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TAX FRESH



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Dear business partners,

In the next issue of this year's Tax Fresh, we would like to introduce you to the latest developments in the field of taxation, transfer pricing and covid-19 measures.

Should you have any questions, don't hesitate to contact our office, we would be glad to assist you.

Best regards



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EXEMPTION OF VALUE ADDED TAX ON THE SUPPLY OF ELECTRICITY AND GAS



Based on the decision of the Minister of Finance published in the Financial Bulletin No. 34/2021 dated 20 October 2021, value added tax will be waived for electricity and gas supplies made between 01 November 2021 and 31 December 2021. The general pardon responds to the current sharp increase in the prices of these commodities on world markets.

The pardon applies to all electricity and gas bills and advances received with a taxable supply date in the relevant period in November and December 2021. The tax will be waived for supplies made to both non-VAT taxpayers and VAT payers, not only for supplies made by energy distributors, but also for other supplies, such as supplies to tenants under a lease of immovable property or supplies between energy traders subject to the reverse charge regime.

VAT payers are not obliged by virtue of the waiver to carry out the mandatory reading of electricity and gas meters or to carry out any other extraordinary act leading to the determination of the state of consumption as of 01 November 2021 or 31 December 2021. However, if the energy deductions are not made by 31 December 2021, the VAT on the energy surcharge will not be waived under the current legal conditions. Nonetheless, if the energy reading is made in the reference period, the tax will be remitted, even for supplies that were actually delivered earlier but were not covered by advance payments.

In connection with the VAT waiver for electricity and gas supplies, there is no obligation to change the amount of advances and to refund to the customer the part of the advance paid corresponding to the amount of the tax waiver. The amount of advances to be paid is determined only on the basis of a contractual agreement between the supplier and the customer.

We would like to add that the decision in question only regulates the waiver of VAT on the supply of electricity and gas and does not restrict the taxpayer from claiming an input VAT from the taxable supplies received and used for the purpose of securing these supplies.

According to the information of the General Financial Directorate, VAT should not be indicated on the tax document issued for the taxable supply of electricity or gas or for advance payments received during the reference period. The customer will not be able to claim an input VAT from these transactions, even if the tax is shown on the tax invoice. If the taxpayer enters VAT on such a tax document issued in the reference period, he/she is obliged to declare the tax and subsequently correct the amount of the declared tax by means of a corrected tax document.

Previously issued payment schedules that have been issued as tax documents will not need to be amended or corrected. Nevertheless, for the reference period, they will be treated as a prescription for reimbursement on which no input VAT can be claimed. At the same time, it will be obliged to apply the tax waiver to the payments received in the reference period and thus include them in full in the tax base according to the VAT Act. Whether the advance payment to the customer will be reduced due to the VAT waiver will eventually be reflected in the subsequent billing, which will depend on the contractual arrangement between the supplier and the energy consumer.

In the reverse charge regime, the provider of electricity and gas supplies follows the standard procedure when issuing tax documents.

Finally, we would like to inform you that the government has approved a draft amendment to the VAT Act, which should exempt electricity and gas supplies from VAT with a right to apply an input VAT for the period from 01 January 2022 to 31 December 2022. The government has also asked the European Commission to allow this procedure. We will keep you informed of further developments in this matter.

EXTRAORDINARY DEPRECIATION OF TANGIBLE FIXED ASSETS



The Income Taxes Act allows the application of extraordinary depreciation for the first owner of tangible assets of the 1st and 2nd depreciation groups put into use in the period from 1 January 2020 to 31 December 2021. In view of the approaching end of 2021, we would like to remind you that assets from amortization group 1 can be tax depreciated in this way in 12 months starting from the month following the date of their activation. Similarly, assets in amortization group 2 can be depreciated over 24 months, where depreciation is applied at 60% of the acquisition price for the first 12 months of depreciation and the remainder in the following 12 months. For the purposes of completeness, we would like to add that extraordinary depreciation cannot be interrupted and the technical improvement of the property for which extraordinary depreciation is applied is separately recorded for tax purposes and tax depreciated in the standard way (straight-line or accelerated method). Should you be considering new investments, we recommend that you consider capitalising the asset before the end of 2021 to apply this tax depreciation within a shortened period.

CONTINUATION OF ANTIVIRUS A PROGRAM



In view of the current epidemiological situation, the government has decided to extend the Mode A of the Antivirus programme until the end of 2021. The date until which the Antivirus contribution agreement can be concluded has therefore been postponed from the original date of 31 October 2021 to 31 December 2021.

For the sake of completeness, the amount of the allowance is 80% of the wage compensation and social and health insurance contributions paid by the employer to the employee for the duration of the obstacle to work due to quarantine or isolation. The maximum monthly contribution per employee is CZK 39,000.

CASE LAW ON THE PRACTICE OF THE TAX ADMINISTRATOR IN THE FIELD OF TRANSFER PRICING



We would like to follow up on our previous issue of Tax Fresh, in which we reminded you that the tax authorities' activity in the field of transfer pricing is not slowing down despite the pandemic, quite the contrary. In this article we offer you a short overview of selected case law on this topic, which we find interesting from the point of view of daily practice and certainly useful for many of our clients.

- **Internal Comparable Transaction**

The case law of the Supreme Administrative Court has already sufficiently confirmed that - if possible - the so-called Comparable Uncontrolled Price Method (CUP) is the method that should be preferred by the tax administrator. This principle also follows the OECD Transfer Pricing Guidelines. Thus, if the Czech subsidiary sells its product "A" to independent customers and at the same time sells the same or a comparable product to its parent company, the tax administrator already knows the "market price" directly from the accounting records of the Czech subsidiary. This price is the price for an independent customer and the tax authority will compare the price terms negotiated with the parent company with this price and in case of any discrepancies will demand a very strong explanation. Transfer pricing documentation mapping the position and profile of the Czech subsidiary within the group and the chosen supply chain can constitute a clear starting advantage in the event of a tax audit.

- **COST+ Method**

The COST+ model is very widespread in the Czech environment and has logically been the subject of many tax audits. The case law of the Supreme Administrative Court has assured us that for a company with limited functions and risks (e.g., a contract manufacturer or tollmanufacturer or similar distributors), this model is acceptable and makes economic sense. The evaluation of the functional-risk profile is an integral part of each Transfer Pricing Documentation.

- **Loss "based on the request"**

The case law also confirmed the opinion of the Financial Administration (which is again based on the OECD rules) that a situation where a Czech subsidiary sells a certain product/service on the Czech market at a loss and this loss is "suffered" on the basis of a request from the parent company (which usually makes a profit on its local market) is a service provided by the Czech subsidiary to its head office. This service should therefore be taxed in the Czech Republic. The Transfer Pricing Documentation includes the identification and mapping of all managed transactions.

- **Which transactions are toxic?**

Based on our transfer pricing practice, it is possible to identify transactions or circumstances that are very likely to increase the risk of questions from the tax administrator. These include "management fee" transactions, transactions with intangible assets (e.g. licences, know-how, transfers of customer databases, etc.) or intra-group financial transactions (e.g. loans or guarantees). Circumstances that increase the likelihood of audit can also be identified. This is, for example, a situation of volatile profitability in low-risk entities (or a situation of falling profitability in a period of economic growth), a situation of corporate restructuring (when the functional and risk profile changes) or a situation of long-term loss-making enterprises (or very low income taxes), while the entrepreneur in question has high turnover. We should remember that companies benefiting from investment incentives are also a frequent target of the tax authorities.

If you have found your company in one of the above described situations or if you are simply interested in resolving the area of transfer pricing comprehensively and thus being prepared for an audit by the tax authorities, we are at your disposal.

CHANGE IN THE CALCULATION OF TRAVEL EXPENSES FOR ROAD MOTOR VEHICLES



On 18 October 2021, Decree No.375/2021 Coll. was published in the Collection of Laws, amending Decree No.589/2020 Coll., amending the rate of basic compensation for the use of road motor vehicles and meal allowances and determining the average price of fuel for the purposes of reimbursing travel expenses. On the basis of this Decree, a change in the average price of fuel is effective from 19 October 2021, when the average price of 1 litre of 95 octane petrol increases from CZK 27.80 to CZK 33.80.

INFORMATIVE PENSION APPLICATION (IDA)



We would like to briefly inform you about the launch of a new service of the ePortal of the Czech Social Security Administration called "Informative Pension Application" or "IDA". You can log in to the application using an electronic identity or a data box. Thanks to this service, it should be possible to find out relatively easily and quickly what a citizen's retirement age is, and for women the number of children brought up can also be taken into account. Furthermore, the application should be able to give users answers to questions such as how much of old-age pension a citizen could achieve, how many years and days of insurance have already been acquired and how many years and days are still needed to obtain the period required to qualify for an old-age pension. For the purpose of calculation, the IDA allows you to enter selected substitute periods of insurance or periods of employment or self-employment that the Czech Social Security Administration does not yet have in its records. More information can be found on the ePortal of the Czech Social Security Administration.

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