



**TAX news**



**Grants & Incentives news**

## dReport: April 2019

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# Contents

<b>Tax news</b>	<b>3</b>
<b>Direct Taxes</b>	<b>3</b>
2020 Tax Package Proposal	3
New Reporting Duty for Tax Payers	3
<b>Indirect Taxes</b>	<b>4</b>
News round up	4
<b>International TAX</b>	<b>5</b>
International taxes in brief	5
CJEU interpretation of beneficial ownership	5
<b>Other</b>	<b>7</b>
A new crime of obstruction of justice and its impact on submitting means of evidence	7
Expansion of exemption from real estate acquisition tax	8
Tax liabilities – May 2019	9
Tax liabilities – June 2019	10
<b>Grants &amp; Incentives news</b>	<b>11</b>
The Latest Schedule of the OP PIK Calls	11
New Programmes for Research Support	12
Announcement of the M-ERA.NET 2 CALL 2019	12
Simplified Administration of OP PIK	13



## 2020 Tax Package Proposal

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

- As we have already informed you [here](#), an EU directive has been transposed into the Value Added Tax Act aimed at improving the existing system of intra-Community supply of goods, affecting, *inter alia*, the rules for supply of goods to another EU member state, the call-off stock regime as well as a special regime for travel services.
- The already-completed transposition of the ATAD Directive into the Income Taxes Act has been extended to include the borrowing costs restriction to be also applicable to private corporation owners as well as the taxation of controlled foreign entities in the case of basic investment funds. These matters are not specifically addressed in the current wording of the Act.

- Introducing the reporting duty of selected cross-border arrangements for intermediaries (advisors) and taxpayers in the Act on International Cooperation in Tax Administration and the Act on Special Court Proceedings.
- A change in the European Union's customs territory has been reflected in the Excise Tax Act; specifically, the Italian municipality of Campione d'Italia and the Italian waters of Lugano Lake were added.

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

Catherine Slavičková  
[cslavickova@deloittece.com](mailto:cslavickova@deloittece.com)

Tereza Tomanová  
[ttomanova@deloittece.com](mailto:ttomanova@deloittece.com)

## New Reporting Duty for Tax Payers

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

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

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

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

Tereza Gebauer  
[tgebauer@deloittece.com](mailto:tgebauer@deloittece.com)

Markéta Kulmová  
[mkulmova@deloittece.com](mailto:mkulmova@deloittece.com)



## News round up

### “April” amendment to the Vat Act

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

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

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

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

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

*Tomáš Brandejs*  
[tbrandejs@deloittece.com](mailto:tbrandejs@deloittece.com)



## International taxes in brief

### Austria: proposal of 5% digital advertising tax

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

### European Commission: UK CFC rules constitutes illegal state aid

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

### European Commission: paper on impact of CCTB

On 15 March 2019, the European Commission published ["The Impact of the CCTB on the Effective Tax Burden of Corporations: results from the Tax Analyzer Model"](#) that attempts to evaluate the impact of the introduction

of the common corporate tax base (CCTB) on the effective corporate tax burdens in EU member states.

### German: exemption of merger gain in upstream merger

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

### Italian Supreme Court: different positions on dividend WHT exemption

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

Kateřina Krchnivá

[kkrcniva@deloittece.com](mailto:kkrcniva@deloittece.com)

## CJEU interpretation of beneficial ownership

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

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

### Tax authorities denied taxpayers's requirement

All of the cases involve situations where a Danish company distributed dividends or paid interest to a company resident in another EU member state. The EU company subsequently redistributed or repaid the amounts received to shareholders that were either private equity funds or companies resident outside the EU (jurisdictions like Bermuda, the Cayman Islands

or Jersey). Subsequently, final payments were made to the ultimate owners that generally were resident in jurisdictions that had concluded a tax treaty with Denmark. The taxpayers in all six cases requested exemptions from withholding tax under the PSD or the IRD, which were denied by the Danish tax authorities on the grounds that the interposed EU companies were not the beneficial owners of the income.

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

### CJEU's perspective

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



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

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

### **Danish case as a precedent for other EU member states**

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

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

*Kateřina Krchnivá*

[kkrchniva@deloittece.com](mailto:kkrchniva@deloittece.com)

*Tereza Tomanová*

[ttomanova@deloittece.com](mailto:ttomanova@deloittece.com)



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

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

## What does obstruction of justice mean?

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

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

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

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

The last legal condition is that such evidence must be submitted **as part of court proceedings, in proceedings before an international body of justice or law enforcement authority**. The crime of obstruction of justice thus does not relate to submitting forged or modified means of evidence in, for example, administrative or tax proceedings. This brings us to the question of how the courts will interpret a situation in which a plaintiff in court proceedings following immediately after administrative proceedings refers to forged or modified means of evidence submitted in administrative proceedings

and filed with an administrative body in order to support the plaintiff's statements. In our opinion, there is a chance that these means of evidence may be understood in the future as being "submitted" by the plaintiff in proceedings before court and the plaintiff may become a perpetrator of the crime of obstruction of justice.

## How will this issue be treated in practice?

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

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

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

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

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

The situation of tax advisors may be rather different as

<sup>1</sup> Act No. 40/2009 Coll., the Criminal Code, as amended.

<sup>2</sup> In a simplified explanation, the first way is submitting forged or modified evidence as authentic; the other way is providing, offering and promising benefit in order to commit a crime of false accusation, false testimony or false expert opinion, or false interpreting.

<sup>3</sup> This will typically include situations in which the crime will be committed on the grounds on certain qualified motives, in connection with the performance

of certain qualified activity, as a member of an organised group or if such a member causes damage in a qualified amount.

<sup>4</sup> Refer to Section 6 (3) of Resolution of the Board of Directors of the Czech Bar Association No. 1/1997 of the Bulletin dated 31 October 1996 stipulating the rules of professional ethics and the rules of competition of attorneys at law in the Czech Republic (the Code of Ethics).



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

In our opinion, the most probable consequence of the situation will be that clients will be asked by their attorneys at law or tax advisors to sign a declaration that

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

Tomáš Brožek

[tbrozek@deloittece.com](mailto:tbrozek@deloittece.com)

Lívia Kulhová

[lkulhova@deloittece.com](mailto:lkulhova@deloittece.com)

## Expansion of exemption from real estate acquisition tax

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

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

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

### Financial administration vs. taxpayers

Although certain tax administrators have admitted the exemption from tax even for apartment units in detached houses in the past, the [Financial Administration](#)<sup>5</sup> objected against such treatment and emphasised that the legislative

objective was indeed to exempt only apartment units in apartment buildings, whether to prevent the construction of "horizontal panel buildings" or due to stricter regulation of apartment buildings. However, taxpayers disagreed with this interpretation as they perceived this exemption as a motivational element for the acquisition of a new apartment regardless of whether it was found in a detached house or an apartment building.

### Deputies agreed with taxpayers

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

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

Daniela Kovalová

[dkovalova@deloittece.com](mailto:dkovalova@deloittece.com)

Tereza Gebauer

[tgebauer@deloittece.com](mailto:tgebauer@deloittece.com)

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





## Tax liabilities – May 2019

### May

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



# Tax liabilities – June 2019

## June

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

## Contacts

If you have any questions concerning the items in this publication, please contact your regular Deloitte Tax contact or one of the following experts:

### Direct Taxes

Jaroslav Škvrna

[jškvna@deloittece.com](mailto:jškvna@deloittece.com)

Zbyněk Brtinský

[zbrtinsky@deloittece.com](mailto:zbrtinsky@deloittece.com)

Miroslav Svoboda

[msvoboda@deloittece.com](mailto:msvoboda@deloittece.com)

Marek Romancov

[mromancov@deloittece.com](mailto:mromancov@deloittece.com)

LaDana Edwards

[ledwards@deloittece.com](mailto:ledwards@deloittece.com)

Tomas Seidl

[tseidl@deloittece.com](mailto:tseidl@deloittece.com)

### Indirect Taxes

Adham Hafoudh

[ahafoudh@deloittece.com](mailto:ahafoudh@deloittece.com)

Radka Mašková

[rmaskova@deloittece.com](mailto:rmaskova@deloittece.com)

### Local Sales / Purchases Report

Jaroslav Beneš

[jbeneš@deloittece.com](mailto:jbeneš@deloittece.com)

### Deloitte Advisory, s. r. o.

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

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# The Latest Schedule of the OP PIK Calls

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

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

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

Petra Chytilová  
[pchytilova@deloittece.com](mailto:pchytilova@deloittece.com)



# New Programmes for Research Support

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

## TREND

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

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

## Prostředí pro život (Environment for Life)

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

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

## DOPRAVA 2020+ (TRANSPORTATION 2020+)

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

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

Petra Chytilová

[pchytilova@deloittece.com](mailto:pchytilova@deloittece.com)

# Announcement of the M-ERA.NET 2 CALL 2019

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

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

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

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

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

Petra Chytilová

[pchytilova@deloittece.com](mailto:pchytilova@deloittece.com)



# Simplified Administration of OP PIK

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

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

Petra Chytilová  
[pchytilova@deloittece.com](mailto:pchytilova@deloittece.com)

---

## Contacts

If these issues relate to your company, we would be happy to provide you with more detailed information. Feel free to contact us at any time.

### Grants CZ

Luděk Hanáček  
[lhancek@deloittece.com](mailto:lhancek@deloittece.com)

Antonín Weber  
[antoweber@deloittece.com](mailto:antoweber@deloittece.com)

### Grants and Incentives SK

Martin Rybar  
[mrybar@deloittece.com](mailto:mrybar@deloittece.com)

### Incentives

Daniela Hušáková  
[dhusakova@deloittece.com](mailto:dhusakova@deloittece.com)

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

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