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TAX FRESH

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Dear business partners,

The next issue of our Newsletter will inform you about several changes in the expected tax consolidation package and other relevant matters.

We shall be pleased to continue to provide you with further expert support in the field of taxation, accounting and auditing.

Best regards

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CONSOLIDATION TAX PACKAGE 2024 – FOCUSING ON TRANSFERS OF SHARES AND SECURITIES

You will have noticed that a draft of the so-called tax consolidation package was published in mid-May 2023. By introduction of this package the Czech Government expects a positive contribution to the settlement of the troubled public finance deficit.

Currently, the paragraphed version of the proposal is ready for discussion in the first reading in the Chamber of Deputies, which should presumably take place at the turn of June and July 2023. The main dispute over the Government's proposal, however, is expected to take place during the Chamber of Deputies' autumn session. The Government expects the amendment to take effect as of 1 January 2024.

The tax package brings a whole range of changes, which we will address in our upcoming issues of Tax Fresh. At this point, we would like to put stress on one particular modification that may have a very significant impact on the **planning of transactions with securities and shares held by individuals**.

Under the still applicable rules, the owner of a security or a share could rely on the exemption time test, which ensured that he/she could sell the security tax-free after 3 years of holding and the share after 5 years of holding. In addition, there was an exempt income limit of CZK 100,000 for securities, which was exempt regardless of the time test.

The Government's proposal does not change the duration of the time tests of 3 or 5 years or the CZK 100,000 limit for securities.

The crucial amendment, however, is the introduction of a limit on income from the sale of securities or shares of **CZK 40,000,000**. Should the income from the sale of a security or share exceed this cap, such income is not exempt **in the proportion** calculated according to the proportion of the part of the aggregate of such income exceeding CZK 40,000,000 and the aggregate of such income.

In other words, if you sell a security or a share after 1 January 2024 for a price of, for example, CZK 50,000,000, the income from the sale will not be exempt in the amount of 1/5 of the sale price (i.e., CZK 10 million / 50 million), even if the seller meets the time test for possession.

Such taxable income may be offset by the seller's pro rata share of the purchase price of the security or the share or, as a new alternative applicable to securities or shares acquired before 1 January 2024, by a pro rata share of the market price determined on the basis of an expert's opinion.

THE DRAFT LAW ON THE 15% TOP-UP TAX – BEWARE OF INVESTMENT INCENTIVES

If your company is a member of a multinational or even domestic group of companies whose annual turnover exceeds **EUR 750 million**, (this is, by the way, the same turnover that is decisive for the submission of the so-called Country by Country Reporting), you should consider the Government's draft bill on the so-called **top-up tax**. As this is an implementation of an EU Directive, the basic principles can be expected to apply more or less as proposed, with the possibility of some technical adjustments. The amendment is planned to take effect from 1 January 2024.

To put it very briefly, the top-up tax is a requirement to achieve a **minimum effective tax rate of 15%**. Where the effective tax rate is below 15%, a top-up tax equal to the shortfall will be due.

The new rules introduce a relatively complex definition of who is liable to pay the top-up tax and in which country. At the same time, the new registration and information obligations should not be overlooked.

At the moment, we would like to highlight one of the accompanying aspects of the matters related to the top-up tax, namely **the investment incentive** (more specifically, the income tax relief for those who have been granted the promise of an investment incentive).

The income tax relief scheme for the investment incentive continues to apply.

The rationale behind the proposed calculation of the effective tax rate for the purposes of the top-up tax calculation, on the other hand, suggests that the tax credit, which is a type of tax deduction from the income tax payable, is very likely to be reflected as a **reduction in the resulting effective tax rate**.

Therefore, it must be considered that the effect of the investment incentive may be surprisingly reflected in the obligation to pay the top-up tax if the resulting effective tax, after taking into account the effect of the investment incentive deduction, does not reach the required 15%.

The actual impacts are, of course, a matter of precise calculation, which we recommend doing in the context of this amendment.

RUSSIA ON THE LIST OF NON-COOPERATIVE JURISDICTIONS

The Council of the European Union updated the list of non-cooperative jurisdictions in February 2023. **The Russian Federation has been newly added** to the list containing three other smaller countries.

From the moment Russia was placed on this "blacklist", experts have been discussing the possible tax implications. We can now confirm with certainty that the above-mentioned fact activates two tax rules: in particular, namely the so-called **CFC rules and reporting obligations under DAC 6**.

In the case of the CFC rules, this is the procedure to be applied by the Czech parent company holding a qualifying stake in the Russian subsidiary. Such Czech parent company is obliged to include the income of the Russian subsidiary in its local tax base in the Czech Republic.

Thanks to the inclusion of Russia on the sanctions list, the Czech parent company no longer examines whether the Russian subsidiary is actually carrying out economic activity or how high its taxation is in Russia. The stricter regime applies to tax years ending at any time after 14 February 2023 (and provided that Russia is still on the list of non-cooperative jurisdictions at the end of the Russian subsidiary's tax year).

In the case of DAC 6, the inclusion of the Russian Federation on the list automatically triggers the notification obligation of any cross-border arrangement with a Russian entity. This obligation applies to arrangements created from 14 February 2023 onwards. A Czech entity may face significant penalties for failing to comply with the notification obligation.

NEW GENERAL FINANCIAL DIRECTORATE (GFD) INFORMATION ON VAT ON IMMOVABLE PROPERTY

The GFD is preparing an extensive Information on the application of VAT on immovable property, which is to be **effective from 1 July 2023**. This new Information has been compiled on the basis of recent European case law, Coordination Committees held between the Tax Administration and representatives of the Chamber of Tax Advisors, as well as previously published information in the field of real estate, which this new Information will replace.

According to the current draft, the Information not only defines selected concepts in the field of real estate, but also provides numerous examples that have been compiled on the basis of the most frequent questions from taxpayers. It explains, for example, the differences in the calculation of floor surface area in the case of a family house and an apartment building, what is considered a substantial change to a building or what the rules are for exemptions for the delivery of land or the lease of selected immovable property.

In view of the volume of the current draft, we will only mention a few points that should be kept in mind when using immovable property in the context of economic activity:

- From a VAT point of view, immovable property is an autonomous concept.
- To determine the use of the property for VAT purposes, **the entry in the Cadastre of Real Estate** or in the municipality's zoning plan is decisive.
- The **principle of principal and ancillary supply takes precedence** over the application of the rules on the functional whole.
- In the case of an alteration to a property, it is necessary to monitor whether the alterations, repairs or upgrades to the property have resulted in a substantial change compared to the original condition, not only in the context of the property's layout but also in the context of its valuation. This may have a significant impact on the 5-year exemption period for the supply of selected immovable property.
- Should the taxpayer decide to apply the tax when supplying land to another taxpayer pursuant to Section 56(6) of the VAT Act, the supply is subject to the reverse charge regime. The tax document must then contain the obligatory indication "**the tax will be paid by the customer**".

NEW REPORTING OF PAYROLL ACCOUNTANTS – UKRAINIAN EMPLOYEES

We would like to inform you about the new obligations of employers in relation to foreigners who are beneficiaries of **the so-called temporary protection**. These foreigners will have to be reported using the "Notice on entry into employment" form, regardless of whether or not their employment will give rise to participation in sickness insurance.

Simply put, if you employ such an employee, a foreigner (e.g., a refugee from Ukraine), on an agreement on the performance of work, contract on work activity or conventional employment relationship and their

remuneration does not exceed the statutory limit for sickness insurance, you will still have to file a Notice on entry into employment. Until now, the reporting obligation is set so that only employees who exceed the legal limit are reported. The deadline for filing the Notice is still the same, i.e., within 8 calendar days after the start of the employment. There is also no change to the notification form.

The above change is effective as of 1 April 2023. We would therefore recommend that you check that your payroll department has recorded this obligation and is complying with it.

REMISSION OF FINES FOR FILING TAX RETURNS BY POST OR IN PERSON IN THE CASE OF NEWLY ESTABLISHED DATA BOXES

As of 1 January 2023, in accordance with law, data boxes have been established for a large number of taxpayers who have had no experience with this form of electronic communication. This step also changed the way tax returns are submitted to the tax administration. Every holder of a data box is obliged to file tax returns only electronically, not in writing using regular mail or personal delivery to the tax authority office. Besides, the electronic submission itself has its own specific features, according to which the tax return cannot be submitted in the commonly used "pdf" format, but in the so-called "xml" format.

As a result of these changes, the tax administration records a large number of incorrectly filed returns, especially in the case of personal income tax. According to established practices, the tax authorities in these cases normally impose fines according to the Tax Code. The Financial Administration has confirmed, however, that a fine of CZK 1,000 will not be imposed in a situation where the tax subject did not comply with the mandatory electronic filing method or filed the tax return in an incorrect format or structure between 1 January 2023 and 2 May 2023. If the tax return complies with all other statutory requirements, the tax administrator considers the return to have been filed within the statutory deadline.

If the tax return was filed electronically in the period starting from 3 May 2023 to 2 June 2023, the tax administrator will continue to apply the tolerance approach if the filing error lies in a different format or structure. Still, if the tax return is filed after the statutory deadline, the penalty for late tax declaration under the Czech Tax Code applies.

Please note that if the tax return is filed in writing after 3 May 2023, it will be treated as if it had never been filed at all. In this case, a new submission should be made in the correct electronic format as soon as possible.