Tax and Legal News

January 2026

The better the question.
The better the answer.
The better the world works.

Shape the future with confidence

Welcome to the New Year's edition of Tax and Legal News – where you'll find:

Planned accounting recodification – we consider the implications of an impending revolution in the form of a new Accounting Act and implementing amendments.

Pillar 2 – the OECD announced an agreement on long-awaited changes to the Pillar 2 rules. The package includes new safe harbors and a Side-by-Side system.

Statistics on court decisions – we prepared an interesting statistical overview of the Supreme Administrative Court's tax decisions in 2025.

Transfer pricing – the new government plans to introduce mandatory transfer pricing documentation. We examine what this obligation might look like in practice.

Until when can a VAT deduction claim be made? – in 2025, the deadline for claiming input VAT deductions was shortened. However, this deadline may still be extended.

The European 28th regime – the European Union has presented a plan that aims to create uniform EU rules for the establishment and operation of business entities and to remove existing financial and administrative barriers that persist in the internal market.

Liability of natural persons for tax arrears of legal entities – the decision-making practice of the Supreme Administrative Court has confirmed that tax authorities may seek payment of a legal entity's tax arrears by means of a guarantor's request addressed to a natural person. However, there are many aspects that remain unanswered.

Where does the difference from a settlement agreement belong? – an interesting Supreme Administrative Court decision dealt with the tax regime for active (income) estimated items for insurance coverage, subsequent settlement agreements and the timing of the resulting difference.

What else caught our attention?

- ***The future of the new Accounting Act*** – according to unofficial sources, the new minister plans to familiarize herself with the details of the new Accounting Act and its implementing amendment in the near future and then decide on the specific future of this initiative.
- ***Dividends to a US parent company and non-recognition of treaty benefits*** – the German central tax authority has reportedly taken the position that if a German subsidiary paying dividends to its US parent company is a disregarded entity from the US perspective, then the US company does not qualify for the reduced withholding tax rate under the US-German treaty. Could a similar position arise in the Czech Republic?
- ***DAC8 ramp-up*** – the Czech Ministry of Finance has issued a statement saying that despite delays in the legislative process regarding DAC8, it continues to strive to adhere to the planned implementation schedule, including the start of information exchange with non-EU countries and the obligation to collect data from 1 January 2026.
- ***Change in the nominal value of shares and the time test*** – the Supreme Administrative Court has confirmed the interruption of the time test when shares are held by a natural person in the event of an increase in the nominal value of the share by stamping it.

Welcome to the New Year's edition of Tax and Legal News – where you'll find:

- ***AI and tax audits*** – the head of the General Financial Directorate suggests that the financial administration would like to make more intensive use of AI in tax audits, e.g. when reviewing extensive documents submitted by taxpayers.
- ***The cautionary tale of a holding structure*** – the Supreme Administrative Court assessed a sad story about a holding company, exit/non-exit and abuse of law, while confirming that it pays to be reasonable when creating a holding structure and that the tax administrator has flexibility in determining how to withdraw a prohibited tax advantage.
- ***Procedure for removing doubts in the context of withholding excessive deductions*** – the Supreme Administrative Court warns that the popular practice of many tax administrators, whereby an excessive deduction equals specific doubt, is absolutely unacceptable.
- ***Is the issue of directly related income still alive?*** – for a while, it seemed that the practical application of provisions allowing otherwise non-deductible costs directly related to taxable income to be tax-deductible was very limited. A recent decision of the Supreme Administrative Court indicates that this may not be the case.
- ***Simplification for triangular trade also works in a situation involving four entities*** – an EU tribunal ruled that simplified VAT rules for triangular trade can also be applied to situations involving four entities, provided that this does not constitute an abuse of rights.

Editorial

Kateřina Dedková
Partner, Tax Services
katerina.dedkova@cz.ey.com
+420 603 577 890

Accounting recodification: a revolution in reporting on the horizon

Imagine a world in which the law allows or even requires you to use uniform standards and focus on what matters: what the financial statements say about the health and overall picture of a company. This is the vision presented by the new Accounting Act.

While the current accounting legislation from 1991 has long served its purpose, nowadays it often acts as an obstacle—the rules are detailed, but outdated and sometimes at odds with the economic reality in which the business sector operates. The recodification promises change and also affects related ecosystem legislation: taxes, auditing, valuation and reporting to regulators.

The new law will bring about quite a lot of changes. What you will notice is a shift in language: there is no longer so much talk about "accounting" (i.e. the process), but rather about "financial statements and reporting" (i.e. the outputs). The essence of the proposal is to emphasize the finish line rather than the starting line. Accounting should not be an end in itself, but should serve to give users an accurate picture of the company. In practice, this means the law will define general principles and specific rules for valuation, and accounting will be somewhat more flexible where this leads to better information. For the CFO, this will be both a challenge and a relief: they will have greater responsibility for the methods chosen and will have to rely more on the professional judgment of the accountant, but they will face fewer exceptions and will no longer need to show personal courage when, in the current setup, they decide to follow international reporting standards. Whether this will be a relief for the tax office, which likes to rely on clear rules, is difficult to predict.

The key issue is the expansion of the option to report according to IFRS. A larger group of entities will be able (or required) to prepare financial statements according to IFRS. The law itself builds on a number of IFRS principles, and their philosophy will also permeate Czech rules. What we see at home will resemble what we see around the world. And even those who do not ultimately prepare IFRS financial statements will feel the influence of international standards in the form of more comprehensible terminology and the implementation of modern reporting principles.

The removal of administrative requirements that have been superseded by technological advances is also worth mentioning. Today, the law details what accounting books you must keep – a journal, a ledger, analytical books and off-balance sheet books. New? You will be required to keep accounting records in

such a way that they provide the data needed for reports and have the necessary features to maintain an audit trail allowing you to trace who performed a particular operation, when, and how.

In valuation methods, we can expect an upgrade to present value valuation for long-term receivables and debts. Excel with the NPV function will thus become a standard tool even for ordinary accountants. And we could go on listing new features for quite some time.

Accounting is and will continue to be linked to taxation. That is why the new Accounting Act is accompanied by an amendment that will update the related regulations. This comprehensive patch to the system will ensure that the new version of accounting runs smoothly within the entire legal environment.

The amendment also introduces changes that are not directly related to accounting. A new uniform term, "tax value," is being introduced for assets and liabilities. Instead of different purchase prices, residual values, and tax values, the aim is to standardize everything. There will be a major change in depreciation: the existing depreciation groups will be abolished, depreciation will be calculated monthly instead of annually, tax depreciation will be accelerated for some assets and slowed down for others. The limit for one-time write-offs of low-value assets will also increase again, to CZK 100,000. Overall, the rules for assets appear to be simplified, and, most importantly, it will be possible to file tax returns based on financial results according to IFRS (with certain adjustments). For companies affiliated with a group that uses international standards other than IFRS, the rules will at least be approximated.

We should not expect a revolution in VAT and other tax laws, but rather adjustments to terminology where the law refers to accounting terms. The planned mandatory electronic invoicing from the EU will have a greater impact on VAT. The recodification of accounting will enable fully digitized accounting in which mandatory e-invoices will be easier to implement. Still unsure whether you can shred paper invoices after scanning them? New legislation will give digitization the green light, explicitly allowing exclusively electronic accounting. This will also affect other laws. For example, the Archiving Act will have to be harmonized so that digital accounting records are fully-fledged archival documents. Of course, this also imposes obligations in the opposite direction: once you have only electronic data, you must ensure its protection and readability for a period of X years. Technologies such as blockchain timestamps or robust backups will therefore become more important. However, this is an IT operation, and the important thing is that legislation will no longer hinder digitization.

There are many connections between different areas, and simplification is often talked about, but this is a conceptual change and in practice it will probably be a storm of reform in which the challenge will be to navigate smoothly and without losing anything. Companies will undoubtedly face an audit of existing accounting rules, software upgrades, IT readiness reviews, tax impact assessments, training and changes in team competencies. This is a multidisciplinary project that requires a considerable amount of time, but one that should not be postponed.

An optimistic timeline for the legislative process assumes the law will be passed by Parliament in 2026. Given the magnitude of the project, the legislative recess is expected to last throughout 2027, and from 1 January 2028, the new rules are to apply to the 2028 accounting period. In the case of tax laws, it is likely that some things (such as depreciation) will start immediately in 2028, but some may be postponed until 2030.

Change is coming, and it is significant. But we have a unique opportunity to be well-prepared for it and use it as a catalyst for improvement. The accounting revolution can be transformed into a positive evolution of our accounting and tax ecosystem. We have an advantage: we know where we are headed, because IFRS and international best practices are not *terra incognita*.

The proposal arrived at the Chamber of Deputies in December last year, just before the change at the Ministry of Finance, and the implementation details are yet to be finalized. We do not know how much time the new executive agenda will take and whether the finalization of decrees and authorizations for new laws will remain a priority. This may lead to "caution" – a tendency to wait until everything is signed and issued, if at all.

Recodification is essentially politically neutral and technocratic. There seems to be relatively broad consensus on the direction towards modern, comparable and digital accounting with reasonable links to taxation. This provides a good basis for smoother negotiations. Fine-tuning the amendment, particularly the link to income tax law, may take longer. If it makes sense to fine-tune the tax connection, why not? But trying to fine-tune everything to 100% seems rather counterproductive.

Partial amendments to the Accounting Act and support for practice through interpretations issued by the National Accounting Board, which will be supplemented by a whole series of others in 2026, have helped us survive the past decade and will help us bridge the period until the recodification comes into effect. Let's hope that it will not be another decade.

We have a unique opportunity for global reevaluation and ground-up improvement. So, our New Year's resolution is simple: let's start preparing now and not be afraid of change.

The most significant modernization of Czech accounting and taxation has entered the legislative process. The new Accounting Act and accompanying amendment are set to change the rules of the game from 2028.

Pillar 2

Karel Hronek
Partner, Tax Services
karel.hronek@cz.ey.com
+420 731 627 065

Vladimír Sopkuliak
Senior Manager, Tax Services
vladimir.sopkuliak@cz.ey.com
+420 730 191 770

OECD publishes a package of changes for Pillar 2 – initial observations

The OECD has just announced a political and technical agreement on the Inclusive Framework's comprehensive package for the so-called "side-by-side" arrangement (Package).

The Package, in the form of Administrative Guidance, includes a new Simplified Effective Tax Rate (ETR) Safe Harbour, a one-year extension of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour, a new Substance-based Tax Incentive Safe Harbour and two Safe Harbours related to a Side-by-Side System.

This Administrative Guidance will be incorporated into the Commentary to the Global Anti-Base Erosion (GloBE) Model Rules.

Simplified ETR Safe Harbour

- The Simplified ETR Safe Harbour will be applicable as of 2027 (and in certain circumstances as of 2026 in jurisdictions that so choose) and is intended to provide compliance simplifications for businesses and tax authorities.
- Under this safe harbor, an MNE Group's ETR is determined under a simplified calculation based on the income and taxes from the MNE Group's financial reporting packages, with certain adjustments. If the Tested Jurisdiction has a Simplified ETR of at least 15%, the Top-up Tax is deemed to be zero, and no detailed GloBE calculations need to be made.
- The "once out, always out" rule that applies for the Transitional CbCR Safe Harbour does not apply to the Simplified ETR Safe Harbour.

Transitional CbCR Safe Harbour extension

- The Transitional CbCR Safe Harbour is extended by one year, to include 2027.
- For MNE Groups with a calendar Fiscal Year this means the TCSH will be extended to 2027, with a 17% threshold to meet the Simplified ETR test as applies for 2026.
- Taxpayers may be able to choose between the Simplified ETR and Transitional CbCR Safe Harbours during the period of overlap.

Substance-based Tax Incentive Safe Harbour

- The Substance-based Tax Incentive Safe Harbour allows a Multinational Enterprise (MNE) Group to treat Qualified Tax Incentives (QTI) as an addition to the Covered Taxes of the Constituent Entities located in the jurisdiction, which allows MNE Groups to benefit from certain tax incentives that have the required economic substance connections to the jurisdiction.
- The election can be made on a jurisdictional basis as of 2026.
- A QTI is an incentive generally available to taxpayers and calculated based on expenditures incurred (an expenditure-based incentive) or on the amount of tangible property produced in the jurisdiction (a production-based tax incentive). A Substance Cap limits the allowance for QTIs based on the amount of substance in the jurisdiction.

Side-by-Side Safe Harbour

- The Side-by-Side (SbS) Safe Harbour provides that MNE Groups with an Ultimate Parent Entity (UPE) in a jurisdiction with a Qualified SbS Regime will not be subject to the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR) if they elect the SbS Safe Harbour.
- These MNE Groups will remain subject to Qualified Domestic Minimum Top-up Taxes (QDMTTs).
- The tax regime in the United States (US) has been identified in the latest update to the Central Record of Legislation with Qualified Status as the only jurisdiction with a Qualified SbS Regime, applicable as of the beginning of 2026.
- MNE Groups with a UPE in the US will remain subject to the global minimum tax rules in 2024 and 2025.

UPE Safe Harbour

- The UPE Safe Harbour applies to the domestic profits of MNE Groups with a UPE in a jurisdiction that has an eligible domestic tax regime. Such an MNE Group that elects the UPE Safe Harbour will not be subject to the UTPR in respect of the profits located in the UPE jurisdiction.

Further work on technical clarifications and simplifications

- The Package indicates that the Inclusive Framework will continue working on technical clarifications and simplifications, including for the application of the GloBE Model Rules, as well as on integrity rules.

We will see how exactly and quickly the changes described above will be "translated" into the legislation of individual countries.

The changes to Pillar 2 rules bring about a shift, among other things, in terms of extending the validity of the existing CbCR safe harbor, introducing a new safe harbor based on a simplified effective tax rate, a more favorable regime for certain types of investment incentives and simplifications primarily aimed at the relationship between the US tax system (and possibly the tax systems of other countries meeting selected criteria) and the Pillar 2 rules.

Statistics on court decisions

Radek Matuštík
Partner, Tax Services
radek.matustik@cz.ey.com
+420 603 577 841

Jakub Tměj
Senior Manager,
Tax Services
jakub.tmej@cz.ey.com
+420 735 729 372

Marek Šťastný
Junior Consultant,
Tax Services
marek.stastny@cz.ey.com
+420 705 620 208

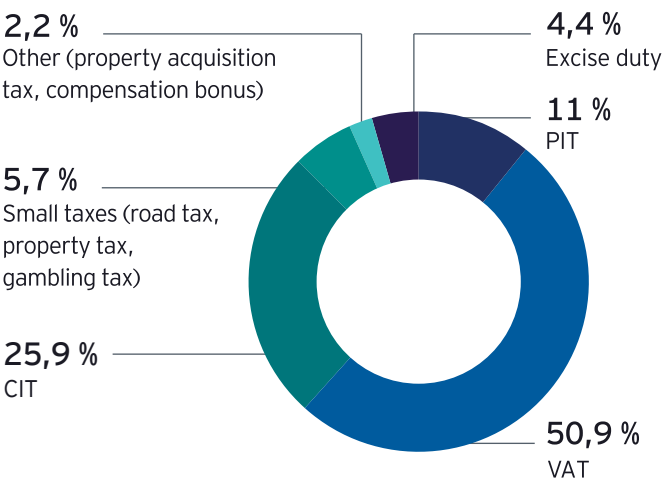
Statistics on Supreme Administration Court tax decisions for 2025

In 2025, we reviewed 465 decisions of the Supreme Administrative Court (SAC) concerning tax issues. We wrote alerts or articles for tax reports on many of them. In today's article, we take a bird's-eye view of the decisions and share some interesting trends.

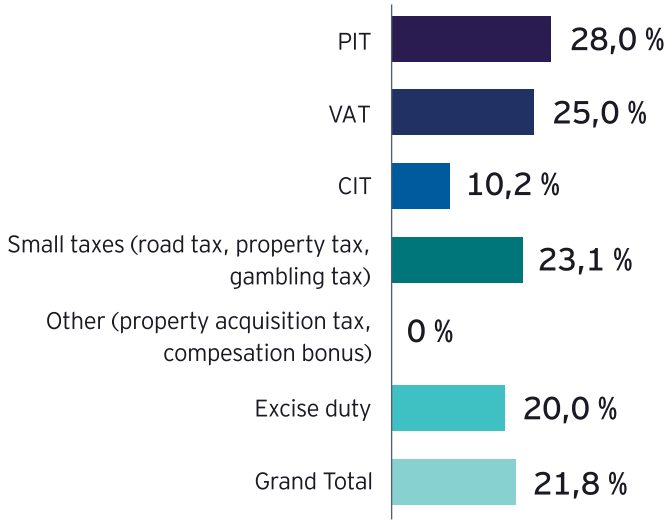
The first graph shows the types of taxes that taxpayers typically litigate. More than half of the disputes concern VAT (claims for deductions from received supplies, chain fraud, etc.), followed by corporate income tax. Personal income tax ranks third. Other taxes are marginal.

Another statistic shows the probability of a taxpayer succeeding in proceedings before the Supreme Administrative Court (regardless of whether they have filed an appeal or are facing an appeal by the tax administration). The average success rate is 21.8%. Among the major taxes, the success rate of taxpayers is below average, particularly in the case of corporate income tax (slightly over 10%).

Tax / % cases

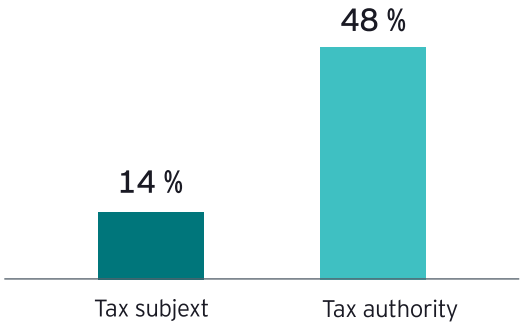


Tax / % success ate of the tax entity



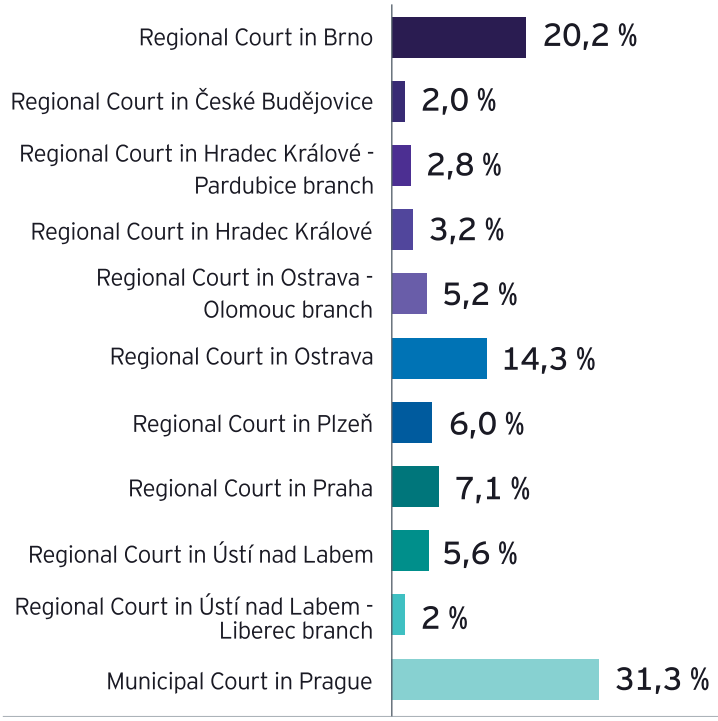
Another statistic shows the success rate of taxpayers who filed a cassation complaint themselves (i.e. who were unsuccessful in the first-instance proceedings) vs. those who had a cassation complaint filed by the tax administrator. The graph shows that in the vast majority of cases, the Supreme Administrative Court upholds the decision of the first-instance court if it approved the tax administrator's procedure. Only in 14% of cases did the complainants succeed in convincing the Supreme Administrative Court that the regional court and the tax administrator had assessed the case incorrectly. If the tax administrator appeals against the decision of the regional court, the taxpayer is successful in 48% of cases.

Complainant / % success rate of the tax entity



The most common source of tax disputes in the Czech Republic are three courts: Prague, Brno, and Ostrava. These three courts supply the Supreme Administrative Court with almost two-thirds of all cases.

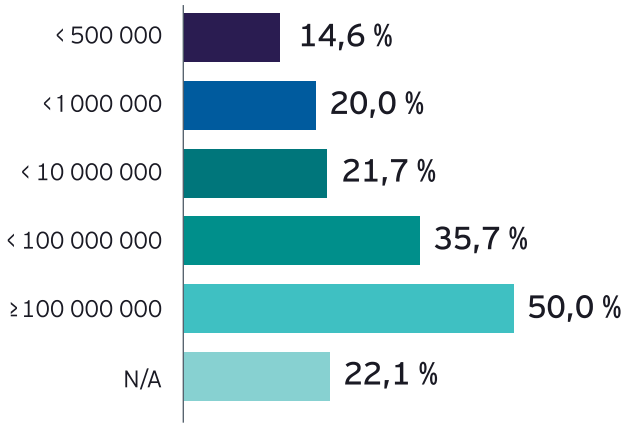
Regional court/ % cases



With regard to the age of disputes, the Supreme Administrative Court dealt on average with disputes from 2017, which were decided by the Appeal Financial Directorate in 2022 and by the court of first instance in 2024.

And finally, one statistic to lighten the mood. As the amount in dispute increases, the chances of success in court increase significantly. This may offer hope in large disputes. On the other hand, in 2025, the Supreme Administrative Court ruled on only two disputes involving tax amounts exceeding CZK 100 million. And there, it was 50:50.

Tax Ammount (CZK) / % success rate of the tax entity



We prepared the statistics without using AI. Given the large number of decisions, human error in processing cannot be ruled out.

Transfer pricing

Lucie Karpíšková
Partner, Tax Services
lucie.karpiskova@cz.ey.com
+420 731 627 067

Tibor Borodáč
Manager, Tax Services
tibor.borodac@cz.ey.com
+420 735 729 225

Mandatory transfer pricing documentation

Transfer pricing documentation. A term that every fan of the arm's length principle knows well. Transfer pricing documentation ("Documentation") is a basic document that describes the transactions in which the taxpayer participates, the pricing policy it applies and its functional and risk profile.

Current tax regulations do not explicitly stipulate the obligation to prepare Documentation. This distinguishes the Czech Republic from most EU and OECD countries, where Documentation is mandatory. The introduction of mandatory Documentation would logically increase the administrative burden on Czech taxpayers. The World Bank has historically attempted to measure the level of administrative burden, and the Czech Republic has not fared very well. Allegedly, a possible reason for not introducing mandatory Documentation is fear of a further decline in the ranking.

However, tax authorities today generally follow the rules of the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (the "OECD Guidelines"). Even the General Financial Directorate has issued Instruction D-334, which essentially adopts the OECD Guidelines and sets out the scope of Documentation tax administrators expect to see during tax audits. However, the guideline is not formally legally binding on taxpayers. At the same time, taxpayers have a general obligation to prove everything they state in their tax returns, i.e. including transfer prices. Many taxpayers address this complexity by preparing certain Documentation in greater or lesser accordance with the OECD Guidelines and Guideline D-334. However, they have considerable flexibility in what and how to include in the Documentation and when to prepare it.

The new government now says in its policy statement that it wants to introduce mandatory Documentation. What might this look like in theory?

The first question concerns format, scope, and content. The logical option is to fully adopt the recommendations of the OECD Guidelines. In practice, tax administrators already expect this format from taxpayers, and the practice is well established. To a certain extent, the continuity of the current approach of taxpayers and tax administrators will be ensured. Multinational groups will be able to use group Documentation, which is generally prepared in accordance with the OECD Guidelines.

An alternative is to draw inspiration from neighboring countries, such as Poland or Hungary. Mandatory Documentation could have a format and/or content specific to the Czech Republic. For example, in Poland, they require the numbers of the analytical accounts on which the transactions were recorded and an overview of all payments made.

The same applies to Hungary, where they also require information on ongoing court proceedings or tax audits.

We can also consider whether the obligation will be to prepare the Documentation by a certain date (as is the case in Slovakia, where the deadline for preparation is linked to the deadline for filing tax returns, or in Poland, where taxpayers must prepare the Documentation within ten months of the end of the fiscal year). In some countries (mostly outside the EU), there is an obligation to submit it directly to the tax administrator by a certain date. Even in countries where Documentation submission is not mandatory, taxpayers often have to provide detailed information on the pricing method (e.g. the method used, market spread, actual profitability achieved) in their tax returns or on specific transfer pricing forms.

In this context, the key question will be whether every taxpayer will be required to prepare (and submit) Documentation, or whether certain criteria will be set. Abroad, we often see a focus on the materiality of a given intra-group transaction or the overall materiality of all such transactions (Slovakia, Poland, Hungary and Germany). The Documentation obligation for all taxpayers without limits could be a major problem for small companies. In practice, we also see that many companies do not even have all the information that the tax administrator may require in Documentation.

Sharing information and details with the tax administrator in advance also poses a certain risk. For example, declaring your functional and risk profile in advance will significantly limit your room for maneuver and the ways in which you can defend your position in the event of a subsequent tax audit. However, transparency and sharing information with the tax administrator is the very purpose of the Documentation.

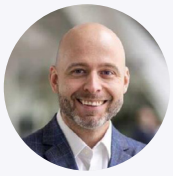
Failure to comply with obligations in tax proceedings logically leads to penalties. It will be interesting to see whether missing Documentation will only lead to the current penalty for non-compliance of a non-monetary nature of up to CZK 500,000, which might be worth it for some taxpayers, or whether new special penalties will be introduced.

On the other hand, some countries have what is known as penalty protection. Put simply, if a taxpayer has Documentation ready, they will avoid penalties or interest on any additional tax assessment. The question is what rules would be introduced to achieve this protection.

Mandatory Documentation can have both positive and less positive aspects for taxpayers. On the one hand, it can provide clear rules and legal certainty, but on the other hand, it can also mean additional administrative burdens or penalties. We will be watching with interest to see which path Czech lawmakers choose.

Mandatory Documentation can have both positive and less positive aspects for taxpayers. On the one hand, it can provide clear rules and legal certainty, but on the other hand, it can also mean additional administrative burdens or penalties. We will be watching with interest to see which path Czech lawmakers choose.

VAT



David Kužela
Partner, Tax Services
david.kuzela@cz.ey.com
+420 731 627 085

Until when can a VAT deduction claim be made?

In 2025, the period during which it is possible to claim input VAT deductions was shortened. A current Supreme Administrative Court (SAC) ruling confirms the deduction may not be completely lost even after that. However, it may not be easy to obtain it.

New rules

Since last year, VAT deductions can be claimed until the end of the second calendar year immediately following the calendar year in which the tax deduction entitlement arose. In simple terms, this means that the original 3-year period has been shortened to 2-3 years.

The supplier's obligation to pay output VAT continues throughout the entire tax assessment period, which is generally three years, but may be extended to up to ten years under certain circumstances (e.g. tax audit or filing of an additional tax return before the end of the period).

There may therefore be an increase in cases where a supplier discovers (either on its own or as a result of action by the tax administrator) that it must additionally pay VAT for which the deadline for the customer to claim a deduction has already expired. In such cases, it may be difficult to claim the additionally paid VAT from the customer.

Positive approach by the CJEU

In the past, the Court of Justice of the European Union gave taxpayers some hope when it ruled in the Volkswagen and Biosafe cases that, under certain conditions, the tax administrator must allow customers to claim a tax deduction (or refund) even after the statutory deadline has expired. This typically applies to situations where the supplier has incorrectly applied VAT exemption or a lower tax rate and subsequently corrects their mistake. In order to claim a deduction, there must be no intentional fraud or other abusive practices. At the same time, the customer must fulfill their obligation to act with due care in the given business relationship.

Czech case

In the current case, the supplier incorrectly issued invoices without VAT between October 2016 and February 2017. The supplier subsequently corrected its mistake and issued tax documents with VAT, which the customer received in September 2019, i.e. still within the standard three-year period for claiming

a deduction (the period for October 2016 expired at the beginning of November 2019).

However, the customer did not claim the deduction from these documents until May 2020, when the statutory period had expired. The tax office therefore rejected the deduction.

The taxpayer sought to apply the deduction in accordance with CJEU case law, arguing that he could not apply the deduction immediately after receiving the corrected tax documents because he had to verify the accuracy of the new invoices.

The SAC upheld the tax administrator's decision. It emphasized that the customer had more than a month to claim the deduction, which should have been sufficient time to verify the deduction. It also stated that it was difficult to understand why the customer did not at least claim the deduction for October 2016, as he must have known that the statutory deadline was approaching when he received the new invoices.

Practical implications

The ruling confirms that Czech courts generally do not have much understanding for time-consuming internal approval processes, which are common in practice, especially in larger companies. We therefore recommend setting up appropriate mechanisms for the timely identification of specific cases that need to be prioritized and given increased attention, for example because the end of a statutory deadline is approaching.

On a positive note, neither the tax administrator nor the courts a priori reject the potential extension of the deadline for claiming a deduction based on the case law of the CJEU. However, it can be expected that the tax authorities will assess such claims restrictively and emphasize the fulfillment of all conditions, in particular the exercise of due care.

We therefore recommend proceeding with caution in such cases and preparing for a thorough review.

On a positive note, neither the tax administrator nor the courts a priori reject the potential extension of the deadline for claiming a deduction based on the case law of the CJEU. However, it can be expected that the tax authorities will assess such claims restrictively and emphasize the fulfillment of all conditions, in particular the exercise of due care.

Law

Dušan Kmoch
Attorney-at-law, EY Law
dusan.kmoch@cz.eylaw.com
+420 704 865 114

Klára Hurychová
Of Counsel, EY Law
klara.hurychova@cz.eylaw.com
+420 603 577 826

The European Union has presented an ambitious plan for greater business development within the EU

The Green Deal is not the only initiative currently shaking up the EU. In spring this year, the European Commission will publish its first legislative proposals under the so-called 28th regime, which aims to create uniform EU rules for the establishment and operation of business entities, thereby removing existing financial and administrative barriers that persist in the internal market. These EU rules will provide an alternative to the existing national regulations of Member States.

Back in 2024, as part of an extensive analysis of the EU's competitiveness, the European Commission presented the so-called 28th regime, a plan to strengthen the internal market and remove internal barriers that persist within it and increase the administrative and financial costs of European entrepreneurs. These barriers mainly take the form of varying formalities, different capital requirements, organizational structure requirements and differing tax regimes.

The aim of the so-called 28th regime is not to harmonize the regulations of individual Member States, but to create an alternative, European, and therefore 28th regime for easier establishment and operation of business entities (especially commercial corporations) within the EU. The ambition is therefore to enable a voluntary opt-out from national regulations to EU regulations in the EU.

However, this presupposes that individual Member States will be obliged to provide and administer such a voluntary option for national entities (citizens and corporations). The success of this initiative will therefore depend primarily on the willingness of Member States to support this idea and find agreement on specific issues.

This initiative is not new. The European Commission has presented several similar proposals in the past. Some were successful, others were not. Among the successful ones are the adoption of the European Company Statute, Societas Europaea (as a transnational, European form of joint-stock company), the regulation of European mutual funds (known as UCITS) and the introduction of a single European patent. On the contrary, efforts to adopt a supranational, European form of limited liability company (known as Societas Privata Europaea) or

to harmonize the establishment of single-member limited liability companies (known as Societas Unius Personae) can be considered unsuccessful.

During 2025, a public consultation on this initiative was held as a preliminary step to the start of legislative work. The first concrete legislative proposals from the European Commission are expected as early as this spring.

Specific proposals

At this stage, the proposed amendment will focus on supporting newly established small and medium-sized enterprises, known as start-ups, and existing, rapidly growing companies, known as scale-ups. The EU intends to create a new EU legal form that will be an alternative to national limited liability companies and joint-stock companies. It will be possible to establish it online within 48 hours via a single European digital portal, based on standardized and digitized corporate documents (in particular, a model founding legal act, but also, for example, model AML documentation) available in all EU languages. A corporation established in this way will have a uniform legal status throughout the EU and will be guaranteed the right to do business in each of the Member States without the need for further registration with national authorities or, for example, establishing a branch under national law.

The internal organizational structure and functioning of this EU form will also be simplified (e.g. digital voting at general meetings via an online portal will be adjusted, and the requirement to establish a supervisory body will be limited). In addition, more lenient capital requirements tailored to start-ups, whose financing options for their own business activities may be limited at first, will be set for this EU form of corporation.

The above rules will also be accompanied by uniform rules (e.g. approval, issuance of options and shares) and documentation for employee stock option plans within these corporations and their taxation, which will enable effective motivation in business development. Insolvency rules for these entities are also to be uniform, with the aim of ensuring a rapid, digitized resolution of their bankruptcies while maintaining the desired protection for creditors. In this context, there are plans to introduce uniform rules governing the ranking of claims, which will primarily protect employees, and rules governing the liquidation of assets. There are also plans to establish specialized courts where proceedings will be conducted exclusively in English and disputes will be handled digitally via a single online portal.

Chances for success

From the above, it is clear that the EU's plans under the 28th regime are very ambitious and robust. The European Commission and expert groups set up in this context present the 28th regime as a strategic step towards strengthening competitiveness (especially vis-à-vis the US) and retaining innovative companies in Europe. However, the expected attitudes are rather mixed. The startup community and investors welcome the proposal, while some Member States express concerns about the weakening of national legislative autonomy. The chances of adoption are relatively high, as the project has strong political support (led by Ursula von der Leyen) and fits in with the priorities of the digital single market. However, it will require countless compromises. Disputes can be expected primarily in the areas of tax and labor law coordination.

If you want to start a business or expand your business, establish a commercial corporation in the Czech Republic or in another European country, do not hesitate to contact us.

The aim of the so-called 28th regime is not to harmonize the regulations of individual Member States, but to create an alternative, European, and therefore 28th regime for easier establishment and operation of business entities (especially commercial corporations) within the EU. The ambition is therefore to enable a voluntary opt-out from national regulations to EU regulations in the EU.

Case law

Radek Matuštík
Partner, Tax Services
radek.matustik@cz.ey.com
+420 603 577 841

Jakub Tměj
Senior Manager,
Tax Services
jakub.tmej@cz.ey.com
+420 735 729 372

Petr Sedláček
Senior Consultant,
Tax Services
petr.sedlacek@cz.ey.com
+420 704 651 391

Liability of natural persons for tax arrears of legal entities in current case law

Legal framework for tax liability

The Tax Code allows for the payment of tax arrears to be demanded not only from the debtor themselves, but also, as a secondary measure, from persons acting as guarantors.

The tax administrator routinely issued guarantee requests in situations involving guarantees by partners in general partnerships, guarantees by recipients of taxable supplies for VAT purposes, or other guarantees arising directly from tax regulations (excise duties, customs duties, historically gift tax or real estate transfer/acquisition tax).

However, the rules of the Civil Code and the Business Corporations Act impose a guarantee obligation on a number of other persons, in particular members of elected bodies of legal entities, but also persons formally outside the corporate structure in the position of so-called influential persons.

According to private law regulations, for example, if a member of an elected body fails to compensate a legal entity for damage caused by a breach of duty in the performance of their function, they are liable to the creditor of the legal entity for its debt to the extent of the uncompensated damage, if the creditor cannot enforce performance against the legal entity. A typical breach of duty is failure to fulfill the requirement to perform one's duties with due care.

For a long time, there was no unified interpretation of how exactly to link liability under the Tax Code with the private law concept of liability. The tax authorities therefore did not actively pursue this option either.

The DEMOSTAVBY ruling and related case law

Recently, however, there have been cases where the tax administrator has issued guarantee requests to members of the statutory bodies of legal entities. This has occurred mainly in connection with criminal convictions for tax offenses committed by these individuals connected with the performance of their statutory functions.

This procedure was first reviewed by the Supreme Administrative Court (SAC) in a judgment known as DEMOSTAVBY. This was a case in which the tax administrator sought payment of outstanding value added tax from a former company executive by means of a guarantor's request, which, according to a criminal judgment, he had helped to evade by allowing, as an executive (albeit only formally), the filing of fictitious tax returns and the siphoning of funds from the company.

In this case, the SAC comprehensively stated for the first time that:

- A guarantee obligation for tax arrears may also be established by private law regulations, and the tax administrator may enforce it by means of a guarantee request in accordance with the Tax Code.
- The damage for these purposes is not the tax arrears themselves. The damage must consist of interference with the company's assets (e.g. unauthorized transfer of funds), which results in the company having no means to pay the tax.
- Issues concerning the creation, scope and termination of guarantees are governed by the Civil Code. The guarantor may therefore object to the limitation period for the obligation to pay damages. However, the objection must not be raised in contravention of good morals (which may be difficult in circumstances of conviction for tax evasion).
- A guarantee request is considered a tax assessment decision and must therefore be issued within the tax assessment period. Here too, the tax may be assessed by the end of the second year following the year in which a final court decision was issued on the commission of a tax offense relating to this tax.

An important conclusion of the aforementioned judgment is that the additional tax assessment itself does not constitute damage to a legal entity. The statutory body first "enriches" the legal entity through its unlawful conduct, for example by obtaining a VAT deduction, and the subsequent additional tax assessment is merely a return to the normal state of affairs, i.e. to the amount of tax that the company should have paid from the outset. The statutory body causes damage to the legal entity only if, as a result of its actions, it is unable to pay the additional tax assessment.

Questions that remain unanswered

Although case law is continuously evolving, a number of important questions remain unanswered. Some of these questions were also mentioned by the Supreme Administrative Court in another recent judgment.

In its judgment, the court addresses the question of whether the damage caused by a statutory body could be additional tax assessments (e.g. penalties). Unlike the tax liability itself, penalties cannot be dealt with according to the logic of the DEMOSTAVBY judgment and viewed as a mere return to the status quo as if the unlawful conduct had not occurred.

However, the tax administrator's argument in this regard was only marginally relevant and did not appear in the reasoning of the regional court's judgment. The Supreme Administrative Court therefore did not deal with it on its merits.

The SAC also stated that although the regional court briefly mentioned the argument that the managing director's actions had led to the legal entity's inability to pay the tax arrears, this reasoning was not sufficient to clearly identify the damage and, moreover, contradicted the otherwise repeatedly mentioned conclusion that the damage was the tax assessment itself.

The question is whether this passage from the SAC's ruling can be interpreted as an indication that paying for overpriced advertising services could fall under "removal of funds from the company," which, according to case law, may give rise to a claim for damages and, where applicable, liability.

Conclusion

We can summarize that the decision-making practice of the SAC has confirmed that tax authorities may seek payment of a legal entity's tax arrears by means of a guarantor's request addressed to a natural person, e.g. a former member of a statutory body.

The condition is that this underpayment arose as a result of damage caused to the legal entity by its statutory body. However, this damage does not consist of the additional tax assessment itself, but rather the situation where the company is unable to pay the tax underpayment.

It remains unanswered whether, in this context, the damage can be considered to be the tax accessories prescribed together with the additional tax assessment. It will also be interesting to see what situations the courts will classify as "withdrawal of funds from the company," which they now consider to be a condition for the creation of liability.

Tax authorities may seek payment of a legal entity's tax arrears by issuing a guarantee request addressed to a natural person, e.g. a former member of the statutory body. The condition is that this underpayment arose as a result of damage caused to the legal entity by the statutory body. However, this damage is not the additional tax assessment itself, but only the situation where the company is unable to pay the tax arrears.

Case law

Kateřina Dedková
Partner, Tax Services
katerina.dedkova@cz.ey.com
+420 603 577 890

Where does the difference from a settlement agreement belong?

We bring you an interesting decision by the Supreme Administrative Court (SAC) concerning a revenue estimate accrual, a subsequent settlement agreement and the timing of the resulting difference (9 Afs 24/2024 - 79).

Facts of the case

- In 2012, a fire broke out in a warehouse, destroying company property.
- This property was insured, but it was unclear exactly what the insurance coverage would be.
- In 2012, the company recognized a loss in the amount corresponding to the carrying amounts of the destroyed property. At the same time, it recognized a receivable in the same amount as an insurance claim against the insurance company.
- A settlement agreement with the insurance company for a lower amount than originally recorded was concluded on 13 June 2013 due to a failure to reach agreement on the scope of insurance coverage and the amount of insurance benefits.
- The company did not reflect this agreement in any way in its financial statements for the 2012 accounting period, and only accounted for the reduction in revenue in 2013 as a reduction in revenue for the current accounting period, rather than as a correction of errors from previous years.
- The financial statements for 2012 were prepared and approved on 24 June 2013.
- On 28 June 2013, the company filed its regular tax return for 2012.
- A year later, on 3 July 2014, the company filed an additional tax return in which it reduced its revenues for 2012 by the amount of the difference from the lower insurance payment.

Subject of the dispute

- The subject of the dispute was the question of the factual and temporal connection between the difference between the amount recorded and the actual payment from the insurance company on the basis of a settlement agreement.
- According to the company, the settlement agreement was supposed to be an "adjusting"

event within the meaning of Interpretation I-24 of the National Accounting Council, Events after the Balance Sheet Date, which is related in terms of time and substance to the 2012 tax period and which should have been taken into account as a fact justifying the conclusion of lower revenues for 2012.

- The tax administrator did not agree to take this difference into account in 2012.

View of the SAC

- The SAC agreed with the regional court and sided with the tax administrator.
- Among other things, the SAC stated that the reporting of the receivable from the insurance company at the end of 2012 was incorrect and that it was an estimated accrual. For the purposes of the corporate income tax base, it is decisive that the amount of the estimated accrual at the end of the balance sheet date corresponded to a substantiated and qualified estimate based on the facts known at that time.
- If, after the balance sheet date, an event occurred that demonstrated the situation at the end of the balance sheet date and justified the conclusion that the estimate was not well-founded and qualified, this event would be considered an "adjusting" event in relation to the estimated accrual item, and its correction in the accounts would be reflected in the tax entity's income for the relevant tax period in accordance with § 21h of the Income Tax Act.
- The SAC further stated that, depending on the specific circumstances, it cannot be ruled out that the settlement agreement itself may, in exceptional cases, be considered an event after the balance sheet date that "adjusts" i.e. reflecting the situation existing as of the balance sheet date (e.g. the circumstances may indicate that the contracting parties merely confirmed in this form the results of the insurance company's investigation concerning the amount of insurance benefits already known before the balance sheet date).
- However, according to the SAC, this was not an exceptional situation in the case in question. Given that there was no agreement on the amount of the insurance benefit, the court, after reviewing the circumstances, concluded that the settlement agreement in the case in question replaced the original obligation with a new one, effective on the date of the agreement, i.e. in 2013.
- The SAC stated that the tax administrator did not err when, in the given procedural situation, it concluded the company had not demonstrated in its accounting or otherwise the significance of the settlement agreement for the 2012 accounting period as an "adjusting" event after the balance sheet date, and therefore correctly considered the settlement agreement to be a "non-adjusting" event in relation to the 2012 tax period.

Conclusion

Caution is advised when assessing events after the balance sheet date for accounting and tax purposes. Deciding whether an event after the balance sheet date is an adjusting or non-adjusting event can be difficult, and each such situation must be assessed in detail in light of all circumstances, especially factual ones. And if the correct conclusion is that it is an adjusting event, it must be taken into account in the accounting records up to the date of preparation of the financial statements.

Given that there was no agreement on the amount of insurance compensation, the court reviewed the circumstances and concluded that the settlement agreement in the case in question replaced the original obligation with a new one, effective on the date of the agreement, i.e. in 2013.

CONTACTS

For further information please contact either your usual partner or manager.

Corporate taxation

Lucie Říhová	+420 731 627 058
Libor Frýzek	+420 731 627 004
Jana Wintrová	+420 731 627 020
Radek Matuštík	+420 603 577 841
Kateřina Dedková	+420 603 577 890
Karel Hronek	+420 731 627 065

VAT and customs

David Kužela	+420 731 627 085
Stanislav Kryl	+420 731 627 021

Personal taxation

Martina Kneiflová	+420 731 627 041
Ondřej Polívka	+420 731 627 088

Law

Ondřej Havránek	+420 703 891 387

EY
+420 225 335 111
ey@cz.ey.com
www.ey.com/cz

Subscription
If you would like one of your colleagues or acquaintances to receive our Tax and Legal News by e-mail, please forward this e-mail to him and he can subscribe here.

Unsubscribe
If you do not wish to receive EY Tax and Legal News, please contact Adéla Vaňková: adela.vankova@cz.ey.com.

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multidisciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.