

Tax and Legal News

July - August 2025



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Editorial



Lucie Říhová

lucie.rihova@cz.ey.com

+420 731 627 058



Summertime gratitude

Another tax season is successfully behind us! So I'm not going to overwhelm you with a long read, but I would like to briefly thank you for your loyalty and cooperation.

And a few numbers, now that we've finished calculating and filing the last tax returns. Currently, there are over 7,000 loyal readers for whom we organized 22 webinars and seminars from September to June. The most popular attracted almost 1,500 participants. As usual, tax and legal topics related to employees and the ever-popular VAT were the most viewed. We recorded five episodes of our newly launched podcast, *The Magic of Transfer Pricing*. We issued 210 tax and legal alerts. All of this delivered to your email inbox every Monday.

If you've already automated everything, artificial intelligence has taken over your work, and you don't even enjoy reading anymore, we've been converting our content into an audio format on Spotify and Apple Podcasts since June, so you won't get bored at the beach. We're not newbies, so of course a robot does the work for us.

Once again, thank you very much. Enjoy your vacation with some pleasant reading or listening to this summer double issue, and we look forward to next season!



Karel Hronek

karel.hronek@cz.ey.com

+420 731 627 065



Interesting tax news in brief

The Chamber of Deputies has passed long-awaited tax amendments as part of parliamentary bills 783, 925, and 926:


- ▶ an [amendment](#) to the law on top-up taxes (Pillar 2) has been approved - there is thus a greater likelihood of averting the threat of an extremely short ten-month deadline for filing for Czech top-up tax purposes;
- ▶ an Accounting Act [amendment](#) has been approved. Among other things, it introduces relief in the area of auditing small accounting entities and sustainability reporting;
- ▶ an [initiative](#) to introduce a [single](#) monthly employer report, which would replace up to 25 different reports currently in use, has been approved;
- ▶ more [amending proposals](#) to the Income Tax Act (or the Act on Reserves) have been approved - those that are most interesting from our perspective:
 - ▶ adjustment of the employee share/option plan regime - both parametric adjustments to the existing regime (such as postponing the latest date for taxation from 10 to 15 years) and a completely new regime for selected companies (moving taxation from Section 6 to Section 10);
 - ▶ adjustments to the deduction for research and development (such as an increased 150% deduction up to a limit of CZK 50 million);
 - ▶ valorization of the limit for "insignificant" receivables, for which a one-time 100% provision can be created, from CZK 30,000 to CZK 50,000;
 - ▶ adjustment of the exemption of employee benefits regulated in Section 6, paragraph 9, letter d) in the sense that it must not explicitly involve performance related to the performance of work.
- ▶ On the contrary, the abolition of the ceiling for the exemption of personal income from the sale of securities/shares/cryptoassets was not approved (though there is speculation that the idea of revoking the ceiling for securities and shares is not entirely dead).

We will keep you informed about further legislative developments.

The Chamber of Deputies approved, among other things, a single monthly employer report and an amendment to the law on Pillar 2, which extends the extremely short ten-month deadline for filing for Czech top-up tax purposes. On the other hand, the abolition of the ceiling for the exemption of personal income from the sale of securities/shares/cryptoassets was not approved.

Pillar 2



Karel Hronek
karel.hronek@cz.ey.com
+420 731 627 065


How to allocate Czech top-up tax

We would like to share a few observations on the reallocation of the Czech (domestic) top-up tax.

The basic allocation formula is as follows:

- ▶ The entity's share of the Czech top-up tax is determined using the allocation amount.
- ▶ The allocation amount of an entity is a multiple of (i) the entity's qualifying profit and (ii) the positive difference between 15% and the entity's effective tax rate.
- ▶ The entity's share of the Czech top-up tax is then determined by the ratio of (i) the allocation amount of the given entity and (ii) the total allocation amounts of all Czech entities (always within the given subgroup).

Let's demonstrate this with a simplified example:

- ▶ First, let us abstract from exclusion based on economic substance.
- ▶ The jurisdictional qualified profit is 400 (100 for entity A, 300 for entity B).
- ▶ The jurisdictional covered taxes are 50 (14 for entity A, 36 for entity B).

- ▶ The jurisdictional effective tax rate is 12.5% (determined as a ratio of 50 and 400).
- ▶ The Czech top-up tax is 10 (calculated as the product of 2.5% and 400).
- ▶ The effective tax rate for entity A is 14% (calculated as the ratio of 14 to 100); the effective tax rate for entity B is 12% (calculated as the ratio of 36 to 300).
- ▶ The allocation amount for entity A is 1 (calculated as the product of 100 and the difference between the 15% and 14% rates), while the allocation amount for entity B is 9 (calculated as the product of 300 and the difference between the 15% and 12% rates).
- ▶ Entity A's share is therefore 10% (determined as the ratio of 1 to 10), which represents a tax of 1.
- ▶ Entity B's share is therefore 90% (determined as the ratio of 9 and 10), which represents a tax of 9.

Let's continue with a slightly modified example:

- ▶ Now let's add the exclusion effect based on economic substance.
- ▶ Jurisdictional qualified income and jurisdictional included taxes are identical, i.e. 400 and 50, respectively.
- ▶ The exclusion based on economic substance is 50, with the entire effect effectively being "provided" only by entity A.
- ▶ The jurisdictional excess profit is therefore 350 (as the difference between 400 and 50).
- ▶ The effective tax rate remains at 12.5% (determined as a ratio of 50 and 400).
- ▶ The Czech top-up tax is therefore 8.75%, this time due to the exclusion based on economic substance (calculated as the product of 2.5% and 350).
- ▶ Entity A's effective tax rate is still 14% (calculated as the ratio of 14 to 100); entity B's effective tax rate is still 12% (calculated as the ratio of 36 to 300).
- ▶ The allocation amount for entity A is therefore still 1 (determined as the product of 100 and the difference between the 15% and 14% rates), while the allocation amount for entity B is still 9 (determined as the product of 300 and the difference between the 15% and 12% rates).
- ▶ Entity A's share is therefore still 10% (determined as a ratio of 1 to 10), which represents a tax of 0.875.
- ▶ Entity B's share is therefore still 90% (determined as the sum of 9 and 10), which represents a tax of 7.875.

The allocation mechanism of the Czech top-up tax is based on the principle of "fault," whereby the effect of exclusion based on economic substance is "dissolved" into jurisdiction.

What's the takeaway?

- ▶ The allocation mechanism of the Czech top-up tax is based on the principle of "fault".
- ▶ The exclusion effect based on economic substance is "dissolved" in jurisdiction.
- ▶ Different jurisdictions may have different allocation mechanisms for domestic top-up tax.



Dušan Kmoč

dusan.kmoch@cz.eylaw.com
+420 704 865 114



Klára Hurychová

klara.hurychova@cz.eylaw.com
+420 603 577 826



The liability of a member of a statutory body of a commercial corporation is extensive, but not unlimited

The position of a member of an elected body of a commercial corporation, especially a managerial position, i.e. a member of a statutory body (such as an executive or a member of the board of directors), entails a wide range of duties and responsibilities. Of course, these duties include rights, primarily the right to remuneration, which plays a key motivational role in accepting the position, but more on that another time...

Due care

A member of the statutory body of a commercial corporation is obliged to perform their duties with due care. This duty has two components. The first is the duty of loyalty. When performing their duties and fulfilling their specific management responsibilities, members must primarily pursue the interests of the corporation and always put those interests before their own. They must not harm the corporation or its shareholders through their actions. The duty of loyalty traditionally includes rules of confidentiality, non-competition, and, for example, the obligation to inform the corporation in the event of a potential conflict of interest.

The second component of care is the obligation to act with the necessary knowledge and care. This means that a member of a statutory body must be a qualified and diligent manager. In particular,

when making specific business decisions (such as investment or reorganization projects), they must act in an informed manner (i.e. their decisions must be based on specific data and considerations, prepared by experts if necessary), in the defensible interest of the corporation and in good faith that the decision is in the best interests of the corporation. If they act with such care, they will not be held responsible for any failure of their decision. This motivates members of statutory bodies to take a reasonable amount of business risk and, from a global perspective, to drive economic growth not only for their corporation but also for the market in general.

If a member of a statutory body violates their duty of care, they face a whole range of sanctions. First and foremost, they are obliged to compensate their corporation for any damage, both financial and non-financial, that they have caused. If they fail to pay for this damage, they face so-called punitive liability toward creditors.

However, a breach of duty of care may lead not only to the logical consequence of possible dismissal or the application of contractual penalties under the contract of employment (e.g. contractual penalties), but also to disqualification from office, the obligation to return received benefits (typically remuneration), or to supplement the company's assets in the event of its insolvency.

In the event of a dispute as to whether a member of a statutory body acted with due care, the burden of proof regarding compliance with this standard of care lies with that member. Czech law thus significantly eases the burden of proof for injured parties, in particular the corporation itself, but also, for example, plaintiff shareholders or creditors. Members of the statutory body should bear this in mind and ensure that all supporting documents, records, minutes, reports, and data proving the proper performance of their duties are properly recorded and stored.

The court on the limits of liability

However, such broadly conceived liability must have its limits. And it was precisely these limits that the Supreme Court pointed out in a recent decision. In a recent judgment, a creditor sought payment of approximately a quarter of a million crowns from a member of the board of directors of a joint-stock company on the basis of liability for debts under Section 159(3) of the Civil Code. It follows from this provision that *“if a member of an elected body of a legal entity fails to compensate the legal entity for damage caused by a breach of duty in the performance of his or her functions, even though he or she was obliged to do so, he or she shall be liable to the creditor of the legal entity for its debts to the extent that he or she has not compensated for the damage, if the creditor cannot obtain performance from the legal entity.”* In this specific case, the creditor claimed that the defendant member of the board of directors caused damage to “her” company by acting contrary to the duty of care of a prudent manager by failing to pay due invoices, employee insurance, and other contractual obligations. By failing to compensate “her” company for this damage, she is liable to the creditor for the

repayment of her claim against this company. The dispute reached the Supreme Court, which was to address the question of the extent to which the duration of a member of a statutory body's guarantee obligation towards a company's creditor depends on the duration of their obligation to compensate the company for damage.

The Supreme Court first emphasized that the meaning and purpose of the statutory liability of members of elected bodies is to establish a fairer arrangement for creditors in situations where the recoverability of their claims against the corporation is impaired. On the other hand, however, it highlighted the meaning of the statute of limitations, which takes into account the interests of the obligor – the debtor. This protects them from being in a situation where, over time, they face a lack of evidence and are limited in their ability to defend themselves. The requirement that a member of a statutory body be constantly prepared, in relation to all of the company's debts, to defend the business decisions made in the performance of their duties and to prove that they met the standard of care of a prudent manager, even though the limitation period for the right to compensation has already expired, is contrary to the meaning and purpose of the legal regulation of limitation periods.

The Supreme Court therefore concluded that **in proceedings concerning an action brought by a creditor against a member of a statutory body to enforce a claim arising from statutory liability, the court shall take into account a successfully raised objection to the limitation period for the company's right to compensation for damage caused to it by the defendant member of the statutory body. In such a case, the action cannot be upheld to the extent that the defendant member of the statutory body is no longer obliged to perform.**

This is a matter of limitation, not preclusion. The court does not examine this fact on its own initiative; the defendant member of the statutory body must raise the objection themselves. The right to compensation for damage caused by a breach of duty in the performance of a function against a member of a statutory body is subject to a subjective three-year and objective ten-year or fifteen-year limitation period.

The key issue here is whether the right to compensation had expired by the date of commencement of the creditor's action under Section 159(3) of the Civil Code. The filing of a lawsuit by the creditor therefore - for the purposes of assessing the validity of the objection to the limitation period for the company's right to compensation in these proceedings - "suspends" the limitation period for the company's right to compensation. In other words, if the right to compensation becomes time-barred after the proceedings have been initiated by the creditor, the statute of limitations objection raised by the defendant member of the statutory body will not be successful. The issue of the statute of limitations is proven by the defendant him/herself.

The above case law conclusions apply to members of statutory bodies. However, they also apply to members of supervisory bodies (members of the supervisory board) or administrative bodies (members of the administrative board). They too are required by law to perform their duties with due care and, in the event of a breach, are obliged to compensate for any damage caused.

It should be added that even in these cases, the assessment of the duration of damage claims and liability will certainly be subject to the older conclusions of the Supreme Court on the issue of the commencement of the limitation period. The limitation period runs from the moment when the company could objectively assert its damage claim. With regard to a specific member of the statutory body, it begins to run from the moment when other (different) persons authorized to assert the company's claim for damages on its behalf, such as other members of the statutory body, the supervisory board, a partner, or an insolvency administrator, learned or should have and could have learned about the circumstances of the damage. Therefore, for example, in the case of a single-member limited liability company (without a supervisory board, with a single shareholder who is also the sole executive), the limitation period would not begin to run until the executive or shareholder is replaced.

The Supreme Court has once again added to its already extensive case law on liability for damage caused in the performance of official duties. This time, it ruled on the statute of limitations on the right to compensation for damage and the right to performance under a guarantee.

Case law



Ivan Zhurkin

ivan.zhurkin@cz.ey.com

+420 730 813 636



Dispute over the dissolution of an accrual and an interesting judicial

We were intrigued by a recent Supreme Administrative Court [ruling](#), which deals with the legitimacy of creating accrual for compensation for damages.

What happened?

As part of a supplementary tax return, the taxpayer reversed an accrual (i.e. an expense was recorded) previously created for compensation for damages by a business partner. The taxpayer justified the reversal of the accrual by the statute of limitations on the claim for damages.

The tax administrator found the taxpayer's procedure to be unlawful. Allegedly, the conditions for creating accrual in the previous tax period were not met. Therefore, their dissolution cannot reduce the tax base.

The supplier and customer (taxpayer) contractually agreed that any disputes between them would be resolved through arbitration. The active accruals were created during the ongoing arbitration proceedings. According to the tax administrator, no legal claim for damages could exist before the end of the arbitration proceedings. Therefore, in his opinion, it was not possible to create accruals.

The Regional Court sided with the tax administrator. The taxpayer's interesting argument that *"confirmation of the existence of a claim by a court or other authority does not give rise to a claim for*

damages as of the date of the decision, but confirms whether or not a legal claim for damages arose in the past on the basis of a breach of contract" was unsuccessful in the Regional Court.

The taxpayer further argued that there was a legitimate expectation based on the local investigation conducted by the tax administrator during the period in which the accrual was created. Although documents and information on the creation of the accrual were provided to the tax administrator during the local investigation, this was not sufficient, according to the Regional Court, to establish a legitimate expectation.

Interesting perspective of the Supreme Administrative Court

It seemed like a very sad story for the taxpayer. However, the Supreme Administrative Court stepped in and challenged the tax administrator's basic premise (approved by the Regional Court). The Supreme Administrative Court simply stated that the period during which the active accrual was created had closed. In the current period, where the accrual has been dissolved and the disputed expense has been accounted for, it cannot be revised that the accrual should not have been created at all, even in

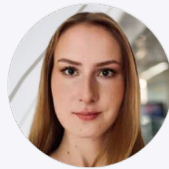
the case of an implied tax assessment for the period in which the accrual was created. The only solution in the current period is the existence of conditions for the dissolution of the accrual in question.

This perspective is somewhat surprising and can certainly serve as inspiration for other taxpayers in situations where the tax position applied in a closed period has an impact on a related item questioned by the tax administrator during an audit of a later period.

The Supreme Administrative Court simply states that the period during which the active accrual was created had closed. In the current period, where the accrual has been dissolved and the disputed expense has been accounted for, it cannot be revised that the accrual should not have been created in the first place, even in the case of an implied tax assessment for the period in which the estimate was created.



Ivana Krylová
ivana.krylova@cz.ey.com
+420 731 627 005



Lenka Doležalová
lenka.dolezalova@cz.ey.com
+420 730 813 639

A tougher Supreme Administrative Court stance when assessing the connection between advertising costs and a company's economic activity

In its recent [ruling](#), the Supreme Administrative Court upheld the tax administrator's decision denying a company's claim for a VAT deduction on received advertising, which the company had claimed in connection with the promotion of a trademark. Unlike the Municipal Court, the Supreme Administrative Court saw no connection between the received advertising and the company's economic activity.

Case summary

The company owned a gas station. First, it entered into a trademark agreement to brand its gas station. Later, it entered into a lease agreement for the gas station with a third party. Finally, it leased advertising space on another company's vehicles, on which the gas station's name was advertised. The tax office assessed input VAT on the advertising services received, as it did not see a connection between the received advertising and the company's economic activity.

Among other things, the company argued that promoting the gas station was a condition imposed by the tenant. It therefore used an established brand name to increase customer confidence. According to the company, the advertising also secured and

maintained its rental income and increased the value of the gas station for future sale. The company justified the gradual reduction in rent, which ultimately only slightly exceeded the advertising costs, by the tenant's poor financial situation. Advertising on vehicles and on the gas station sign also promoted the company's brand. According to the company, the obligation to correctly present the trademark and its placement at the gas station stemmed directly from the trademark licensing agreement.

The Municipal Court in Prague initially ruled in favor of the company. However, the Supreme Administrative Court overturned the Municipal Court's decision and returned the case for further proceedings.

The connection between the advertising and the economic activity

The Supreme Administrative Court, referring to the established case law of the Court of Justice of the European Union, reiterated that there must be a direct and immediate link between the consideration received and the economic activity of the payer. This link may be either direct, where the costs form part of the price of specific outputs, or indirect, where the costs form part of overhead costs and are included in the price of goods or services provided by the taxable person. In the case under consideration, the Supreme Administrative Court found neither of these types of link to exist.

The Supreme Administrative Court stated that a loose or theoretical connection is not sufficient. On the contrary, it must be proven that the advertising performance actually supports the economic activity of the payer and represents an element that determines the price of their goods or services.

In the case under review, the Supreme Administrative Court stated that the content of the advertising performance - brand promotion - was not directly and immediately related to the economic activity of the company, which was the leasing of a gas station. The court pointed out that the presence of brand advertising in public spaces could have a real impact on the business of entities engaged in the distribution of fuel and related products, especially those that trade in products of this brand. However, the company did not engage in such activities during the relevant period.

The only connection between the advertising performance and the company's economic activity was the designation of the gas station with this brand. However, according to the court, this was only a loose connection that did not directly affect the company's economic sphere.

Demonstrating the economic benefits of advertising services

In its ruling, the Supreme Administrative Court also addresses the issue of proving the economic benefits of advertising services. The court emphasized that the taxpayer must be able to prove how advertising services specifically support its economic activity, not only in theory but also in practice.

The company argued that the advertising increased the value of the gas station and ensured rental income. However, the Supreme Administrative Court found these claims not to be sufficiently proven, pointing out that the lease agreement was concluded more than a year before the advertising agreement, which casts doubt on any causal link between the advertising and the securing of rental income.

Another important factor in the Court's decision was the fact that the rent had been decreasing over the years, which directly contradicts the claim that advertising has a positive effect on rent levels. The Court thus clearly stated that the mere theoretical possibility that advertising will increase rent in the future is not sufficient to claim a tax deduction.

In practice, it is important that the company be able to specifically demonstrate how advertising performance is reflected in the payer's economic activity. General statements about increasing asset value or securing income are not sufficient.

A few notes on the burden of proof in tax proceedings

It is important to remember that the primary burden of proof regarding the fulfillment of substantive conditions for claiming a VAT deduction lies with the taxpayer. The taxpayer must prove not only the fulfillment of formal requirements, such as the existence of a tax document, but also the fulfillment of substantive conditions, such as a direct connection with economic activity.

If the tax administrator questions the taxpayer's claim, they must substantiate their doubts with specific facts. In such a case, the burden of proof shifts back to the taxpayer, who must submit further evidence refuting the tax administrator's doubts.

Judgment of the Court of Justice of the European Union in *Amper Metal* and its application in the case

In its decision, the Supreme Administrative Court also addresses the (for taxpayers) favorable judgment of the Court of Justice of the European Union in the *Amper Metal* case, which dealt with the application of a claim for a deduction from advertising services, the price of which, according to the tax administrator, was

unreasonable and did not lead to an increase in the company's turnover. The Court concluded that the price of advertising does not affect whether a taxable supply has been made. It also rejected the idea that the application of the deduction should be subject to the condition that the taxable supply received must lead to an increase in the company's turnover.

While in the *Amper Metal* case, according to the Supreme Administrative Court, the connection with economic activity was proven, as the advertising services promoted the company's own activities, in the case assessed by the Supreme Administrative Court, this connection is missing. The promoted brand was not directly related to the economic activity of the company, which consisted in the rental of real estate.

Partial recognition of the deduction entitlement

Another interesting aspect of the judgment is the issue of partial recognition of the right to deduct VAT. In its original decision, the Municipal Court pointed out that the tax administrator had failed to adequately address the argument that it was not possible to refuse to recognize the performance at least to the extent that it had been proven.

The Supreme Administrative Court did not directly address this issue in its decision, as it primarily ruled on the existence of a direct link between the advertising performance and the economic activity of the payer.

After the case is returned to the Municipal Court, it will be interesting to see how the Court deals with this issue and whether it will set more specific criteria for determining the extent of proven performance.

Increased risks for specific types of payers?

The ruling of the Supreme Administrative Court may have an impact in particular on the following types of companies, which may be at greater risk of having the connection between advertising costs incurred and their own economic activity questioned by the tax authorities:

- ▶ holding companies or companies within a group;
- ▶ companies with a diversified portfolio of activities;

- ▶ companies in the field of property management and rental;
- ▶ companies promoting foreign brands.

Practical recommendations

Based on developments in case law regarding tax deductions for advertising services, we recommend that companies, when purchasing such services, in particular:

- ▶ document the business plan and expected benefits for their own economic activity;
- ▶ collect evidence of advertising performance on an ongoing basis;
- ▶ evaluate the impact of advertising activities on the company's economic results;
- ▶ for long-term advertising contracts, regularly evaluate their contribution to economic activity and update them, as appropriate;
- ▶ consider the possibility of a partial deduction and prepare an appropriate defense if the connection with economic activity can only be partially proven.

The Supreme Administrative Court found no connection between the received advertising and the company's economic activity. It stated that a loose or theoretical connection is not sufficient. On the contrary, it must be proven that the advertising actually supports the payer's economic activity and represents an element that determines the price of its goods or services.



Vladimír Sopkuliak
vladimir.sopkuliak@cz.ey.com
+420 730 191 770



Question on the limits for refusing the benefits arising from the EU Directive on the taxation of parent companies and subsidiaries

Following an interesting question in the Nordcurrent case, Lithuanians are now posing another interesting question to the Court of Justice of the European Union in the [Neo Group](#) case concerning the limits for refusing the benefits arising from the EU directive on the taxation of parent companies and subsidiaries.

In simple terms, what was it about?

A Lithuanian company paid dividends to its long-term Cypriot parent company, tax exempt. Lithuanian authorities are now imposing withholding tax, arguing that the law has been abused.

But note the interesting context

Above the Cypriot parent company is another holding company, which purchased the Cypriot parent company from a Belizean company relatively shortly before the problematic dividend payment, with the ultimate owner of the group remaining unchanged in this sale. Put simply,

the situation appears to be that dividends from Lithuania effectively flowed through Cypriot holding companies to the ultimate owner as part of the purchase price for the transfer of the shareholding.

How the company defends itself?

The Lithuanian company argues that there is no abuse because the Cypriot parent has held a stake in the Lithuanian subsidiary for many years, the transactions involving the Cypriot parent do not represent any additional tax advantage for the Cypriot parent, and the Cypriot parent is its beneficial owner, which qualified for dividend exemption both before and after.

What the Court is asking?

Interestingly, the Lithuanians do not primarily question the status of the Cypriot parent, but rather the circumstances above it (i.e. the overall context), and the Lithuanian court logically asks how to apply the prohibition of abuse of law in such a situation.

Looking forward to the result.

In simple terms, the situation is that dividends from Lithuania effectively flowed through Cypriot holding companies to the ultimate owner as part of the purchase price for the transfer of the shareholding. The Lithuanian court logically asks how to apply the prohibition of abuse of law in such a situation.

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 Matušík +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

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Did you know:

- ▶ It appears the EU's Unshell directive and transfer pricing directive initiatives are [dead](#)?
- ▶ A [draft](#) decree on the tax return form and GIR for top-up taxes has been published?
- ▶ The National Accounting Council's [interpretation](#) of I-51 on the reporting of products and goods used for demonstration purposes has been published?
- ▶ A [communication](#) on the depreciation of photovoltaic systems following the abolition of the special scheme has been published?
- ▶ The G7 issued a [statement](#) regarding the relationship between Pillar 2 rules and the US, which, among other things, states the exemption of US groups from the application of the IIR and the UTPR?