



TAX news



Grants & Incentives news

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Motivational Programmes: What to Bear in Mind

We have been recently encountering an increasing number of situations where as part of the sale of products and services companies provide their business partners not just with various discounts and turnover bonuses but also with all kinds of incentives targeting primarily the business partners' employees, who are essential in the sale of products. Let us focus our article on these "motivational programmes" from the tax perspective.

The backwater of established practice has been recently stirred up in particular by the ruling of the Supreme Administrative Court ("SAC") ref. no. 1 Afs 162/2018 Coll. The case handled by the SAC dealt with whether Československá obchodní banka, which provided the employees of Česká pošta with motivational contributions based on sales criteria, should increase the income paid out to Česká pošta's employees to so-called "super-gross salary" for the purposes of calculating the tax base. The conclusion of the Supreme Administrative Court was favourable for the bank, since the SAC concluded that it had not been demonstrated that Česká pošta's employees performed the activities directly for the bank, rather, the contents of the file indicated that the remuneration was for the performance of activities directly for Česká pošta.

However, we know from experience that not all motivational programmes are set up in a similar way as the case described above. We often come across situations where employees of business partners directly perform activities for the provider of the motivational programmes, while the business partner (their employer) often remains unaware. In such cases, the referenced conclusion of the Supreme Administrative Court about not increasing the tax base with the super-gross salary would probably not apply. At first glance, the payment of the 15% tax on dependent activities from the super-gross salary should not be a major problem for the organisers of the motivational programmes. However, what would be significantly more painful for them would be

the fact that in addition to the obligation to pay tax on dependent activities from the income of the business partner's employee, the motivational programme organiser would also become an "employer" in terms of the definition of insurance regulations, with the obligation to pay social security and health insurance contributions from the remuneration paid to the business partner's employees. On the one hand, the provider includes the motivational bonuses in its tax-deductible expenses; on the other hand, the contributions related to the fiction of dependent activities would represent a more substantial burden for the motivational bonus provider in terms of costs.

Detailed assessment of tax implications pays off

Another thing that follows from the aforementioned ruling of the Supreme Administrative Court is that there was no indication of doubt that if the activities were performed for Československá obchodní banka, this company would be a payer of tax on dependent activities with the obligation to make personal income tax prepayments for the employees of Česká pošta. Therefore, if you organise any motivational plans and reward the employees of your business partner as part of these plans, we recommend conducting their detailed revision and careful assessment of the possible tax impact. We see a possible solution either in the adjustment of the conditions of the plan so that the obligation to pay contributions from salaries would be shifted to the business partner, or in the scope of the performance provided to the employees of the business partner and the transfer of this performance to performance exempt from tax.

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News round up

CJEU Case Law

In case **C-329/18 Altic**, the CJEU assessed the circumstances that may indicate the involvement of a taxable person in a fraudulent activity of a different person. The tax administrator refused the right of Altic to deduct VAT as it had not verified the entries about the supplier in a certain publically available register. In our opinion, the considerations of the CJEU regarding the duties of taxable persons are in partial disagreement with the approach taken by the Czech Tax Administration and the rulings of Czech courts. The CJEU takes a more tolerant approach to the good faith of the taxable persons. Thus, the given judgement could modify to a certain extent the approach taken by tax inspections in the Czech Republic or strengthen the position of taxable persons in a situation when they already are in a dispute with the Tax Administrator.

Case **C-42/18 Cardpoint** summarised the rules for the exemption of services related to transactions concerning transfers or payments. According to the CJEU, services consisting in operating and maintaining ATMs, replenishing them, installing computer hardware and software in them, sending a withdrawal authorisation request to the bank that

issued the bank card used, dispensing money and registering withdrawal transactions, do not fall into the category exempt from VAT. The decisive criterion for the CJEU was the fact that Cardpoint did not have the right to authorise the given transactions. The question is whether the scope of contractual obligations of the companies providing services of ATMs in the Czech Republic corresponds to the above-stated criterion. The relevant persons should indisputably verify the regime of the relevant services in light of case C-42/18 Cardpoint, as the existing rules for VAT exemption have not been formulated clearly.

In judgement **C-573/18 "C"**, the CJEU highlighted the principles for including subsidies from public sources in the tax base for a supply provided to the purchaser/customer by the taxable person. Subsidies that cover price reduction in the ratio 1:1 is to be included in the tax base. The given judgement comes as no surprise and in our opinion, it should not have any significant implications for the common practice in the Czech Republic.

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International Taxes in Brief

Belgian participation exemption infringed on the EU parent-subsidiary directive

In a 5 September 2019 opinion, an Advocate General (AG) to the Court of Justice of the European Union (CJEU) opined that the application of Belgium's dividends received deduction (DRD) in conjunction with the notional interest deduction (NID), infringed the EU parent-subsidiary directive (PSD). Belgium implemented article 4(1) of the PSD through the DRD regime, which provides for an exemption for 95% of qualifying dividends received by a Belgian parent company, via a tax deduction, which may be carried forward for an indefinite period provided the parent company is in a loss-making position. The DRD regime, therefore, does not qualify as a plain tax exemption of dividends but instead functions as an "inclusion-deduction" regime. The Belgian NID provides for a domestic deduction from the tax base equal to a certain percentage of the equity of a company. The AG then determined that the DRD regime applied in conjunction with other tax deductions results in a less favourable position for the parent company, since in certain situations unused NID may be lost after seven years because the DRD must be applied first, whereas this would not be the case if Belgium applied a tax exemption. The AG compared the tax burden imposed under the inclusion-deduction regime with that of a tax exemption regime and found that the former regime resulted in a higher tax burden for the company. According to the AG, the loss of the unused NID results in the indirect taxation of the dividends and thus infringes the PSD.

Commission on taxation of multinationals in the Netherlands

The commission was set up on 1 August 2019 with a broad remit and is expected to publish a final report by the end of 2019. The following points shall be evaluated in the final report: the classification of corporate income tax (CIT) revenues according to different types of companies and sectors, an inventory of the types of companies currently mainly paying CIT and a determination to which extent such companies are multinationals or nationally oriented, and whether they are large or small companies; in which areas the Dutch CIT (for multinationals) differs materially from the income tax in surrounding countries and economically comparable countries and in which of these areas systems are becoming more alike; the importance of multinationals and head offices for the Dutch economy; and whether there is increased tax competition and/or evasion and what that means for the taxation of multinationals.

Germany allows a tax-free repayment of capital by a non-EU subsidiary

In a decision dated 10 April 2019 and published on 12 September 2019, Germany's federal tax court considered the possibility of a tax-free repayment of capital by a non-EU subsidiary and ruled that the payment received by the German corporate shareholder could be treated as 100% tax-exempt repayment of capital. Under German domestic tax law, dividends and liquidation proceeds received from a domestic or foreign subsidiary generally are 95% tax-exempt at the level of the German corporate shareholder, with the remaining 5% being subject to the general corporate tax rate of approximately 30% (including the solidarity surcharge and trade tax, resulting in an effective tax rate of approximately 1.5%). The 5% that is taxable is deemed to represent non-deductible business expenses under the "5% addback rule." To the extent dividends or liquidation proceeds qualify as a repayment of capital, the payment is considered non-taxable and, therefore, 100% tax exempt at the level of the corporate shareholder. To qualify for a 100% tax exemption, it is necessary to provide proof that the payment is not funded from current and/or prior-year profits (retained earnings, earnings and profits (E&P)), but rather is funded from the tax "contribution account". However, German domestic tax law does not specifically address the treatment of a repayment of capital by a non-EU subsidiary to a German corporate shareholder. In light of the court's decision, it is possible that the tax law could be amended, and that a formal approval procedure also could be introduced for non-EU cases. Affected taxpayers that were subject to a 5% add-back in connection with a repayment of capital made by a non-EU subsidiary should carefully revise the facts of their case and consider filing an objection against the relevant assessments and claim a 100% tax exemption for any repayment of capital, based on the BFH's decision.

The investigation of EC on Belgian excess profit rulings

On 16 September 2019, the European Commission announced that it had opened separate in-depth investigations to assess whether rulings granted by Belgium under its excess profit rulings regime to 39 Belgian companies belonging to multinational groups gave those companies an unfair advantage over their competitors, in breach of EU state aid rules. The intention for such investigation has arisen from the recent European General Court's decision ([T-131/16](#) and [T-263/16](#)) annulling the Commission decision from 2016, since according to the court, the compatibility of the tax ruling with EU state aid rules must be assessed individually. The opened investigations concern rulings issued by Belgium between 2005 and 2014.

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Tax liabilities – November 2019

November

Monday, 11	Excise tax	Tax maturity for September 2019 (excluding excise tax on alcohol)
Thursday, 14	Intrastat	Submission of statements for intrastat for October 2019, paper form
Monday, 18	Intrastat	Submission of statements for intrastat for October 2019, electronic form
Wednesday, 20	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Monday, 25	Value added tax	Tax return and tax for October 2019 EC Sales List for October 2019 VAT control statement for October 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for October 2019
	Excise tax	Tax maturity for September 2019 (only the excise tax on alcohol) Tax return for October 2019 Tax return for claiming of refund of excise tax, for example on fuel oil, other petrol (benzine) for October 2019 (if applicable)

Tax liabilities – December 2019

December

Monday, 2	Real estate tax	Tax maturity of 2nd tax payment (all tax payers with tax duty above CZK 5,000)
	Income tax	Payment of special-rate withholding tax for October 2019
Tuesday, 10	Excise tax	Tax maturity for October 2019 (excluding excise tax on alcohol)
Friday, 13	Intrastat	Submission of statements for intrastat for November 2019, paper form
Monday, 16	Road tax	Advance payment on tax for October and November 2019, possibly the maturity of one advance payment of tax (minimally in amount of 70 % of the annual tax obligation) - in a case of taxpayer, who is an operator of trucks, trailers and semitrailers with maximum allowed weight of 12 tonnes and more, to whom the tax is decreased by 48 % according to § 6 paragraph 10 based on Act on Road Tax
	Income tax	Quarter or half-year tax advance payment
Tuesday, 17	Intrastat	Submission of statements for intrastat for November 2019, electronic form
Friday, 20	Income tax	Monthly payment of deducted advance payments on personal income tax from employment
Friday, 27	Value added tax	Tax return and tax for November 2019 EC Sales List for November 2019 VAT control statement for November 2019
	Energy taxes	Tax return and tax maturity on gas, solid fuels and electricity for November 2019
	Excise tax	Tax maturity for October 2019 (only the excise tax on alcohol) Tax return for November 2019 Tax return for claiming of refund of excise tax, for example on fuel oil, other petrol (benzine) for November 2019 (if applicable)
Tuesday, 31	Income tax	Payment of special-rate withholding tax for November 2019



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Announcement of New Calls and Beginning of Receipt of Applications for Support in the Operational Programme Enterprise and Innovations for Competitiveness

Several new calls in the Operational Programme Enterprise and Innovations for Competitiveness 2014-2020 were announced in late September, with the starting date for the receipt of applications for support in early or mid-October. More details are provided below.

Programme Application

Call VII of programme Application supports projects focused on the realisation of activities of industrial research and experimental development leading to specific outputs in the form of prototypes, industrial or utility models, verified technology or software.

Who can request the grant:

- Small, medium-sized and large enterprises. However, large enterprises only under the condition that the project has a positive impact on the environment or if the primary intention of the project is the cooperation of a large enterprise with a small or medium-sized enterprise on a specific project.

What the grant can be used for:

- Staff costs (costs of salaries and insurance of researchers, technicians etc.).
- Costs of tools, devices and equipment in the form of depreciation of tangible movable fixed assets during the time of work on the project.
- Costs of contractual research.
- Non-investment costs of licences purchased or acquired from third parties during the time of work on the project.
- Costs of research and development (hereinafter R&D) advisory services used exclusively for the purposes of the project.
- Additional overheads and other operating expenses.

Grant amount per project:

- CZK 1 million – CZK 40 million for projects without effective cooperation.
- CZK 1 million – CZK 80 million for projects within effective cooperation or within intervention code 063 or 065 (project with a positive impact on the environment or with the primary intention of cooperation of a large enterprise with a small or medium-sized enterprise).

Aid intensity per project:

- Maximum of 70% of eligible costs per entire project depending on the type of activity and size of enterprise.

Receipt of applications:

- 16 October 2019 – 15 January 2020.

This is a call in rounds. The project has to be realised in the Czech Republic, outside of the Capital City of Prague, depending on the actual place where the project is realised. Project realised in districts with a share of unemployed persons higher than the Czech Republic average receive a bonus points.

Programme Innovation

Call VII of programme Innovation (Innovation Projects) focuses on the support of projects introducing new or innovated products, technologies or services in production or on the market. Supported activities include product innovation activities such as strengthening the technical or utility values of products, technologies and services, process innovation activities such as efficiency increase of the production process or provision of services.

Who can request the grant:

- Small, medium-sized and large enterprises. However, large enterprises only under the condition that the project has a positive impact on the environment.

What the grant can be used for:

- Costs of project documentation, including engineering activities.
- Costs of construction.
- Costs of production technology, machinery and equipment.
- Costs of software and data.
- Costs of rights to use intellectual property.
- Costs of product certification.
- Costs of marketing innovation.

Grant amount per project:

- CZK 1 million – CZK 75 million.



Aid intensity per project:

- Maximum of 45% of eligible costs for small enterprises.
- Maximum of 35% of eligible costs for medium-sized enterprises.
- Maximum of 25% of eligible costs for large enterprises.

Receipt of applications:

- 15 October 2019 – 15 January 2020.

This is a continuous call. The project has to be realised in the Czech Republic, outside of the Capital City of Prague, depending on the actual place where the project is realised. Project realised in districts with a share of unemployed persons higher than the Czech Republic average receive a bonus points.

Programme Potential

Call VI of programme Potential supports projects focused on building centres of industrial research, development and innovation. Support is provided for the purchase of land, buildings, machinery/devices and other equipment of the research and development centre.

Who can request the grant:

- Small, medium-sized and large enterprises. However, large enterprises only under the condition that the project has a positive impact on the environment or if the primary intention of the project is the cooperation of a large enterprise with a small or medium-sized enterprise on a specific R&D project.

What the grant can be used for:

- Costs of tangible fixed assets necessary for performing the R&D activities and equipping the R&D centre such as purchase of land, buildings, machinery and other equipment. These assets have to be subject to depreciation (except for land).
- Intangible fixed assets meeting the conditions of the call, up to 50% of total eligible investment costs per project.

Grant amount per project:

- CZK 2 million – CZK 30 million.

Aid intensity per project:

- Maximum of 50% of eligible costs for all enterprise sizes.

Receipt of applications:

- 1 October 2019 – 16 December 2019.

This is a call in rounds. The project has to be realised in the Czech Republic, outside of the Capital City of Prague, depending on the actual place where the project is realised. Project realised in districts with a share of unemployed persons higher than the Czech Republic average receive a bonus points.

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News in the Area of Research and Development Tax Deductions in Slovakia

Is the research and development cost deduction about to become more attractive for companies?

A newly adopted amendment to the Income Taxes Act increases the deduction of R&D costs from the original 100% to 150% for the 2019 taxation period and to 200% for the following taxation periods. The period for the preparation of the R&D project also changes and the project no longer has to be prepared before the beginning of its realisation. The taxpayer is newly required to prepare it within the period

for filing the tax return for the period where the deduction was utilised. Companies will also surely appreciate the transfer of the entitlement to deduction, which can now be applied for an additional year longer, i.e. over five years. The objective of these measures is to make the deduction more attractive and to support more extensive realisation of R&D activities.

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Announcement of New Calls and Public Tenders of the Technology Agency of the Czech Republic for the Support of Applied Research and Innovation

The Technology Agency of the Czech Republic announces several new calls and public tenders this autumn focused on the support of applied research and development. They primarily include the following calls/tenders, a more detailed description of some of them is provided below.

- Programme ETA – social sciences and humanities.
- BiodivClim - biodiversity and climate changes.
- Programme ZETA – young research generation and gender.
- CHIST-ERA IV Call 2019 – information and communication technology.
- Programme THETA – power industry.
- Programme KAPPA – international cooperation.
- Programme Environment for Living (Ministry of the Environment) – the environment and climate.

Fourth public tender of programme Zeta

The support from this programme is intended for projects of cooperation of enterprises with the academic sphere via the involvement of students and young researchers up to 35 years of age.

The objective is involving students and young researchers in research and development activities leading to the use of the results in practice, increasing their interest in projects with a practical impact and supporting academic projects with a connection to the economic sphere. A necessary requirement of the projects is achieving a certain type of result, such as prototype, functional sample, software, industrial or utility model etc.

Who can request the grant:

- The tender applicant may be an enterprise or organisation for research and spreading knowledge, but the project has to contain at least one application guarantor.

What the grant can be used for:

- Staff costs, costs of tools and equipment, costs of contractual research, findings and patents, advisory services used for the purposes of the project, additional overheads and other operating expenses directly related to the project.

Grant amount per project:

- Maximum aid amount per project is CZK 5 million.

Aid intensity per project:

- Aid intensity will be calculated separately for each project as well as for each recipient and each participant. Maximum aid intensity per project is 85% of total eligible costs.

Receipt of project proposals:

- 10 October 2019 – 21 December 2019.

International call CHIST-ERA IV Call 2019

This call is part of the EPSILON programme for the support of applied research and experimental development, which will provide funding for successful Czech applicants. The call focuses on the support of research in the area of information and communication technology in two areas:

- Explainable Machine Learning-based Artificial Intelligence.
- Novel Computational Approaches for Environmental Sustainability.

Support will be provided to projects which anticipate achieving at least one of the results supported by the EPSILON programme, which include industrial or utility model, prototype, software or verified technology.

Who can request the grant:

- Applicants in this tender may be enterprises and research organisations. However, the project has to involve international partners. This international consortium has to be composed of at least three partners, each of which has to be from a different country. Each partner in the consortium has to meet the conditions of its national provider.

Grant amount per project:

- Maximum aid amount per project is EUR 1,000,000.

Aid intensity per project:

- Maximum aid intensity per project within one country is 60% of total aid.
- One partner can request no more than 40% of total aid.

Receipt of project proposals:

- 31 October 2019 - 16 December 2019.



Third public tender of programme Theta

Aid from the THETA programme for the support of applied research, experimental development and innovation is intended for projects in the area of the power industry. Support will be provided primarily for improving management in the power industry, new technologies and system elements with a high potential for quick utilisation in practice and long-term technological perspective.

Who can request the grant:

- The tender applicants may be enterprises and research organisations.

What the grant can be used for:

- Staff costs, costs of sub-contracts, other direct costs and scholarships.

Grant amount per project:

- Maximum aid amount per project is CZK 10 million or unlimited, depending on the type of activity and applicant.

Aid intensity per project:

- Maximum aid intensity per project is 60 – 90% depending on the type of activity and applicant.

Receipt of project proposals:

- 24 October 2019 - 19 December 2019.

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