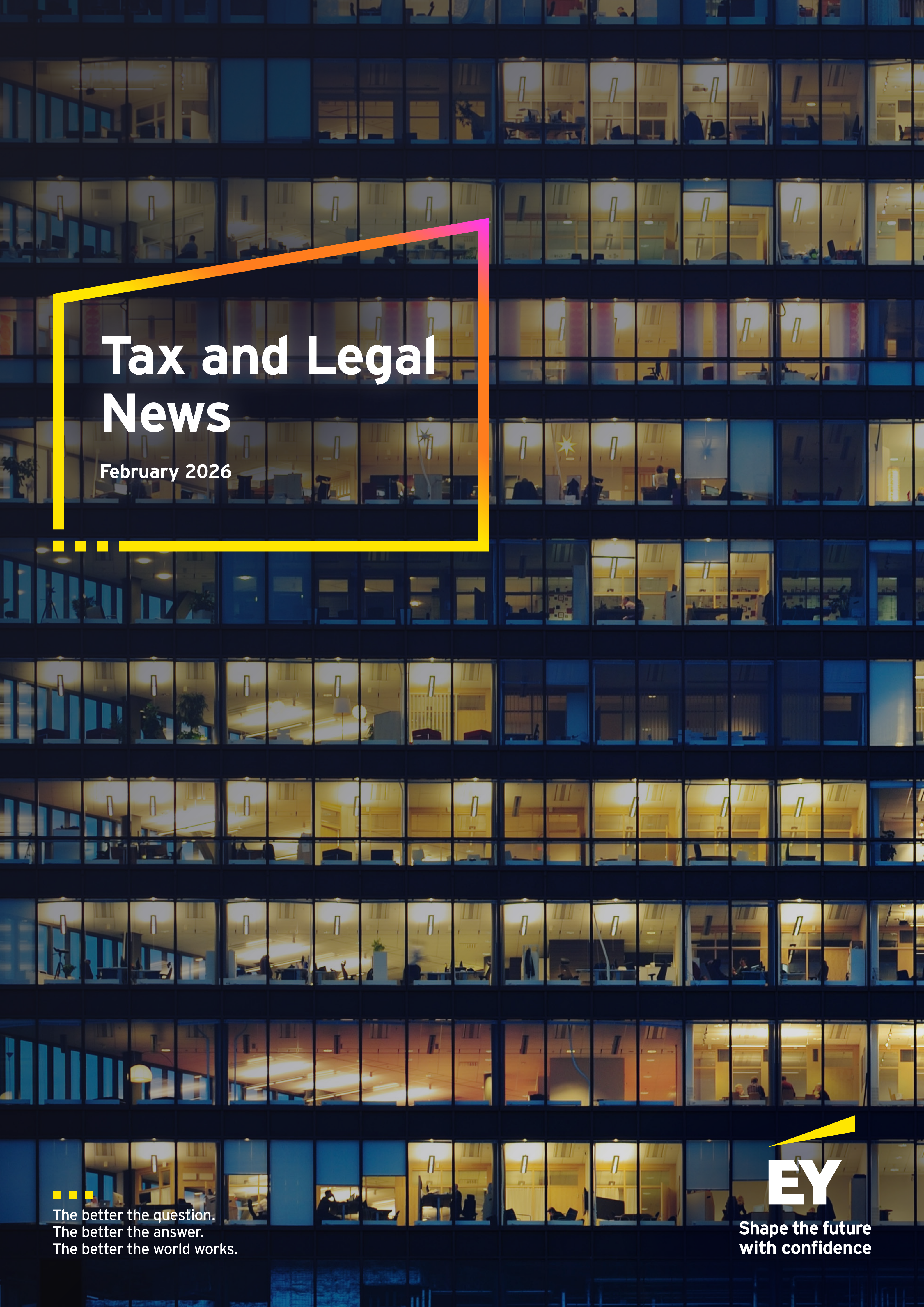

Tax and Legal News

February 2026

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Welcome to the February issue of Tax and Legal News – what's inside?

What kind of tax system do we have? – We reflect on the Czech tax system and look beyond our borders for comparison.

What are we currently discussing with importers? – Importers currently face many challenges in the area of customs and tax regulation. However, optimists can also see opportunities, particularly in the form of potential savings on import duties or gaining a competitive advantage through the correct implementation of legislation with an overlap into ESG (CBAM, EUDR).

The Constitutional Court's view on the limitation period for claims payable upon the creditor's request – The Constitutional Court criticizes, among other things, the Supreme Court's view that the subjective limitation period may begin to run earlier than the objective limitation period. In its ruling, it concludes that no limitation period may begin to run before the claim becomes due and payable.

Tax deductibility and confidentiality in legal services – We provide details of a court ruling that addressed whether a taxpayer had met the burden of proof regarding the purpose and actual provision of legal services and whether the tax administrator's request for more specific details of the provided legal services constituted an impermissible interference with attorney-client privilege.

How thoroughly must the tax administrator examine implied tax assessments? – We present a decision in which the courts dealt with the question of the extent to which the tax administrator must examine the accuracy of the information provided in the supplementary tax return when imposing an implied additional tax assessment.

Impacts of a security transfer of a business share – We provide details of a decision that once again addressed the question of whether a security transfer of a business share in favor of a bank constitutes a capital relatedness of persons, which may, among other things, lead to the non-deductibility of interest on a secured loan under thin capitalization rules.

What else caught our attention?

- ***An interesting passage from a court ruling concerning a dispute over the deductibility of costs for an additional audit of the 2010 and 2011 financial statements in 2013*** – The Supreme Administrative Court stated that a mere assertion that the additional audit of the financial statements in question was related to the 2013 tax period simply because the additional audit was performed in 2013 cannot suffice as a sufficient argument for this.
- ***EET 2.0*** – The Minister of Finance has indicated that she expects the draft bill on the (re)introduction of electronic sales records to be completed in mid-February and submitted for comment.
- ***Court ruling on the timing of bonuses*** – In a decision, the court dealt with the tax deductibility of bonuses and the creation of a related claim. The tax administrator and courts studied the internal company guidelines in detail and concluded that bonuses recorded on an accrual basis cannot be recognized for corporate tax purposes in the given year as no clear claim arose for employees during this period.
- ***From 2026, there will be a change in the limit for creating tax adjustments for "small" receivables*** – According to a General Financial Directorate opinion, the new wording can be used for adjustments posted from 1 January 2026, even for receivables arising before 1 January 2026.

Welcome to the February issue of Tax and Legal News – what's inside?

- ***New rules for VAT deduction*** – The General Financial Directorate issued information that summarizes changes in the rules for claiming VAT deductions.
- ***Application of VAT to real estate*** – The General Financial Directorate issued a new methodology on VAT on real estate, which explains the changes effective from 1 July 2025.
- ***Disguised employment mediation*** – A decision of the Supreme Administrative Court (negative for the company) concerned a fine imposed by the Labor Inspectorate for work that was assessed not as the performance of work, but as disguised employment mediation.
- ***The Czech Ministry of Finance*** *has updated* ***the internal deadlines for tax administration*** – From a practical point of view, we consider the extension of the deadline for issuing a binding transfer pricing assessment from three to six months to be the most significant change.
- ***Pillar 2 and the EU*** – The European Commission issued information regarding the OECD side-by-side package, in which it confirms the application of these safe harbors in the context of the European directive implementing the Pillar 2 rules. It is also worth noting that the European Commission has issued infringement proceedings against Member States, including the Czech Republic, which have failed to fully implement DAC9.

Editorial

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How are we doing?

This is an optimistic editorial. The Czech government has announced it will not raise taxes. In addition, corporate income tax is to be reduced. Pessimists might argue this is not sustainable given the state budget deficit. But let's stay optimistic. We will have a stable tax system for the next four years. Is the system good or bad?

Quite good in international comparison. According to the international competitiveness index published by the Tax Foundation, the Czech Republic ranks 10th out of 38 countries.

France and Italy occupy the bottom ranks. Poland, which has recently become attractive to foreign investors, is almost at the bottom in 35th place. Hungary is one spot ahead of us. Of the jurisdictions we often deal with for our clients, Switzerland and Luxembourg are in fifth and sixth place. Cyprus, Malta and the countries of the Arabian Peninsula are not included in the comparison.

Our performance is balanced. We have a below-average (read: competitive) corporate tax rate. And the government has not even lowered it to the promised 19%. We have low property taxes – a combination of real estate tax and no real estate transfer tax. According to comparisons, we also have relatively low personal income tax. The only aspect in which the Czech Republic has above-average taxation is indirect taxes.

Such comparisons are not perfect. If you read the index carefully, you will find inaccuracies. However, they can indicate where the government would look if it needed to increase state budget revenues.

It probably won't be the corporate tax rate, which it wants to reduce. We tax consumption heavily in international comparison, so that's unlikely too.

That leaves taxation of individuals and property. Coincidentally, these are areas in which a number of concepts that seem radical from a Czech perspective have recently been emerging around the world.

Property taxes are often levied on the market value of real estate.

In terms of personal income tax, there are proposals targeting high-income individuals. California, for example, wants to introduce a one-off 5% tax on the current value of assets for the super-rich. No income, no profit. 5% of the value of assets. The expected yield is approximately USD 100 billion from more than 200 billionaires. Another country proposing taxation of the wealthy is the Netherlands. Again, in a slightly different way. By taxing unrealized gains. That is, you hold a share, its value changes, and you pay tax on the difference. Without even selling the share.

So let's stay optimistic and believe taxes will not increase.

We have low property taxes. Compared to other countries, we also have relatively low personal income taxes. The only area where the Czech Republic has above-average taxation is indirect taxes. Where would the government look if it needed to increase state budget revenues? It probably wouldn't be the corporate tax rate, which it wants to reduce. We tax consumption heavily in international comparison. So that's unlikely too. That leaves personal and property taxes.

Importation of goods

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What we are currently discussing with importers (not only) at the start of the year?

The end of the year is usually hectic when it comes to tax and customs, which is why some topics do not receive as much attention as they deserve. Below, we have summarized several areas that importers should not forget (not only) at the start of 2026.

Carbon Border Adjustment Mechanism (CBAM) – carbon tax

CBAM, or the carbon border adjustment mechanism – simply put, a carbon tax – entered its so-called definitive phase on 1 January 2026.

Importers of goods subject to CBAM (including cement, steel, aluminum and products made from them) that are not covered by the exemption for imports of up to 50 tons of CBAM goods per year will have new obligations starting in 2026. The immediate obligation is to obtain the status of an authorized declarant for CBAM purposes in order to continue importing goods into the EU. If an importer of CBAM goods does not obtain the status of an authorized declarant, the customs administration will not release further CBAM goods into free circulation in the EU after the 50-ton limit has been exceeded. Only those importers who submit the relevant application by 31 March 2026 will be exempt.

Subsequently, CBAM importers should calculate how much CBAM certificates will cost them. Although they will not start purchasing them until 2027, they will cover emissions for 2026.

We will be happy to assist you in fulfilling the above obligations and calculating the financial impact on your company.

Changes in customs value – transfer pricing adjustments and royalties and other fees

The correct determination of the customs value when importing goods has a direct impact not only on the amount of customs duty, but also on import VAT. In practice, prices often change after goods are released for free circulation, whether due to subsequent adjustments to transfer prices between related parties or other factors – typically, these may be royalties paid in connection with the imported goods.

Two basic rules apply to customs value with regard to transactions with related parties: (i) the importer of goods from a related party (e.g. a parent company) must be able to prove that this relationship did not affect the price of the imported goods (otherwise, they are not entitled to determine the customs value based on the invoiced amount, which can significantly complicate the determination of customs value due to the need for cooperation with the customs office), and (ii) a subsequent price increase as a result of transfer pricing adjustments (i.e. a debit note received by the importer) generally requires the importer to request the customs office to amend the customs declarations, which may result in an obligation to pay additional customs duties. However, reflecting the subsequent reduction in (transfer) prices (i.e. credit note received by the importer) in the customs value (reduction) and thus obtaining a refund of part of the import duty remains problematic in practice.

The debate on whether and how to take into account price adjustments after the release of goods was reignited by the Court of Justice of the European Union (CJEU) in its decision in case C-782/23 Tauritus in May last year. We wrote about this judgment in Tax and Legal News for June 2025. As a reminder, the CJEU stated that the basis for determining the customs value should be the transfer (i.e. invoiced) value of the goods, unless the final amount depends on conditions or payments that cannot be related to the goods being valued. In other words, it requires the existence of objective criteria determining the final price of goods at the time of import. However, the case did not concern a transaction between related parties, and it is therefore unclear whether a specific transfer pricing method could also be an objective criterion. If so, this decision could offer importers greater flexibility even in cases where the transfer pricing adjustment ultimately leads to a reduction in customs value.

In addition to transfer prices, a number of other factors can influence customs value. Complex contractual arrangements regarding royalties and other payments for intangible assets are particularly complicated. Unfortunately, even here, the legislation is not sufficiently supplemented by case law that would provide importers with clearer guidance. In the Czech Republic, the Supreme Administrative Court attempted to do so in a unique ruling 2 Afs 385/2023, which we reported on in our alert. The Supreme Administrative Court assessed whether various types of fees, including CSR contributions or royalties for the use of trademarks/know-how, should be added to the price of imported goods. In particular, the Court sought to summarize the principles based on the case law of the CJEU (e.g. judgment C-76/19 in Curtis Balkan), namely that fees (i) must relate to the goods being assessed, (ii) must be paid directly or indirectly by the buyer as a condition of sale of the goods being assessed, and (iii) must not already be included in the purchase price that has been or is to be actually paid. As demonstrated by the case dealt with by the Supreme Administrative Court, in practice it is difficult to determine whether a specific fee meets these conditions.

We will be happy to help you verify whether it is necessary (or possible) in your situation to adjust the customs value of imported goods after their release.

Import of goods by a non-owner

Importers may find themselves in a situation where they release goods into free circulation that they do not own (and will not own until sometime after importation). This is typically the case with toll manufacturers, who are tasked by their parent company with reworking certain goods, which the parent company then supplies to its customer. However, it may also be an importer repairing products owned by a customer who sends them to the EU from a country outside the EU for repair, or generally any warehouse keeper or carrier of goods who is forced to release the goods into free circulation for a specific reason (e.g. in the event of a breach of the customs transit procedure).

In light of CJEU case law (including Case C-621/19 Weindel Logistik Service), such an importer is not entitled to deduct VAT on imports if it is unable to prove a direct and immediate link between the costs incurred for the import of goods and its actual economic activity. However, according to the Court of Justice, issuing an invoice for reworking or repair services does not create such a link. The importer therefore remains in a position where VAT is only paid on the import of goods.

In general, there are several options for dealing with the situation. However, it should be noted that the applicability and economic rationality of a given solution will vary from case to case. One option is to amend the customs declarations, replacing the importer. An alternative is to use a special inward processing regime, which allows goods to be imported without incurring a customs debt (and the obligation to declare VAT) when they are processed and subsequently exported from the EU (or at least to defer the moment when the customs debt arises until the processed goods are released for free circulation). Some situations can only be resolved by changing the business model.

We always recommend assessing the specifics of each case in a broader context, particularly with regard to transfer pricing. If you find yourself in a situation where you are not the owner of imported goods, we will be happy to discuss your options with you.

If a CBAM importer does not obtain the status of an authorized declarant, the customs administration will not release further CBAM goods into free circulation in the EU after the 50-ton limit has been exceeded. Only those importers who submit the relevant application by 31 March 2026 will be exempt.

EUDR – the fight against deforestation

The EUDR Regulation poses a new challenge for importers of commodities associated with the risk of deforestation (wood, cattle, coffee, soy, palm oil, cocoa and rubber). However, as it turns out, the practical applicability of this regulation is not only a challenge for importers, which is why another last-minute postponement has been granted. The new obligations should therefore come into force on 30 December 2026.

Although it may seem like a long way off, it is important to realize that preparing for EUDR is extremely demanding. It requires comprehensive data management and verification, the establishment of internal control mechanisms and detailed knowledge of supply chains. Typically, it requires cooperation between the company's logistics, finance, ESG, purchasing, and legal departments, and above all, with suppliers.

We recommend starting your analysis of whether the EUDR applies to you by mapping your supply chains. You can then define your company's role for the purposes of the EUDR and the obligations arising from it.

The above list of topics is, of course, not exhaustive. It appears that current developments in customs and tax regulation continue to pose significant challenges for importers. However, they also offer opportunities, particularly in the form of potential savings on import duties or gaining a competitive advantage through the correct implementation of legislation with an overlap into ESG (CBAM, EUDR). We will be happy to help you explore these possibilities.

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The courts have once again ruled on the statute of limitations. And once again, surprisingly.

A recent decision by the Constitutional Court has shaken things up regarding the limitation period for claims payable upon request by the creditor.

The limitation period for a claim begins on the invoice due date. It seems simple and logical. However, the case law of the Supreme Court takes a different view, which was addressed by the Constitutional Court in September last year. And although the Constitutional Court's response seems natural, given the earlier case law of the Supreme Court, the new Constitutional Court ruling may have a significant impact on business practice.

Position of the Supreme Court

First, let's take a look at history – fortunately (or unfortunately) only recent history. In December 2023, we discussed the Supreme Court's decision ref. no. 31 Cdo 3125/2022 in our Tax and Legal News. In this case, the Supreme Court dealt with the commencement of the limitation period in cases where performance is agreed upon at the creditor's request, i.e. in a manner that often appears in contracts as payment of the price based on an issued invoice. In these cases, it is up to the creditor (e.g. the contractor or seller) to decide when to issue the invoice and, therefore, when the other party is obliged to pay the price.

In the above-mentioned ruling, the Supreme Court stated that if the determination of the performance period is left to the creditor (i.e. if it is the creditor who triggers the obligation to pay the price, e.g. by issuing an invoice), then the right to debt performance (i.e. payment of the price) begins to expire not from the due date of the invoice or from the date of issuance of the invoice, but from the moment when the creditor could and should have learned that the conditions entitling him to issue the invoice had been met. In practice, this meant, for example, the handover and acceptance of work or the provision of certain services.

According to the Supreme Court, the right to payment could not only begin to expire, but could even expire completely before the relevant invoice became due. This conclusion by the Supreme Court ultimately led to the subjective limitation period for this type of claim beginning to run earlier than the objective limitation period, which significantly disrupted the established practice.

The decision sparked a wave of discussion (and disagreement) among experts, including some Supreme Court judges. The court itself stated in the decision that it was aware that this position was criticized by part of the legal community.

Constitutional Court ruling

The subject of a recent ruling by the Constitutional Court was a case factually similar to one previously dealt with by the Supreme Court. Based on a contract for work, one of the parties was entitled to payment for the work, and this party issued an invoice after a short delay. However, the other party did not pay it, and the matter was therefore brought before the courts. The lawsuit was filed approximately three years after the events described, and its filing fell exactly between three years from the date of the claim for payment of the price of the work and three years from the due date of the invoice issued. In light of the Supreme Court's decision described above, the lawsuit was dismissed on the grounds of limitation, because although three years had not passed since the invoice in question was due, three years had passed since the work was completed and the contractor's claim for payment arose, and thus also since the invoice was issued.

However, the complainant did not accept the negative outcome and filed a constitutional complaint in this matter, and the case was thus decided by the Constitutional Court in its ruling ref. no. IV.ÚS 778/25.

The Constitutional Court pointed out that interpreting legal norms in a way that is *"extremely contrary to the principles of justice,"* such as an overly formalistic interpretation, may constitute an infringement of fundamental rights. It described the Supreme Court's interpretation in relation to the start of the limitation period as precisely such an infringement.

The Constitutional Court also criticizes the Supreme Court's interpretation, according to which the subjective limitation period may begin to run earlier than the objective one. In its ruling, it agrees with the opponents of the Supreme Court's approach and concludes that none of the limitation periods can begin to run before the claim becomes due.

According to the Constitutional Court, the principle of autonomy of will in private law relationships is one of the fundamental legal principles that must be respected to the utmost. Therefore, if the parties have agreed that the price of the work will be payable on the basis of an invoice issued, according to the Constitutional Court, it is precisely the due date of the invoice that is the decisive moment for the running of the limitation period, and the courts should not interfere with the free agreement of the parties by a formalistic interpretation of the legal norm, provided that such an agreement is comprehensible, certain, and does not conflict with the mandatory provisions of the law.

For the sake of completeness, the Constitutional Court has referred this new case back for reconsideration. The lower courts will therefore have to re-examine the entire case, taking into account the conclusions of the Constitutional Court as expressed in its ruling.

What this means in practice

The Constitutional Court itself best summarizes its finding directly in its decision when it states that *"based on respect for the autonomy of will, the Constitutional Court considers it constitutionally consistent that the limitation period does not commence at the moment the legal relationship arises, but only when the claim becomes due (i.e. in the case in question, when the complainant's invoice becomes due)."*

Simply put, for the limitation period to start running in the case of claims payable on demand, it is the due date of the invoice that matters, not the date on which the invoice could have been issued for the first time. And that brings us back to the start – it seems simple and logical. And yet, in recent years, the courts' decision-making practice has taken a different turn.

There is a legal principle stating that rights belong to the vigilant, and the statute of limitations is a textbook example. Prudence is always appropriate, and leaving a potential lawsuit to the last minute can prove to be a stumbling block. The Constitutional Court's approach to the issue of the statute of limitations on debts payable on demand is somewhat more favorable to creditors, but it should be noted that this is only on the basis of the free will of the parties. The parties may therefore agree on a different procedure in their contract.

However, even now, the issue remains unresolved. The question is how (and how quickly) general courts will reflect the Constitutional Court's opinion in their decisions and how they will deal with its argument of autonomy of will in relation to specific cases.

The Constitutional Court itself best summarizes its finding directly in its decision when it states that it considers the conclusion that the limitation period does not begin to run at the moment of the establishment of the legal relationship, but only upon the maturity of the claim (i.e. in the case under review, upon the maturity of the complainant's invoice) to be constitutionally consistent.

Case law

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Flat-rate legal services – tax deductibility and confidentiality

The Supreme Administrative Court considered an interesting question concerning the tax deductibility of costs incurred for legal services in relation to the need to breach attorney-client privilege when proving received services. At the heart of the dispute was the tax deductibility of lump-sum expenses for legal services, specifically the question:

- whether the taxpayer has met its burden of proof regarding the actual provision of these services and their factual connection with taxable income, and
- whether the tax administrator's request for more specific details of the legal services provided constitutes an impermissible interference with attorney-client privilege.

The company argued that a general definition of the nature of flat-rate legal services is sufficient and that the requirement for specificity effectively forces a breach of attorney-client confidentiality.

View of the Supreme Administrative Court

The Supreme Administrative Court (SAC) disagreed with the company's view:

- According to the SAC, the taxpayer bears the burden of proof not only regarding the formal existence of expenses (contracts, invoices), but also regarding their actual occurrence and factual connection with income. The lump-sum nature of the remuneration does not in itself reduce the standard of proof.
- The tax administrator raised specific, serious and justified doubts (e.g. lack of specification of services, discrepancy between the contract and invoicing), which resulted in a justified transfer of the burden of proof back to the taxpayer.
- According to the SAC, the requirement to specify the provided legal services does not automatically breach attorney-client privilege. Confidentiality is incumbent on the attorney, not the client, and does not in itself relieve the taxpayer of the obligation to prove that the conditions for tax deductibility have been met. In the case in question, the legal services were entirely trivial, and the company would not have been harmed had it provided the tax administrator with a more detailed description of the services and the reasons for agreeing on a flat fee and adjusting its amount.

- If the taxpayer decides not to submit further evidence, they bear the procedural consequences in the form of failing to meet the burden of proof.

The tax administrator raised specific, serious and justified doubts (e.g. lack of specification of services, discrepancy between the contract and invoicing), which resulted in a justified transfer of the burden of proof back to the taxpayer. The requirement for a general specification of the provided legal services does not automatically constitute a breach of attorney-client privilege.

Case law

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How thoroughly must the tax administrator examine implied tax assessments?

We bring you an interesting procedural piece, a case in which the Supreme Administrative Court (SAC) addressed the question of whether the tax administrator acted correctly when it requested the company to file an additional tax return and subsequently assessed additional tax after conducting a procedure to remove doubts, having already implicitly assessed additional tax on the basis of an additional tax return. The SAC dealt primarily with the question of the extent to which the tax administrator must examine the accuracy of the information provided in the supplementary tax return when imposing an implied additional tax assessment.

Background

- The company received tax documents from the supplier in December 2016 and January 2017, respectively, from which it claimed a tax deduction in April 2020 in the form of an additional VAT return for the October 2019 tax period.
- At the same time as filing the additional tax return, the company submitted a subsequent control report for the October 2019 tax period and sent a cover letter to the tax administrator, in which it identified the relevant tax documents by their number, tax base, and tax amount, and stated that it had filed the additional tax return and subsequent control report for October 2019 due to accrual reporting to its Dutch parent company. At the same time, it asked the tax administrator to verify the claim for deduction from the tax documents if it did not agree with the claim for deduction.
- Based on the supplementary tax return, the tax administrator issued (implicitly) a supplementary payment assessment in June 2020, in which it assessed the tax claimed by the company, i.e. according to the supplementary return.
- The tax administrator subsequently sent the company a request to file an additional tax return because it had doubts about the legitimacy of the tax deduction claim based on the above-mentioned tax documents. According to the tax administrator, the company filed its claim after the three-year deadline had expired. The company

responded to this request by filing a "zero" additional tax return.

- The tax administrator then initiated proceedings to remove the doubts, which had not been removed. In January 2023, the tax administrator therefore issued another additional payment assessment in which it reassessed the VAT deduction claim, reducing it by the amount of the additionally claimed (and originally assessed) tax. At the same time, it imposed a penalty on the company.
- The company filed an appeal, which was rejected, and then a lawsuit, which was also rejected.

The essence of the company's argument

- In the original additional tax assessment from 2020, the tax administrator assessed the company's VAT deduction claim in full accordance with what it claimed in the additional tax return filed in April 2020. This was therefore a case of implied additional tax assessment.
- When assessing the additional tax, the tax administrator should have determined from the information contained in the documents accompanying the additional tax return that the company was claiming a VAT deduction from two tax documents too late.
- If it did not discover this and assessed the tax implicitly, it could not, two years later, call on the company to file an additional tax return and then, after carrying out the procedure to remove doubts, assess VAT and impose a penalty on the additional tax, but should instead have conducted a review procedure.

The SAC sided with the tax administrator

- According to the SAC, the company's basic assumption that the tax administrator applied a certain legal opinion when imposing an implied additional tax assessment based on an additional tax return, which it subsequently changed (after finding out when the taxable transactions in question took place), must be considered incorrect.
- According to the SAC, the implied tax assessment was not the result of any factual or legal assessment of the facts claimed by the company in its supplementary tax return, but rather the result of the tax administrator's unconditional acceptance of these claims.
- According to the SAC, no provision of law imposes an obligation on the tax administrator to conduct a factual and legal assessment of the claims contained in the supplementary tax return. It also follows from this that the implied additional tax assessment could not give rise to a legitimate expectation on the part of the company that the tax thus determined would not be further reviewed in the future through control procedures.
- Similarly, when issuing a request to file an additional tax return or a request to remove doubts, the tax administrator did not have to explain what new facts it had discovered compared to the moment at which the tax was implicitly assessed, as it had not yet dealt with the factual and legal issues.
- It is true that these judicial conclusions concerning the tax administrator's procedure for implied tax assessment were, according to the SAC, clarified and corrected to a certain extent in the Hamé and Sev.en EC judgments. The conclusions of both judgments must be interpreted as meaning that it will not be possible to determine tax by implication if the tax claim contains, at first glance, completely obvious and easily detectable inaccuracies or errors of such a nature that the tax administrator should detect them without the need for any detailed examination or legal assessment (typically an obvious error in numbers, taxation of income that is clearly exempt from tax, etc.).
- Although the company tried to argue that this was also the case in its situation, the SAC disagreed.
- Along with the supplementary tax return, the company submitted a cover letter to the tax administrator, in which it generally stated only "accrual reporting to the Dutch parent company" as the reason for the supplementary claim for deduction from two tax documents. It referred to the subsequent control report for October 2019 and two tax documents from which it additionally claimed a VAT deduction, which it identified only by their number and by stating the tax base and the amount of tax. It did not provide any information from which it would be possible to implicitly deduce when it became entitled to the deduction on the basis of these

tax documents and when the period for claiming the deduction began to run. Respectively, it could appear that the supplies in question could have taken place in October 2019, which is why an additional tax return is being filed for this period. Even its appeal in the accompanying letter that the tax administrator should initiate proceedings to remove any doubts if it has any doubts about the correctness of its procedure is not a fact that should prevent the tax administrator from imposing an implied additional tax assessment. Any doubts could be the result of a more detailed examination of facts which, on the basis of the additional tax return, the accompanying letter, or the subsequent control report, might not appear to be controversial at first glance (and were not entirely obvious errors or inaccuracies within the meaning of the above-mentioned case law, but required legal consideration based on an examination of the specific circumstances).

- If the company repeatedly emphasized that the date of taxable supplies according to the relevant tax documents and the date of their issue were based on the subsequent control report (its detailed statement), it should be emphasized that the detailed extract from the subsequent control report comprises a total of nineteen pages and contains information on hundreds of taxable supplies. In such a situation, the tax administrator was not obliged to "match" the statements made in the accompanying letter, in which the company only stated the invoice numbers, with the data in the subsequent control report and to verify when the taxable supplies on the basis of which the company claimed the deduction took place, and to consider at this point whether this claim was made in time. This exceeds the limits defined by case law for a rough assessment of an additional tax claim, which should be limited to the detection of truly obvious inaccuracies and errors.

- Accepting the company's request that the tax administrator verify the accuracy of the claimed deduction in such detail would negate the aforementioned principle of self-assessment and effectively paralyze the activities of the tax authorities, which should already be conducting a detailed analysis of the facts claimed by taxpayers at the stage of implied tax assessment. The SAC does not dispute the company's claim that "the primary purpose of control reports is to verify compliance with tax obligations." However, this cannot be interpreted to mean that the submission of a (subsequent) control report automatically triggers the tax administrator's obligation to examine in detail the data contained in the control report and compare it with what is stated in the (additional) tax return before implicitly determining the tax.

What's the takeaway from this?

The municipal court summed it up succinctly, stating that if the company had pure intentions, it should have explicitly stated in the cover letter that the deductions related to performance in November and December 2016. In other words, if the accompanying letter is to have the desired effect, it should leave no room for doubt as to the relevant issue.

Accepting the company's request that the tax administrator thoroughly verify the accuracy of the claimed deduction would negate the aforementioned principle of self-assessment and effectively paralyze the activities of the tax authorities, which should already be conducting a detailed analysis of the facts claimed by taxpayers at the stage of implied tax assessment.

Case law

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Securing transfer of a business share and related parties

We present a decision of the Supreme Administrative Court (22 Afs 232/2025) on the question of whether a security transfer of a business share establishes a capital connection between persons leading to the exclusion of interest based on thin capitalization rules.

Background

- The company claimed interest on bank loans as tax expenses (for the years 2018 and 2019).
- The loans were secured by a security transfer of 100% of the company's shares to the bank.
- The tax administrator concluded that the bank and the company were therefore related parties during the period in question and applied thin capitalization rules to the interest on the loans, which led to an additional tax assessment.
- The Regional Court dismissed the action with reference to existing case law of the SAC (Grand Class case).
- The taxpayer filed a cassation complaint, arguing in particular the specific meaning and purpose of the security transfer, its temporary nature and ex tunc effects after termination, the absence of actual influence on the company by the bank, and the alleged abuse of rights by the tax administrator.

View of the Supreme Administrative Court

The SAC dismissed the cassation appeal and upheld the decision of the regional court and the administrative authorities. Its key conclusions were as follows:

- A security transfer of a business share results in a full transfer of ownership, not merely a formal one.
- The acquirer of the share becomes a partner with all rights and obligations, regardless of contractual restrictions on the exercise of voting rights.
- A capital connection between persons arises from the mere ownership of a 100% share, not from the actual exercise of influence.
- The fact that a security transfer may later be terminated with ex tunc effect does not affect the tax assessment for the period during which it remained in force.
- Tax law implements an autonomous classification of private law institutions.

- The application of thin capitalization rules does not constitute an abuse of rights, and their use in this case does not negate their purpose; it is a preventive measure that applies when the legal conditions are met, regardless of the parties' intentions.

The security transfer of a business share in favor of the bank establishes a capital connection between persons, which may, among other things, lead to the tax non-deductibility of interest on the secured loan based on thin capitalization rules.

What's the takeaway from this?

In the context of previous case law, this decision comes as no surprise. However, this topic has been the subject of intense debate among experts in recent months, and the prevailing sentiment was that such an outcome would be unfair. One might have hoped that the judges would reconsider and take a different approach. This did not happen. The fact is that the tax result may not be what appears to be fair.

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