Tax and Legal News

July, August 2026

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

Another (very hot) season is behind us – Thank you for your support. We hope you enjoy at least a little bit of downtime during your well-deserved summer vacation!

The EU proposes simplifying direct taxes – The European Commission has put forward a proposal for a tax omnibus package aimed at simplifying and modernizing the EU's direct taxation framework. The proposal includes many interesting changes.

Shakira and Spanish tax residency – Shakira's case serves as a useful reminder for all internationally mobile individuals. Tax residency is not merely a matter of a formal address, high-profile personal connections or a subjective sense of where one "lives." What matters are concrete facts and the ability to substantiate them.

A parcel of land that forms a functional unit – We look at the guidelines on the application of VAT to real estate, which, among other things, stipulate that in the case of the transfer of a building with land, the concept of principal and ancillary supplies now takes precedence over the concept of a functional unit.

A major overhaul of Czech fund law – The Act on Investment Companies and Investment Funds (ZISIF) amendment is currently awaiting Senate approval and represents the most extensive overhaul of Czech fund regulation since the ZISIF was enacted. In addition to the mandatory transposition of the European AIFMD II Directive, the amendment also addresses domestic market needs.

Artificial holding companies – We tell you a sad story that may complicate considerations regarding the tax implications of holding companies.

Repair vs capital improvement – Here is another piece of the puzzle regarding this seemingly inexhaustible topic. According to the court, the expenses incurred to transform a virtually unusable property into one that will be used in the coming years and generate income were so high that they meet the definition of a capital improvement.

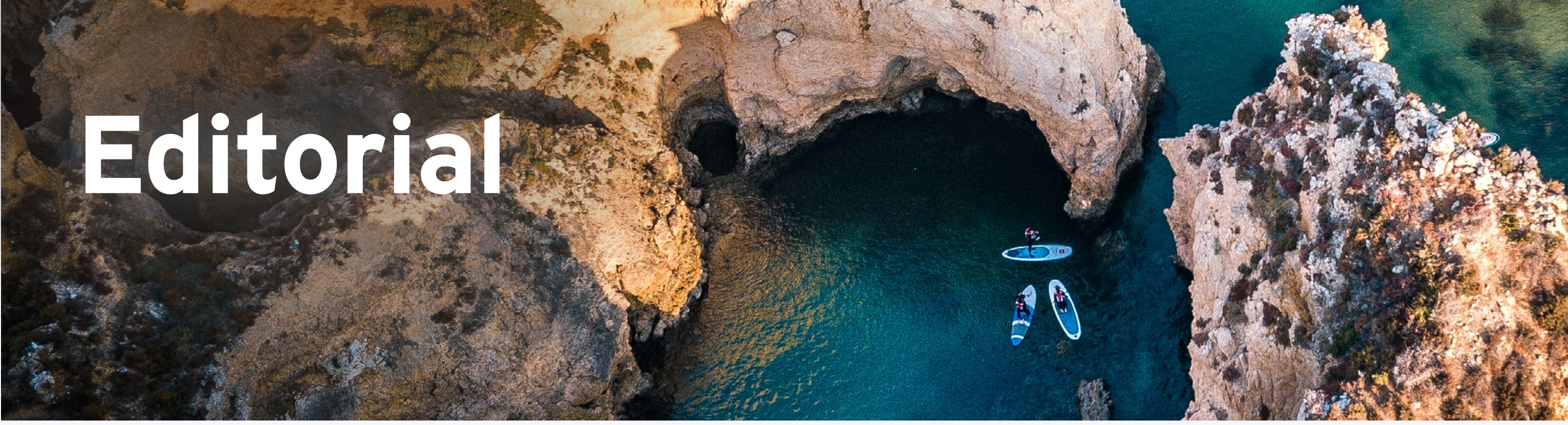
Retroactive application of the exemption for royalties – We update you on an interesting dispute regarding the interpretation of the conditions for applying the exemption under the Directive on a Common System of Taxation of Interest and Royalties between Affiliated Companies from Different Member States—we are entering the final stages.

What else caught our attention?

- ***Is there a chance of getting a refund on import duties in the US?*** – Under certain circumstances, there may be a chance to get a refund on import duties in the U.S.—but you need to act quickly—please contact us here if you're interested.
- ***Cross-border mergers*** – Tax administrators reportedly intend to focus more on situations in which Czech entities merge with a foreign entity and assets are transferred to the foreign entity as part of the merger (outside the Czech permanent establishment).

Welcome to the summer issue of Tax and Legal News - what's inside?

- ***Tightening of CBAM rules*** - It appears that the list of products subject to the CBAM regulation will likely be expanded.
- ***VAT amendment*** **-** A VAT Act amendment introduces new rules for the digital economy starting in 2027.
- ***Transfer pricing*** - The OECD has published draft update to Chapter VII of the Transfer Pricing Guidelines, focusing on the issue of intra-group services.
- ***M&A*** - Locked box vs. completion accounts - how the choice of mechanism influences risk allocation and the final purchase price in M&A transactions.
- ***Statute of limitations*** - The Supreme Administrative Court has ruled on the suspension of the deadline for assessing taxes during ongoing civil proceedings.
- ***EET (Electronic Sales Registration) 2.0*** - The Financial Administration has published the first technical documentation for EET 2.0 and outlined the implementation schedule.
- ***Transparency in compensation*** - In our series on the amendment to the Labor Code and pay transparency, we have focused on one of the newly introduced measures—compensation systems.
- ***Interest rates*** - The Czech National Bank's Bank Board raised interest rates by 0.25 percentage points—bringing the 2T repo rate to 3.75%.



Editorial

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Another (very hot) season is behind us

June is traditionally a very busy month for most of our loyal readers, and this year we really worked up a sweat again. The weather didn't help, underscoring this with some impressive temperature records of 40+ degrees during the last weekend before the filing deadline.

And it's no longer just about filing a tax return. There haven't been any dramatic legislative changes this year. A few are still in the works and are stuck somewhere in the legislative process. So the tax administration has at least spiced things up by requiring us to append all gift agreements. There have been plenty of lively discussions about whether a table with all the details is sufficient, whether to just copy hundreds of pages or to wait for a request.

For those of you who "fell under the pillar" in 2024 (i.e. the OECD BEPS 2.0 initiative, the global minimum tax, Pillar 2), we hope it wasn't literal and that it didn't kill you. We all knew it would be complicated—a mountain of rules and thousands of pages of interpretations, diving into international accounting standards, calculations demanding extensive input data and maneuvering in safe harbors. Plus, it was the first reporting period, so there was a lack of preparation on all fronts. But few expected it would be such a nightmare. And it was far from over on June 30.

If you didn't enjoy the "pillar," then perhaps you at least enjoyed the Unified Monthly Employer Report (JMHZ). That turned out really well, too. With a nice idea and the goal of simplifying everything, it turned into a monstrous ordeal for everyone who hadn't had it nearly this complicated before. It's still being supplemented and clarified to this day. Apparently, things became so intense that the tax administration declared the JMHZ one of the legitimate reasons for extending the income tax return filing deadline.

Those of you who deal (in addition to the above?) with indirect taxes may have had the chance to delve into EET (Electronic Sales Registration), which, in its new form, has raised a number of interesting questions, e.g. for corporations that collect money at their business locations on behalf of someone else (various forms of agency and cooperation) or for logistics companies that handle cash-on-delivery payments in some form.

If you export to the U.S. and your goods were subject to import duties, you are surely already hard at work getting them refunded following the U.S. courts' decision (the deadline is extremely tight and the clock is ticking).

For those who've already finished everything and are bored, the European Commission issued the tax omnibus on June 24 with the aim of simplifying the tax system and boosting competitiveness. You can read more about it in one of our articles. It's a bit of a "promises, promises" situation, though, since the announced effective date is 2029, and for some of the more attractive provisions, as late as 2032 or 2037.

Thank you for your support. We hope you enjoy at least a little bit of downtime during your well-deserved summer vacations!

International taxation

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The EU proposes simplifying direct taxes

The European Commission published the Direct Taxation Omnibus, which aims to simplify and modernize the EU's direct taxation framework. Here are our initial observations on the proposed changes:

Directive on a Common System of Taxation of Interest and Royalties (IRD)

- elimination of the requirement for a minimum ownership stake between companies in order to apply the exemption
- reduction of preliminary administrative procedures–a general shift toward "self-assessment" (with certain exceptions)
- introduction of a rule against double non-taxation
- update to the list of qualifying forms of companies

Directive on a Common System of Taxation of Parent Companies and Subsidiaries (PSD)

- elimination of the requirement for a minimum ownership stake between companies in order to apply the exemption
- extension of the scope of application to pension funds
- similar to the IRD, a reduction in preliminary administrative procedures (with certain exceptions)
- update to the list of qualifying forms of companies

Directive on Tax Avoidance Practices (ATAD)

(a) Limitations on the deductibility of interest

- a uniform 30% EBITDA limit (not less)
- mandatory safe harbor of EUR 3 million (indexed)
- exclusion of loans from third parties (if used for the company's own activities)
- further easing in case of a significant decline in EBITDA
- mandatory "group escape rule"
- new exemption for the defense sector

(b) CFC rules

- exclusion of the application of CFC (Controlled Foreign Corporation) rules for groups under the Pillar 2 regime (except for specific cases, e.g. side-by-side regimes under certain circumstances)
- mandatory use of Model A only
- exemption for small and medium-sized groups

(c) Hybrid mismatches

- repeal of the rules governing so-called "imported hybrid mismatches" due to their complexity

(d) New R&D scheme

- Introduction of a minimum regime for eligible research and development expenditures

(e) GAAR

- expansion to include Pillar 2

Directive on a Common System of Taxation for Mergers, Divisions, etc. (TMD)

- extension to other types of reorganizations
- update to the list of qualifying forms of companies

In addition, certain amendments are also proposed in the:

- **FASTER Directive** (including modifications reflecting the changes to the PSD and IRD described above)
- **Directive on Tax Dispute Resolution Mechanisms (DRM)**
- **Directive on Administrative Cooperation in the Field of Taxation (DAC)**, e.g. a new exemption from DAC6/MDR reporting for selected groups falling under Pillar 2, an adjustment to the DAC6 hallmarks or a change to selected deadlines.

Effectiveness - Most of the changes are proposed to take effect in 2029; however, for certain provisions, the implementation is proposed to be significantly postponed until 2032 (ATAD interest rate safe harbor) or 2037 (a substantial portion of the changes to the PSD and IRD).

> The European Commission has published a tax omnibus package aimed at simplifying and modernizing the EU's direct taxation framework.

International taxation

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Shakira and Spanish tax residency: 183 days, relationship in Barcelona and the burden of proof

The case of Colombian singer Shakira is one of the most high-profile disputes in recent years concerning an individual's tax residency. At first glance, it appeared to be a media-friendly celebrity scandal. From a tax perspective, however, it is particularly interesting because of how the court specifically assessed physical presence, personal ties, economic interests and the tax authority's burden of proof.

Recent developments in May 2026 brought a major victory for Shakira. The Spanish National Court ruled that she should not have been considered a Spanish tax resident in 2011. According to available information, the Spanish tax authorities failed to prove that the singer spent more than 183 days in Spain that year. The court noted that the authorities had documented a maximum of 163 days of her presence in Spain—20 days short of the legal threshold for meeting the physical presence test.

The ruling concerns a dispute dating back to 2011. According to publicly available sources, the court overturned the additional tax assessments and penalties imposed by the Spanish tax authorities and ordered the refund of amounts in the tens of millions of euros. Sources cite a figure exceeding EUR 55 million, or approximately EUR 60 million including interest.

It wasn't just about counting the days

Spanish tax residency rules for individuals are not based solely on a mechanical count of days. Under Spanish tax law, an individual may be considered a resident, among other things, if they remain in Spain for more than 183 days in a calendar year. When determining this period, sporadic absences are also taken into account, unless the taxpayer proves tax residency in another country. In addition, it is also relevant whether the principal center or base of a person's economic activities or economic interests is located in Spain. There is also a rebuttable presumption of residence if the person's non-separated spouse and minor dependent children habitually reside in Spain.

It was precisely these broader personal and economic ties that were one of the key points of contention in Shakira's case. The Spanish tax authorities argued, among other things, that she had a relationship with then-FC Barcelona player Gerard Piqué and that her life was, in fact, centered in Spain. However, according to available information, the court did not accept this argument. For the purposes of assessing residency, her relationship with Gerard Piqué could not simply be equated with marriage, and at the same time, it was not proven that the main center or base of her activities or economic interests was in Spain in 2011.

Another important factor was the nature of her professional activities during that period. According to available information, Shakira spent a significant portion of 2011 traveling as part of her world tour. This supported the argument that her professional activities were not concentrated in Spain.

What is the practical significance of the May 2026 decision?

The May ruling reiterates that tax residency is primarily a matter of facts and the ability to prove those facts. It is not sufficient for the tax authority to point to general personal ties, a relationship that has received media attention or repeated stays in a particular country. For an individual to be considered a tax resident, it must be proven that the relevant criteria have been met.

According to available information, Shakira failed to meet the 183-day test because her proven presence in Spain did not reach the legal threshold, nor did the argument regarding her principal center of economic interests hold up. The court therefore annulled the related tax assessments and penalties for 2011.

At the same time, it is worth noting the need for procedural caution. Some sources indicate that the Spanish tax authority may, or intends to, appeal the decision to the Supreme Court. For the purposes of this article, it is therefore safer to currently state the conclusion as follows: "The National Court ruled that Shakira was not a Spanish tax resident for 2011," rather than necessarily stating that "the entire matter is definitively settled.".

What's the takeaway?

Shakira's case serves as a useful reminder for all internationally mobile individuals: tax residency is not merely a matter of a formal address, high-profile personal connections or a subjective sense of where one "lives." What matters are the specific facts and the ability to substantiate them.

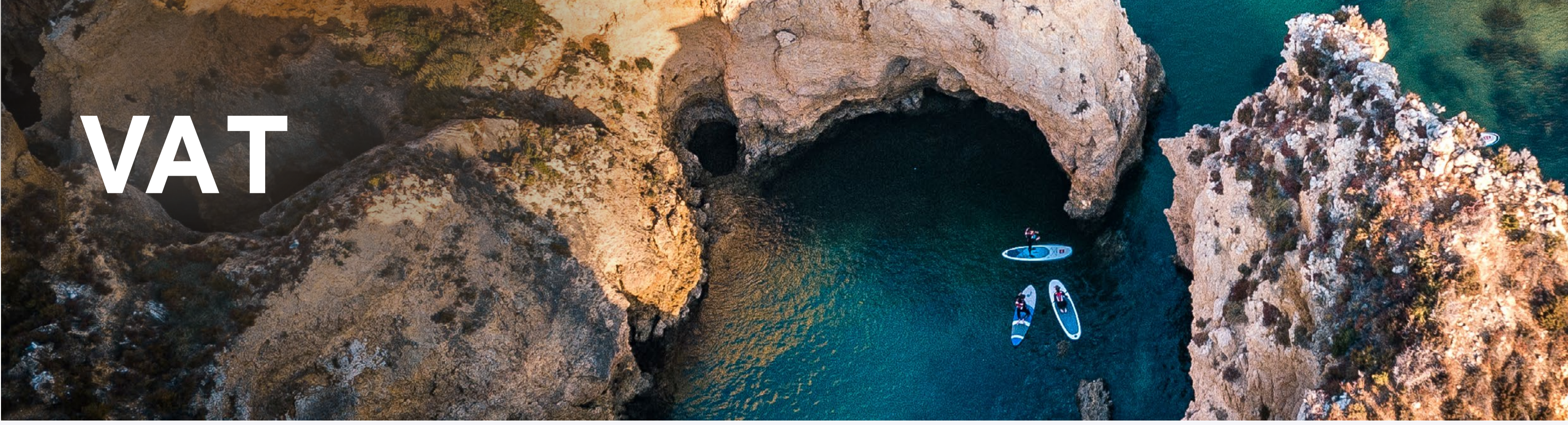
For individuals with ties to multiple countries, it is therefore crucial to keep a running record of days spent in each country and to retain supporting evidence. In practice, this may include travel records, airline tickets, calendars, work-related documentation, contracts, proof of the place of business, housing information, or documents regarding family circumstances. For individuals with significant assets, cross-border income or a mobile work style, it may be equally important to assess in advance not only local residency tests but also the relevant double taxation treaty and its tie-breaker rules.

The case also shows that the outcome can vary from year to year. According to a May 2026 ruling, 2011 ended successfully for Shakira, while the years 2012–2014 were resolved through a separate agreement with the prosecutor's office. Tax residency is therefore not determined once and for all, but is always assessed based on the specific circumstances of the relevant period.

The decision also shows that tax authorities are not afraid to actively assert the residency of high-income individuals.

Shakira's case serves as a useful reminder for all internationally mobile individuals: tax residency is not merely a matter of a formal address, high-profile personal connections or a subjective sense of where one "lives." What matters are the specific facts and the ability to substantiate them.

VAT



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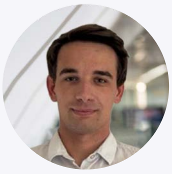

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A parcel of land forming a functional unit with a building in light of the tax authorities' information

The General Financial Directorate (GFŘ) issued a notice in early 2026 regarding the application of VAT to real estate effective July 1, 2025[1] (the Notice). Among other things, the information stipulates that, in the case of the transfer of a building with land, the concept of principal and ancillary supplies now takes precedence over the concept of a functional unit.

Let's take a look together to see if this is correct.

1. A functional unit consisting of land and a building

Article 135(j) of the VAT Directive[2] states that *"Member States shall exempt the supply of a building or parts thereof, and of the land on which it stands, other than the supply referred to in point (a) of Article 12(1),"* that is, except for the supply of a building or part thereof prior to its first occupation and except for the supply of the land appurtenant thereto. Therefore, only the transfer of a building that has already been occupied (i.e. after it was first occupied) and the transfer of the adjacent land are eligible for a VAT exemption. The transfer of a new building and the adjacent land must always be subject to VAT.

Article 12 of the VAT Directive further requires Member States to define the term *"the land on which a building stands"*. The Czech legislature did not fulfill this obligation until 2015 (i.e. more than 10 years after the VAT Directive entered into force upon the Czech Republic's accession to the EU), when the Czech VAT Act (ZDPH)[3] defined the term "land that forms a functional unit with a structure" (now § 48(4) of the VAT Act). The legislature's intention to implement the concept of "adjacent land"—derived from the VAT Directive—into Czech law through

1 https://financnisprava.gov.cz/assets/cs/prilohy/d-seznam_dani/120126__Informace_k_uplatnovani_DPH_u_nemovitych_veci_od_010.pdf

2 Council Directive 2006/112/EC of November 28, 2006, on the Common System of Value-Added Tax (VAT Directive)

3 Act No. 235/2004 Coll. on value added tax (the "ZDPH")

the concept of a "functional unit" is confirmed in the explanatory memorandum[4] to Act No. 360/2014 Coll., whereby the amendment incorporated this concept into § 56 of the VAT Act, which governed the exemption of the transfer of buildings. However, during the legislative process, the Senate postponed the effective date of the amendments to § 56 of the VAT Act, for which the definition of a "functional unit" was essential. As a result, a temporary inconsistency arose in the 2015 calendar year: although the term "functional unit" had already been defined, the provision to which it was to be applied in practice did not take effect until later, on 1 January 2016.

2. Supreme Administrative Court Judgment No. 7 Afs 374/2021-36

The interpretation of the term "land that forms a functional unit with a building" was addressed in Supreme Administrative Court Judgment No. 7 Afs 374/2021-36 dated 10 May 2022, on which the General Financial Directorate's Notice is largely based. Unfortunately, the case concerned a period when the aforementioned legislative inconsistency existed. In 2015, the plaintiff entered into purchase agreements, the subject matter of which was always the transfer of a new single-family home situated on a building lot (hereinafter, we will use the term "developed lot" for this property) and, at the same time, the transfer of another separate lot immediately adjacent to this home, which was in fact used as a garden or related area (hereinafter we will use the term "garden lot"). While the plaintiff taxed the transfer of houses and developed lots at a reduced rate, it considered the transfer of adjacent garden lots to be an exempt supply of undeveloped land. The tax administrator, on the other hand, concluded that these lots also formed a single functional unit with the houses and assessed additional VAT.

The lower court agreed with the tax administrator and supplemented the argument with the concept of principal and ancillary supplies, which is based on CJEU case law and whose application would also lead to an obligation to report output tax. The Supreme Administrative Court (SAC) described the arguments of the regional court and the tax administrator as *"internally contradictory"*. The SAC went on to say that *"this provision therefore (unlike the doctrine of principal and ancillary supplies) applies to situations involving two separate supplies (land and a building) that nevertheless constitute a functional unit for the purposes of the VAT Act (which leads to certain consequences prescribed by law). This indicates that the doctrine of principal and ancillary supplies and the doctrine of the functional whole cannot coexist. Indeed, the principle of principal and ancillary supplies must take precedence over the rules on the functional unit. It is necessary to determine whether the transaction in question constitutes a single supply for VAT purposes (i.e. to assess the matter from the perspective of the principal and ancillary supplies), and only then (if it does not constitute a single supply) to view the transaction as two separate supplies and examine whether they meet the conditions for a functional whole."*.

The SAC therefore concludes that the "functional unit" doctrine applies only if the transfer of the building and the land is not a single supply. However, the "functional unit" doctrine (of adjacent land) would never be applied, as this would be contrary to the VAT Directive (as we will show later). The simultaneous transfer of the building and the developed lot is, in fact, ALWAYS A SOLE SUPPLY. The main reason is that, under Czech law, a building cannot be transferred without also transferring the land on which it is situated. According to the Civil Code, the land and the building constitute a single entity that can be transferred only as a whole[5]. It is undoubtedly important for the buyer to own not only the building but also the parcel of land on which it stands. According to established CJEU case law, a single supply must also be understood to include a supply consisting of two (or more) elements, where neither element is ancillary and both are equally important to the buyer.[6]. However, this applies not only to the house itself and the developed lot, but also to the garden lot. For buyers, living in a single-family home with a garden is important. Owners of single-family homes are fulfilling their dream of stepping out of their home into their own garden, rather than onto public land or a busy street. Otherwise, they would simply buy an apartment in an apartment building.

Conversely, the doctrine of principal and ancillary supplies applies to determining whether a parcel of land is developed or undeveloped. As the Notice correctly summarizes, if there are only minor structures on the land (such as a bench or a retaining wall) that are not the primary objective of the purchase for the buyer, the land is treated as if it were undeveloped (as if these minor structures were not there).

4 https://www.psp.cz/sqw/text/orig2.sqw?idd=110801

5 If no right to build has been established, or if the structure is not owned by another person under the old Civil Code.

6 See the CJEU judgment in Case C-44/11, Deutsche Bank

Furthermore, the authors of the article believe that, in this case, the SAC had to bridge a legislative gap that arose in 2015, when—although the concept of a parcel of land forming a functional unit with a structure was already defined by law—the new wording of § 56 had not yet taken effect. The SAC's conclusions should therefore be understood as temporary.

3. Inconsistency with the VAT Directive

Giving priority to the concept of principal and ancillary supplies over that of adjacent land is inconsistent with the VAT Directive. Both a textual and a historical interpretation support this conclusion.

The VAT Directive clearly requires Member States to define the concept of land adjacent to a building. At the same time, it imposes a clear obligation that land adjacent to a building be taxed under the same regime as the building itself. This obligation has been enshrined in EU law since the entry into force of the so-called Sixth VAT Directive, that is, since 1977. On the contrary, the concept of principal and ancillary supplies was developed later as a result of the CJEU's interpretive activity. It was fully articulated in Case C-349/96, Card Protection Plan, as late as 1999. An interpretive principle that emerged approximately 20 years after the VAT Directive entered into force cannot override an explicit rule established by the Directive.

As one of the authors of this article noted in his article published in the Czech Chamber of Tax Advisors Bulletin No. 3/2014, titled "The Transfer of Developed and Undeveloped Land and Value-Added Tax," "the drafters of the VAT Directive apparently wanted to spare us the dilemma of whether these are two separate transactions subject to distinct regimes, or whether the land is an ancillary transaction to the main building being transferred.". In this case, therefore, the aforementioned principle of uniform taxation of the building and the land applies. The land must be considered developed, and the taxation of its transfer thus depends on the age of the building."

4. Practical application of the doctrine of the functional unit

The Czech legislature has implemented the concept of land adjacent to a structure through the term "land that forms a functional unit with the structure." Such land is land that serves to operate the structure or fulfill its function, or is used in conjunction with the structure. The developed lot meets all of these conditions. However, there is no doubt that the garden attached to the single-family home is used in conjunction with the building. For VAT purposes, the developed lot and the garden lot therefore together constitute a single parcel of land adjacent to the building and must therefore be subject to the same VAT regime as the building.

In practice, more complex cases may arise in which a single contract transfers multiple structures—which are not minor structures—and multiple parcels. Some structures may be new (prior to first occupancy), while others may be older. In most cases, however, it will not be a problem to identify the parcels that form a functional unit with each such structure based on the principles outlined above, and to apply the same tax regime to such parcels as to the structure itself.

5. Transfer of land without a structure on it

The General Financial Directorate Notice further states that the concept of a functional unit can be applied only when land is transferred without the structure erected on it—that is, when the sale of the land is treated as a separate transaction.

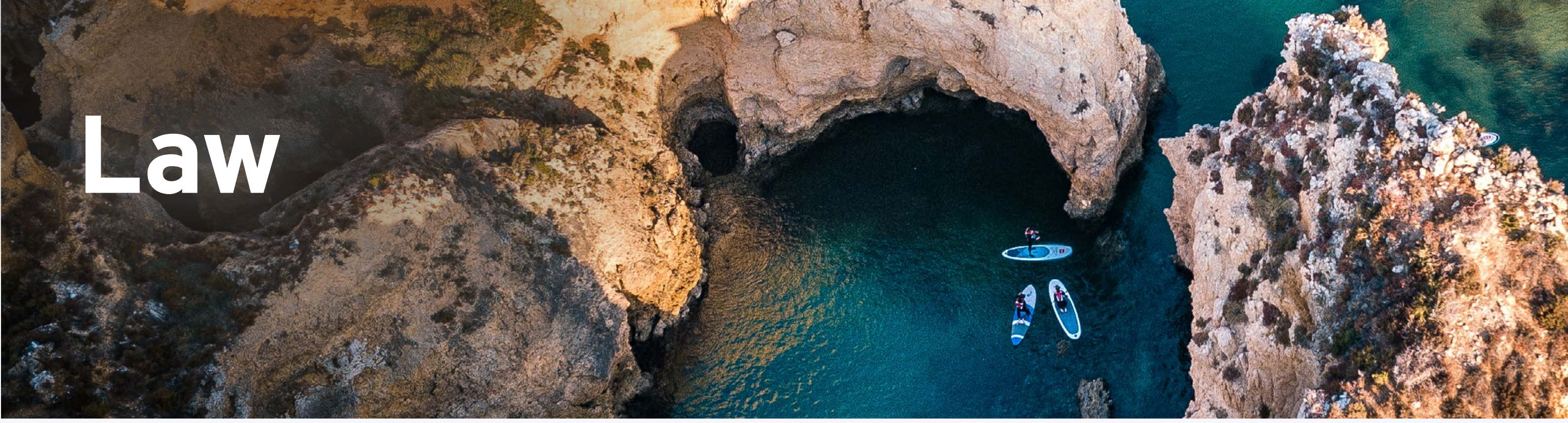
However, this is inconsistent with the CJEU's decision in Case C-73/85, Kerrutt. The judgment holds that if a parcel of land on which a structure—other than a minor structure—stands is transferred separately, such a transfer is always taxable regardless of the age of the structure. This means, however, that it is precisely in this situation that the "functional unit" doctrine must not be applied.

In the Notice, therefore, everything is reversed. Where the VAT Directive imposes an obligation to apply the doctrine of adjacent land (functional unit), the Notice states that the principal-ancillary supply doctrine should be applied instead. Where CJEU case law excludes the doctrine of adjacent land (functional unit), the Notice states that, conversely, the doctrine should be applied.

6. To conclude

Based on the foregoing, we believe the conclusions contained in the Notice are not in accordance with the VAT Directive or the relevant CJEU case law. The concept of a functional unit should take precedence when assessing the transfer of a building and adjacent land, as it is derived directly from EU law. In practice, although incorrect application will in many cases still lead to the correct determination of the tax regime due to the similarity of the two concepts, differences cannot be ruled out. Caution is required when making a sale—we would be happy to assist you in setting up the correct VAT regime.

We consider as problematic the idea that, in the transfer of a building with land, the concept of principal and ancillary supplies now takes precedence over the concept of a functional unit.



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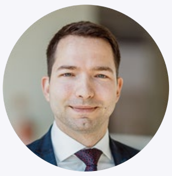

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Major amendment of the Act on Investment Companies and Investment Funds (ZISIF): key changes are here

A major overhaul of Czech fund law is nearing completion. What does the ZISIF amendment entail and how do we prepare for it?

An amendment of Act No. 240/2013 Coll. on investment companies and investment funds (ZISIF) is currently awaiting Senate approval and represents the most extensive overhaul of Czech fund regulation since the adoption of the ZISIF. Its main impetus is the transposition of the European AIFMD II Directive, which harmonizes and tightens the rules for alternative investment funds across the EU. In addition to the mandatory transposition, the amendment also addresses domestic market needs: it eliminates goldplating, modernizes certain processes and creates new opportunities for expanding investment strategies. Below, we summarize selected areas with the most significant practical impact.

Note: As of the date this article was written, the amendment is still under consideration by the Senate, and neither the effective date nor the final text has been definitively determined.

1. Loan-originating funds – the first comprehensive framework

Until now, Czech regulations did not formally recognize the term "loan-originating fund." The amendment changes this by introducing a detailed and strict regime for special funds, qualified investor funds and comparable foreign funds whose investment strategy consists primarily of acquiring receivables from fund loans or for which the face value of such receivables represents at least 50% of the fund's capital.

A receivable from a fund loan is defined as a receivable arising from a loan or credit agreement entered into on behalf of the fund as the creditor, as well as a receivable assigned to the fund, provided that the fund manager participated in structuring the loan or defining its parameters. What is decisive, therefore, is the actual role of the fund manager in the creation of the credit exposure, not the formal designation of the transaction.

The pillars of the new regulation are:

- Credit policy and risk management: The manager must establish, maintain and review at least once a year effective policies, procedures and processes for acquiring receivables, assessing credit risk and managing the portfolio on an ongoing basis.
- Concentration limits: The fund's exposure to a single debtor that is a financial institution (bank,

insurance company, other AIF, etc.) may not exceed 20% of the fund's capital.

- Leverage: For open-end funds, the maximum leverage is 175% of NAV; for closed-end funds, it is 300% of NAV.

- Prohibition of the "originate-to-distribute" model: The amendment expressly prohibits the management of a fund whose strategy is, even partially, focused on acquiring receivables solely for the purpose of assigning them to third parties. Upon the assignment of any receivable, the fund must retain at least 5% of its face value—until maturity for receivables with a maturity of up to eight years, or for at least eight years in other cases.

- Prohibition on consumer loans: Investment funds (both self-managed and non-self-managed) are prohibited from providing consumer loans.

- Conflict of interest management (white label): The new § 20c of the ZISIF explicitly regulates situations in which a fund is managed at the initiative of another party (typically a parent group or an investor whose name the fund bears). The fund manager is required to prevent conflicts of interest and, if that is not possible, at least to transparently identify, address and disclose them to investors.

Transitional provisions: Funds established before 15 April 2024 (*this date and the dates listed below are subject to change*) generally have a period of 6 months from the effective date of the Act to bring their documentation into compliance with the new rules. Exposure and leverage limits do not fully apply to funds established before that date that continue to raise capital for a period of three years from the effective date; funds that do not accept any new capital after 15 April 2024 are permanently exempt from these limits. The rules on the processes for acquiring and retaining holdings do not apply at all to receivables acquired before 15 April 2024.

2. Mandatory liquidity management tools (LMTs) — a new standard for open-end funds

The amendment introduces a requirement that every manager of an open-end fund (with the exception of money market funds, for which a single tool is sufficient) select at least two liquidity management tools from the harmonized European catalog and incorporate them into the fund's articles of association. This is not merely a formality; the manager must also develop internal methodologies and procedures that enable these tools to be effectively activated.

The catalog of nine tools includes suspensions of new share issuance and redemptions, redemption gates (restrictions on the maximum volume of redemptions during a given period), extensions of notice periods, redemption fees, swing pricing (variable NAV pricing), dual pricing (a method of setting two prices), anti-dilution levy (a fee for large transactions), non-cash redemptions and side pockets (separate accounts for illiquid assets).

In practice, one can expect a preference for instruments that have a direct impact on the redemption process, typically extended redemption periods, redemption gates or swing pricing.
The choice of instruments must be consistent with the investment strategy, the liquidity profile of the assets, the results of liquidity stress tests and the investor structure. ESMA recommends combining a quantitative tool (redemption restrictions) with a tool that prevents dilution of value (anti-dilution).

The purpose of this regulation is to protect funds and their investors from the destabilizing effects of mass redemption requests. At the same time, in extreme situations, the liquidity of an investment may be temporarily restricted. Investors must be informed of this risk in a transparent manner.

3. Cross-border depositary — a conditional exemption, not a full passport

The amendment introduces the option of using a foreign depositary from another EU member state (even one without a branch in the Czech Republic). However, this exception to the domestic establishment rule is subject to conditions and is strictly case-by-case. The amendment sets forth three cumulative conditions that must be met in order to use a foreign depositary. These are:

- a lack of available depositary services on the domestic market (the operator must provide convincing evidence of this fact);

- a total volume of assets under management by the asset manager not exceeding EUR 50 billion; and

- individual approval granted by the Czech National Bank (CNB) for a specific fund.

Only when all these conditions are met may a bank from another EU member state act as the depositary for a special fund, even without a branch in the Czech Republic. The fund manager bears the burden of proof and must demonstrate to the CNB that the available depositary options in the Czech Republic do not meet the fund's needs.

The practical impact may be most pronounced for funds with unusual investment strategies or specific types of assets, where the domestic custodial market may lack the necessary technology or operational experience. In the longer term, this change may increase competitive pressure on domestic providers and support the development of the entire segment.

4. Outsourcing — stricter reporting requirements

The amendment significantly tightens the reporting requirements to the CNB regarding outsourcing, not only in the case of primary delegation but now also in the case of sub-delegation (delegation to another authorized person). The asset manager must report the identity of the authorized persons, a description of the delegated activities, the manner in which its own control mechanisms are established and ongoing due diligence.

The goal is to prevent the so-called "hollowed-out" operator (letterbox entity)—a situation in which the operator is merely a formal license holder and all substantive activities are carried out by third parties. The operator must demonstrably perform management and oversight functions, have adequate personnel resources and continuously monitor the activities of its outsourcing partners.

The stricter requirements now also apply to standard funds (UCITS), thereby further harmonizing the rules. Certain provisions regarding reporting (§ 459(2)–(4) and § 460(2)–(3) of the ZISIF) will not take effect until one year later, as the law is awaiting the implementing technical standards (RTS) that ESMA is required to submit to the European Commission by that date, which will specify the frequency and deadlines for reporting.

5. Other selected changes

Senior officers — transition to a notification system: The current system of formal approval for senior officers at the CNB is being replaced by a notification model aligned with the approach applied to banks and securities dealers. Both the manager and the administrator are required to notify the CNB of the intended appointment at least 30 business days in advance and to provide documentation for assessing the candidate's suitability. The CNB retains the authority to initiate administrative proceedings and prohibit the performance of duties if it has doubts about a person's suitability. Until the proceedings are concluded, the senior officer may not assume the position.

Expansion of permitted activities: Investment companies may now acquire and manage receivables from fund loans, manage special-purpose entities in the context of securitization and act as benchmark administrators. Investment companies authorized to exceed the applicable limit may also manage non-performing loans.

Division of mutual funds: The amendment allows for the first time the division or spin-off of a mutual fund—a change that both the market and regulators had been calling for. Fund managers will thus gain greater flexibility in reorganizing their portfolios.

Deregulation – elimination of minimum capital requirements: The amendment eliminates the statutory minimum capital requirements for investment funds, thereby removing a barrier to entry that had been criticized by the market as unnecessary. It also eliminates public oversight of the committee of real estate appraisal experts and ex ante review by the depositary.

6. Timeframe and next steps

On 9 June 2026, the amendment (Senate Document 252) was submitted to the Senate. Once approved by the Senate, the amendment will be forwarded to the President of the Republic. It will then be published in the Collection of Laws. If the amendment is published in the Collection of Laws by 31 July 2026, it will take effect on 1 September 2026; if published in August, it will take effect on 1 October 2026.

For investment funds and asset managers, the key factor following the amendment's entry into force will be a general 6-month transition period to align their articles of association, key disclosures and internal regulations. Outsourced reporting obligations to the CNB will not take full effect until one year after the effective date of the ZISIF amendment. Specific transitional exemptions will apply to funds acquiring loans for up to three years from the effective date.

The amendment sets forth several priorities that will need to be addressed immediately after it takes effect:

Area	Recommended steps
Loan-originating funds	Assess whether the fund falls under the new regime; conduct a gap analysis of the credit policy, limits, and contractual documentation; update the bylaws within 6 months.
LMTs	Select at least two liquidity management tools, incorporate them into the bylaws and prepare internal procedures for their implementation.
Depositary	Assess whether a cross-border solution makes sense; if so, prepare the supporting documentation to justify the request to the CNB.
Outsourcing	Map all delegations, including sub-delegations; verify that the administrator has a demonstrable organizational and personnel structure.
Senior officers	Update internal processes for appointing senior officers; ensure that the CNB is notified 30 days in advance.
New authorized activities and capital	Consider utilizing the newly permitted activities (debt management, securitization, benchmarks); if necessary, initiate amendments to the articles of incorporation in connection with the elimination of the minimum capital requirement.

Conclusion

The ZISIF amendment does not represent a revolution, but rather a profound evolution of the fund market. The focus is shifting from the formal establishment of rules to their day-to-day application in processes, risk management and internal governance. Those who began preparing early now have an advantage; for the rest, it is high time to act.

The amendment sets forth several priorities that will need to be addressed immediately after it takes effect, such as assessing whether the fund falls under the new regime, liquidity management tools and mapping all delegations, including sub-delegations.

Judicial decisions

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The negative consequences of poor tax planning

Here is a sad story that may complicate considerations regarding the tax implications of holding companies.

Background

- Let's start a few years back with the first phase of this case (2 Afs 94/2021 - 48).

- A Czech individual sold (tax-exempt) a 25% stake in a Czech company to a Cypriot company. The Cypriot company was subsequently entitled to 100% of the profits. The individual justified this on the basis of an overall agreement, under which the remaining portion of the stake was to be sold for much less, and this arrangement was intended to guarantee payment of the purchase price.

- The Czech company subsequently paid (tax-exempt) a share of the profits to the Cypriot company. These amounts were immediately transferred to the Czech individual (as installments of the purchase price). In addition, the individual had the right to dispose of the Cypriot company's accounts.

- The tax administrator did not approve of this and assessed the Czech company for withholding tax on the profit share in question. The tax administrator concluded that the actual owner of the profit shares paid out was a Czech individual and that the amounts paid out merely "passed through" the foreign accounts.

- Both the Regional Court and the Supreme Administrative Court ruled in favor of the tax administrator. The SAC noted, among other things, that the entire transaction (not just its individual steps) was used to conceal the actual situation, which was the payment of a share of profits to a natural person, albeit with a tax benefit that would not have been available if this payment of the share of profits had been made directly.

- To put this in context—in addition, the Czech company paid fees to Cyprus for the use of trademarks whose validity was also the subject of a legal dispute in which the company was unsuccessful (10 Afs 113/2021 - 50).

- That was the previous chapter in this saga. Now let's move on to the current—and even sadder—chapter.

- A recent SAC decision (10 Afs 57/2026 - 48) concerns a modified situation (most likely in response to that first additional assessment), in which dividends were paid to Cyprus and the Cypriot holding company subsequently invested that money in another Czech subsidiary (which had a loan from the first subsidiary).

- Subsequently, offsetting entries were made, and the problematic transaction is therefore the payment of dividends to the holding company and their contribution to another subsidiary (as a contribution in excess of the registered capital).

- The tax administrator points out the artificial nature of the structure and assesses additional withholding tax on the dividend, citing abuse.

- The company defends itself, saying that the money did not go to an individual but was used for the actual operations of another subsidiary owned by the holding company, which is a legitimate function of a holding company.

- Given the overall context, the courts side with the tax administrator. Both the tax administrator and the courts emphasize, in particular, the personnel links between the companies involved through a specific individual and confirm the conclusion that the holding company was artificially created for the purpose of siphoning money out of the company and obtaining a tax advantage.

- The court specifically rejects the company's objection that no tax advantage arose in this case. From the court's wording, it is possible to infer that it concludes the existence of a tax advantage by comparing the situation to a scenario without an "artificial" holding company and with a distribution to a natural person, who subsequently disposes of the taxed funds at his or her discretion.

What's the takeaway?

Here's what we take away from this:

- The wild '90s are over, and tax planning must be approached with caution and strategy—avoid careless advisers.

- In our opinion, this case must be viewed in the context of the entire history—and thus the overall problematic "foundation." It serves as yet another warning that a single problematic piece can shatter the entire mosaic.

- The considerations raised by the court may complicate the analysis of the tax implications of holding companies even in a much more innocuous context.

Details, context, appropriateness, and implementation are key—we're ready to help you.

From the court's reasoning, it is possible to infer that it concludes the existence of a tax advantage by comparing it to a scenario in which there is no "artificial" holding company and the funds are distributed to a natural person, who then disposes of the taxed funds at his or her discretion.

Judicial decisions

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It's too substantial to not be considered a capital improvement

We bring you a fresh take on the never-ending topic of repairs versus capital improvements (10 Afs 184/2025 – 54).

Background

- The company reported expenses for materials and construction work as costs for repairs to a property (a former hotel).
- According to the tax administrator, however, this was a renovation aimed at changing the property's intended use, and thus constituted a capital improvement.
- The tax administrator emphasized that in 2013, when the company purchased the property, it was unused, partially burned out and damaged. The cost of construction work performed on the property in 2014 amounted to nearly CZK 11 million; the work was extensive, and the project documentation from that year indicated that the building was being converted from its original use as a hotel into a nursing home.
- However, the company argued that the work carried out in 2014 consisted solely of repairs, which differed from the work carried out in 2015, when the previously repaired structure was renovated—and it was only then that it constituted a technical improvement.

View of the courts

- According to the Regional Court, it is not decisive whether the construction work over the years constituted a single project or consisted of two distinct phases with different purposes.
- Even if the work carried out in 2014 was intended solely to restore the property to a condition suitable for normal use (and not yet to change its intended use), it would still constitute a capital improvement because the construction modifications were extensive (they did not merely repair minor wear and tear or damage).
- The work performed must therefore be considered a "higher-quality repair," which, according to case law, constitutes a technical improvement. This is also evident from the fact that the purchase price of the property in 2013 was approximately CZK 3.5 million, while the expenses incurred for the construction modifications exceeded that amount several times over.
- Like the Regional Court, the Supreme Administrative Court ruled in favor of the tax administrator.

- According to the court, what ultimately results from the construction work is what matters. The company argued that in 2014 it sought to restore the property to its original operational condition. From this, it concluded that the work constituted merely a repair. However, according to the court, this completely overlooks the fact that, given the property's original condition, the work performed necessarily affected the property's characteristics, the quality of its fixtures and fittings and the possibilities for its use.
- According to the court, this was by no means merely a matter of remedying existing deficiencies, which could be considered a repair, as the company claims. This is also evidenced by the fact that the company acquired the property for a sum several times lower than what it subsequently spent to make the property usable in any way at all.
- According to the court, the key factor in determining whether the work constituted a repair or a capital improvement is therefore that the original condition was so poor that, without substantial investment in structural modifications and all essential fixtures and fittings, the property would have been virtually unusable (whether as a hotel or as a social services facility).
- The court concluded that all evidence indicated that the company had intended to convert the hotel into a social services facility even before 2015. In this regard as well, the work was clearly aimed at changing the property's intended use. However, even if this intention had not existed earlier, the expenses incurred in 2014 to transform a virtually unusable building into a property that would be used in subsequent years and generate income were so high that they meet the definition of a capital improvement.

What's the takeaway?

- The nature of expenses must always be assessed in the context of the overall situation—there are no simple, universally applicable rules.
- Extra caution is therefore warranted when it comes to expenses that are very substantial in relation to the value of what they are intended to repair.

According to the court, the expenses incurred to transform a virtually unusable building into a property that will be used in the coming years and generate income were so high that they meet the definition of a capital improvement.

Judicial decisions

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Retroactive application of the exemption for royalties – finale

We are keeping you updated on an interesting dispute concerning the interpretation of the conditions for applying the exemption under the Directive on a Common System of Taxation of Interest and Royalties between Associated Companies of Different Member States ("EU I-R Directive").

Nature of the dispute

- The company requested a decision granting an income tax exemption on royalties pursuant to § 38nb of the Income Tax Act (ZDP), which implements the exemption under the EU I-R Directive, for the tax periods covering the calendar years 2014 through 2018.

View of the tax administrator

- The tax administrator granted the company the right to this exemption for the 2017 and 2018 tax periods, but denied the request for the other periods. The company had applied for the exemption in June 2019, which, according to the tax administrator, was after the two-year deadline had expired for the years 2014, 2015, and 2016.

View of the Czech courts – round one

- The company challenged the tax administrator's decision by filing a lawsuit, which the Municipal Court in Prague, however, dismissed. The dispute was therefore referred to the SAC.
- The SAC had doubts regarding the interpretation of the EU I-R Directive and therefore decided to refer a preliminary question to the CJEU.
- The first question referred was whether the EU I-R Directive can be interpreted as allowing a Member State, on the basis of a decision pursuant to Article 1(12), to grant a tax exemption even for the period preceding the date of submission of the certificate and supporting information (or, as the case may be, the date of issuance of the decision itself).
- If this question were answered in the affirmative, then the follow-up question would be whether the EU I-R Directive sets any deadline for filing an application for a decision granting an exemption under Article 1(12) of the EU I-R Directive, or, alternatively, any time-limit regarding the period preceding the filing of the application for a decision granting an exemption during which a tax exemption may be granted.

View of the CJEU

According to the CJEU, the EU I-R Directive should be interpreted to mean that it

- allows a Member State to grant tax exemptions, on the basis of a decision pursuant to Article 1(12), for the period preceding the date of issuance of that decision or, where applicable, for the period preceding the date on which the certificate and supporting information were submitted to the administrative authority;
- does not specify a time-limit for the submission of certificates and supporting information that the Member State of origin may reasonably require for the purpose of issuing a decision granting an exemption under Article 1(12) of this Directive, nor does it set a time-limit regarding the length of the period preceding their submission for which a tax exemption may be granted. It is therefore for the national legal system to set such a time-limit in accordance with the principle of procedural autonomy, and it is for the Czech court to determine whether Czech law provides for a time-limit applicable in the present case.

Back to the SAC - finale

The case was referred back to the Czech SAC, which considered whether there is a time-limit in Czech law that restricts retroactive requests for exemption. The SAC upheld the taxpayer's position (2 Afs 140/2022 - 94).

The SAC concluded that neither national nor EU law sets any time-limit for filing an application for a decision granting an exemption under § 38nb of the Income Tax Act, and that the conclusions of the tax administrator and the municipal court—respectively—regarding the denial of the application on the grounds of late filing cannot stand.

The SAC concluded that neither national nor EU law sets any time-limit for filing an application for a decision granting an exemption under § 38nb of the Income Tax Act.

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