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Accounting news

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dReport: August 2019

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

Contents

Introduction of digital tax in the Czech Republic

The Ministry of Finance has presented a legislative draft of the taxation of income from digital services, a so-called "digital tax", and it has sent it for external consultation.

As has already been mentioned in our previous article, the Ministry of Finance brings a proposal of a digital tax rate in the record amount of 7% for selected internet services provided in the Czech Republic. The newly taxed services will include:

1. Placement of targeted advertising on the internet;
2. Digital mediation services; and
3. Sale of user data.

Based on the current wording of the act, companies meeting the following two conditions will be subject to the tax from mid-2020:

1. The company has consolidated income exceeding EUR 750 million; and simultaneously
2. The aggregate amount of payments for the taxed services provided in the territory of the Czech Republic exceeds CZK 50 million.

The purpose of the digital tax is clear from the statement of reasons and it has been confirmed by the Ministry of Finance itself. The objective is the fair taxation of large technological companies that are not based in the Czech Republic. Typically, they are large technological giants that operate social media, internet search engines, mediators of goods or services, etc. The term 'not based' is absolutely essential in this case. However, the choice of terminology in the draft bill does not lead to a clear definition and at present, the obligation to pay digital tax would concern even entities of multinational companies which are properly registered in the Czech Republic and pay corporate income tax. Should the wording of the draft bill remain unchanged, these companies would suffer a significant disadvantage compared to their domestic competitors and it could even lead to a decrease in the economic activity of these companies (which was certainly not the original intention).

The tax base is composed of sales of selected digital services attributed to Czech users. The nationality of users should be determined based on IP addresses, which the companies will newly be required to track. At present, it is not clear from the draft bill what should be done in the event that it is not possible to determine the state where the user is located based on the IP address and at the same time the user's address is not known. The draft bill does also not take into consideration the possibility of manual software changes of the IP address.

The consultation proceedings brought many other questions relating to the practical application of this new type of tax. Deloitte takes an active part in the consultation and we will continue to keep you up to date on the resolution of the comments and any potential changes.

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Investment Incentives and their End for the Manufacturing Industry?

Are you planning investments in production in the coming months? If so, it is a good time to consider whether to apply for an investment incentive now. If you file an application before the amendment to the Act on Investment Incentives becomes effective, the existing conditions will apply.

On Wednesday, 24 July 2019, the Senate approved the governmental proposal of an amendment to the Act on Investment Incentives. The amendment can be expected to come into force approximately in October 2019.

Investment incentives will have new rules

The amendment to the Act on Investment Incentives is **expected to limit investment incentives** for other than "supported regions" with higher unemployment. Support will be directed primarily to projects with higher added value (projects with the condition of a higher ratio of employees with higher salaries and university education, by cooperation with universities and research organisations, or investments in research and development projects).

Government approval will be needed

An important new aspect of the system of awarding investment incentives is the condition of the government's approval of all the applications with respect to the benefit brought to the region by the investment. A positive change concerns the cancellation of the condition of creating job openings for investments in manufacturing, and the halving of the limits of general conditions for small and medium-sized enterprises. Technological centres and centres for strategic services will attract more intensive support in the form of cash support of job openings in all regions or by decreasing the limits for new job openings for strategic investments.

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News round up

Amendment to the VAT Act

During July, the Senate rejected an amendment to the Act on Electronic Sales Records. Consequently, the presented motion to amend will be returned to the Chamber of Deputies for another vote. The amendment also proposes a decrease in VAT rates for selected supplies (draught beer, restaurant services, electronic books, household cleaning services etc.). The proposed changes have a postponed effect on the first day of the seventh calendar month following the date of publication in the Collection of Laws (the amendment is thus anticipated to take effect no earlier than in the first half of 2020).

Information of the General Financial Directorate

After several months of preparation, the General Financial Directorate (GFD) has issued Information concerning new rules for the issuance and distribution of vouchers. Aside from a description of one-purpose/multi-purpose vouchers as such, the Information also specifies the rules for voucher distribution, explains the arrangement for gratuitous voucher issuance, describes the impacts of subsequent complaints about goods (services), defines situations when a voucher has not been used at all and draws attention to situations when a supply is paid by a voucher with a nominal value higher than the cost of supply.

The GFD has issued Information that is significant primarily for taxable entities not based in the Czech Republic. The Information provides a summary of the rules for registering hese entities to VAT and other selected tax liabilities.

CJEU's judgments

As part of case C-242/18 UniCredit Leasing, the Court of Justice of the European Union (CJEU) provided its opinion on the rules for the VAT treatment of damages in the event of a premature termination of lease agreements. The compensation of unrealised revenues that would have been generated by the lessor if the lease agreement had not been terminated prematurely is, according to the CJEU, a component of the tax base of the lease and is thus subject to VAT. This conclusion is likely to affect the practice of lease companies operating in the Czech Republic. Concurrently, the CJEU further explained the application of the rules for a VAT decrease in the event of bad debt, which are part of the VAT directive.

Judgment C-388/18 "B" terminated disputes as to whether, in the event of sales that are subject to a specific VAT margin scheme, the turnover for mandatory VAT registration is calculated based on aggregate revenues generated by these sales or only from a sum of margin values. The CJEU opines that it is necessary to add up the aggregate revenues from individual sales and after the threshold value for VAT registration has been exceeded, it is necessary for the seller to become a VAT payer.

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What Is the Future of Electronic Sales Records?

During June, the Chamber of Deputies approved in the third reading an amendment to the Act on Sales Records. As such, the voting lasted several days because of more than 800 motions to amend. During July, the amendment was considered by the Senate, which dismissed it. The proposed amendment will thus be returned to the Chamber of Deputies.

The effective date of the amendment, or more precisely of its core part providing for extending the duty to record sales to the remaining payers, is postponed to the first day of the 7th calendar month following the date of the amendment being published in the Collection of Laws. The nearest ordinary meeting of the Chamber of Deputies is scheduled to take place in September 2019. Therefore, the question is when and in which wording the amendment is to be approved.

The current wording of amendment provides for the following:

- Introducing the duty to record sales for the remaining payers (sale of own products, provision of services);
- Ruling out the duty to record sales generated outside the Czech Republic;
- New sales records exceptions for social services, visually impaired entrepreneurs, sale of freshwater fish from 18 to 24 December, pre-paid telephone cards as well as sales generated by air transportation and gambling;
- Re-introducing the duty to include the tax ID number on receipts unless it includes the payer's birth certificate number; and
- Payers with annual sales up to CZK 600,000 may apply for recording sales in a paper form using a receipt block provided by the tax administrator.

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International taxes in brief

Slovakian government approves draft law implementing ATAD 2

On 29 May 2019, the government approved a draft law introducing changes to the Income Tax Act including measures to implement the provisions of the EU Anti-Tax Avoidance Directive 2 (ATAD 2) as regards hybrid mismatches with third countries.

CJEU rules on cross-border use of losses

On 19 June 2019, the Court of Justice of the European Union (CJEU) issued its decision in two Swedish cases, further clarifying the application of the Marks & Spencer decision on the deduction of foreign subsidiary losses.

French parliament approves legislation creating digital services tax

On 11 July 2019, the French parliament approved draft legislation introducing a 3% digital services tax (DST) from 2019.

Austrian court rules use of Luxembourg holding companies is not abuse of parent-subsidiary directive

In a recently published decision of 27 March 2019, the Supreme Administrative Court ruled on the application of the EU parent-subsidiary directive to an interposed Luxembourg holding company concluding that the abuse of law is not relevant in this particular case.

Italian Supreme Court rules on tax residence of holding company

In a 28 May 2019 ruling, the court held that a foreign holding company cannot be deemed to be tax resident in Italy if the board of director and shareholder meetings are held in the foreign country, and the company has suitable premises in that country from which to manage its participations.

Netherlands establishes commission on taxation of multinationals

On 25 June 2019, the State Secretary for Finance announced the establishment of a commission that will make an inventory of measures that broaden the corporate tax base while also ensuring that the Netherlands remains attractive for head offices of multinational companies.

Slovenia proposes corporate tax rate increase

Proposals announced on 18 June 2019 include an increase in the standard corporate income tax rate from 19% to 20% as from 1 January 2020 and the introduction of a 7% minimum rate.

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Tax liabilities – September 2019

September		
Monday, 2	Real estate tax	Tax maturity of 1st tax payment (tax payers engaged in agricultural production and fish farming with tax greater then CZK 5,000)
	Income tax	Payment of special-rate withholding tax for July 2019
Monday, 9	Excise tax	Tax maturity for July 2019 (excluding excise tax on alcohol)
Friday, 13	Intrastat	Submission of statements for intrastat for August 2019, paper form
Monday, 16	Income tax	Quarter tax advance payment
Tuesday, 17	Intrastat	Submission of statements for intrastat for August 2019, electronic form
Friday, 20	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Tuesday, 24	Excise tax	Tax maturity for July 2019 (only the excise tax on alcohol)
Wednesday, 25	Value added tax	Tax return and tax for August 2019
		EC Sales List for August 2019
		VAT control statement for August 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for August 2019
	Excise tax	Tax return for August 2019
		Tax return for claiming of refund of excise tax, for example on fuel oil, other petrol (benzine) for August 2019 (if applicable)
Monday, 30	Value added tax	Deadline for submission of application VAT refund from/to other member state to sec. 82 and sec. 82a VAT Act
	Income tax	Payment of special-rate withholding tax for August 2019

Tax liabilities – October 2019

October		
Thursday, 10	Excise tax	Tax maturity for August 2019 (excluding excise tax on alcohol)
Monday, 14	Intrastat	Submission of statements for intrastat for September 2019, paper form
Tuesday, 15	Road tax	Advance payment of tax for 3rd quarter 2019
Wednesday, 16	Intrastat	Submission of statements for intrastat for September 2019, electronic form
Sunday, 20	Value added tax	Tax return and maturity of the MOSS VAT
Monday, 21	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Friday, 25	Gambling tax	Submission of statement for advanced payment on deduction from lotteries and other similar games and payment of advanced for 3rd quarter 2019
	Value added tax	Tax return and tax due date for 3rd quarter and September 2019
		EC Sales List for 3rd quarter and September 2019
		VAT control statement for 3rd quarter and September 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for September 2019
	Excise tax	Tax maturity for August 2019 (only the excise tax on alcohol)
		Tax return for September 2019
		Tax return for claiming of refund of excise tax, for example on fuel oil, other petrol (benzine) for September 2019 (if applicable)
Wednesday, 30	Energy taxes	Submitting a notification about meeting the obligation to ensure minimum amount of biofuels and maturity of the related security
Thursday, 31	Value added tax	Last day of term for submission of application, changes or cancellation of VAT group according to § 95a based on VAT Act with effectiveness of change of group on 1 January 2020
	Income tax	Payment of special-rate withholding tax for September 2019

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Ministry announced new calls

During June, the Ministry of Industry and Trade of the Czech Republic announced several calls for projects. Below we provide more detailed information on some of the currently announced calls.

Fifth call of programme Energy savings

Call V of the Energy Savings Programme supports projects aimed at reducing the energy demands of a company. Supported activities include, for example, reconstruction and modernisation of energy production facilities for own consumption, distribution system of electricity, gas and heat in order to increase efficiency, modernisation of lighting systems of buildings and industrial sites, reducing energy demands of production and technological processes, modernisation and implementation of measurement and control systems, installation of RES for the company's own consumption.

- Who can apply for a subsidy:
  - Small, medium-sized and large businesses.
- What the subsidy covers:
  - Tangible fixed assets;
  - Intangible fixed assets required for operating tangible fixed assets;
  - Energy assessment;
  - Project documentation;
  - Expenditure on the organisation of a selection procedure; and
  - Engineering activity.
- Subsidy amount per project:
  - CZK 500 thousand – EUR 15 million; and
  - Financial aid for an energy assessment, project documentation, organisation of selection procedures and engineering activities is provided under the *de minimis* regime.
- Aid amount per project:
  - Maximum 50% of eligible expenditure for small businesses;
  - Maximum 40% of eligible expenditure for medium-sized businesses; and
  - Maximum 30% of eligible expenditure for large businesses.
- Aid amount for an energy assessment, project documentation, organisation of selection procedures and engineering:
  - Maximum 50% of eligible expenditure for small businesses;
  - Maximum 40% of eligible expenditure for medium-sized businesses; and
  - Maximum 30% of eligible expenditure for large businesses.
- Receiving applications:
  - 16 September 2019 – 30 April 2020.

It is a continuous call. The project must be executed in the Czech Republic, outside of the capital city of Prague; the actual place where the project is executed is decisive.

Second call of programme Energy Savings - Energy Efficient Buildings

The second call of the Energy Savings Programme - Energy Efficient Buildings supports projects aimed at reducing the energy demands of a company. Supported activities include, for example, the construction of new energy-efficient buildings and the construction of superstructures and extensions with higher energy standards to existing buildings.

- Who can apply for a subsidy:
  - Small, medium-sized and large businesses.
- What the subsidy covers:
  - Tangible fixed assets (additional costs for construction of buildings with a higher energy standard up to CZK 3,000 per sq. m. Of energy related area);
  - Energy assessment;
  - Investor technical supervision;
  - Project documentation;
  - Blower-door test.
- Subsidy amount per project:
  - CZK 200 thousand – EUR 200 thousand;
  - Financial aid for energy assessment, project documentation, investor technical supervision and blower-door test up to CZK 350 thousand.
- Aid amount per project:
  - Maximum 80% of eligible expenditure for small businesses;
  - Maximum 70% of eligible expenditure for medium-sized businesses;
  - Maximum 60% of eligible expenditure for large businesses.
- Aid amount for energy assessment, project documentation, investor technical supervision and blower-door test:
  - Maximum 80% of eligible expenditure for small businesses;
  - Maximum 70% of eligible expenditure for medium-sized businesses;
  - Maximum 60% of eligible expenditure for large businesses.
- Receiving applications:
  - 16 July 2018 – 15 January 2020.

It is a continuous call. The project must be delivered in the Czech Republic, outside of the capital city of Prague; the actual place where the project is executed is decisive. The building must meet the parameters of an almost zero-energy building pursuant to Decree No. 78/2013 Coll., as amended.

Fifth call of programme Renewable energy sources

Call V of the Renewable Energy Sources Programme aims to support projects using renewable energy sources for energy production and distribution. Supported activities include, for example, construction of wind power plants, installation of electric and gas heat pumps, installation of solar thermal systems, construction and reconstruction of sources of cogeneration of electricity and heat from biomass and heat transfer to a heat exchanger station, construction and reconstruction of small hydroelectric power stations or heat transfer from existing electricity generating plants.

- Who can apply for a subsidy:
  - Small and medium-sized businesses.
- What the subsidy covers:
  - Tangible fixed assets; and
  - Intangible fixed assets required for operating tangible fixed assets.
- Subsidy amount per project:
  - CZK 500 thousand – up to the planned allocation of the given activity.
- Aid amount per project:
  - Maximum 50 - 80% of eligible expenditure for small businesses, according to the type of activity; and
  - Maximum 45 - 70% of eligible expenditure for medium-sized businesses, according to the type of activity.
- Receiving applications:
  - 2 September 2019 – 31 March 2020.

It is a continuous call. The project must be executed in the Czech Republic, outside of the capital city of Prague; the actual place where the project is executed is decisive.

Tenth call of programme Technology

Call X of the Technology Programme supports projects aimed at digital transformation through the acquisition of new machines, technology equipment and the integration of these technologies through autonomous duplex communication into the production process. The aid is not intended for a simple renewal of existing machines with zero innovation.

- Who can apply for a subsidy:
  - Small and medium-sized businesses.
- What the subsidy covers:
  - Tangible fixed assets;
  - Intangible fixed assets (for example, acquisition of patent licences).
- Subsidy amount per project:
  - CZK 1 million – CZK 40 million.
- Aid amount per project:
  - Maximum 45% of eligible expenditure for small businesses; and
  - Maximum 35% of eligible expenditure for medium-sized businesses.
- Receiving applications:
  - 23 September 2019 – 16 December 2019.

It is a continuous call. The project must be executed in the Czech Republic, outside of the capital city of Prague; the actual place where the project is executed is decisive.

In the Real estate programme announced two calls

Two calls were announced in the Real Estate Programme: Call IV - Tourism and Call V - Coal Regions.

- Who can apply for a subsidy:
  - Small and medium-sized businesses.
- Aid amount per project:
  - Maximum 45% of eligible expenditure for small businesses; and
  - Maximum 35% of eligible expenditure for medium-sized businesses.
- What the subsidy covers:
  - Expenses for tangible fixed assets such as land improvement, reconstruction of buildings, modernisation, construction changes, construction or removal of a structure, utilities, roads to construction sites; and
  - Other construction-related costs that will be included in tangible fixed assets (such as studies, project activities and engineering activities).

Tourism

Supported activities include reconstruction of technically unsatisfactory buildings or reconstruction of brownfields into an object designed for business activities in the specific CZ NACE codes for tourism. Projects executed in the regions of Central Moravia, Northwest, Central Bohemia, Moravia-Silesia, Northeast, Southeast and Southwest will be supported. The condition for obtaining the subsidy is the creation of jobs, which is associated with the amount of eligible expenditure, which is as follows:

Number of jobs created	Maximum amount of eligible expenditure
1 job	CZK 10,000,000
2 jobs	CZK 20,000,000
3 jobs	CZK 30,000,000, etc.

- Subsidy amount per project in call IV Tourism:
  - CZK 1 million – CZK 100 million.
- Receiving applications in call IV Tourism:
  - 16 September 2019 – 31 March 2020.

It is a round call. The project must be executed in the Czech Republic in one of the 57 defined municipalities; the actual place where the project is executed is decisive. There can only be one execution place per project. Each applicant (one corporate ID) can submit a maximum of three projects.

Coal regions

Supported activities include the reconstruction of technically unsatisfactory buildings or the reconstruction of brownfields into an object designed for business activities in the specific CZ NACE codes. Projects executed in the Karlovy Vary, Ústí nad Labem and Moravian-Silesian regions will be supported.

- Subsidy amount per project in call V Coal Regions:
  - CZK 1 million – CZK 70 million.

- **Receiving applications in call V Coal Regions:**
  - 16 October 2019 – 16 March 2020.

It is a continuous call. The project must be executed in the Czech Republic, in the Karlovy Vary, Ústí nad Labem or Moravian-Silesian regions; the actual place where the project is executed is decisive. There can only be one execution place per project. Each applicant (one corporate ID) can submit a maximum of three projects. All pieces of real estate within the submitted project must be registered in the National Brownfields Database.

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Feel free to contact us at any time.

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Right of Superficies

In this issue of the Accounting Bulletin, let us have a closer look at the right of superficies and its accounting treatment to be applied by both the structure owner and the land owner under Czech accounting legislation.

The right of superficies was incorporated into the Czech legal system by way of Act No. 89/2012 Coll., the Civil Code (hereinafter "NCC") effective from 1 January 2014. As part of general property law, the right of superficies is stipulated in Chapter "Right in Rem", Sections 1240 - 1260 of NCC. The right of superficies was introduced in connection with the *superficies solo credit* principle, pursuant to which land prevails over a structure. In the event that the owner of a structure is the same as the owner of land, the structure "unites" with the land. The purpose of the right of superficies is to enable both the construction and ownership of structures for persons that are different from the owner(s) of land.

The right of superficies is established against land for the following purposes:

- Construction of new structures;
- Repair or technical improvement of existing structures;
- Blocking: the owner of the right of superficies makes construction on a piece of land impossible; and
- Acquisition for the purpose of resale.

Pursuant to NCC, the right of superficies is an immovable asset that is recorded in the land cadastre and originates when the record is made. The right of superficies represents a temporary limitation of disposal of land for up to 99 years, unless agreed otherwise. At the point the right of superficies ceases to exist, its value is nil.

The land owner may agree with the structure owner that, at the point the right of superficies expires as a result of lapse of time for which the right was provided, the structure owner shall either transfer the structure to the land owner or remove the structure. In the event that that the structure gets transferred, the structure owner shall be entitled to compensation under NCC that equals a half of the structure's value, unless agreed otherwise.

Accounting Implications of the Right of Superficies

As the Czech accounting regulations do not stipulate a precise treatment of the right of superficies, the legal treatment stipulated in NCC is taken into consideration. The right of superficies is stipulated by the following accounting regulations: Regulation No. 500/2002 Coll., which provides implementation guidance on certain provisions of Accounting Act No. 563/1991 Coll., as amended, for reporting entities maintaining double-entry accounting records (hereinafter the "Regulation"); and correspondingly also Regulation No. 504/2002 Coll., for reporting entities the principal activities of which do not include business. The treatment stipulated by the Regulations is described below.

Legal Treatment

The treatment of the right of superficies stipulated by the relevant regulation is as follows:

Section 7 Tangible Fixed Assets

(2) Item "B.II.1.2. - Structures", includes the following, regardless of the valuation amount and the useful life:

a. *Structures including buildings, mining structures and subterranean mining structures, water structures, and other construction structures under special legislation; and*
b. ***The right of superficies**, unless it represents goods.*

Section 47

(3) The valuation of the right of superficies does not include the structure that satisfies the right of superficies. In the event that upon the acquisition of the right of superficies that is valued at one certain amount and that includes a structure, which satisfies the right of superficies and which was constructed by another reporting entity or person, the value of the right of superficies shall be divided into a portion corresponding with the structure and another portion corresponding with the right of superficies, under the materiality principle and under the principle of a true and fair view of both portions of the right of superficies.

Section 56

(5) Structures that satisfy the right of superficies under Section 47 (3) which are accounted for in standalone accounts shall be depreciated separately.

Accounting Treatment Applied by the Structure Owner

Accounting Act No. 563/1991 Coll. (hereinafter "AA") determines the method of valuation, recognition and depreciation (if relevant) of immovable assets, that is land, structures, and the right of superficies, regardless of how they are stipulated by the Civil Code. This means that, just as land and structures shall always be reported and valued on a standalone (separate) basis, so shall the right of superficies as such and the structure satisfying the right of superficies be reported separately. Thus, in valuating the right of superficies, the value shall not include the structure itself. The right of superficies shall be reported and valued separately. Also, the right of superficies shall be depreciated separately, pursuant to the time over which the right exists.

The right of superficies shall be reported in balance sheet line B.II.1.2. - "Structures", regardless of its value.

Valuation

Upon acquisition, the right of superficies is either valued at acquisition cost (if acquired for compensation), or at replacement cost (if acquired without consideration, such as inheritance or donations).

The acquisition cost can be comprised as follows:

- The agreed price including incidental costs related to the acquisition, such as costs of contract conclusion, fees paid for recording the right of superficies in the cadastre, and the like; or
- The sum of individual consideration payments to be made including the incidental costs related to the acquisition.

In the event that the valuation is determined based on the sum of individual consideration payments, the valuation amount is an amount to be regularly paid, in which no indexation is included as it is uncertain at the point the right of superficies is acquired. Thus, in line with the prudence concept, the indexation shall not be included in the acquisition cost.

The structure owner shall record the right of superficies as part of its assets at cost including the incidental costs related to the acquisition. In the event that the right of superficies is valued in an amount equalling the agreed compensation, the valuation shall be made in the amount of the compensation and the amount of the relating costs (such as costs of the fees for recording in the land cadastre, costs of legal counsel, and the like). In the event that the valuation is made based on the compensation payments to be made, the value shall be determined based on the sum of the agreed compensation payments (ie without "uncertain" indexation).The point of recording the right of superficies under an entity's assets is the point at which the right was recorded in the land cadastre. Also, the date of recording in the land cadastre is the date at which depreciation starts. Depreciation for accounting purposes shall be made regularly, over the existence of the right of superficies. Both the right of superficies and the structure itself are depreciated separately.

Individual consideration payments to be made will be reported with a corresponding entry in the relevant payable account. Indexation shall be treated as an expense for the relevant period to which it relates; at the same time, the corresponding payable will increase by this amount. The (increased) consideration payment made will be accounted for with a corresponding record of the increased payable.

For financial reporting purposes, the reporting entity shall differentiate the short-term and long-term portion of the payable arising from the acquisition of the right of superficies.

Accounting Treatment Applied by the Land Owner

The land owner shall report the relevant piece of land in a special sub-ledger account so as to separate land with limited disposal options, in line with Czech Accounting Standard No. 001 (2.2.1.a).

The land owner shall report the compensation for providing the right of superficies (regardless of the method of determining the compensation, that is, either as one-off compensation, as compensation instalments, or as regular compensation payments) in income on an accrual basis, over the time for which the right of superficies was provided. For the event of a one-off compensation, instalments, or partial regular compensation payments, the summarised agreed amount for the provided right of superficies will be accounted for on an accrual basis, over the existence of the right of superficies, regardless of the amount of payments actually made. In the event of a regular compensation payment made annually, the compensation payment will be reported in the reporting period to which it relates. Also, indexation will be reflected in line with the accrual principle.

If it has been agreed that subsequent to the expiry of the right of superficies, the structure owner shall remove the structure, there are no other accounting implications for the land owner. As such, the land owner shall solely reclassify the land back from the separate sub-ledger account to another sub-ledger account reflecting pieces of land for which no right of superficies was established. If it has been agreed that subsequent to the expiry of the right of superficies, the structure shall be transferred back to the land owner, the land owner shall make a compensation payment to the structure owner in an amount that is to be treated as the acquisition cost by the land owner. Alternatively, the transfer can be made without consideration (valuation at replacement cost). As this transaction has tax implications, it is recommended that the set-up of such an agreement be discussed with tax advisors.

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New extracts from the ESMA database of IFRS decisions

In July 2019, the European Securities and Markets Authority (ESMA) published further extracts from its confidential database of enforcement decisions taken by European national enforcers.

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.

The European national enforcers of financial information monitor and review financial statements published by issuers with securities traded on a regulated European market and who prepare their financial statements in accordance with International Financial Reporting Standards (IFRS) and consider whether they comply with IFRS and other applicable reporting requirements, including relevant national law.

ESMA regularly publishes extracts from its internal database of enforcement decisions on financial statements, with the aim of providing issuers and users of financial statements with relevant information on the appropriate application of IFRS. Such publication, together with the rationale behind these decisions, will contribute to a consistent application of IFRS in the European Union.

Extracts from the database of enforcement decisions can be downloaded here.

Topics covered in the latest (23rd) batch of extracts, covering the period from December 2016 to December 2018:

Standard	Topic
IFRS 10 *Consolidated Financial Statements* IAS 7 *Statement of Cash Flows*	Presentation of cash flows arising from changes in ownership interests in a subsidiary
IAS 7 *Statement of Cash Flows*	Disclosure of changes in liabilities arising from financing activities
IAS 7 *Statement of Cash Flows*	Definition of cash and cash equivalents
IFRS 10 *Consolidated Financial Statements* IFRS 12 *Disclosure of Interests in Other Entities* IFRS 13 *Fair Value Measurement* IAS 1 *Presentation of Financial Statements*	Disclosure of fair value measurement of investments by investment entity
IFRS 9 *Financial Instruments*	Impact of forbearance on assessment of significant increase in credit risk
IAS 40 *Investment Property*	Accounting treatment of leased-out property acquired with a view to redevelopment
IFRS 2 *Share-based Payment*	Vesting and non-vesting features of performance conditions in share-based payment plans
IAS 36 *Impairment of Assets* IAS 34 *Interim Financial Reporting*	Indications of impairment of assets

From the above mentioned enforcement decisions issued by ESMA in July 2019 we have selected two enforcement decisions, which may be applicable for a number of entities that report under IFRS.

Presentation of cash flows arising from changes in ownership interests in a subsidiary

Financial year end: 31 Dec 2016

Category of issue: Statement of cash flows

Standards or requirements involved:

- IFRS 10 *Consolidated Financial Statements*
- IAS 7 *Statement of Cash Flows*

Description of the entity's accounting treatment

The entity does not meet the definition of an investment entity in IFRS 10 and, therefore, consolidates its subsidiaries rather than accounting for them at fair value through profit and loss.

During 2016, the entity acquired additional shares in one of its subsidiaries. The cash flow relating to this 2016 acquisition was presented as 'cash flows from investing activities' in its statements of cash flows even though the change in the ownership interests in the subsidiary did not result in a change of control.

The entity considered that the presentation of acquisitions and/or disposals of shares, irrespective whether it leads to a change of control, as cash flows from investing activities in the statement of cash flows provides more relevant information for users, as such transactions are part of entity's investment strategy.

The enforcement decision

The enforcer did not agree with the issuer and required the issuer to present cash flows arising from changes in ownership interests in a subsidiary that do not result in a change of control as cash flows from financing activities in the statement of cash flows.

Rationale for the enforcement decision

Paragraph 42A of IAS 7 requires cash flows arising from changes in ownership interests in a subsidiary that do not result in a loss of control to be classified as cash flows from financing activities, unless the subsidiary is held by an investment entity as defined in IFRS 10.

Furthermore, paragraph 42B of IAS 7 clarifies that as changes in ownership interests in a subsidiary that do not result in a loss of control, such as the subsequent purchase or sale by a parent of a subsidiary's equity instruments, are accounted for as equity transactions, unless the subsidiary is held by an investment entity as defined in IFRS 10. Accordingly, the resulting cash flows are classified in the same way as other transactions with owners, i.e. as cash flows from financing activities.

Disclosure of changes in liabilities arising from financing activities

Financial year end: 31 March 2018

Category of issue: Changes in liabilities arising from financing activities

Standards or requirements involved: IAS 7 *Statement of Cash Flows*

Description of the entity's accounting treatment

The entity sells computers and multimedia equipment. In the entity's financial statements, financial liabilities account for nearly 30% of the balance sheet total and have increased by 80% since the end of the previous annual reporting period.

The entity did not explain the changes in liabilities arising from financing activities, either in narrative form or by reconciling the changes in financial liabilities in the statement of financial position to the changes from financing cash flows and non-cash changes.

The enforcement decision

The enforcer required the entity to explain changes in liabilities arising from financing activities.

Rationale for the enforcement decision

It was the enforcer's view that, based on the information provided in the primary financial statements and in the notes, a user could not evaluate the changes in liabilities arising from financing activities both from cash items and non-cash items.

Paragraph 44A of IAS 7 requires disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including changes arising from both cash flows and non-cash changes.

The enforcer considered that one way to fulfil the disclosure requirement in paragraph 44A of IAS 7 is suggested in paragraph 44D of IAS 7, in the form of a reconciliation between the opening and closing balances in the statement of financial position for liabilities arising from financing activities, including the changes identified in paragraph 44B. Where an entity discloses such a reconciliation, it shall provide sufficient information to enable users of the financial statements to link items included in the reconciliation to the statement of financial position and the statement of cash flows.

Further, the enforcer noted that the implementation guidance to IAS 7 also includes an illustration of how to present such a reconciliation (in the illustrative example E).

Source: www.esma.europa.eu

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New Deloitte climate change website

On 12 June 2019, Deloitte, in collaboration with the Institute of Chartered Accountants in England and Wales (ICAEW), launched a dedicated climate change website and video learning programme.

This initiative is designed to help businesses and finance professionals learn more about tackling climate change. Therefore, the new website offers video learning resources, setting out the impact that climate change is having on humanity and business equipping businesses to implement change, manage risks and take advantage of the challenges and opportunities created by climate change. A key feature of the programme is learning about considerations for financial statements and how to translate climate change effects into tangible measurements.

In addition, the new website offers interviews with key drivers of climate action in business and links to additional resources and guidance.

Please click to access and explore the new climate change website.

Source: www.IASPlus.com

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New IFRS Publications by Deloitte

In May and June 2019, Deloitte published two new interesting publications relating to IFRS. The first publication deals with revenue recognition under IFRS 15, with a focus on an assessment as to whether an entity is acting as a principal or an agent. The other one focuses on IFRS 9 *Financial Instruments*; specifically, the measurement of expected credit losses for intercompany loan assets.

Revenue recognition—evaluating whether an entity is acting as a principal or as an agent

In June 2019 Deloitte IFRS Global Office issued the short publication: a Closer Look — Revenue recognition - evaluating whether an entity is acting as a principal or as an agent.

The IASB's new revenue Standard, IFRS 15 *Revenue from Contracts with Customers*, provides indicators that are similar to those in IAS 18 *Revenue* to help an entity determine whether it is a principal or an agent in a revenue transaction which involves a third party in providing goods or services to a customer. In such situation the entity must determine whether the nature of its promise to the customer is to provide the underlying goods or services itself (i.e. the entity is the principal in the transaction) or to arrange for the third party to provide the underlying goods or services directly to the customer (i.e., the entity is the agent in the transaction).

However, given the complexities of some arrangements, including those involving three or more parties, the evaluation of whether an entity is acting as a principal or as an agent continues to require significant judgement, and conclusions reached under IAS 18 may not be the same as those reached under IFRS 15.

This publication clarifies how the principal-versus-agent indicators should be evaluated to support an entity's conclusion that it controls a specified good or service before it is transferred to a customer. It also compares the key principal-versus-agent considerations under IFRS 15 which is based on application of the control principle with the analysis under IAS 18 which was focused on the exposure to the significant risks and rewards associated with the sale of goods or the rendering of services.

The publication is available on www.iasplus.com.

Measurement of expected credit losses for intercompany loan assets with no documented contractual term

In May 2019 Deloitte IFRS Global Office issued the publication: a Closer Look — Measurement of expected credit losses for intercompany loan assets with no documented contractual term.

In consolidated financial statements, intercompany loans are eliminated. Hence, there is no intercompany loan asset in consolidated financial statements that requires a classification and expected credit loss assessment. However, when entities prepare their separate financial statements these intercompany positions are not eliminated and the reporting entity that is a lender needs to assess any intercompany loan assets for classification and potential measurement of expected credit losses under IFRS 9.

This publication is focused on how to assess the expected credit loss of an intercompany loan asset with no stated terms (loans are interest-free and have no stated maturity) in separate financial statements.

The publication is available on www.iasplus.com.

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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 28 August 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

Useful Q&As related to the Current expected credit losses standard (ASC 326) have been published

In July 2019 FASB staff prepared and published a useful document that should help companies clarify questions related to the application of provisions from Accounting Standards Update No. 2016-13, Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments.

The published document gives responses to 16 questions on application of the above mentioned standard and may be very helpful to accounting specialists preparing analysis in accordance with it.

The questions relate mainly to the following topics:

- Application of forecasted information
- Use of historical information vs. forecast information
- What sources of information are required to be used
- Use of external vs. internal data
- Length of the forecast period

Also note that earlier in the year, the FASB staff issued a set of Q&As related to the very same standard concerning the method applied to estimate expected credit losses: Whether the Weighted-Average Remaining Maturity Method Is an Acceptable Method to Estimate Expected Credit Losses. This Q&A document was published in January 2019.

Both documents are available on the FASB web page www.FASB.org

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Court versus Arbitration Proceedings: Do You Know How to Tackle Business Disputes Efficiently?

Most probably, all entrepreneurs have experienced some kind of business conflict in conducting their day-to-day business. Even though some industries are more prone to dispute than others, all businesses, from the smallest family firms up to large multinational corporations have to deal with disputes. Business conflicts that go much further beyond the regular terms may even jeopardise a firm's existence per se. Therefore, there is a question of how to tackle such disputes efficiently.

As the saying goes, forewarned is forearmed. And the same applies to business disputes. Strictly speaking, even contract structuring as the starting point may affect whether proceedings will occur in the future and how their actual course will be. However, a well prepared contract may not be a sufficient preventative means. As contractual compliance by both parties is what matters. Also, the selection of the business partner with whom the deal is made is of vital importance, for instance with regard to the business partner's reputation and history. Furthermore, it is essential to put in place appropriate warrants and guarantees such as contractual fines or bank guarantees prior to contract conclusion and to take into account whether the contractual performance or the agreed guarantee can be collected and enforced from the contractual partner if necessary.

A dispute's life cycle, or how to reach seizure in five steps

1. **Contractual phase** (selection of the contractual partner, stipulation of the contractual terms, etc);
2. **Phase prior to the dispute** (compliance with statutory and contractual terms, etc);
3. **Phase prior to the start of proceedings** (dispute identification, assessment of the procedural situation, etc);
4. **Procedural phase** (course of the proceedings as such, focus on their efficiency); and
5. **Ruling execution phase** (seizure, acknowledgement on an international basis, ruling execution, etc).

In the event that all measures fail and proceedings are inevitable, special attention ought to be paid to the decision whether the dispute shall be tackled by way of court proceedings or arbitration proceedings. Both these alternatives have advantages and disadvantages. However, the actual aptness of one or another depends on the aspects of the actual case. Generally speaking, arbitration proceedings are faster. Moreover, thanks to the option to select the arbiter, the proficiency factor is secured. On the other hand, court proceedings are generally less costly and provide legal coercive means (such as witness summons).

Non-public, less costly, or fast?

Major differences between regular court proceedings and arbitration proceedings:

COURT PROCEEDINGS

- Public
- Generally slower
- No option to select the judge (ie absence of specific proficiency)
- Formal
- Lower expenses
- Coercive means (such as witness summons)
- Limited enforceability abroad (especially outside the EU)
- Legal remedies (ie better foreseeability of the ruling)
- Lower degree of confidence in national courts in international transactions

ARBITRATION PROCEEDINGS

- Non-public
- Generally fast (the option of fast-track proceedings)
- An option to select the arbiter (that possesses the relevant proficiency)
- Flexible procedural rules
- Greater expenses (in particular for international arbitration proceedings outside the Czech Republic)
- Limited number of coercive means
- Greater ruling enforceability abroad, in line with the New York Convention
- Limited options for remedying poor-quality/surprising rulings

In addition, international disputes are a special category. In resolving international disputes, arbitration proceedings are the rather more apt option, as enforceability under arbitration proceedings is covered by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is internationally valid. In assessing international disputes, foreign legal systems are the most critical factor. However, frequently, the legal systems are different from the domestic jurisdictions of the dispute parties. Another significant aspect in resolving international disputes includes genuine commercial practice. And last but not least, the equity principle may be applied in resolving international disputes, which is based on the general understanding and interpretation of justice. Moreover, similarly as in "domestic" arbitrations, the possibility of the lack of the arbiter's impartiality is a threat to international arbitrations.

Are you planning on concluding a contract with a potential business partner, but do not feel confident about his reliability? Or do you have a large number of business partners and wish to verify them all at once? Use support via the Maják software instrument by Deloitte that will help you with ongoing checks of your vendors and customers.

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The most significant changes in the field of labour migration after the amendment to the Act on the Residence of Foreigners

The amendment to the Act on the Residence of Aliens, which was signed by the President of the Czech Republic on 4th of July and was sent to be published in the Collection of the laws should come into effect in August 2019. The implementing regulations which are part of the amendment should come into effect in September 2019. Based on the EU transposition directive, the changes will enable foreign university students and researchers to stay in the Czech Republic up to nine months after completing their studies or research activities on the basis of a long-term residence for the purpose of finding a job or starting a business.

An extraordinary long-term work visa valid for a maximum of one year will be newly introduced to facilitate the recruitment of foreign workers for certain occupational sectors suffering from a long-term labour shortage. Acceptance of applications for this type of visa should be launched by a special government regulation in order to react flexibly to the situation on the labour market, without the possibility of extension. At present, it is not clear whether the holders of this type of visa will be allowed to apply for another type of residence in the Czech Republic if they want to remain in the territory for more than one year.

In addition, the amendment introduces the obligation to complete an adaptation-integration course (the effect was postponed to January 2021). A foreigner (if not subject to an exception from this obligation) should complete the course during the first year after entering the Czech Republic. It should be a one-day course and the expected length is eight hours.

The amendment also introduces quotas for the number of applications received at embassies of the Czech Republic abroad. This implementing regulation is expected to come into effect from September 2019 (an inter-ministerial consultation procedure is currently ongoing). Thus, the government regulation will set the maximum number of applications for long-term visas for the purpose of business and employee cards, which can be filed at individual embassies. Currently, some embassies do not allow foreigners to arrange meetings to apply for selected residence permits for September 2019 with reference to the quotas under preparation.

Another innovation is the transformation of current economic migration projects into new government economic migration programmes. Current economic migration projects and schemes will merge and three types of government economic migration programmes will be introduced. The new government economic migration programmes should be launched in September 2019.

1. Programme for key and scientific personnel
- This program replaces the Fast Track and Welcome Package for Investors.
- Newly there is a possibility of recruiting new employees; previously it was possible to use only intracompany transfers and relocations of employees.

2. Programme for highly qualified employees
- Significant territorial enlargement; previously only for highly qualified employees from Ukraine and India.

3. Programme for qualified employees
- So far the programme has been limited to Ukraine, Mongolia, the Philippines and Serbia; the programme will be extended to Belarus, Montenegro, India, Kazakhstan and Moldova.

The amendment also includes changes related to the employee card. The consent of the Ministry of the Interior with the change of employer or job position has been replaced by a notification obligation. The foreigner should report the change 30 days in advance and, if the conditions are met, both the foreigner and the employer will be notified by the Ministry of the change approval. The change of employer has been limited to the possibility of change after six months of the foreigner's residence in the territory (possibility of earlier change in specific cases) in relation to the employer for which the first employee card was issued.

Some changes will also affect EU / EEA or Swiss citizens; pursuant to the transitional provision of the amendment, certificates of temporary residence in the Czech territory issued before 1 January 2010 will expire on 31 December 2019. Certificates of temporary residence issued before the effective date of this Act (after 1 January 2010) will expire in 10 years from the date of its issuance.

We will inform you about further developments on the above topics.

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Personal Data Processing News

Personal data protection does not go unnoticed even in the summer. Great attention was attracted in particular by the British data protection authority ICO, which announced the possibility of imposing fines worth of millions of pounds on British Airways and Marriott. The European Data Protection Board also kept busy and adopted a series of important documents at its last meeting. The fate of standard contractual clauses and the Privacy Shield as a tool for transferring personal data to third countries and the US remains in the centre of attention.

British ICO as a possible pioneer of massive fines for GDPR breaches

The highest fine for a GDPR breach to date, specifically EUR 50 million, was imposed on Google by the French supervisory body CNIL. This threshold may soon be exceeded by the British supervisory body ICO, which announced its intention in early July to fine British Airways and Marriott.

Marriott hotel chain

The well-known hotel chain faces a fine of GBP 99,200,396 for an alleged leak of contact and financial data of tens of millions of customers. The leak is supposed to have taken place in 2014, when the systems of the Starwood hotel group, purchased by Marriott two years later, were attacked. This case clearly shows that the area of personal data protection is not to be underestimated in acquisition projects.

The leak was discovered in 2018, when it was also reported – in line with the new EU rules for personal data protection – to the British regulator, which had Marriott's full cooperation throughout the investigation and the identified flaws were remedied.

British Airways

The fine that could be imposed on the airline is almost twice as high as the one to be imposed on the Marriot hotel chain, specifically, it could be as high as GBP 183 million. British Airways is supposed to have committed an infringement of the GDPR by not adopting sufficient security measures and failing to prevent a hacker attack on its website and mobile application, which allegedly led to the leak of data of almost half a million customers. Through a false website, the attackers had harvested details of customer names, payment cards, email and postal addresses since June 2018.

The airline reported the incident in September of last year and similarly to Marriott, it provided full cooperation during the investigation and took remedial action. Like Marriott, British Airways has an opportunity to make representations to the ICO as to the proposed findings and sanction. Data protection authorities in the EU whose residents have been affected by the leak will also have the same right.

The fine amount is not final in either of these cases. Both companies have allegedly committed a similar infringement of the GDPR, i.e. A data leak as a result of insufficient security. While both fines may seem very high, the question remains whether the British ICO would not have proposed an even higher amount if the companies had not reported the leak immediately or had not fully cooperated during the investigation. In the case of British Airways, the proposed fine corresponds to 1.5% of its annual turnover, while the maximum fine for a GDPR breach may amount up to 4% of the company's global turnover.

Transfers of personal data outside the EU at risk? Developments surrounding the Privacy Shield and standard contractual clauses

The primary tool for transferring personal data to the United States of America, namely the resolution of the European Commission known as the "Privacy Shield" is subject to scrutiny of the Court of Justice of the EU, together with so-called standard contractual clauses, which are the most common instrument for transferring personal data to third countries.

Austrian lawyer Maximilian Schrems, who was behind the invalidation of the previous instrument for transferring data to the United States of America ("Safe Harbour"), filed a complaint with the Irish data protection authority stating that personal data protection in the US was insufficient since the transferred data were accessible to US authorities. The preliminary questions referred to the Court of Justice of the EU are available on the eur-lex website.

The ruling of the Court of Justice of the EU can be expected in the first half of 2020. Until that time, the United States is trying to address certain complains of EU bodies regarding the level of personal data protection in the US. As an example, we can mention the recent appointment of an ombudsman whom EU citizens may contact regarding the processing of personal data by US authorities. Following the confirmation by the US Senate in late June 2019, this role will be held by Keith Krach.

Standard contractual clauses, whose timely review was promised by Czech EU Commissioner Eva Jourová in her June speech on the first anniversary of the effective date of the GDPR, also do not remain unnoticed. The current version of standard contractual clauses still refers to the previous data protection directive.

The potential invalidation of the Privacy Shield or standard contractual clauses would have extensive consequences, as there would be no legal framework for transferring personal data not just to the US but also to most non-EU countries. An alternative could consist in the use of so-called binding

corporate rules, which are, however, used rather rarely (primarily due to their limited flexibility, since they have to be approved by the competent data protection authority) and they are suitable primarily for cross-border transfers of personal data within multinational corporations. Prospectively, codes of conduct or data protection certificates could represent a suitable method of transferring data. Since they are new GDPR institutes, their use has not caught on so far as the procedures of their set-up have not yet been fully finalised.

DPIA: further developments regarding the methodology of its preparation

In February 2019, the Czech Data Protection Office issued the first part of the long-awaited methodology, which answers the question of data controllers whether they need to prepare a Data Protection Impact Assessment (DPIA) for a specific case.

The second part of the methodology, which lists exceptions from the obligation to perform a DPIA, has yet to be issued. However, a draft already exists and has been submitted to the European Data Protection Board (EDPB), which issued an opinion on it on 10 July 2019. However, the opinion does not contain the full list of the proposed exceptions. Nevertheless, its wording indicates that the Czech office proposed exempting at least the following processing events from the obligation of preparing the DPIA, but it has to amend or exclude the relevant parts according to the EDPB:

- Processing in the area of HR, social security and health insurance (according to the EDPB, the exception is admissible only under the condition that it is a legally required processing and not on a large scale);
- Processing in relation to business activities (according to the EDPB, the exception is admissible only under the condition that the processing concerns non-sensitive data of customers and the processing is not on a large scale);
- Processing for the purposes of direct marketing (according to the EDPB, the exception is admissible only under the condition that the processing does not concern sensitive data and data of vulnerable groups of persons); and
- Footage of a camera installed on a vehicle (the EDPB is against this exception).

The European Data Protection Board issued guidelines on camera systems

At its July plenary meeting, the European Data Protection Board (EDPB) adopted draft guidelines on processing of personal data through video devices. The draft is intended for public consultation.

On almost 30 pages, the EDPB analyses several legal aspects, with the most interesting ones being:

- When the processing by camera systems is not subject to the GDPR and when it is;
- How to correctly inform natural persons about the use of camera systems;
- What are the specifics with respect to the request for exercising the rights of the data subjects; and
- A significant part addresses questions regarding the combination of camera systems with biometrical analysis.

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