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Tax and Legal Update

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January 2016

Dear readers,

Last year saw the highest corporate tax revenues since 2008. The total tax revenues of public budgets increased by 72.2 billion year-on-year, and the state budget deficit was by 37.2 billion lower than planned. This was possible thanks to the positive development of the economy, lower unemployment, and the successful drawing of EU funds. Although, quoting the Minister of Finance, this was mainly due to him substantially improving the work of the financial and customs administration.

Into 2016, the financial administration has set out under the flag of fighting tax evasion. Its arsenal includes VAT ledger statements and the duty to disclose the origin of assets in the event of a disproportion between acquired private property and consumption on one side and income declared in the tax return on the other side (although the bill has not been passed by parliament yet the Ministry plans it to enter into effect in 2016).

With the new year comes also a new deputy Minister of Finance, Alena Schillerová. Let's wish her a firm hand in steering tax policies as well as success in fighting tax evasions. Let's also hope that the increased administrative burden will not claim any victims from among honest taxpayers.

In the year now beginning we will have to broaden our field of vision to include EU directives under preparation (e.g. extension of automated information exchange) and changes arising from the implementation of BEPS/OECD recommendations. Export-oriented firms may find it important that the Ministry of Finance together with the CNB has recommended not setting a deadline for adopting the euro, and not making efforts to join the ERM II system this year.

To conclude, I wish you that your financial statements and reported results will look at least as favourable as the state budget deficit when presented by the Minister of Finance.

Daniel Szmaragowski
Director

First VAT ledger statements to be filed shortly. Are you ready?

The duty to file VAT ledger statements becomes effective from 1 January 2016; the deadline for submitting first VAT ledger statements is 25 February 2016. As time is running out, both taxpayers and the General Financial Directorate are finalising their preparations for first submissions. We bring up-to-date information in this respect.

On 4 December 2015, the General Financial Directorate published an updated version of its instructions on the completion of VAT ledger statements (this time under the title Instructions on How to Complete VAT Ledger Statements). In addition to minor wording changes, the instructions include the following adjustments:

- In the case of instalment/payment schedules, each individual taxable supply (and possibly also the relevant payment) will be reported separately in the VAT ledger statement for the period to which it relates in terms of the date of supply or the date on which a relevant payment is received, always stating the relevant tax document number. To assess whether the limit of CZK 10 000 (incl. VAT) has been reached, the sum of all individual taxable supplies/payments stated in these tax documents is taken into account.
- Parts A.4 and B.2 of the VAT ledger statement will show taxable supplies with relevant payments whose total stated in a tax document exceeds CZK 10 000 (incl. VAT) irrespective of the VAT regime applied to individual supplies. This means that VAT-exempt supplies, which are not separately reported in VAT ledger statements, will be counted towards the limit of CZK 10 000.
- If the contact information provided in a VAT ledger statement includes both a data box ID and an email address, the tax administrator should always select the data box as a means of communication with taxpayers.

On 21 December 2015, the General Financial Directorate updated its answers to questions regarding the submission of VAT ledger statements. The changes primarily relate to tax corrections:

- If taxpayers issue a tax document to the wrong customer, report that document in their VAT ledger statement and subsequently issue a new tax document to the right customer, they must file an additional VAT ledger statement within five days of the day on which they identified the inaccuracy. The additional VAT ledger statement will again show all taxable supplies for the period plus the

taxable supply that has been corrected. In the additional VAT ledger statement, the wrong line will be replaced by a new, correct line.

- Where suppliers provide subsequent discounts to their customers, customers must correct their VAT deductions for the period in which they identify the circumstances resulting in the duty to make tax corrections. If customers do not have the corrective tax documents at their disposal at that time, they may use their internal numbers for reporting changes as the relevant tax document numbers in the VAT ledger statements. The date on which the customer learns about the circumstances decisive for making a correction is then used as the date of supply. When customers subsequently receive the relevant corrective tax documents, they should cancel the correction originally declared in a VAT ledger statement. They should report this correction on the line below the original correction, stating the information from the received corrective tax document. The date on which the customer receives the corrective tax document should then be used as the date of supply.
- Taxpayers using an incorrect VAT regime or rate will have to file additional VAT ledger statements showing the supplies in the correct sections of the VAT ledger statement.

Finally, we draw attention to proposed changes to the VAT Act presented in connection with the Minister of Finance's press conference on VAT ledger statements. The ministry is contemplating introducing, effective from 1 May 2016, the possibility to waive penalties associated with VAT ledger statements where the law prescribes fixed penalty amounts (at the same time, a retrospective application would be introduced to cover penalties occurring before the effective date of this amendment). For example, a penalty of CZK 1 000 could be waived automatically once per calendar year without a request. Higher penalties would be waived based on requests by taxpayers furnishing justifiable reasons.

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Fight against VAT fraud gains momentum

The government is stepping up the fight against VAT fraud. In addition to a notice published by the financial administration informing taxpayers about the occurrence of VAT fraud in the sector of trade in gas and electricity, the government has recently expanded the reverse-charge mechanism to cover this sector.

At the end of last November, the financial administration published a short notice on its website regarding possible VAT fraud involving trade in energy commodities such as electricity and gas. The financial administration recommends that, when entering into any transactions with these commodities, taxpayers should carefully analyse any potential tax risks and adopt all measures available to ensure that the supplies they receive and effect do not make them participants in tax fraud.

We cannot but praise the financial administration's innovative approach to informing taxpayers about another segment that might potentially be affected by tax fraud. This may help the state save substantial funds while incurring minimum costs. On the other hand, however, we cannot fail to notice the financial administration's certain reluctance to clearly formulate this notice as the text itself does not provide any guidance on how to identify such potentially fraudulent transactions. And that is the key issue, as we can see from the case law recently issued by Czech administrative courts. The courts have confirmed that the tax administrator may refuse entitlements to VAT deductions claimed by taxpayers who knew, or must have known, that they had acquired supplies involving fraud.

Following the financial administration's notice, the government has prepared a draft decree to apply the reverse-charge mechanism to trade in electricity and gas. This mechanism has so far been applied to cereal and technical crops, metal and metal scrap, mobile phones, and microprocessors (as these segments had earlier been affected by VAT fraud). From
1 February 2016, the reverse-charge mechanism should also apply to gas and electricity delivered to gas and electricity traders. Gas and electricity traders are entities liable to tax which purchase gas or electricity for resale and whose gas and electricity consumption is insignificant as well as entities whose business activities involve electricity transmission, electricity distribution, trade in electricity, market operator activities, gas transport, gas distribution, gas storage, and trade in gas under the conditions prescribed by the Energy Act. The reverse-charge mechanism should also apply to the delivery (transfer) of guarantees of origin when making gas and electricity supplies under the Act on Subsidised Energy Sources.

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Three pitfalls regarding VAT on company conversions

The Coordination Committee of the Chamber of Tax Advisors and the General Financial Directorate has recently discussed a number of issues related to the conversion of corporations with subsequent VAT implications. Below you may find a short summary of the issues in question.

Legal succession on the sale of a business establishment

The Coordination Committee considered the legal succession issues on the sale of a business establishment, in particular discussing the two following situations:

- The entitlement to a VAT deduction relating to a received taxable supply is claimed before the sale of a business establishment whereas the relevant tax document is received only after the transfer of the business establishment.
- Where a discount is provided, a corrective tax document is issued and the tax base and tax corrected after the sale of a business establishment whereas the relevant supply is effected before the sale of the business establishment.

The GFD is of the opinion that in both cases the entitled/liable person is the acquirer of the business establishment. Although the VAT Act does not explicitly provide for this, the GFD believes that this is in line with an EU-compliant interpretation of VAT legislation. The GFD has further declared that the transfer of all rights and duties associated with the application of the VAT Act to a legal successor is generally accepted by the financial administration.

Demerger by spin-off from a corporation that is part of a VAT group

This involves the acquisition of assets from a spin-off from a corporation belonging to a VAT group and the resulting VAT registration implications for the successor company. The GFD admits that the current VAT Act does not deal with this issue. An amendment to the VAT Act effective from 1 January 2017 should rectify this situation. According to the GFD, the successor company should assume all rights and duties associated with the application of VAT on the transferred assets, thus ensuring VAT continuity by becoming either a member of the VAT group or a VAT payer by filing the appropriate request or application. Taxpayers may proceed in this manner until the effective date of this amendment. Moreover, the GFD highlights that individual VAT group members cannot be regarded as VAT payers. It is therefore impossible to invoke automatic registration as a VAT payer under Section 6b of the VAT Act.

Conversion of a VAT group member

The Committee also discussed the conversion of a VAT group member leading to the formation of a new company while preserving the existence of the VAT group member. The question was whether the newly formed company may file an application to become a member of the respective VAT group before it comes into legal existence, i.e. before the conversion is recorded in the Commercial Register. The GFD agreed that it was possible to proceed in this manner. Decisive is whether the new company meets the conditions for becoming a member of the VAT group at the moment it joins the group.

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Another wave of subsidy opportunities in the CR

First calls for participation in the new TRIO programme designed to support research, development and innovation as well as other calls for participation in selected programmes within OP Enterprise and Innovation for Competitiveness have recently been announced. The subsidy opportunities for 2016 are briefly outlined below.

TRIO programme – national funds

The TRIO programme has been designed to subsidise operational expenses incurred for industrial research and experimental development projects. It is open to candidates from all over the Czech Republic, including Prague. The TRIO programme aims to support projects focusing on key technologies such as photonics, nanoelectronics, nanotechnologies advanced production technologies, etc. The first round of calls was announced in November 2015. It is possible to submit applications until 15 January 2016 while successful projects may receive a subsidy of up to CZK 20 million. Large companies may obtain 25–65% of qualified expenses depending on the type of the project. A necessary pre-condition for receiving a subsidy is the efficient cooperation with at least one research organisation. The subsidised project's final output must result in a patent, partial operation, proven technology, utility design, industrial design, software or prototype. The second round of calls should be announced in summer 2016.

Operational Programme Enterprise and Innovation for Competitiveness (OPEIC) – EU funds

A preliminary time schedule for the second round of calls to submit applications within the OPEIC programme in 2016 has been disclosed. Calls to participate in selected programmes such as Innovation, Potential or Energy Savings should be published in August 2016. Preliminary applications should be accepted from September 2016.

The first calls to participate in some other selected programmes were announced on 15 December 2015. The Renewable Energy Sources programme is relevant for large enterprises. This programme particularly focuses on providing support to the building and reconstruction of biomass-generated combined electricity and heat resources and the building, reconstruction and modernisation of small water power plants (the installed output of up to 10 MW).

In addition to the Renewable Energy Sources programme, calls have also been issued to small and medium-size companies to participate in the following programmes:

- Innovation – protection of industrial property rights;
- Technology – acquisition of new machinery, technological equipment and fittings in selected sectors;
- Infrastructure Services – extension and construction of innovative infrastructure.

Full applications within the first round of calls for participation in the OPEIC programme are still being accepted. Since funds intended for distribution to large companies from this programme are limited, it is vital to submit an application as soon as possible, as full applications began to be accepted on 1 December 2015. Once all funds available for the specific programme have been allocated, the support provider will prematurely stop accepting new applications.

We will be happy to discuss any subsidy opportunities with you personally.

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Important changes to the Act on Residence of Foreign Nationals

On 18 December 2015, an amendment to the Act on Residence of Foreign Nationals in the Czech Republic came in force, changing the time limits for submitting applications. At the same time, it simplifies the process of extending the validity of employment cards when changing employers or jobs.

Extending the validity of employment cards and long-term stay permits

It is now possible to apply for the extension of one's employment card up to 120 days (formerly 90 days) before the expiry of the existing employment card's validity. We also point out that the application for extension must be submitted at the latest 30 days before the expiry of the existing permit, not 14 days before its expiry as in the past.

Similarly as with employment cards, the time limit for submitting an application for the extension of a long-term stay permit has been extended from 90 to 120 days. Conversely, the deadline for submitting this application is in this case the last day of the term of the existing permit/visa.

If the last day of the term of the existing permit is a Saturday, Sunday or a public holiday, the nearest preceding working day is to be considered the last possible day on which the application may be submitted. Applications requiring the applicant's personal presence can be delivered to the Ministry of the Interior on the last day of the time limit in electronic format (by e-mail, fax, or to the Ministry´s data box) and then confirmed in person within five days. Applications which do not have to be submitted personally can be sent by regular mail on the last day of the time limit.

Change of employer and extension of the employment card's validity

The Amendment to the Act on Residence of Foreign Nationals further simplifies the administrative procedures associated with the employment card holder's application for approval of a change of employer or job. The previous legal regulation divided these acts into two separate procedures. An application for approval of a change of employer or job submitted within a time limit of 120 to 30 days prior to the end of the term of the existing employment card is newly automatically considered an application for the extension of the employment card's validity. In this event the applicant shall also submit documents necessary for the extension of the employment card's validity.

Maximum validity of long-term visas extended to one year

Long-term visas may now be granted for up to one year (formerly a maximum of six months).

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Bankruptcy of consumers according to the CJEU

At the end of last year, an Opinion of the Advocate General on the request for a preliminary ruling submitted to the Court of Justice of the EU by a Czech court was published. If the CJEU adopts the Advocate General's opinion, this will have major implications for Czech law and for the practice of insolvency courts and consumer credit providers.

In the case in question, the Czech court addressed the bankruptcy of spouses who were debtors resulting from their inability to repay a consumer credit, among other factors. As a result of the default, the lender was left with a secured and an unsecured claim (relating to the contractual penalty) from the debtors. The debtors challenged the amounts of both claims on the grounds that the terms had been contrary to accepted principles of morality. Valid Czech insolvency legislation, however, allows a debtor to lodge an incidental application only in relation to an unsecured claim, and that only for a certain limited number of reasons.

The EC's Directive on Unfair Terms, in the advocate's view, rules out those national procedural rules that prevent reviewing the legitimacy of the consumer loan provider's claims and render it impossible or excessively difficult for a consumer who is a debtor to challenge the claims even though the insolvency court may have the legal and factual elements necessary to assess the terms of the agreement. According to the advocate, the Consumer Credit Directive should be interpreted as to make the national insolvency court examine ex officio whether the creditor has provided the information on the credit laid down by the directive to the consumer and to impose the relevant penalties under national law where that obligation has not been met.

In its final decision, the CJEU may of course diverge from the Opinion of the Advocate General, but if it adopts her conclusion, Czech insolvency law will have to be amended. In practice, that would in particular lead to changes in the procedures of insolvency courts, which would have to alter their existing routine approach to bankruptcies of consumers and start reviewing the terms of consumer credit agreements. Along with the upcoming new legislation governing consumer credits, the decision may also lead to a change in methods applied by (certain) lenders, as they often benefit from the courts' limited possibility to examine credit agreement terms when a consumer goes bankrupt. The insolvency court's decision on the illegitimacy of credit agreement terms may therefore affect a given lender's portfolio as a whole. The future decision of the CJEU may thus be considered yet another fragment in the mosaic of growing rights of consumers drawing consumer loans.

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Advance pricing agreements eliminated by automatic exchange of information?

Following the December publication of ECOFIN's report, member states' tax administrations can be expected to be somewhat reluctant to issue additional advance pricing agreements for international transactions.

In an effort to combat aggressive tax planning, on 8 December 2015 the EU's Economic and Financial Affairs Council (ECOFIN) published a draft amendment to Directive 2011/16/EU, which governs the automatic exchange of information. The amendment expands the automatic exchange to include tax rulings issued by member states as well as advance pricing agreements relating to cross-border transactions.

The level of detail of information disclosed between tax administrations should be kept to a minimum so as to guarantee the protection of trade secrets. Having read the amendment, however, we believe that more than enough information will be shared (including, for example, the name of the company for which a particular ruling was issued; a general description of the transaction; the transfer pricing method; planned transaction volumes; the period for which the ruling is effective; a list of member states that may be affected by the ruling; etc.).

The directive envisages the establishment of a central register in which required disclosures will be stored. The register will be accessible to all member states, with the European Commission also having access to selected information as may be required to monitor the proper application of the directive. Based on the information thus available, the respective member states will be able to request the full wording of a ruling issued by another member state and ask for additional details.

The automatic exchange of information on tax rulings will begin on 1 January 2017. In certain cases, key information regarding rulings issued between 2012 and 2016 will also have to be made available. In addition, the directive contains direct recommendations for coordinating this activity with the OECD's BEPS action plan.

Following the December publication of ECOFIN's report, member states' tax administrations can be expected to be somewhat reluctant to issue additional advance pricing agreements for international transactions. The sentiment is likely to be mutual, as there will be fewer companies willing to divulge the structure and pricing of cross-border transactions.

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Tax transparency from a BEPS perspective

In the previous two issues of our update, we summarised the pillars of the BEPS Action Plan focusing on the unification of domestic tax rules and the taxation of profits at the place where value is created; in the last article of the series devoted to BEPS, we shall look into the remaining actions, whose common denominator is tax transparency.

Apart from its three main pillars, the final OECD report contains also two horizontal actions. The first of them, a multilateral instrument, was covered in the last edition. The second one, and one of the main reasons for the BEPS initiative, addresses new tax challenges arising from the development of a digital economy. The OECD in its final report states that the digital economy creates opportunities for tax avoidance in the area of both direct and indirect taxes (such as VAT), as it is problematic to identify actual places of business. Changes may thus be expected in the permanent establishment definition and in the VAT area or in withholding tax policies. The report recommends introducing a withholding tax on all digital transactions in the state where given goods or services are ordered online. It is up to individual states how to approach the taxation of the digital economy. In practice, this may even mean double taxation, if individual states implement different digital economy taxation rules or do not allow offsetting the withholding tax on online transactions paid abroad. This was one of the reasons for establishing a task force to monitor the challenges of the digital economy (the Task Force on the Digital Economy), with the aim of issuing a final report by 2020.

Action 11 aims to improve the manner of collecting and analysing data on aggressive tax planning practices through the continuous monitoring of the scope and effect of the adopted BEPS actions. In this respect, we may expect increased cooperation among the participating countries, international organisations and tax administrations.

Action 12 suggests imposing a duty on taxpayers to disclose any suspected aggressive tax planning schemes. While the final report states that introducing mandatory disclosure rules will increase tax transparency and collection, it leaves the decision on how to implement this action fully within the discretion of the individual member states.

Transfer pricing documentation

Efficient and effective compliance with the arm's length principle is closely related to the availability of relevant information. For this reason, the OECD has agreed on a three-tiered approach to transfer pricing documentation to replace the presently used two-tiered

one; this means that apart from masterfile and local documentation requirements, there will be also country-by-country reporting (CBCR). CBCR will provide, among others, an overview of the financial results achieved and taxes paid in all countries where a corporate group operates. The primary duty to file CBCR shall apply to parent companies of multinational groups whose annual consolidated turnover exceeds EUR 750 million for the year preceding the filing of CBCR. The parent companies shall submit CBCR to their local tax administrator, who will then automatically pass the information on to the other jurisdictions where the individual group companies are located. To ensure consistency and efficiency of the information exchange, a multilateral instrument – an agreement of individual parties as regards the exchange of CBCR – has been developed.
Action 13 concludes that CBCR for 2016 has to be filed by the end of 2017, and the first exchange will take place by mid-2018. Countries who have already implemented CBCR in their national legislations or are close to doing so include Australia, China, Denmark, France, Ireland, Mexico, the Netherlands, Poland, Spain, Sweden, the USA and the United Kingdom. The Czech Republic will join the CBCR countries in the near future, even though the issue of obligatory transfer pricing documentation appears not to be so clear cut. This topic was side-lined after the introduction of a separate appendix to income tax returns monitoring related-party transactions. Yet, in our recent experience, tax administrators nearly always request transfer pricing documentations in tax inspections.

Dispute resolution

Action 14 aims to improve the effectiveness of the mutual agreement procedure (MAP) in resolving treaty-related disputes. The final report sets a minimum standard for the resolution of such disputes. One of the outputs of the work on this action is the commitment to MAP binding arbitration (i.e. the mechanism of timely resolution of MAP cases), so far adopted by 20 countries.

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State administration uses unsupported supplier argument again

Recently, the Supreme Administrative Court supported the use of an almost unbeatable weapon from the tax administrators' arsenal: when challenging claimed VAT deductions, tax administrators often argue that the actual delivery of goods or services by the supplier given in the tax document was not sufficiently supported.

In its recent judgement (file no. 4 Afs 178/2015) the Supreme Administrative Court denied a taxpayer an entitlement to the deduction of an input VAT on the grounds that the taxpayer had failed to sufficiently prove that the supply had been actually received as per the tax documents (invoices) based on which the VAT deduction was claimed. In a tax inspection, a supply of copper scrap could not be verified with the supplier, as the supplier had in the meantime become uncontactable. The taxpayer was at an impasse, as he did not have sufficient evidence that the copper scrap had actually been supplied by the company stated in the tax document. His situation was further worsened by the fact that he had failed to check whether the contact person had been authorised to act on behalf of the company.

The Supreme Administrative Court repeated that for the purpose of claiming a VAT deduction, entrepreneurs must proceed so as to be able to carry a future burden of proof. The taxpayer argued mainly that it would be absurd to expect him to ensure (through a contract or otherwise) that his business partner would be contactable for the tax authorities in future years. The SAC strictly denied this, repeating that it is the taxpayers' duty to support their assertions.

The taxpayer came up with a rather original argumentation, namely the concept of unauthorised agency in the meaning of private law: the taxpayer argued that it was of no consequence whether specific individuals had in fact been authorised to act on behalf of the company listed in the tax document, as the company had rectified the absence of such an authorisation by actually delivering the goods and receiving the payments for the goods in its account. This, however did not moderate the adamant approach of the SAC, who stated that the actual delivery of copper scrap does not in itself prove the approval of an unauthorised agency, unless it can be proven that the delivery was actually made by the supplier as given in the tax document.

The commented decision of the SAC thus strongly reminds us not to underestimate the importance of checking suppliers and gathering sufficient supporting materials for supplies. Neglecting this duty may result in substantial additional tax assessments.

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VAT on real estate fund management

In December, the Court of Justice of the European Union confirmed that the actual management of real property in a fund, comprising for instance lease administration or maintenance, is subject to VAT.

Before Christmas, the Court of Justice of the EU dealt with the case of Fiscale Eenheid X NV cs (C-595/13); in it, two questions were referred to the court:

- whether a specific real estate fund may be regarded a special investment fund in the meaning of the VAT terminology;
- if so, whether selected services relating to the management of the real property in such fund (rentals, lease administration, maintenance) may qualify for VAT exemption pursuant to the VAT Directive, i.e. whether they fall under the scope of special investment fund management.

As to the first question, the court sided with the Advocate General's opinion, confirming that entities into which capital is pooled by several investors with a view to purchasing, owning, managing and selling immovable property to generate profit to be distributed to unit-holders may be regarded as a special investment fund. The directive then allows exempting the funds' management from VAT.

The second question seems particularly interesting in the Czech context. The court did not support the approach proposed by the Advocate General, however. The case in question concerned services comprising, among others, the actual management of the real property in the fund, including, for instance, lease administration or delegation of property maintenance. The Advocate General referred to the case law of the CJEU; in her opinion, operations constituting a separate group considered as a whole and forming a specific and substantial part of the management of collective investment undertakings fall under the scope of the exemption for the management of special investment funds. The Advocate General therefore proposed confirming that in the case in question the actual management of properties in the fund qualified as such a specific activity. The court, however, took a more critical view of the issue, and held that the term special investment fund management did not cover the actual management of properties, as it went beyond the various activities connected with the collective investment of raised capital. The court thus confirmed the prevailing market approach that the actual administration of real property in the funds is subject to VAT.

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Bitcoin transactions VAT exempt

Transactions involving the exchange of bitcoins for traditional currency are subject to VAT, even if no separate fee is charged for the service. However, such service may be exempted from VAT, analogously to transactions involving currency, bank notes and coins used as legal tender.

The Court of Justice of the EU (CJEU) dealt with the case of David Hedqvist (C-264/14), who offered to carry out bitcoin transactions, namely to exchange Swedish crowns for bitcoins via an internet site. The reward for his services was to be in the form of a margin reflected in the calculation of the exchange rate.

The CJEU was asked for a preliminary decision on whether the services envisaged by Hedqvist would constitute the subject-to-VAT provision of services for consideration; and, if so, whether such services would be covered by VAT exemption. Before addressing these preliminary questions, the CJEU in the introduction of its judgement referred to a 2012 report by the European Central Bank on virtual currencies stating that bitcoins constitute a virtual currency, i.e. so-called digital money, which is analogous to traditional currencies, as its units can be used to pay for goods and services.

The CJEU's case law implies that services may be viewed as having been provided for consideration even where no separate fee or commission was charged; the first question was thus answered by the CJEU to the effect that Hedqvist's transactions constitute services provided for consideration, and are therefore subject to VAT.

As for the exemption of the services provided by Hedqvist, the CJEU considered three possible reasons for such an exemption as per specific provisions of the VAT Directive. Individual provisions referred to by the court allow for exempting transactions involving:

- deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments;
- currency, bank notes and coins used as legal tender;
- shares, interests in companies or associations and debentures.

Of the above listed options, the CJEU chose transactions involving currency, bank notes and coins used as legal tender. The reason is that bitcoins, analogously to any other legal tender, can be used to buy or sell goods or services and are accepted by all the parties to a transaction. The exchange of bitcoins may therefore enjoy VAT exemption under the above-mentioned provision of the VAT Directive.

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Liability for employee injuries during business trips

If employees do not get to rest between two shifts, they cannot be reprehended for interrupting business trips to rest without their employer's approval. In its recent decision, the Supreme Court concluded that only employees themselves as drivers of motor vehicles are responsible for the course of and safety during their car trips.

The Supreme Court heard the case of an employee who was sent on a two-day business trip after having worked his regular hours that same day. Taking into account the number of working hours and fatigue after he completed his duties assigned for the business trip, the employee decided not to set out for the several-hour-long drive back to the employer's office. Instead, without the employer's approval, he drove to spend the night at his relatives', away from the route of his business trip. The following day, while driving back, the employee had a car accident during which he suffered an injury (Resolution No. 21 Cdo 5306/2014).

In hearing this case, the court primarily focused on the question whether the employee had been injured in direct relation to the completion of his work duties or whether he had terminated his business trip by arbitrarily interrupting his journey. If the first had been the case, it would be possible to classify the injury as a work-related injury in line with the Labour Code and to conclude that the harm suffered by the employee was the responsibility of the employer. With the second possibility, the injury could not be classified as a work-related injury.

In its reasoning, the Supreme Court emphasised that a business trip may be divided into several stages that are assessed differently based on how they relate to the completion of work-related duties. The fact that employees interrupt their business trips to rest, even without the express consent or knowledge of their employers, does not imply that they have terminated the business trip. Any subsequent steps that employees take, i.e. driving back to their employers' premises after resting, are considered acts directly linked to the completion of work tasks with all the relevant implications for the employers. The court also noted that there is no regulation stipulating that employees have to rest only in places located on their business trip route.

The court's conclusions concerning the duties of employees are also significant in this respect. Employees have to fulfil their employment duties as well as regulations directly relating to the work performed. Employees are also obliged to act in compliance with any other provi-

sions governing their work, provided they have been duly acquainted with them. In the case before the court, since the employee was driving a company car, one of the provisions was the Road Traffic Act, which states that drivers need to consider whether to interrupt their journey to get adequate rest regardless of their employer's previous instructions or orders. The drivers themselves should assess their current condition, determine whether they are able to drive safely and take appropriate steps, i.e. interrupt their trip or decide not to drive at all. Merely the driver, not the employer, bears responsibility for the course of a trip.

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News in brief

The following legal regulations were published in the Collection of Laws:

- Amendment to Decree No. 344/2015 Coll., listing cadastral areas and the corresponding average basic prices of agricultural land;
- Amendment to the Valuation Decree (No. 345/2015 Coll.);
- Notification of the Ministry of Labour and Social Affairs No. 346/2015 Coll., on the national average wage for the first to the third quarter of 2015 for the purpose of the Employment Act;
- Amendment to Decree No. 361/2015 Coll., on the manner of calculating the entitlement to refund mineral oil tax paid as part of the prices of some mineral oils consumed in primary agricultural production;
- Act No. 376/2015 Coll., on termination of Pillar 2 pension scheme, and Act No. 377/2015 Coll., which amends some laws in connection with its adoption;
- Amendment to the Consumer Protection Act (No. 378/2015 Coll.);
- Amendment to Excise Duty Act (No. 382/2015 Coll.);
- Decree No. 385/2015 Coll., changing the rate of basic reimbursement for the use of road motor vehicles and meal expenses and establishing the average cost of fuel for travel expense reimbursement purposes.

The Ministry of Finance has published an updated list of price maps of municipalities' construction sites (CMSP) as at 31 December 2015.

On its website, the financial administration has published information on changes to real estate tax effective from 2016.

The financial administration has informed real estate tax payers that based on the Act on Abolishment of the Brdy Military Training Area, on Determining the Borders of Military Training Areas, on Change of Regional Borders, and on Change of Related Acts, as at 1 January 2016 the borders of military training areas have been changed or abolished, new municipalities have been established, and regional borders have been changed.