax Treaty concluded between Germany and the Czech Republic) generated the income from sources in the Czech Republic through a permanent establishment as a dependent agent. The permanent establishment in the Czech Republic was to be established by means of a contractual relationship with an unrelated Czech company MSV that provided various administrative and client services to ES as this company did not have any employees in the Czech Republic.

The primary business activity of ES is the sale of work clothes and work aids and the tax administrator deduced that the activities performed by MSV for ES under a contract represented an independent and indispensable part of the business activities of ES, not just the activities of preparatory or auxiliary nature. Since MSV performed these services on a long-term basis and systematically (the contract was concluded for an indefinite period of time) and taking into account other circumstances (webpages in the Czech language, phone number and contact place in České Budějovice), the tax administrator concluded that in this situation it was possible to see the intent to approach an unlimited number of clients with the aim of realising business deals there, ie, also profits. The Regional Court in its ruling 50 Af 33/2017 – 32 confirmed the conclusion of the tax administrator.

What about the Supreme Administrative Court

First, the Supreme Administrative Court stated that the decision of the Regional Court is **unreviewable** as it had stated inaccurate or misleading data in the substantiation thereof that did not correspond to the contents of the tax administrator's file and findings. Subsequently, it gave a statement on the merit of the case – ie, on the construction of the Double Tax Treaty (DTT), and especially the relevant article dealing with the creation of permanent establishment through a dependent agent.

Primarily, it gave a statement that a **model treaty (and the commentary thereon) can be used as additional means to interpret the DTT**, whereby it is necessary that the interpretation corresponds to the text of the concluded treaty (through which it de-facto confirms the so-called **historical approach** to the interpretation of the commentary and model treaty): "*The additional means of interpretation can undoubtedly also include the so-called OECD model treaty as a sample document based on which the relevant international convention was concluded between two particular countries (contracting parties). In this sense the model treaty can be, with a certain amount of simplification, compared to the explanatory memorandum of a bill of act. It is not a source of law but interpretation guidance on a retrospective deduction of the intent of contracting parties. As a matter of logic, such a purpose can be performed by the model treaty (and the commentary thereon) only provided the text of the model treaty in its decisive sections fundamentally corresponds to the text of a concluded and ratified international treaty*."

Subsequently, the Supreme Administrative Court engaged in assessing the creation of the permanent establishment. It stated that the provisions of Article 5(4) of the DTT expressly determined as one of the conditions of the qualification of a person as a dependent agent that such a person was not simultaneously an "independent agent" in which the court refers to the **determination of independent agent** pursuant to related Article 5 of the DTT. According to the Supreme Administrative Court, the tax administrator did not deal at all with the commentary on this article in its decision, it only stated that the "activity of MSV represented an independent and indispensable part of the business activities of the tax person that could not be considered the activities of preparatory or auxiliary nature or the activities of an independent service provider."

Referring to the interpretation of the commentary, the Supreme Administrative Court states that a certain person can be considered an independent agent, if it is independent of a company both **legally and economically and, simultaneously, in acting on behalf the company, it acts in the normal course of its business**. Specifically, the SAC states the **most relevant criteria to assess the dependence:**

- *Legal and economic independence of the agent depends on the **scope of the obligations** the agent has in relation to the company. If its activity is subject to detailed instructions and broad supervision by the company, such a person cannot be considered independent of the relevant company.*
- *Another criterion is whether a **business risk** is borne by*

the agent or the company itself. The independent agent will not generally be subject to substantial control as regards the manner in which it performed work for the company. Also, it will not be subject to detailed instructions by its superior regarding the manner in which it is to perform the work.

- *The fact that a principal* ***relies on special skills and knowledge of the*** *agent is a sign of independence.*
- *Another factor that must be taken into account in assessing the question of independence is the* ***number of principals*** *to be represented by the agent. The independence is less probable, if the activities of the agent are, in the course of their performance or on a long-time basis, performed exclusively or almost exclusively for one company. To assess the question of whether the activities of the agent represent an autonomous business of this agent as part of which it bears risks and is rewarded for applying his business skills, it is necessary to take into account all facts and circumstances. If the agent acts as part of its normal business activity for multiple principals and none of them are a main principal from the perspective of the activities performed by the agent, the legal dependence can exist, if the principals act in agreement in controlling the activity of the agent performed on their behalf. Persons cannot be considered the persons acting as part of their common activity, if, instead of the relevant company, they perform the activities that, from an economic point of view, fall within the sphere of the company's activity rather than in the area of their own business activity.*

Based on the above-mentioned the SAC concluded that the permanent establishment of ES had not been created in the Czech Republic through a dependent agent and thus the Czech Republic is not entitled to the taxation of (a part of) profits of this company in compliance with Article 7 of the relevant DTT.

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News round up

VAT Treatment of Issuing and Distributing Meal Vouchers and Similar Means of Payment

Following a debate of the Coordination Committee between the Czech Chamber of Tax Advisors and the General Financial Directorate, it is evident that the tax administration applies the tax regime for vouchers pursuant to Section 15 and 15a of the VAT Act, as amended, to meal vouchers and similar payment vouchers. Although the debate has yet to be concluded, there is general agreement that the circulation of meal vouchers in the form of single-purpose vouchers will be subject to VAT, and the same rate will also have to be applied to the commission for their distribution. In contrast, the circulation of vouchers in the form of multi-purpose vouchers will not be subject to VAT, and supplies provided in this context to the issuer of meal vouchers should have the nature of administrative or mediation activities and should be subject to a 21% VAT rate. The conclusions of the Coordination Committee will be available in late June 2019.

CJEU Case Law

C-224/18 Budimex

In this ruling, the Court of Justice of the European Union (the "CJEU") expressed the idea that the moment when construction services are subject to taxation may not occur the resulting work has yet to be duly taken over by the customer, provided the final amount of the payment is not yet known prior to the take-over. The CJEU's argumentation could be useful in cases where the date of taxable supply is generally determined in respect of the provision of services or supplies of goods.

C-672/17 Tratave, C- 127/18 A-PACK

In two independent rulings, the CJEU described additional aspects of the possibility/obligation to correct tax in respect of irrecoverable receivables. On the one hand, the CJEU indirectly confirmed that the obligation of delivering a corrective tax document to the debtor under the Czech VAT Act does not, in principle, depart from the options stipulated by the EU's VAT Directive applicable to member states, while, on the other hand, it regarded one of the other conditions stipulated by the Czech VAT Act to be in contradiction with EU law. Specifically, it ruled that the Czech VAT Act is not compliant with the Directive, given that it conditions the correction of the tax base and VAT under Section 44 of the VAT Act by the fact that the debtor has not stopped being a VAT payer. We believe that the CJEU's deliberation should also be valid considering the new provisions of Section 46 et seq. Of the VAT Act effective since 1 April 2019.

C-235/18 Vega International Car Transport and Logistic – Trading GmbH

In the ruling, the CJEU described the context of suppling goods from the VAT perspective. A holder of a fuel card, which is used for paying for fuel, lent the card to another person and rebilled the fuel to the person. The CJEU highlighted that the supply of goods is not performed between the fuel distributor and the fuel card holder, but directly between the fuel distributor and the person that used it in fuelling up. The question is whether the CJEU's perspective is, indeed, applied in practice.

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International taxes in brief

Cyprus: ATAD implementation

On 5 April 2019parliament approved legislation implementing the EU Anti-Tax-Avoidance Directive (ATAD) with retroactive effect from 1 January 2019. The bill introduces an EBITDA-based interest deduction limitation rule, controlled foreign company (CFC) rules and a new general anti-avoidance rule (GAAR).

Denmark: rejection of dividend WHT refund

On 2 April 2019, the Danish Eastern High Court (High Court) issued its decision in a case involving two investment funds registered in Luxembourg and the UK that requested a refund of Danish dividend withholding tax (WHT) on distributions received from Danish companies during the period 2000-2009. The High Court ruled that the funds were not entitled to refunds. Under the legislation at issue, an exemption from Danish WHT on dividends distributed by a Danish resident company is available for investment funds if (i) the recipient is a Danish-resident investment fund and (ii) the investment fund fulfils the requirements in article 16C of the Tax Assessment Act. As a result, a non-resident investment fund cannot qualify for the WHT exemption because it can never meet the first requirement and thus, the exemption has never been granted to non-resident investment funds, even though they had article 16C fund status.

German: no royalty WHT for online advertising

A decree issued by the Federal Ministry of Finance on 3 April 2019 and published on 10 April 2019 confirms that payments for online advertising to non-resident recipients are not subject to German withholding tax. The publications confirm that the German tax authorities will not move forward with their initial plans to apply the domestic royalty withholding tax rules to cross-border payments for online advertising, which would have imposed a form of domestic digital services tax.

France: No French PE of Google Ireland

On 25 April 2019, an appeals court upheld a 2017 lower court decision that Google Ireland Ltd. did not have a permanent establishment (PE) in France based on activities performed by Google France. The appeals court argued that Google France was controlled by Google Ireland, it held that the French company's employees could not enter into contracts on its Irish affiliate's behalf. In the alternative, the tax authorities argued before the appellate court that Google Ireland Ltd. should be regarded as having a fixed place of business in France consisting of the premises and staff of Google France. However, the appeals court, considering that these were available only to the French company for its own activity in the framework of the contract of service binding it to the Irish company, did not validate this thesis.

France: introduction of digital service tax and reduction of the CIT rate

On 9 April 2019, the National Assembly (the lower house of parliament) adopted a bill introducing a digital services tax (DST), which will apply to resident and non-resident companies with a worldwide turnover exceeding EUR 750 million and a French turnover exceeding EUR 25 million. The French-source turnover will be calculated using a digital presence coefficient based on the proportion of French users, the rate of tax will be 3%. The DST will be deductible from the French corporate income tax base, if any, and will apply retroactively with effect from 1 January 2019 and until an agreement on the taxation of the digital economy is concluded at OECD level. The corporate income tax (CIT) rate will be progressively reduced from 33.3% in 2018 to 25% in 2022. Under current rules, the rate for fiscal years commencing in 2019 should have been 31% for all companies for profits exceeding EUR 500,000 (and 28% for profits up to EUR 500,000). However, article 2 of the Bill provides that companies with a turnover of EUR 250 million or more will remain subject to the 33.3% rate for fiscal years commencing in 2019 on the fraction of profits exceeding EUR 500,000 (profits up to this threshold remain subject to the 28% rate).

Japan: new approach for intangibles

Japan's 2019 tax reform package, approved by the National Diet on 27 March 2019, contains new rules that represent the domestic implementation of the OECD's guidance on hard-to-value intangibles (HTVI). The new rules will apply for fiscal years beginning on or after 1 April 2020 for corporations and as from the 2021 calendar year for individuals. Based on the OECD's approach, the tax authorities can make an adjustment where there is a significant deviation of actual outcomes from forecasts used to price a transaction. Exceptions to an adjustment exist where the deviation does not exceed 20% or where the financial forecasts were based on appropriate weighting of developments or events known at the time of the transaction. Taxpayers also should be granted an exception where a bilateral advance pricing agreement (APA) is in place, the assumption being that thorough due diligence was performed as part of the APA process.

Netherlands: new policies for international tax rulings

The decree proposing a new tax ruling practice implementing from 1 July 2019 was sent to the lower house on 23 April 2019. Based on the new tax ruling practice, in principle, the competent tax inspector is the first point of consultation for obtaining a ruling. For certain types of rulings (e.g. application of participation exemption to foreign income, the presence of a permanent establishment in the Netherlands, or head office/permanent establishment (allocation) rulings), however,

the tax authority's International Fiscal Certainty Team is the first consultation point. A new body – the International Fiscal Certainty Board– will be responsible for the central coordination of rulings in order to ensure unity in, quality of and adherence to the ruling practice and policy. Moreover, a summary of every granted ruling will be published in anonymised form. A ruling will apply (i.e. be valid) for a period not exceeding 5 financial years, under special circumstances, a ruling may be granted for a period of 10 financial years.

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Brexit: the lull before the (next) storm?

Another turbulent development regarding Brexit is expected in the UK. Aside from the necessity to hold the European Parliament elections, which took place in the UK Thursday, 23 May, Britain faces another big event as soon as the week of 3 June – the British parliament will vote on the draft bill implementing the agreement on leaving the EU.

It is generally expected that the parliament will not approve this draft bill. Theresa May resigned, she will stand down as Conservative Party leader on June 7. The Prime Minister's resignation seemed unavoidable, but the key question for the Conservative Party and the whole Brexit process is who will be her successor.

As it stands, the United Kingdom will leave the EU on 31 October 2019. As unlikely as it seems at the moment that the UK would leave the EU at the end of October with no deal, the preliminary favourites of the Prime Minister competition, especially Boris Johnson, are hard Eurosceptics and supporters of the fastest Brexit possible.

All Options are Still at Stake

The current situation is no more clear than it was in recent months and there are still countless possible options: leaving with the original agreement, which now seems like an option with little probability, revoking Article 50 and thus stopping Brexit, another extension, no deal Brexit, a second referendum (without any agreement about its contents at present), customs union of the UK and the EU, or a combination of the above.

When trading with the UK, we still recommend avoiding taking over long-term commitments (i.e. those exceeding the end of October of this year) without the possibility of their renegotiation reflecting the result of Brexit.

More information about tax and legal impacts and practical tips can be found in our Brexit articles: for example, the article on Lex Brexit or on how to prepare for a no deal option.

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Digital tax in the Czech Republic

At the end of April 2019, the Ministry of Finance of the Czech Republic announced its intention to introduce a draft bill on taxation of income from digital services by the end of May 2019. The Ministry seeks to start collecting tax on digital services in the Czech Republic in mid-2020.

Following other European states, such as France, Spain or Italy, the Czech Republic decided to tax digital services on a national level after certain states had refused the European Commission's proposals of a coherent EU approach to digital services taxation at the ECOFIN meeting held on 12 March 2019 (note: adoption of a coherent approach requires an unanimous approval of all Member States). Let us remind you that the European Commission proposed two separate directives on digital services taxation a year ago (specifically on 21 March 2018), namely a proposal for a Council directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services and a proposal for a Council directive introducing the institutes of a digital permanent establishment.

Czech solution

Although the Czech concept of digital tax should be partly based on the first of the above-mentioned directives of the European Commission, by adopting a national solution the Czech Republic entirely changes its position declared in the past. In October 2018, the Czech Republic preferred a full scope solution at the OECD level and only accepted the European Commission's proposal to introduce digital turnover tax as an interim solution.

In the Czech Republic, digital tax should be imposed on income from selected Internet services (namely income from Internet advertising or income from the sale of data collected on digital interface users) that are provided by companies with their global turnover exceeding EUR 750 million in the Czech Republic.

Discussions are underway to determine the minimum amount of turnover of a company providing the selected types of digital services in the Czech Republic in order to impose the tax on as many entities operating on the Czech market as possible.

Based on its preliminary calculations, the Ministry assumes that digital services tax of 7% should increase the state budget by an additional CZK 5 billion.

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When do Businesses become Entitled to Interest Paid by the Tax Administrator

Businesses often find themselves in a situation where they become entitled to interest as a result of the tax administrator's actions or negligence. However, in practice, we often come across cases where the tax administrator does not pay the interest to the taxpayer at all or pays an amount that is lower than the one to which it is entitled by law or based on the administrative courts' judicature. When should the entitlement to interest be claimed then?

Interest on an Audited Excessive Deduction

In auditing an excessive VAT deduction claim made, the tax administrator must be aware of the "cost" of the time devoted to the audit if it transpires that the payer's assertions are true. The "cost" consists of interest on the VAT deduction, which, in some cases, may amount to 14% of the excessive deduction per year.

The issue of compensation, which is supposed to balance out the taxpayer's financial disadvantage resulting from an unreasonably long audit of the excessive deduction, which would not have occurred if the excessive deduction had been immediately paid out, has undergone significant development in the past five years. However, interventions by administrative courts, namely regarding the amount of the interest, may continue to be expected, for which reason we recommend that you actively enforce your interest claim against the tax administrator.

Interest on the Tax Administrator's Unjustified Actions

Another situation when a business may become entitled to interest as a result of the tax administrator's actions or negligence is the issuing of an unlawful ruling. If the tax administrator had issued a payment assessment that was subsequently cancelled for unlawfulness or an incorrect administrative procedure, the taxpayer becomes entitled to interest on the incorrect determination of tax from the amount that it paid based on or in relation to the unlawful payment assessment during the period from its payment to its refund. The entitlement to interest on the tax administrator's unlawful actions may also originate if the tax administrator applies an incorrect administrative procedure.

At the annual rate of 14% or more depending on the Czech National Bank's repo rate, the amount of interest on the tax administrator's unlawful actions is not immaterial.

Businesses most frequently become entitled to the interest if the court issues a ruling that revokes the financial administration's ruling for unlawfulness, for example when the period for determining tax has expired, a legal regulation has been incorrectly applied or a payment security order has been cancelled. However, the business may also become entitled to interest on the tax administrator's unlawful activities if the payment assessment is cancelled or amended as early as during the appellate proceedings, for example owing to an income tax overpayment arising from tax prepayments made.

Interest on a Refundable Overpayment

The tax administrator is obliged to refund a tax overpayment within 30 days from receiving a request for the refund. In respect of a VAT overpayment (excessive deduction), the period is 30 days from its assessment, ie the delivery of the payment assessment. In some situations, the deadline for refunding the overpayment is only 15 days, for example in respect of overpayment refunds resulting from the expiry of the payment security order or the tax administrator's unlawful actions.

If the tax administrator does not observe the deadline, the business becomes entitled to interest on the refundable overpayment also at 14% per year. To receive it, an application must be filed to the tax administrator.

Therefore, in practice, situations may occur when the business makes an overpayment as a result of the tax administrator's unlawful ruling (eg, owing to the expiry of the period for determining tax) which the tax administrator fails to automatically refund to the business within 15 days, and the business must actively defend itself against the tax administrator's incorrect procedure. Besides interest on the tax administrator's unlawful actions, the business will also become entitled to interest on a refundable overpayment. The tax administrator may further exacerbate the situation if it does not automatically refund the interest on its unlawful actions, whereby the interest also becomes a refundable overpayment following its allocation to the personal tax account and the tax administrator is obliged to refund it within 15 days.

Knowing the regulations and judicature is worth the effort

Therefore, it may be concluded that legislation compensates taxable entities for the tax administrator's default and sanctions the tax administrator's incorrect administrative procedures or unlawful rulings through interest that is applied to multiple situations. However, given the diversity of the situations, businesses that wish to enforce their rights must have a greater knowledge of legal regulations and the administrative courts' judicature.

Deloitte Legal has practical experience and has achieved much success in enforcing interest claims as a result of the tax administrator's actions or negligence, and may facilitate your journey towards winning your claims. For detailed information, contact our litigation attorneys-at-law at kdevlin@deloittece.com.

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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)

Tax liabilities – July 2019

July		
Monday, 1	CRS (GATCA) report	Submission of announcement according to Section 13k of Act No. 164/2013 Coll., as amended
	FATCA report	Submission of announcement according to Section 13k of Act No. 164/2013 Coll., as amended
	Income tax	Submission of tax return and payment of tax for 2018, if the taxpayer has obligatory audit or the tax return is elaborated and submitted by the tax advisor
		Payment of special-rate withholding tax for May 2019
Wednesday, 10	Excise tax	Tax maturity for May 2019 (excluding excise tax on alcohol)
Monday, 15	Road tax	Advance payment of tax for 2nd quarter 2019
	Intrastat	Submission of statements for intrastat for June 2019, paper form
Wednesday, 17	Intrastat	Submission of statements for intrastat for June 2019, electronic form
Saturday, 20	Value added tax	Tax return and maturity of the MOSS VAT
Monday, 22	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Thursday, 25	Gambling tax	Submission of statement for advanced payment on deduction from lotteries and other similar games and payment of advanced for 2nd quarter 2019
	Value added tax	Tax return and tax for 2nd quarter and for June 2019
		EC Sales List for 2nd quarter and June 2019
		VAT control statement for 2nd quarter and for June 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for June 2019
	Excise tax	Tax maturity for May 2019 (only the excise tax on alcohol)
		Tax return for June 2019
		Tax return for claiming of refund of excise tax, for example on fuel oil, other petrol (benzine) for June 2019 (if applicable)
Tuesday, 30	Energy taxes	Submitting a notification about meeting the obligation to ensure minimum amount of biofuels and maturity of the related security
Wednesday, 31	Income tax	Payment of special-rate withholding tax for June 2019

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The Latest Schedule of the OP PIK Calls

The timetable of OP PIK calls for 2019 was updated in early May. The table below presents the latest schedule of the already announced calls under the Operational Programme Enterprise and Innovations for Competitiveness ("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
Real Estate 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
Energy Savings in Heat Supply Systems Call IV	Subsidy for reconstructing and developing heat supply systems, and increasing the efficiency of cogeneration	Ongoing	SME, LE	From 1 Oct 2019 To 1 June 2020
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 1 Oct 2019 To 1 Oct 2020
Technology – Industry 4.0 Call XI	Subsidy for non-production technologies and their connection to the production process	Ongoing	SME	From 1 Aug 2019 To 1 Nov 2019
ICT in Enterprises Call VI	Subsidy for acquiring new technologies and services in the area of IS/ICT solutions	Ongoing	SME, LE	From 1 Nov 2019 To 1 April 2020
Real Estate Call IV – Tourism	Subsidy for modernising outdated buildings for the development of business activities in the area of tourism	Ongoing	SME	From 3 Oct 2019 To 3 March 2020
Real Estate Call IV – Coal Regions	Subsidy for modernising outdated buildings for the development of business activities in the area of coal regions	Ongoing	SME	From 3 Oct 2019 To 3 March 2020
Energy Savings Call V	Subsidy for activities related to final energy consumption savings	Ongoing	SME, LE	From 16 Sept 2019 Do 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*

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Announcement of the first call for proposals in the Environment for Life programme

The Technology Agency of the Czech Republic plans to announce a call for proposals in the Environment for Life programme on 12 June, focusing on the support of applied research and experimental development and innovation in the area of the environment.

The filing project proposals is planned to take place in two sub-programmes:

- Operating research in public interest; and
- Eco-innovation, technology and procedures for environmental protection.

Applicants in this call for proposals can include enterprises, research organisations and other legal entities.

A necessary prerequisite for the projects is achieving a certain type of result, such as a prototype, functional sample, software, patent, specialised book or the organisation of a conference, etc. The subsidy applies to staff costs, scholarships, costs of sub-supplies and other direct costs.

The maximum amount of support of one project within this call for proposals is up to 100% of total eligible costs, based on the type of research activity and type of applicant. The maximum amount of support per project is up to CZK 30 million, based on the type of research activity and type of applicant.

The deadline for submitting project proposals has been set to 19 September 2019.

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Announcement of the first call for proposals in the GAMA 2 programme, sub-programme 1

In late April, the Technology Agency of the Czech Republic announced the first call for proposals in the GAMA 2 programme, focusing on the support of applied research and experimental development and innovation. The GAMA 2 programme, sub-programme 1 is intended to support the system of transfer of new R&D findings and their implementation in practice.

Applicants in this call for proposals can include only research organisations. A necessary prerequisite for the projects is achieving a certain type of result, such as a prototype, functional sample, software, industrial or utility model, etc. The subsidy applies to staff costs, indirect costs, costs of sub-supplies and other direct costs.

The maximum amount of support of one project within this call for proposals is up to 100% of total eligible costs, based on the type of research activity and type of applicant. The recommended amount of support per project is up to CZK 15 million.

The deadline for submitting project proposals has been set to 6 June 2019.

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Announcement of the first call for proposals in the DELTA 2 programme

The Technology Agency of the Czech Republic plans to announce a call for proposals in the DELTA 2 programme on 25 June, focusing on the support of applied research and experimental development and innovation.
The objective of the DELTA 2 programme is to support projects of international cooperation between enterprises and research organisations in order to increase the amount of concrete results of applied research, which are expected to be later implemented in practice.

Applicants in this call for proposals can include enterprises and research organisations. However, one of the partners has to be from the country where the foreign partner agency is based (specifically, the countries are Brazil, South Korea, Vietnam, Israel, China – localities Jiangsu and Zhejiang, Taiwan, Canada – provinces Alberta and Québec).

A necessary prerequisite for the projects is achieving a certain type of result, such as a prototype, functional sample, software, patent, industrial or utility model, etc. The subsidy applies to staff costs, scholarships, costs of sub-supplies and other direct costs.

The maximum amount of support of one project within this call for proposals is up to 74% of total eligible costs, based on the type of research activity and type of applicant.

The deadline for submitting project proposals has been set to 22 August 2019.

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Announcement of the first call for proposals in the TREND programme

The Technology Agency of the Czech Republic announced the first call for proposals in the TREND programme, focusing on the support of applied research and experimental development. The objective of the TREND programme is to support projects focusing on implementing the results of industrial research and experimental development in practice and on the support of penetration of new markets.
The programme is organised by the Ministry of Industry and Trade of the Czech Republic, but the provider of the support is the Technology Agency of the Czech Republic.

Applicants in this call for proposals can include enterprises and research organisations. A necessary prerequisite for the projects is achieving a certain type of result, such as a prototype, functional sample, software, industrial or utility model, etc. The subsidy applies to staff costs, costs of sub-supplies, indirect costs and other direct costs.

The maximum amount of support of one project within this call for proposals is up to 70% of total eligible costs, based on the type of research activity and type of applicant.
The maximum amount of support per project is up to CZK 70 million, based on the type of research activity and type of applicant.

The deadline for submitting project proposals has been set to 11 July 2019.

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Amended Interpretation of the National Accounting Council for the Accounting Treatment of the Sale of Investments in Subsidiaries

In this issue of the Accounting News, we will briefly summarise the main features of Interpretation I-38 of the National Accounting Council entitled "Accounting Treatment of the Sale of Equity Investments in Subsidiaries in Consolidated Financial Statements".

About the National Accounting Council

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

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

Interpretations of the National Accounting Council

The interpretations express the expert opinions of the National Accounting Council on hands-on application of Czech accounting rules. The interpretations are not legally binding. Their aim is to contribute to the formation of optimal and unified accounting and financial reporting procedures. They namely focus on issues that are either not addressed by Czech accounting regulations or that are not tackled sufficiently. Also, the focus is on areas for which no unified treatment is applied in day-to-day accounting practice.

Interpretation I-38 – Accounting Treatment of the Sale of Equity Investments in Subsidiaries in Consolidated Financial Statements

Interpretation I-38 (hereinafter the "Interpretation") was issued in February 2019 in response to the query as to what accounting and presentation treatment should be applied to the sale of 100% equity investments held in subsidiaries consolidated financial statements. The Interpretation does not deal with the partial sale of investments.

The Interpretation is based on the premise that "from the perspective of consolidated financial statements, the substance of the sale of equity investments held in subsidiaries is similar to transactions constituted by the sale of business under the perspective of single financial statements". The sale of business is dealt with by Czech Accounting Standard No. 011 - Transactions related to Businesses.

The general results arising from the Interpretation are as follows:

- The subsidiary has been consolidated from the date of acquisition to the date of the sale of the full (100%) equity investment.
- In the event that the full equity investment is sold in the course of the reporting period, as of the balance sheet date the assets and liabilities of the subsidiary are no longer included in the consolidated assets and liabilities.
- The subsidiary's assets and liabilities at a value determined at the sale date are reported (derecognised) in the consolidated profit and loss, specifically in other operating expenses (or other operating income, if the net assets sold have a negative value).
- The reserves and provisions reported by the subsidiary are not released (as opposed to the treatment applied on the sale of business under Czech Accounting Standard 011). Conversely, the reserves and provisions are included in the net assets sold. Therefore, as of the sale date, together with other components of net assets, they are reported in other operating expenses.
- Other items to be derecognised are the book value of goodwill arising on consolidation, minority interests, and any deferred taxes.
- It is advisable to obtain the values of the assets and liabilities sold, of derecognised goodwill and of minority interest from interim financial statements.
- The income from the sale of equity investments is recognised in other operating income. Therefore, it shall be reclassified from the financial profit or loss (under which it was reported as part of single financial statements of the parent company).

Given that income and expenses related to the sale of equity investments are not transactions that occur regularly, in line with the requirements of Regulation 500/2002 Coll., the Interpretation includes a list of items that ought to be disclosed separately in the notes to the financial statements.

In addition, the Interpretation includes a comprehensive illustrative example.

The full wording of the Interpretation can be found on the National Accounting Council's website.

Source: www.nur.cz

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Cryptocurrencies under IFRS

In this article we make some observations about cryptocurrencies and the current accounting requirements under IFRSs for those holding, using for payments for goods or services or issuing cryptocurrency.

The first cryptocurrency - Bitcoin - came into existence in 2008. It was created to facilitate peer-to-peer exchanges, using Blockchain technology. Its use of cryptography to control how it is created and managed led to it being called a cryptocurrency.

Nowadays, there are more than 1,400 'cryptocurrencies' (sometimes referred to as 'digital currencies') in existence (e.g. Bitcoin, Ethereum, Litecoin, Bitcoin cash and Ripple). Cryptocurrencies have the following common characteristics:

- They are created through cryptography, often with a maximum possible number of 'coins' that can exist through solutions to a complex algorithm (e.g. there can only ever be 21 million Bitcoins in existence).
- They are decentralised, with no single party (government or otherwise) regulating their use.
- Although values for a cryptocurrency may sometimes be quoted in a particular currency, a 'coin' in one country is indistinguishable from a 'coin' in another.
- Their value is supported only by the laws of supply and demand.
- Cryptocurrencies can be obtained by 'mining' (use of computing power to solve the relevant algorithm) or by purchase on a peer-to-peer basis and can, if both parties agree, be exchanged for goods or services.

The increased use of, and exposure to, cryptocurrencies raises issues about the financial reporting implications for those who receive, hold, issue or trade in them.

Holdings of Cryptocurrencies

The holding of cryptocurrencies have been discussed by the International Accounting Standards Board (IASB) and the IFRS Interpretations Committee (IFRIC Committee) since 2018. In November 2018 the IASB decided not to issue a separate standard on cryptocurrencies and ask the IFRIC Committee to publish a tentative agenda decision that explains how IFRSs apply to holdings of cryptocurrencies.

The IFRIC Committee published this tentative agenda decision at its meeting in March 2019. The IFRIC Committee noted that a range of cryptoassets exist. For the purposes of its discussion, the IFRIC Committee considered only a subset of cryptoassets—cryptocurrencies—with the following characteristics:

- A cryptocurrency is a digital or virtual currency that is recorded on a distributed ledger and uses cryptography for security.
- A cryptocurrency is not issued by a jurisdictional authority or other party.
- A holding of a cryptocurrency does not give rise to a contract between the holder and another party.

Nature of a cryptocurrency

According to the IFRIC Committee, cryptocurrencies meet the definition of intangibles in IAS 38 Intangible Assets since they typically:

- are capable of being separated from the company and sold;
- are a nonmonetary item (because they do not include rights to obtain fixed units of currency); and
- have no physical substance.

Under IAS 38, cryptocurrencies would be recognised at cost on initial recognition, with subsequent measurement using either the cost or the revaluation model.

If a company applies the cost model, it measures intangible assets at cost less any accumulated amortisation and impairment losses.

Which IFRS applies to holdings of cryptocurrencies?

The IFRIC Committee concluded that a holding of cryptocurrency is not a financial asset. This is because a cryptocurrency is not cash (because an insignificant number of businesses currently use them for transactions). Nor is it an equity instrument of another entity. It does not give rise to a contractual right for the holder and it is not a contract that will or may be settled in the holder's own equity instruments.

The IFRIC Committee concluded that in cases where a company holds cryptocurrencies **for sale in the ordinary course of business** (ie dealer of cryptocurrencies), such holdings could be within the scope of **IAS 2 *Inventories***. If the company is a broker-dealer (eg a trading platform or exchange) in cryptocurrencies, it may be able to measure inventory at fair value less cost to sell. If the company is not a broker-trader, its holdings will be measured at the lower of cost or net realisable value.

If IAS 2 *Inventories* is not applicable, an entity applies **IAS 38 *Intangible Assets*** to holdings of cryptocurrencies.

Disclosure of holding of cryptocurrencies

According to the IFRIC Committee a company should apply the presentation and disclosures requirements of the Standard it applies (ie IAS 38 or IAS 2) to recognise and measure the holding of cryptocurrencies. In addition, a company may have to disclose information related to material non-adjusting events (events that may arise after the reporting date that indicate conditions after the reporting period). For example, a company holding cryptocurrencies may have to consider whether changes in the fair value

of those holdings after the reporting period are of such significance that non-disclosure could influence the economic decisions that investors make based on the financial statements.

Accounting for other crypto-assets

Neither the IASB nor the IFRIC Committee have discussed the accounting for other types of crypto-assets, such as those issued via initial coin offerings (ICOs).

Companies that raise capital via ICOs often provide holders (coin holders) with promises. Generally, the accounting treatment for holders of these coins will depend on the obligations arising for the company issuing the crypto assets. The nature of the obligations could result in these being recognised as equity, liabilities or revenues.

The full version of the IFRIC Committee tentative agenda decision is available here.

'Mining' of Cryptocurrencies

Neither IASB nor the IFRIC Committee have discussed how a cryptocurrency miner should account for these activities. The following text is based on Deloitte's recommendation included in the iGAAP 2018 publication.

In the blockchain technology upon which cryptocurrency is based, 'miners' create new blocks that are added to the blockchain by using a 'proof-of-work' approach. Miners use 'brute force' computing power (a huge number of iterative trial-and-error calculations) to find a solution to a designated algorithm in the form of a unique identifier meeting defined parameters specified in the protocol underpinning the cryptocurrency.

When a solution is found, this new 'block' is added to the blockchain and can then be used by the miner to record the next set of cryptocurrency transactions waiting to be processed. In return, that miner receives:

- a reward of a number of newly 'minted' units of cryptocurrencies for identification of a new block; and
- any transaction fees (also in the form of cryptocurrencies) that the parties to cryptocurrency transactions have paid to have their transactions processed and confirmed.

No party is obliged to participate in and/or complete mining activity (a miner can cease their activities at any time) and no specified single party is responsible for providing the new units of cryptocurrency to a successful miner. The entitlement to an award is established through a protocol.

The transaction fee is agreed upon by the transacting parties, often by means of a bidding process based on the demand for space in a block.

Income

Revenue should be recognised at the fair value of cryptocurrencies received at the time it is earned both for identification of a new block and in respect of transaction fees.

In respect of the 'reward' for identification of a new block, the miner does not have a contract with a specified party in respect of its search for the successful generation of a valid identifier (rather, all parties to the blockchain are subject to the same protocol). As such, the definition of a customer in IFRS 15:Appendix a ('a party that has contracted with an entity to obtain goods or services that are an output of the entity's ordinary activities in exchange for consideration') is not met. Accordingly, IFRS 15 *Revenue from Contracts with Customers* is not applicable to this aspect of the activities of a cryptocurrency miner.

Nevertheless, the miner is receiving an asset (in the form of cryptocurrencies) upon generating a new block. Hence, income (defined in part under IFRSs as an increase in economic benefits in the form of an inflow of asset) will be recognised if it can be measured reliably. This should be presented as revenue (albeit not revenue from contracts with customers).

In contrast, the transaction fee is received from the parties to the recorded transaction that have a common and binding understanding that the miner who solves the next block first will be unconditionally entitled to the transaction fee for that transaction. Those parties are the miner's customers and recognition of revenue with respect to the transaction fee is, therefore, subject to the requirements of IFRS 15.

In both cases, the consideration received is in the form of cryptocurrencies, not cash, and therefore, as required by IFRS 15:66 (or by analogy to those requirements, in the case of the 'reward' for identification), the revenue should be measured at the fair value of the cryptocurrencies received.

As discussed above, the cryptocurrencies received should then be classified as an intangible asset in the scope of IAS 38 or, if held for sale in the ordinary course of business, as inventory in the scope of IAS 2.

Costs

The costs the miners incur, which can be substantial, cannot be related to a particular transaction for which the miner will receive consideration (i.e. they do not meet the asset recognition criteria and so will be expensed as incurred).

Property, plant and equipment used in the mining activities would be depreciated over its useful life in accordance with IAS 16.

Payment for goods or services

An entity could pay for goods or services using a cryptocurrency. Some companies offer to pay their employees in cryptocurrency.

Generally, these non-monetary transactions will need to be recognised at fair value. For example, IAS 16 *Property, Plant and Equipment* states that when plant and equipment is acquired in exchange for a non-monetary asset the cost of the item of property, plant and equipment is measured at fair value. A Standard might indicate that an entity should look

to the fair value of the thing being acquired, such as in the plant and equipment example, or to the fair value of the consideration paid (which would be the cryptocurrency) such as for employee remuneration.

You can find more information about accounting for cryptocurrencies under IFRSs in the Deloitte publication Thinking Allowed — Cryptocurrency: Financial reporting implications.

Accounting for cryptocurrencies pursuant to Czech accounting legislation

For the sake of completeness, we add that communication on the accounting for and presentation of digital currencies was issued by the Ministry of Finance regarding the issues of cryptocurrencies in May 2018.

According to this opinion, the Ministry of Finance recommends that all users, regardless of the different motives for holding and using digital currencies, account for and present them as inventory "of its kind".

More information about accounting for cryptocurrencies in line with Czech accounting legislation can be found in our Accounting News from July 2018.

Sources: www.iasplus.com
IFRIC Update March 2019
Investor Update April 2019
iGAAP 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 28 March 2019.

As of 29 May 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

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US GAAP

FASB improves Accounting for Episodic Television Series

In March 2019, the Financial Accounting Standards Board (FASB) published an Accounting Standards Update (ASU) that amends and clarifies the accounting for production costs for films and episodic content produced for television and streaming services.

In past several years, the production and distribution models used in the entertainment industry have changed significantly, one of the main changes was the adoption of subscription-based revenue models for online streaming services.

Based on the reactions of industry and key stakeholders of the organizations that use subscription-based revenue models, the current accounting capitalization guidance doesn't properly reflect the results and does not give the right information.

Based on FASB Chairman Russell G. Golden "the new standard converges the guidance for films and episodic content. This better reflects the economics of an episodic television series and improves the information provided to investors about the various types of produced and licensed content".

The current accounting guidance has differing capitalization requirements for content production:

- For films, production costs are capitalized.
- For episodic content (for example, a TV series), production costs are capitalized subject to a constraint based on contracted revenues in the initial and secondary markets.

The amendments in this Update improve GAAP by aligning the accounting for production costs of episodic television series with the accounting for production costs of films.

In addition, the amendments require that an entity test a film or license agreement within the scope of Subtopic 920-350 for impairment at the film group level, when the film or license agreement is predominantly monetized with other films and/or license agreements. This improvement addresses application issues with existing guidance as a result of changes in the industry and better reflects the economics of how certain entities monetize their content.

The amendments in the standard also:

- amend presentation requirements;
- require that an organization provide new disclosures about content that is either produced or licensed; and
- address cash flow classification for license agreements.

For public companies, the standard is effective for fiscal years beginning after December 15, 2019, and interim periods within those fiscal years. For all other organizations, the standard is effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. Early adoption is permitted.

For the full ASU text see www.FASB.org.

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Legal News in e-Commerce, Blockchain and FinTech

E-commerce has been subject to updates in relation to the development of a new wave of EU legislation as part of the "New Consumer Policy", which governs the issue of online offer rankings and comparison or the issue of dual product quality. The objective of the new draft directive is to make the operation of on-line markets and on-line comparison services more transparent.

EU Parliament Adopts Two Directives Regulating E-Commerce

In March, we informed you of the legislative processes relating to the directive on certain aspects of contracts for the sale of goods and the directive on certain aspects of contracts for the provision of digital contents and digital services. The directives primarily aim to limit the obstacles for cross-border shopping in relation to consumers. These directives were adopted by the Parliament and Council of the EU in the debated wording and are expected to be signed.

EU member states will have two years to make appropriate adjustments to their respective national legislations to ensure compliance with the directive.

EU Parliament and Commission have Decided to Strengthen Consumer Rights

In April, the European Parliament approved new consumer protection rules whose objective is primarily to amend the issue of online offer rankings and comparison and the issue of dual product quality. This directive represents another step of the European Union in implementing the plan referred to as the "New Consumer Policy".

The new draft directive primarily aims to increase the transparency of how online marketplaces and comparison services work in respect of customers (consumers). Going forward, they should namely publish the parameters that determine the ranking of the specific offers posted by them or the ranking in which the offers are displayed in the customer's (consumer's) search engine. The legislation should also ensure that customers are appropriately informed about the entity from which they make the purchase, ie whether they purchase products or services directly from the operator of the online marketplace, from a trader (business) or from a private entity, thereby also making sure that the customer (consumer) is sufficiently informed about his or her rights prior to making the purchase.

The new draft directive also addresses the issue of dual product quality, which refers to situations where the business offers goods under the same brand that have substantially different composition or characteristics in different member states. According to the existing draft directive, such actions should extend the existing definition of unfair commercial practices and should be banned, with the exception of situations when such actions on the business's (trader's) part would be justified by objective factors (such as the availability and seasonality of foodstuffs). However, the existing draft may give rise to ambiguities in interpreting the term "considerable difference".

A large-scale violation of the consumer protection legal regulations in multiple member states could, based on the new rules, be subject to a fine of up to 4% of the business's (trader's) annual turnover for the prior year. If the information about the business's (trader's) turnover is unknown, the maximum penalty could amount to EUR 2,000,000.

The draft directive will now be subject to a vote by the EU Council. If the directive is approved in the existing wording, member states will have 24 months to transpose it to national legislation.

To learn more about the issue, visit the website of the European Commission.

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Regulation of Research and Development Tax Deductions: Victory of Substance over Form

The outcome of development projects is always uncertain. Therefore, it is important to provide various forms of aid for businesses to embark on these uncertain projects. From the tax perspective, this primarily includes the possibility of treating research and development costs as a tax-deductible item. However, in respect of this form of aid, some businesses have so far objected that the regulation itself is uncertain. All this has changed with the amended Income Taxes Act that significantly revises the manner of regulating deductions for promoting research and development.

One example for all. The existing treatment of the deduction for promoting research and development ("R&D") required that the written project of the R&D in the pipeline be prepared and signed prior to the commencement of its implementation. In relation to this requirement, long disputes were held as to when exactly the implementation of the development project commences and, therefore, when the written document has to be signed. Utilised deductions were contested, for example by stating that the research and development project should have been signed by the business prior to negotiating the contractual terms with the customer or prior to any preparatory activities. Paradoxically, authorities did not examine which projects were of an R&D nature and, as such, should have been supported, but whether the statutory executive did not sign the project a couple of days later. These disputes were terminated by a case represented by Deloitte Legal's attorneys-at-law and held before the Supreme Administrative Court. The Court upheld that the project commences as late as when it is duly approved and signed. While court rulings have established the practice in enforcing unclear legal provisions, they have unfortunately not encompassed all those of key importance.

Will the amended act help?

Since as early as 1 April 2019, new rules for utilising R&D tax deductions have been in effect. The amendment to the Income Taxes Act was made in response to the recommendations of the task force set up under the leadership of the Research, Development and Innovations Council in which Deloitte was also involved. One of the objectives of the amendment is to remove the uncertainty experienced by payers utilising the R&D tax deduction. A major development is primarily the fact that it will be newly sufficient to merely inform the tax authority in advance of the intention of utilising the R&D deduction. The full project documentation will need to be prepared before the deadline for filing an ordinary tax return expires. This method of regulation is a much better reflection of how development projects are carried out by businesses. In fact, businesses generally do not design development projects without carrying them out, but flexibly respond to the present market situation to always be one step ahead. Payers will now not need to worry about preparing formally correct project documentation in advance or otherwise risk losing this tax relief. As a result, businesses will be able to concentrate on the technical implementation of the project so that it has the most certain outcome possible.

Deloitte Legal has succeeded in research and development tax deduction disputes

Deloitte Legal's tax litigation team has succeeded in all disputes relating to research and development tax deductions. The possibility of deducting the costs of development activities from the tax base constitutes substantial tax support. However, in practice, businesses face ambiguous rules for its utilisation. Deloitte has represented several clients in this regard and led their cases to successful conclusion. As a result, businesses were not only refunded unlawful additionally assessed tax along with interest on the tax administrator's unlawful actions for court disputes spanning years, but the rules for utilising the deduction in subsequent years have also been clarified. If you would like to know more, contact Jiřina Procházková, an attorney-at-law, at jprochazkova@deloittece.com.

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Amendment to the Act on Medicinal Products – Another Step towards the Digitisation of the Health Service and a New Obligation to Report the Prices of Medicinal Products

The Chamber of Deputies is currently debating, as Parliamentary Print No. 302, Amendment to Act No. 378/2007 Coll., on Medicinal Products and Amendments to Some Relating Acts, as amended (the "Medicinal Products Act"). On 9 May 2019, the Medicinal Products Act passed the second reading in the Chamber of Deputies, with proposed amendments sent to deputies on 10 May 2019. The third reading of the amendment is currently scheduled for the 30th Chamber of Deputies' session, ie on 28 May 2019.

Patient's Pharmaceutical Record

Since January 2018, physicians have been obliged (with the exception of specific cases) to issue prescriptions in the electronic form. Nevertheless, the existing wording of the Medicinal Products Act makes it impossible to further use the information on the medicinal products prescribed and dispensed in providing health services to the patient. However, this information may, in fact, be of crucial importance for the attending physician as well as the pharmacist dispensing the prescribed medicinal products so that possible contraindications of individual prescribed pharmaceuticals can be identified in time and the patient's safety ensured.

Thanks to the pharmaceutical record, physicians and pharmacists should be provided, in the Central Repository of Electronic Prescriptions, with access to information not only about all prescribed medicinal products, but also about those actually dispensed. Physicians (registering or attending to the patient, or emergency service physicians) will have access to pharmacotherapy information through the pharmaceutical record only in relation to the provision of health services. Similar will apply to pharmacists, who will be able to consult the pharmaceutical record in dispensing a medicinal product (based on a valid and as yet fully unutilised e-prescription) or during personal consultations with the patient (by entering the number of the patient's identity card or passport in the eRecept system). Restrictions to the range of authorised persons should prevent the threat of the data contained in the pharmaceutical record being leaked or abused.

The Patient Need not Agree

Nevertheless, the patient will be able to express their opposition to having their record accessed at any time (referred to as the "opt-out"). The patient may revoke their opposition at any time (ie, make it possible to have their pharmaceutical record accessed within the boundaries of law), or only give their consent to having their record accessed to specific physicians or pharmacists (referred to as the "selective consent").

Physicians and pharmacists will be able to view the information about the patient's medication stored in the eRecept system under the above-described conditions for a period of up to one year from the date on which the relevant record was created. However, in our view, it would be appropriate if, at least under certain conditions, the physician had a comprehensive knowledge of the patient's entire pharmacological history.

Obligation to Report Information about the Price of the Medicinal Product

Furthermore, the amendment extends the reporting duty of the holders of marketing authorisation under Section 33 of the Medicinal Products Act. At present, marketing authorisation holders are already obliged to report, to the State Institute for Drug Control (the "**Institute**"), among others, information on the volume of the supplies of medicinal products introduced on the Czech market, including the identification of medicinal products and information as to whether they were supplied to a distributor or a pharmacy. Marketing authorisation holders will also be newly obliged to inform the Institute of the price of the medicinal product in the report.

By analogy, the amendment also revises Sections 77 and 82 of the Medicinal Products Act, which stipulate the scope of compulsory reports in respect of distributors and pharmacies. These entities will also be newly obliged as part of the reporting duty to inform the Institute of the prices of medicinal products. In respect of distributors, this will apply to the price for which the medicinal product was supplied to another distributor in the distribution chain or pharmacy. In respect of pharmacies, this will apply to the prices for which the medicinal product was dispensed.

The sanction for violating the reporting duty, which also newly includes the duty to report information on the prices of medicinal products, may amount to a maximum of CZK 20 million in respect of the violation by a marketing authorisation holder, and a maximum of CZK 5 million in respect of the violation by a distributor.

Effectiveness

The amended act is likely to become effective on the first day of the second calendar month following the promulgation date, ie on 1 July 2019 at the earliest (the effective date is also subject to proposed amendments, both on the part of the Constitutional Committee and deputies).

Proposed Amendments

A series of major amendments have been proposed in respect of the bill.

- Two of the proposed amendments include a change in the system of the patient's presumed agreement (opt-out) to the opt-in system. Therefore, the concept is quite the reverse, whereby it would only be possible to access the information in the patient's record based on the patient's previous consent, namely owing to the sensitivity of medication data and indirectly the patient's health condition. Another major argument in favour of the opt-in concept is the association of certain chronic conditions with a high degree of social stigmatisation. Patient organisations repeatedly record breaches of the confidentiality obligation in respect of these conditions, which often leads to the patient's further social ostracism.
- Another amendment has been proposed by Patrik Nacher, who proposes that the regulation governing the mail order dispensation of prescription-only medicinal products be revised with effect from January 2021. Therefore, it should newly be possible to dispense not only over-the-counter (so called OTC) medicine, but also prescription-only medicine.
- Based on the amendment proposed by a group of deputies headed by Petr Pávek, Section 77 (1) (h) of the Medicinal Products Act, the purpose of which is to ensure the availability of medicinal products for patients, should be revised. At present, the provision stipulates that distributors must ensure the delivery of a medicinal product following the pharmacy's request no later than within two working days, with the pharmacy being able to contact any distributor regardless of whether the distributor trades with the medicinal product or not. Subsequently, marketing authorisation holders are obliged to supply the medicinal product to the distributor in the volume corresponding to the size of its market share. The amendment restricts the distributor's right to call on the marketing authorisation holder to supply the medicinal product if the availability is not ensured by the marketing authorisation holder otherwise. Subsequently, the distributor is obliged to supply the medicinal products supplied to it by the marketing authorisation holder based on a call only to a pharmacy (or a physician in the event of vaccines). The amendment additionally abolishes considering distributors' market shares, also in view of non-compliance with competition law mentioned multiple times in the past.
- The affected provision is also addressed by another amendment, this time proposed by the government, which, besides the abolition of the section relating to market shares, proposes that the obligation to supply requested medicinal products within two days should only apply to the distributors that will voluntarily assume the obligation in assuming the public service obligation based on a written statement to the marketing authorisation holder. Furthermore, the amendment introduces a protected distribution system as part of which the distributor, that has voluntarily assumed the duty, is obliged to maintain stocks of inventory in such amounts as to be able to supply the necessary medicinal products to a pharmacy within two working days.

Deloitte's Note: the above-outlined proposed amendments relating to the obligatory system of supplies merely confirm the shortcomings of the existing legislation which the experts from among the public have pointed out since the very beginning of its existence. Therefore, a systemic change may be expected in respect of the emergency supply system in the near future.

- According to the amendment proposed by deputy Kamal Farhan, the Institute should newly be authorised to also provide information relating to the certificates that it issues under Section 81a (1) of the Medicinal Products Act for access to the eRecept system to other bodies within the departmental scope of authority of the Ministry of Health (including the Czech Social Security Administration for the purposes of verifying the identity of attending physicians in the eNeschopenka or "e-Sick Leave" system) that will also be able to use the certificate to access and use the services and systems established or managed by departmental organisations.
- Furthermore, the amendment proposed by Věra Adámková recommends revising the regulation on food supplement advertising, which will have to contain an explicit and legible caution to consult the consumption of food supplements with a physician or a pharmacist. At the same time, the amendment should abolish the liability of advertising agents for the contents of advertising, given that they do not have the necessary specialised qualifications as opposed to ordering parties and processors.
- The amendment proposed by deputy Tomáš Vymazal addresses the price regulation of cannabis-containing medicinal products. The objective of the proposal is for individually prepared medicinal products containing cannabis to be fully covered for Czech patients, regardless of the unavailability, if applicable, of Czech cannabis and the necessity to procure cannabis through cross-border supplies. In this context, it is proposed that the method of determining the maximum price of the medicinal products be revised; however, from the perspective of pricing and coverage, this seems to be non-systemic.

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