Tax and Legal News

June 2026

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

Pay transparency – We examine how the EU Pay Transparency Directive is changing the rules of the game.

VAT on the transfer of a going concern – We examine (among other things) the VAT aspects of a transfer of a going concern and the related practical challenges.

Law – We summarize new rules governing the composition of governing bodies of listed companies from the perspective of gender balance.

Acquisition financing – The courts have discussed the difference between upstream and downstream mergers when assessing the tax deductibility of acquisition financing and evaluate the rationality of the chosen structure.

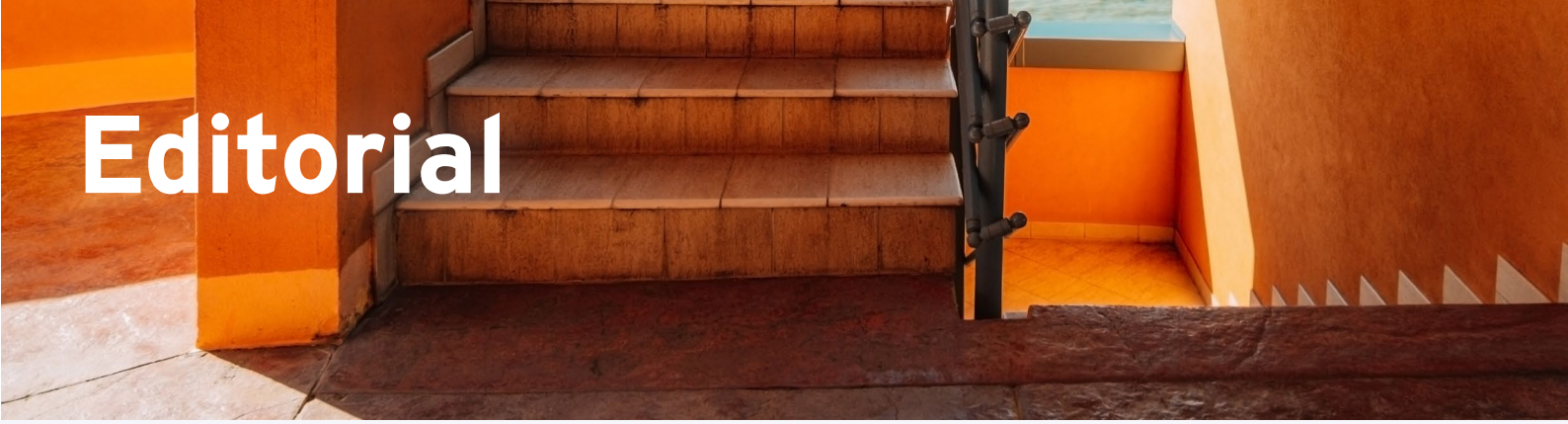
Related parties in the context of thin capitalization – We present a very interesting ruling regarding the assessment of related-party status for the purposes of applying thin capitalization rules.

Proving the tax basis of fixed assets – We tell a sad story of the rejection of a claim for the purchase price of a property at the time of sale due to a failure to provide proof.

The limits of abuse – The Advocate General considers limits on the denial of benefits under the EU Parent-Subsidiary Directive.

What else caught our attention?

- ***Pillar 2*** – The General Financial Directorate has confirmed favorable news regarding a supportive stance on centralized GIR (GloBE Information Return) filing. The OECD has also issued an updated consolidated pillar commentary.
- ***VAT and transfer pricing*** – In the Stellantis case, the CJEU confirmed that the mere fact that transfer prices between car manufacturers and distributors take certain costs (e.g. warranty repairs) into account is not sufficient to conclude that such prices constitute remuneration for a service.
- ***Donations*** – The General Financial Directorate published a response regarding the possibility of a simplified procedure for documenting donations as an attachment to the corporate tax return.
- ***Tax residency*** – The General Financial Directorate has issued guidance on determining the tax residency of individuals.
- ***Holdings in the crosshairs*** – The Tax Administration has announced it will target artificial holding structures.
- ***Deductibility of management services*** – A recent Supreme Administrative Court ruling confirms that the deductibility of management services (in this case, provided by a Czech parent company) is a frequent focus of audits.
- ***EET (electronic sales registration system)*** – The Government approved the EET 2.0 bill and announced a timeline for its implementation.
- ***CBAM*** – The European Commission has published the price of the CBAM certificate for Q1 2026.
- ***Customs administration*** – A new AIS (Automated Import System) is being launched.
- ***Crypto*** – The National Tax Administration is reportedly preparing guidelines on the accounting treatment of cryptoassets. In addition, a coordinating committee report has been published to address the conditions for exempting income from the transfer of cryptoassets for consideration.
- ***Top taxpayers*** – The General Financial Directorate has published a list of the top 20 taxpayers for 2025.



Editorial

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So how much do you actually make?

The EU Directive on Pay Transparency is changing the rules of the game: a topic that has been discussed in whispers for years is now set to be underpinned by systems, data and more open communication.

Based on my own professional background and experience with various client projects, I can confidently say that for many years, one of the fundamental rules in Czech companies was the principle "you don't talk about money." It's actually quite a convenient rule. It acts as a kind of social mute button: when no one talks about pay, no one gets offended, no one breaks a sweat trying to explain things, and everyone can pretend that the system is fair simply by virtue of the fact it exists.

But reality has an unpleasant tendency to reveal itself from time to time. It might be quite innocently—in the morning in the breakroom by the coffee machine. Two people, similar jobs, similar responsibilities, similar tenures at the company. One mentions something about a mortgage, the other about daycare, then energy prices come up, and, finally, the sentence decent people don't say out loud is uttered: "So how much do you actually make?"

Whatever the answer, very often that's the start of something hard to shake—a sense of injustice. Sometimes warranted, sometimes not. But always unpleasant. Mainly because when it comes to compensation, that feeling is often all we have, given the lack of information and transparency.

And this brings us to why the European Union has decided it will no longer leave the issue of equal pay solely up to "goodwill" and corporate culture. Although the principle of equal pay is nothing new, in practice it is often difficult for employees to enforce—precisely because of a lack of information and transparency. The Pay Transparency Directive aims to shed light on this practical issue and provide clarity where corporate rules once created ambiguity, thereby turning equality into something that cannot only be proclaimed, but also verified.

As regular readers of our Tax and Legal News may have guessed, implementing the new rules will not be easy. The Czech legislative process traditionally follows its own rhythm. According to the available draft transposition bill from the Ministry of Labor and Social Affairs, the majority of the rules are only expected to take effect on 1 January 2027, while certain provisions—particularly regular reports on pay gaps and employees' right to request detailed information—will not take effect until 1 January 2028. In other words: the European ambition is "as soon as possible," while the Czech reality is "the main thing is to go gradually.".

What's new about it?

The main new element here is that compensation is no longer based on silence and traditions like "that's just how we do things"; instead, companies are now expected to have a system that is transparent, explainable and justifiable. It's a bit like accounting: it's not enough that the numbers "somehow add up"—what matters is that you can demonstrate the rules you used to arrive at those figures. In practical terms, this means employers will have to establish and maintain a transparent compensation system that is made available to employees in an internal policy or collective bargaining agreement—that is, in a form that is not merely an "oral tradition" but an actual rule.

At the same time, the definition of what exactly constitutes "remuneration" will be clarified. The Czech proposal treats remuneration as wages, salary or compensation under a contract, and also addresses the system of other monetary and in-kind benefits, if provided by the employer, and requires that these benefits also be based on objective and non-discriminatory criteria.

The change also affects the hiring process: candidates should not enter negotiations without prior knowledge, but should be provided with information about the starting salary or its range in advance, before contract negotiations begin. While the directive recommends including this information in job postings, the Czech draft, as currently proposed, does not explicitly require this.

And within companies, another change is coming: employees will be able to request information not only about their own compensation but also about the average compensation within their job category, broken down by gender, and employers will have two months to respond. In certain situations where providing the information could effectively "reveal" a specific individual's compensation, the information is to be provided to the Public Defender of Rights instead of the requester.

For larger employers, the issue goes a step further: the proposal calls for regular reports on pay gaps and related follow-up processes. And if a pay gap of at least 5% between men and women is found in a particular job category—one that is unjustified and not corrected within the specified timeframe—this will trigger the obligation to conduct a written pay assessment and implement corrective measures. Moreover, this isn't just a "recommendation to be filed away" – the proposal introduces administrative offenses and penalties, with fines of up to CZK 1,000,000 for the most serious cases (such as failure to establish a compensation system).

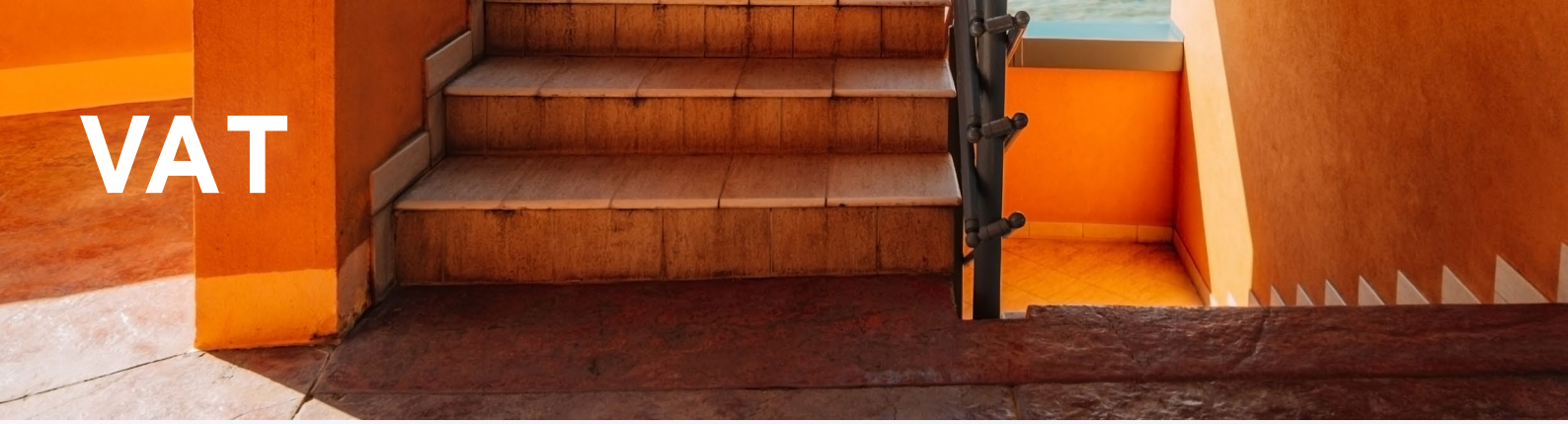
Why am I actually writing all this in an editorial?

I chose the topic of fair pay for our editorial because it has been a hot topic among our clients lately. Equal pay is a typical "social issue": everyone agrees with it, as long as it doesn't directly affect their pay scales, budgets and decisions. However, the new European regulation and its Czech implementation are shifting the focus from declarations to practice—from "equality on paper" to a system based on access to information, transparency and systematic monitoring.

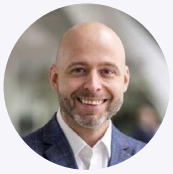
And this brings us back to that morning meeting in the kitchen by the coffee machine. It's quite possible that the biggest change won't be found in a legal clause or a report table, but in the fact that conversations like this will cease to be taboo and become a normal part of work life. For employers, this is uncomfortable only until they realize that transparent rules—however tedious to implement—are often better than protracted speculation, reputational damage and disputes that arise in an environment where "nothing is said" and "everyone is suspicious.".

In closing, I wish our readers success in ensuring their compensation systems stand up not only to regulatory scrutiny, but also to the strictest of auditors—their own employees. And if the question "where to even start" just crossed your mind, know that the first step is usually neither the most expensive nor the most complicated: it is simply the decision to stop relying on silence and start relying on transparent rules.

In practical terms, this means that employers will have to establish and maintain a transparent compensation system that is made available to employees in an internal policy or collective bargaining agreement—that is, in a form that is not merely an "oral tradition" but an actual rule.



VAT



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VAT on the transfer of a going concern

The sale or contribution of a going concern is typically a very complex transaction. In practice, we often encounter borderline cases where an underestimation of the tax and accounting implications can lead to very unpleasant disputes with the tax administrator.

What exactly is a going concern?

The very definition of what constitutes a going concern is often a source of difficulty.

Determining whether or not a going concern exists is crucial for the application (or non-application) of VAT:

- In the case of a going concern transfer, no VAT is due upon the transfer, and the transferee is considered the legal successor to the transferor. However, the exact scope of legal succession is often a matter of dispute, particularly regarding the tax administrator's ability to assess the transferee for VAT relating to the period prior to the transfer of the going concern. We therefore recommend paying close attention to this aspect in transactions involving a going concern.
- In cases where the transfer does not involve a going concern, the application of VAT must be assessed separately for each individual item being transferred (e.g. whether it constitutes a secondary supply, what rate applies, the reverse charge mechanism, exemptions, etc.). The concept of legal succession does not apply, which may complicate certain situations, such as with credit and debit notes relating to the period prior to the transfer.

Neither Czech nor European legislation provides sufficient guidance. Since this is a concept of EU law, one cannot rely on its definition for the purposes of Czech private law. It is therefore necessary to draw on relevant Czech and European case law.

When is the transfer of a going concern considered to have taken place for VAT purposes?

To put it simply, the main criterion that a going concern transfer must meet is that it involves the transfer of a sufficiently independent operational unit that enables the transferee to continue the transferor's existing economic activities.

The purchaser's intention to continue these activities is also crucial. If the purchaser were to terminate or significantly alter the business, it would most likely not constitute a sale of a going concern.

If the transferee assumes all of the transferor's activities, the risk of a dispute is generally lower. However, it may not be negligible. For example, the General Financial Directorate's opinion on the sale of a going concern consisting primarily of leased real estate and related contracts confirms that such a transaction is generally considered a going concern for VAT purposes, but excludes certain specific situations.

Borderline cases where the risk of issues with the tax administrator is highest in practice are typically transactions in which only a portion of the transferor's operations is transferred—usually involving a limited number of employees and only selected assets, rights and contractual relationships.

The courts have also confirmed that a transfer of a going concern may occur even if the relevant components of the business are transferred gradually through several separate transactions over a period of time.

Cases currently before the Court of Justice of the European Union

The complexity of determining whether a transaction constitutes a going concern for VAT purposes is also illustrated by two cases currently pending before the Court of Justice of the European Union.

The *A&P Deco* case (T-397/25) concerns the issue of legal succession. Specifically, it addresses the question of who is obligated to adjust the VAT deduction for fixed assets in a situation where a change in the use of real estate has occurred as a result of the transfer of a going concern (a horticultural business).

In the *Szytelbiecka* case (T-366/25), a mother (a natural person) transferred a going concern to her two daughters. Immediately thereafter, each of them contributed her 50% share to a joint venture (an unincorporated entity). Some of the Advocate General's arguments are quite interesting and could also have implications for transfers of going concerns between corporations.

Given the complexity of the issue, it is also likely that the question of the transfer of a going concern will continue to arise before the Court of Justice in the future. We will therefore closely monitor further developments.

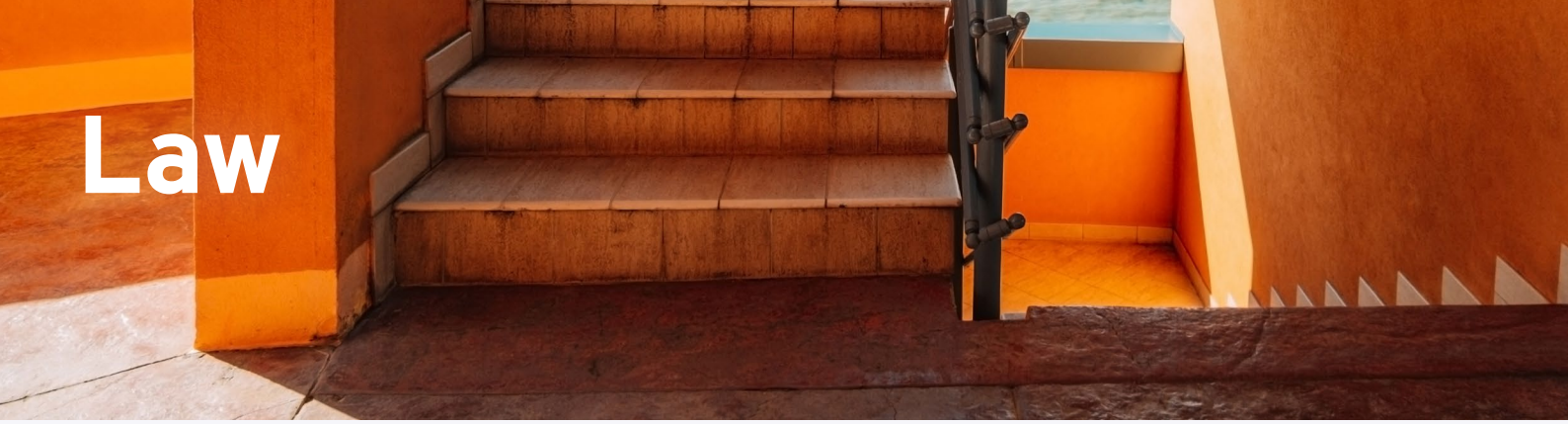
What to watch out for in practice

The incorrect or non-application of VAT in borderline situations can lead to financial risks for both the transferor (if they fail to apply VAT) and the transferee (if they claim a VAT deduction on VAT incorrectly applied by the other party). In the event of a subsequent assessment by the tax authority, there is also a risk of penalties (in addition to late payment interest).

We recommend carefully analyzing, in particular, whether the VAT regime anticipated by the contracting parties is justifiable. At the same time, it is advisable to assess the associated tax risks and ways to minimize them (including the issue of legal succession) and to draft the relevant contractual documentation accordingly.

At the same time, VAT is only one—albeit often a very significant—tax consideration that must be taken into account in transactions involving the purchase of a going concern. Accounting implications, income tax implications and other tax obligations should also not be overlooked, such as the requirement to submit the going concern purchase agreement to the tax administrator within 15 days of its execution.

We recommend carefully analyzing, in particular, whether the VAT regime anticipated by the contracting parties is justifiable. At the same time, it is advisable to assess the associated tax risks and ways to minimize them (including the issue of legal succession) and to draft the relevant contractual documentation accordingly.



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New rules for the composition of the governing bodies of listed companies

In mid-May, the government discussed a draft amendment to the Act on Capital Market Activities and Related Regulations, which aims to incorporate into Czech law the requirements of Directive (EU) 2022/2381 on improving gender balance among members of the governing bodies of listed companies. The directive was to be transposed by 28 December 2024, at the latest. The explanatory memorandum therefore explicitly mentions the infringement proceedings already initiated by the European Commission and the government's intention to ask the Chamber of Deputies to approve the bill as early as the first reading. The proposed amendment is designed as a minimalistic transposition intended to apply to a limited group of entities, allowing them to choose their own objectives and making use of existing mechanisms; on the other hand, however, it introduces strict rules that are enforceable through sanctions.

Who is affected by the new requirements?

A new section on gender balance in the governing bodies of selected issuers is being added to the Capital Markets Act. The obligations are to apply only to issuers whose equity securities are admitted to trading on a European regulated market and who also meet the size criteria: an average of at least 250 employees and, at the same time, either an annual net turnover exceeding 50 million euros or total assets exceeding 43 million euros (in each case, for the most recently completed financial year). The explanatory memorandum also specifies that the target group consists of large publicly traded companies and explains why the regulation focuses specifically on publicly traded companies as economically significant entities.

For the purposes of the new regulations, the terms "executive" and "non-executive" member of a governing body are further clarified: an executive member participates in the day-to-day management of the company, while a non-executive member does not. At the same time, it is stipulated that a member of an issuer's board of directors is considered an executive member of a governing body for these

purposes. In practice, members of the supervisory board in a dualistic management system will typically be considered non-executive members.

What goals should be set?

The issuer in question must choose one of two targets for balanced representation of the underrepresented gender on the governing body.

The first option targets non-executive members of the governing body: at least 40% of non-executive positions must be filled by members of the underrepresented gender (the specific numbers corresponding to this percentage are listed in the annex to the Directive).

The second option stipulates that at least 33% of the positions held by all members of the governing body must be filled by persons of the underrepresented gender.

If an issuer sets a 40% target for non-executive members, it must also set a target aimed at achieving a balanced representation of women and men among executive members. Unlike for non-executive members, however, the law does not set a fixed percentage threshold for executive members; it merely requires that the target set be aimed at gradually achieving a balanced representation.

Reporting and disclosure

The proposal expands the content of the corporate governance report to require that it include information on the representation of women and men among the members of the governing body, distinguishing between executive and non-executive members, as well as information on the measures taken to achieve the selected target.

If the issuer fails to meet the selected target, it must state the reasons for the failure and describe the corrective measures taken and planned. The issuer must also publish this information on its website "in an appropriate and easily accessible manner." The explanatory memorandum adds that this obligation may also be fulfilled by publishing the entire annual financial report, provided the information is clearly identified and easily retrievable in an accessible format.

Issuers will therefore need to have sufficient internal documentation regarding the composition of their governing bodies and the conduct of selection processes in order to be able to meet both their disclosure obligations and any requirements imposed by the supervisory authority.

Consequences of failing to meet the target: stricter candidate selection

A key element of the proposal is a revision of the procedure for selecting a candidate for a position on the governing body of an issuer that is not meeting its objectives or would cease to meet them if a new member were elected or appointed.

In such cases, the procedure must be based on a comparison of the qualifications of individual candidates, and the selection criteria must be clear, neutral and unambiguous. It is also stipulated that the procedure and criteria must be established before the selection process begins and applied throughout the entire process, including the preparation of the job posting, the pre-selection phase and the creation of a shortlist. Furthermore, the issuer must send the criteria to the Czech National Bank without undue delay.

If candidates have the same or comparable qualifications (particularly qualifications, skills and work performance), the employer must give preference to the candidate of the underrepresented gender. However, the proposal also allows for exceptions—in order to achieve other diversity policy objectives or for reasons worthy of special consideration—provided that the issuer takes into account the specific circumstances of the candidate from the underrepresented gender based on non-discriminatory criteria. The explanatory memorandum explicitly emphasizes that priority must not be automatic or unconditional, and that individual assessment must be maintained.

For example: if two candidates with comparable qualifications are applying for a position and one of them is a member of the underrepresented gender, that candidate should be given preference. The employer may deviate from this procedure only on the basis of objective, non-discriminatory reasons relating to the specific candidate.

In cases where the selection is made through a vote by shareholders or employees, the proposal requires the issuer to ensure that voters are informed of the procedure, criteria and objectives of the selection, as well as the potential consequences of non-compliance. In practice, this will not involve "penalizing" the voters themselves, but rather requiring the issuer to demonstrate that those participating in the election had access to sufficient information about the selection rules (e.g. through materials for the general meeting or internal documents).

Candidates' rights, sanctions and judicial protection

An unsuccessful candidate who was evaluated during the selection process shall, upon request, have the right to information regarding the eligibility criteria, the evaluation of candidates and the specific reasons that led to the selection of a candidate from the underrepresented gender. The explanatory memorandum also emphasizes the need to protect the rights of others when providing such information.

The proposal introduces administrative offenses for violations of key obligations—such as failure to set a target, failure to disclose information, failure to meet criteria and procedural requirements, or failure to comply with reporting obligations. The maximum fine imposed by the Czech National Bank is set at 1 million crowns. At the same time, public oversight is strengthened by requiring the Czech National Bank to publish a list of issuers that meet the selected target.

The proposal also divides the role of analysis and support according to the type of issuer. For issuers authorized or licensed by the Czech National Bank, this role is performed by the CNB itself, while for other issuers, it is carried out by the Office of the Government of the Czech Republic.

The Anti-Discrimination Act will also be amended to include a specific right for a candidate to seek appropriate redress in cases where a candidate of the underrepresented gender was not given preference, even though the legal requirements were met. The amendment to the Civil Procedure Code then introduces a rule regarding the burden of proof. If the plaintiff presents facts indicating comparable qualifications, the defendant must prove that it acted in accordance with the preferential treatment rules.

In practice, this will mean, in particular, that the issuers concerned will need to establish transparent selection processes and be prepared to document their conduct to the regulator.

The proposal expands the content of the corporate governance report to require it to include information on the representation of women and men among the members of the governing body, distinguishing between executive and non-executive members, as well as information on measures taken to achieve the selected target. If the issuer fails to meet the selected target, it must state the reasons for the failure and describe the corrective measures taken and planned. The issuer must also publish the same information on its website "in an appropriate and easily accessible manner.".

Judicial decisions

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The court's view on the difference between upstream and downstream mergers when assessing the tax deductibility of acquisition financing

We present an interesting perspective from the Supreme Administrative Court ("SAC") on the "direction" of a merger and its impact on the assessment of the tax deductibility of acquisition financing (5 Afs 164/2024 – 69).

Background:

- We view the nature of the transaction as an "intra-family" debt push-down. The company originally controlled by the father was sold to another company controlled by his daughter. This was followed by the issuance of koruna-denominated bonds, the assumption of debt and a downstream merger. The result was the original company burdened with massive debt to the father (generating significant interest expenses), which was now controlled by his daughter.
- The tax administrator did not consider these steps to be rational and excluded the costs of bond financing from tax-deductible expenses (thus applying the general deductibility test rather than the test for abuse of rights).

The courts' views:

Both the Regional Court and the SAC ruled in favor of the tax administrator. Below are some interesting points raised by the SAC:

- The SAC reflects on the difference between upstream and downstream mergers and, to some extent, questions the merits of downstream mergers.
- It notes that, in this case, from the perspective of the acquiring company, the purchased shares did not become assets used to generate taxable income (as is typically the case in an upstream merger). In this case, a downstream merger, the debt was assumed not by the acquiring company but by the target company, and the shares which the bonds were issued to finance the purchase did not cease to exist.

- On the other hand, the SAC notes—albeit primarily by reference to the tax administrator's argument—that the tax administrator viewed the direction of the merger merely as a circumstance that made it more difficult for the company to provide evidence, and that, in the case of a downstream merger, the tax administrator maintains that it is still conceivable to demonstrate compliance with the general test for tax deductibility. In this case, if the company had demonstrated that the merger provided it with value in the form of access to a business plan and that this plan could generate adequate taxable income. However, this was not demonstrated in this case.
- In assessing the value of this business plan, the SAC noted that the notion that any taxpayer would spend CZK 2 billion to obtain a business plan in the general form in which it was submitted, plus interest costs of 12% per annum on that amount for a period of 20 years, is illusory. Regarding the argument that the business plan was only truly beneficial when combined with the knowledge and experience of the previous owner's daughter, the SAC noted that her involvement in the period following the merger was not contingent upon that merger, and furthermore, nothing prevented her from providing the company with a business plan independently of the merger in question.

The SAC noted that, in this case, from the perspective of the acquiring company, the purchased shares did not become assets used to generate taxable income (as is typically the case in an upstream merger). In this case, a downstream merger, the debt was assumed not by the acquiring company but by the target company, and the shares which the bonds were issued to finance the purchase did not cease to exist.

What do we take away from this?

At first glance, we take away the following:

- Downstream mergers carry a higher risk than upstream mergers.
- Any restructuring involving related parties (group, family, etc.) carries an increased risk.
- Having a business rationale for a given step is not enough—its importance must be assessed in the context of the transaction in question.

The issue of acquisition financing in the context of a merger requires a detailed assessment of the specific situation. We therefore recommend that you pay close attention to this area. We would be happy to assist you with the related tax and legal obligations.

Judicial decisions

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An interesting judicial perspective on related-party transactions in the context of thin capitalization

We present a very interesting ruling regarding the assessment of related party status for the purposes of applying thin capitalization rules (10 Afs 185/2025 – 96).

Background

- Company A was wholly owned by Company B.
- The majority of Company B's shares were held by ten individuals, who together owned a 92.2% stake (natural person shareholders).
- This was followed by a restructuring in which the natural person shareholders transferred their shares in Company B to their holding company, Company C. Company B then transferred its shares in Company A to holding Company D (also majority-owned by the natural person shareholders).
- Both holding Companies, C and D, issued koruna-denominated bonds with an interest rate of 12% per annum and a 20-year maturity. These bonds were acquired by the natural person shareholders, and subsequently, mutual claims arising from the transfer of the bonds and shares were offset.
- Subsequently, mergers took place between Companies C and B, and between Companies D and A.
- The result of the transformation was thus two sister companies majority-owned by the natural person shareholders and burdened with koruna-denominated bonds.

View of the tax administrator

- The tax administrator concluded that the transformation took place in such a way that the original shareholders of Company B did not lose their ownership interest in either company and, in effect, sold them to themselves. In this way, they realized the value of the companies in question, including accumulated retained earnings, which, unlike a dividend payment, were not subject to taxation. At the same time, they acquired the right to receive interest payments on bonds under a favorable tax regime, while these bonds were paid for with receivables arising from the sale of the company.
- The tax administrator thus concluded that it had not been proven that the transformation had an economic rationale and that the interest on

the issued bonds could be considered expenses incurred within the meaning of § 24(1) of the Income Tax Act (ITA).

- However, given the negative equity, these expenses are not deductible under § 25(1)(w) of the ITA (thin capitalization). Since, in the tax administrator's opinion, these grounds for non-deductibility cannot be applied simultaneously, the tax administrator gave priority to the second of the aforementioned grounds, i.e. thin capitalization.
- The tax administrator admitted that none of the ten natural person shareholders (twelve, including the heirs of one of the original shareholders who has since passed away) met the capital relatedness test.
- According to the tax administrator, however, the relationship between shareholders who are natural persons and, at the same time, bondholders vis-à-vis the company as the debtor constitutes a relationship between otherwise related parties pursuant to § 23(7)(b)(1) of the ITA. In the tax administrator's opinion, the natural person shareholders exercise control over the company because there is a relationship of influence between them. The natural person shareholders have significantly and decisively influenced the corporation's conduct through their voting at the general meeting. The natural person shareholders exercised their voting rights in concert within the meaning of § 78 of the Business Corporations Act. The natural person shareholders unanimously approved the subscription of bonds and the entire transformation. Having found that a relationship of influence existed, the tax administrator applied the thin capitalization test.
- Unsurprisingly, the company was not pleased. However, the Regional Court dismissed the lawsuit, and the case was referred to the SAC.

View of the Supreme Administrative Court

- The SAC examined in detail the interpretation of the concept of participation in management or control (as well as acting in concert) and upheld the tax administrator's conclusion that the relationship between the shareholders—who were natural persons—and, at the same time, the bondholders vis-à-vis the company, as the debtor, constituted a relationship between otherwise related parties pursuant to § 23(7)(b)(1) of the ITA, and thus the condition of relatedness was met for the purposes of the thin capitalization test.
- In its reasoning, the SAC emphasized, among other things, that in view of the actions taken during the transformation and in the context of how the natural person shareholders exercised their voting rights (i.e. approval of the merger plan and personnel changes in the company's management), and also in view of their participation in other related steps (i.e. the acquisition of shares with voting rights, the acquisition of bonds, the assignment of claims, the conclusion of set-off agreements, etc.), it follows from these steps that the natural person shareholders acted with a common intent, which was to enable the issuance of koruna bonds while maintaining control over the companies. Without this joint action by the natural person shareholders, the entire transformation (and the related bond issue) would not have taken place.

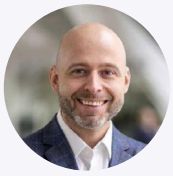
What's the takeaway?

We take away the following insights from this ruling:

- Assessing relatedness is more complicated than it might seem at first glance.
- Even shareholders holding less than 25% of the share capital and voting rights may, under certain circumstances, be regarded as otherwise related parties (the individual provisions of § 23(7)(b) of the ITA are not mutually exclusive).
- Participation in oversight involves not only the actual exercise of influence, but also the possibility of exercising it.
- It is not the case that a "potential problematic status" arising at the beginning of the relationship (i.e. that persons who were once related in a certain way remain so forever) cannot be changed.
- For a conclusion regarding concerted action, mutual understanding need not be expressed in writing.

A recent ruling by the Supreme Administrative Court confirms that assessing relatedness is more complicated than it may seem at first glance.

Judicial decisions



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A sad story of proving the tax basis of fixed assets

We present a sad story regarding the rejection of a claim for the purchase price of real estate in a sale due to lack of evidence (22 Afs 184/2025 – 47).

Background

- A company acquired real estate through a merger with a dissolving company (without revaluation), and the dissolving company had acquired the real estate through purchase.
- The company subsequently sells this real estate and recognizes its acquisition cost as an expense.
- Along comes the tax administrator, who discovers a discrepancy between the valuation of the real estate in question in the company's books and the amount stated in the purchase agreement entered into by the dissolved company. The purchase price was slightly higher than the book value—CZK 43 million versus CZK 42 million.
- Having doubts, the tax administrator requests an explanation. The company does not provide a satisfactory explanation for the discrepancy.
- The tax administrator refuses to recognize the full declared value of the real estate and assesses additional tax.

View of the Supreme Administrative Court (SAC)

- It was not until the proceedings before the regional court that the company explained that the price difference was due to the use of different exchange rates. However, this claim was raised too late, and the courts therefore did not take it into account.
- Both the Regional Court and the SAC ruled in favor of the tax administrator..
- The SAC emphasized that a discrepancy in the amounts alone does not necessarily lead to the disallowance of the entire expense. However, if the taxpayer fails to provide a clear explanation upon the tax administrator's request, the tax administrator may refuse to recognize the entire expense for tax purposes. This applies even in a situation where the amount in the contract was higher than the amount the taxpayer claimed in their accounting records.

What's the takeaway?

- It is clear that the very strict requirements for documenting tax-deductible expenses also apply to fixed assets.
- It is therefore necessary, particularly when it comes to real estate, to pay close attention to the archiving of relevant documents throughout the entire period—in practice, until the statute of limitations on their sale or full depreciation expires (i.e. even more than 50 years).
- The ruling also confirms the need to take a proactive approach during the tax audit itself—waiting to argue before the administrative courts usually does not pay off.

The SAC reaffirms the long-standing trend of taking a strict approach to the proving of tax-deductible expenses—this time regarding the purchase price of assets sold.

Judicial decisions

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Thresholds for rejecting benefits under the EU Parent-Subsidiary Directive

Following an interesting question in the Nordcurrent case, the Lithuanians posed another interesting question to the Court of Justice of the European Union in the Neo Group case regarding the limits on denying the benefits arising from the EU Parent-Subsidiary Directive.

Interesting context

A Lithuanian company paid dividends to its long-standing Cypriot parent company, which were tax-exempt. The Lithuanian authorities have now stepped in and assessed a withholding tax, arguing that the company abused the law.

Above the Cypriot parent company is another holding company, which acquired the Cypriot parent from a Belizean company relatively shortly before the problematic dividend payment, although the ultimate owner of the group did not change as a result of this sale. Put simply, the situation appears to be that dividends from Lithuania effectively flowed through the Cypriot holding companies to the ultimate owner as part of the payment of the purchase price for the transfer of the stake.

Company's objections

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

Opinion of the Advocate General

What is interesting is that the Lithuanians do not primarily challenge the status of the Cypriot parent, but rather question the broader context, and the Lithuanian court logically asks how to apply the prohibition against abuse of rights in such a situation.

The Advocate General's conclusions appear to us to be relatively liberal and generally favorable to taxpayers. Our main observations:

- The fact that a parent company is the beneficial owner of the dividends does not in itself automatically rule out abuse. However, if the parent company is the actual beneficial owner of the dividends, a finding of abuse should be considered rather exceptional.

- The mere subsequent distribution of received dividends within the group is not sufficient to conclude that there has been abuse.
- The mere presence of an artificial element within another Member State is generally not sufficient in itself to deny the benefits of the Directive in the source country.
- To conclude that abuse has occurred, there must typically be a broader abusive scheme aimed at obtaining a tax advantage that is contrary to the purpose of the Directive. For example, if a structure were used to allow the ultimate owner to unlawfully avoid taxation on the final distribution through offshore structures due to information gaps, this alone could constitute an abuse of the Directive itself.
- The Advocate General acknowledges that moving a holding structure from an offshore jurisdiction to the EU may have legitimate business reasons—such as better access to banks and business partners. The mere existence of such a restructuring therefore does not automatically imply abuse.
- The Advocate General leaves the final assessment of whether there has been an abuse of rights to the national court, but it is clear from her opinion that, in her view, the facts of the case are unlikely to be sufficient to deny the benefits of the Directive.

We'll see whether the Court of Justice of the European Union agrees with the Advocate General's relatively liberal approach.

According to the Advocate General, the mere existence of an artificial element within another Member State is generally not sufficient, in and of itself, to deny the benefits of the Directive in the source state. To conclude that there has been an abuse, there must typically be a broader abusive scheme aimed at obtaining a tax advantage that is contrary to the purpose of the Directive.

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