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TAX news

Grants & Incentives news

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Contents

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

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

1. Areas where mistakes are frequently made

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

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

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

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

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

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

2. From the existing judicature – intercompany services

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

3. ITA amendment

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

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

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

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

Jakub Vrkoč
jvrkoc@deloittece.com

Tereza Tomanová
ttomanova@deloittece.com

Finance Leases and Real Estate Acquisition Tax

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

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

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

Different conditions since 2015

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

Tereza Gebauer
tgebauer@deloittece.com

Trang Huyen Bui
hubui@deloittece.com

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

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

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

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

What about the Supreme Administrative Court

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

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

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

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

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

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

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

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

Tereza Tomanová
ttomanova@deloittece.com

News round up

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

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

CJEU Case Law

C-224/18 Budimex

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

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

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

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

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

Tomáš Brandejs
tbrandejs@deloittece.com

International taxes in brief

Cyprus: ATAD implementation

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

Denmark: rejection of dividend WHT refund

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

German: no royalty WHT for online advertising

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

France: No French PE of Google Ireland

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

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

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

Japan: new approach for intangibles

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

Netherlands: new policies for international tax rulings

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

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

Kateřina Krchnivá
kkrchniva@deloittece.com

Tereza Tomanová
ttomanova@deloittece.com

Brexit: the lull before the (next) storm?

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

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

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

All Options are Still at Stake

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

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

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

Martin Vlk
mvlk@deloittece.com

Tereza Tomanová
ttomanova@deloittece.com

Digital tax in the Czech Republic

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

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

Czech solution

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

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

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

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

Kateřina Krchnivá
kkrchniva@deloittece.com

Kateřina Novotná
knovotna@deloittece.com

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

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

Interest on an Audited Excessive Deduction

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

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

Interest on the Tax Administrator's Unjustified Actions

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

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

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

Interest on a Refundable Overpayment

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

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

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

Knowing the regulations and judicature is worth the effort

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

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

Kateřina Devlin
kdevlin@deloittece.com

Tax liabilities – June 2019

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

Tax liabilities – July 2019

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

Contacts

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

Direct Taxes

Jaroslav Škvrna
jskvrna@deloittece.com

Zbyněk Brtinský
zbrtinsky@deloittece.com

Miroslav Svoboda
msvoboda@deloittece.com

Marek Romancov
mromancov@deloittece.com

LaDana Edwards
ledwards@deloittece.com

Tomas Seidl
tseidl@deloittece.com

Indirect Taxes

Adham Hafoudh
ahafoudh@deloittece.com

Radka Mašková
rmaskova@deloittece.com

Local Sales / Purchases Report

Jaroslav Beneš
jbenes@deloittece.com

Deloitte Advisory, s. r. o.
Churchill I
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 timetable of OP PIK calls for 2019 was updated in early May. The table below presents the latest schedule of the already announced calls under the Operational Programme Enterprise and Innovations for Competitiveness ("OP PIK"), including the deadlines for submitting grant applications in individual programmes.

Programme name	Programme focus	Type of call	Types of recipients*	Planned date for accepting grant applications
Real Estate Call II – Integrated Territorial Investment Hradec-Pardubice	Subsidy for modernising manufacturing premises and reconstructing the existing obsolete business infrastructure and brownfield structures	Ongoing	SME	From 2 May 2019 To 2 May 2020
Energy Savings in Heat Supply Systems Call IV	Subsidy for reconstructing and developing heat supply systems, and increasing the efficiency of cogeneration	Ongoing	SME, LE	From 1 Oct 2019 To 1 June 2020
Technology – Integrated Territorial Investment Ostrava Call II	Subsidy for start-up businesses for the acquisition of new machinery, technology devices and equipment	Ongoing	SME	From 30 Aug 2019 To 30 June 2020
Technology – Integrated Territorial Investment Olomouc Call II	Subsidy for start-up businesses for the acquisition of new machinery, technology devices and equipment	Ongoing	SME	From 1 Oct 2019 To 1 Oct 2020
Technology – Industry 4.0 Call XI	Subsidy for non-production technologies and their connection to the production process	Ongoing	SME	From 1 Aug 2019 To 1 Nov 2019
ICT in Enterprises Call VI	Subsidy for acquiring new technologies and services in the area of IS/ICT solutions	Ongoing	SME, LE	From 1 Nov 2019 To 1 April 2020
Real Estate Call IV – Tourism	Subsidy for modernising outdated buildings for the development of business activities in the area of tourism	Ongoing	SME	From 3 Oct 2019 To 3 March 2020
Real Estate Call IV – Coal Regions	Subsidy for modernising outdated buildings for the development of business activities in the area of coal regions	Ongoing	SME	From 3 Oct 2019 To 3 March 2020
Energy Savings Call V	Subsidy for activities related to final energy consumption savings	Ongoing	SME, LE	From 16 Sept 2019 Do 30 April 2020
ICT in Enterprises Call VI	Subsidy for acquiring new technologies and services in IS/ICT solutions	Ongoing	SME, LE	From 1 Nov 2019 To 1 April 2020

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

Petra Chytilová
pchytilova@deloittece.com

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

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

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

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

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

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

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

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

Petra Chytilová
pchytilova@deloittece.com

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

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

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

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

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

Petra Chytilová
pchytilova@deloittece.com

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

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

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

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

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

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

Petra Chytilová
pchytilova@deloittece.com

Announcement of the first call for proposals in the TREND programme

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

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

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

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

Petra Chytilová
pchytilova@deloittece.com

Contacts

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

Grants CZ

Luděk Hanáček
lhanacek@deloittece.com

Antonín Weber
antoweber@deloittece.com

Grants and Incentives SK

Martin Rybar
mrybar@deloittece.com

Incentives

Daniela Hušáková
dhusakova@deloittece.com

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

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