Tax and Legal News

March 2026

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

Editorial – We consider how Pillar 2 rules are becoming part of the normal tax agenda and need to be taken into account in acquisitions and transaction structuring, new investments, incentive applications and the application of various deductions.

Pillar 2 – We outline the existence of special rules for assessing the existence of a large group in situations involving the merger or demerger of groups, and provide examples of their practical application.

International taxation – We summarize practical insights into the functioning of the Mutual Agreement Procedure (MAP) and the related updated OECD manual.

Transfer pricing and VAT – We bring you an overview of the development of CJEU case law on the application of VAT to transfer pricing and reflections on the related practical challenges.

Building Act amendment – We summarize key aspects of the extensive amendment to the Building Act, which has already passed its first reading in the Chamber of Deputies.

Failure to prove abuse in advertising services provided by a foreign entity – We present an interesting dispute concerning the assessment of corporate income tax due to alleged abuse of law in claiming advertising costs provided through foreign companies. The tax administration considered that the advertising costs were primarily used to transfer funds to the company's manager. However, the Supreme Administrative Court disagreed with the tax administrator's view.

What else has caught our attention?

- ***VAT horror show*** – As a result of the paradoxical situation in which the delivery of goods to another Member State and the purchase of goods from another Member State were taxed in the same Member State of dispatch, double taxation occurred. The customer paid VAT twice without being entitled to deduct it.
- ***EET (electronic sales registration) 2.0 and related relief measures*** – The government has submitted a draft law on sales records and amendments to certain other laws, including selected relief measures in the area of income tax and VAT.
- ***VAT deduction and late invoicing*** – The CJEU confirmed that the recipient of a taxable supply may claim a deduction already for the tax period in which the taxable supply took place, provided that they receive the invoice no later than the date of filing the tax return for the tax period in question.
- ***New customs rules for small consignments*** – The Council of the EU has approved new customs rules for small consignments worth up to EUR 150, effective from 1 July 2026.
- ***Update of the OECD Model Tax Convention*** – At the end of last year, an update to the OECD Model Tax Convention and commentary on it were published. The Ministry of Finance issued a statement on this matter.
- ***Economic strategy*** – The new government has presented its economic strategy, which includes innovations such as the possible introduction of patent boxes and a one-stop shop for foreign investors.

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What else has caught our attention?

- ***Strategic locations for investment projects*** – The State Investment and Development Company has prepared several strategic locations for investment projects in the Czech Republic, particularly in the Karlovy Vary and Moravian-Silesian regions.
- ***Active repentance*** – What happens when the taxpayer declares and pays the tax themselves after the deadline for determining the tax has passed?

Editorial

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The inevitable difficulty of Pillar 2

Since January 2022, we have been sharing with you the joys and pitfalls of the BEPS 2.0 Pillar 2 rules. We have studied the rules, commentary, examples, administrative guidelines, Czech law and explanatory memorandum, and we have regularly shared our findings, observations and comments with you.

Until now, the work has mainly involved Excel, paper and pencil, or various calculation models. You have calculated whether you have reached a safe harbor or whether you have to set sail on the open sea full of effective tax calculations. Somewhere along the way, you have recorded a higher expected tax. Now begins the period of regular filings with the tax office.

The deadlines for submission are approaching, and in some cases have already passed. Questions about what and how to submit, when and on behalf of whom remain open in individual states, and there is considerable room for creativity. Each state has its own form, procedure and deadlines. In the Czech Republic, we are still waiting for the final forms. So far, it looks like every Czech entity will have to file at least four submissions (two notifications and two returns). And they must also hope that someone will file the GIR in the correct jurisdiction and that the content will meet the requirements of Czech law. If an entity changes its group affiliation during the year, then there will be at least eight filings. The first Czech filing will be at the end of the school year, and a clear procedure for dealing with filings is still lacking.

What will be the impact on the Czech state budget? According to the explanatory memorandum, the Ministry of Finance expected new revenue estimated at CZK 4 to 6 billion. However, after the tax rate increase from 19% to 21%, this will only amount to CZK 2 billion per year. At the same time, the ministry estimates that the rules will affect approximately 3,200 Czech taxpayers. From the perspective of the state budget, this is a negligible amount, especially when compared to the administrative burden on taxpayers.

If you are responsible for multiple jurisdictions, or even a parent company, the fun with rules multiplies significantly. The rules have been introduced across Europe, Asia and Australia. However, the United States, India and China, for example, are not actively participating in Pillar 2. Some countries have wisely introduced only a domestic tax for large groups so that profits from their jurisdictions are not taxed elsewhere. Other countries did not manage to implement the rules in time and are allowing opt-in for 2024 (e.g. Poland), or, conversely, have postponed the rules until later (e.g. the Baltic states). As a result, though we have uniform rules, their implementation and functioning will vary from country to country. Local implementation will certainly also lag; local interpretations may vary and will certainly not be consistent across jurisdictions.

Even without the influence of local differences, there seem to be more rules and exceptions than is acceptable. A brief digression. We have simplified safe harbor rules based on the Country-by-Country Report (CbCR). The key is to have the correct Country-by-Country Report, meet several conditions, successfully deal with hybrids (which, of course, differ from the rules for income tax) and pass at least one of the three tests. Every taxpayer's dream. Not surprisingly, most Czech entities will fulfill this dream, but even so, each must submit forms to the tax office. If the dream does not come true, the hard work begins. The rules are extremely complex and require careful mapping of almost everything in all Czech companies.

We now have Side-by-side (SbS) rules, which in terms of their complexity fall somewhere between safe harbors and the full rules. This new set will hopefully resolve (or at least improve) the unfortunate settings of various incentives and deductions (e.g. for research and development) in the existing pillar rules. At the same time, the coexistence of Pillar 2 with other similar concepts of international taxation (especially the American one) has apparently been resolved).

The probability of Pillar 2 rules being abolished is virtually zero, especially after the SbS package and the agreement with the US. The rules will become part of the regular tax agenda during the year, for example when calculating tax reserves. They will have to be considered when acquiring and structuring transactions, making new investments, applying for incentives or claiming various deductions. At the same time, we hope that comments and interpretations will stabilize and that the degree of uncertainty in applying the rules will decrease.

The probability of Pillar 2 rules being abolished is virtually zero. The rules are becoming part of the regular tax agenda during the year and will need to be taken into account in acquisitions and transaction structuring, new investments, incentive applications and when claiming various deductions.

Pillar 2

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Special rules for assessing the existence of large groups subject to Pillar 2 in the event of mergers or demergers

The purpose of this commentary is to draw attention to the existence of special rules for assessing the existence of a large group and to provide examples of their practical application.

Pillar 2 rules generally apply to large groups (multinational or domestic). A large group is generally a group whose consolidated annual revenues reported in the consolidated financial statements of the ultimate parent entity amount to at least EUR 750 million in at least two of the four reporting periods immediately preceding the period in question (with a possible adjustment if any of these reporting periods is longer or shorter than 12 months).

However, to make things more complicated, there are special rules for mergers and demergers. In the case of a merger or demerger, the "2 out of 4" rule is modified in certain ways.

Definition of mergers or demergers

For these purposes, a merger is generally understood to mean an arrangement whereby (i) all or substantially all of the entities of the participating groups form a combined group, or (ii) a separate entity is under common control with another entity or group in such a way that they form entities of a combined group.

A demerger is defined as an arrangement whereby entities within a single group are split into two or more different groups that are not consolidated by the same ultimate parent entity.

Effects of mergers and demergers

In the case of a merger, the historical revenues of the participating "players" are generally aggregated.

In the case of a demerger, the "2 out of 4" rule is modified and the new group may fall under the Pillar 2 rules in the first year after the demerger even without the existence of historical revenues (if the EUR 750 million threshold is exceeded); for the second to fourth periods after the demerger, it is then required to exceed the threshold in at least two periods after the demerger.

Practical examples

Typical merger scenario: Group A and Group B each reported separate consolidated revenues of EUR 400 million, EUR 300 million, EUR 300 million, and EUR 400 million for years 1 through 4. Group A and Group B will merge into Group AB in year 5. Due to the application of retrospective aggregation, Group AB is subject to Pillar 2 rules in year 5 because in two of the four previous periods, their consolidated revenues reached at least EUR 750 million (i.e. in year 1, combined revenues amounted to EUR 800 million, and in year 4, combined revenues also amounted to EUR 800 million).

Typical demerger scenario: Group A has an accounting period that coincides with the calendar year. In the middle of year 1, the ultimate parent company of Group A distributed all shares of subgroup B to its shareholders. This distribution will result in the creation of Group B and will constitute a demerger. We assume that the reporting period for both groups ends on December 31 of year 1. In this case, we will test the consolidated revenues of Groups A and B for Year 1, as this is the first tested period ending after the demerger. However, given that the first tested period for Group B is less than 12 months, the EUR 750 million threshold should be adjusted according to the commentary (in this case, most likely to half).

What's the takeaway?

It is thus good to know there are situations where the simple rule of "the ultimate parent's financial statements for 2 of the previous 4 periods exceeding EUR 750 million" does not apply. In particular, groups that are just below this threshold and have made (or are planning) acquisitions, or new groups formed as a result of reorganization, should take note.

However, to make things more complicated, there are special rules for mergers and demergers. In the case of a merger or demerger, the "2 out of 4" rule is modified in certain ways.

International taxation

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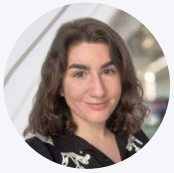

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The OECD and mutual agreement procedures

The OECD recently updated its Manual on Effective Mutual Agreement Procedures (MEMAP). This is the first update since 2007. The new manual should serve as a practical guide for taxpayers and relevant authorities in the Mutual Agreement Procedure (MAP), i.e. in proceedings under double taxation treaties.

What is MAP?

In general, MAP is a procedure in which the competent authorities of two (or more) countries negotiate and resolve specific disputes arising from the application of double taxation treaties. Typically, these are cases of double taxation, e.g. in the area of transfer pricing, dual tax residence, withholding tax, permanent establishments, etc. MAP provides taxpayers with protection by obliging the state to properly examine the case and seek to eliminate double taxation. Unlike local remedies, it also leads to an internationally coordinated outcome that the other state cannot unilaterally ignore.

Procedure under a Double Taxation Treaty

MAP may be initiated and conducted on the basis of several legal provisions. The first of these are double taxation treaties (DTTs), which usually include a provision on mutual agreement procedures. This provision, which has direct effect, allows taxpayers to contact the competent authority of the state in which they are tax residents if they believe that their taxation is contrary to the treaty. However, the specific form of MAP is determined by each DTT separately, and therefore individual agreements may differ significantly. The MAP procedure conducted under the DTT can be quite limiting in practice, as it does not contain any binding mechanism in case the competent authorities fail to reach an agreement. This means that the outcome is uncertain and the elimination of double taxation is not guaranteed. At the same time, unlike EU-level instruments, there are no fixed deadlines under the DTT within which the matter must be resolved, which can lead to lengthy negotiations. In addition, the process itself is relatively non-transparent. Taxpayers do not know how negotiations between countries proceed, cannot participate in the process in any meaningful way, and are only informed of the outcome. For these reasons, we do not recommend DTT as a tool for applying MAP.

Procedure under the Arbitration Convention

Another option is to use the European Arbitration Convention (the Convention), which focuses primarily on transfer pricing cases between affiliated companies within the EU. The Convention is a long-established mechanism within the EU, with clearly defined rules and procedural structure, and includes a binding arbitration clause in cases where the

competent authorities of EU Member States fail to reach agreement during the MAP phase. This means that disputes should never remain unresolved. The Convention applies across the entire EU, which facilitates predictability and coordination between individual states. The Czech financial administration has extensive experience with applying MAP through the Convention. However, taxpayer participation in the process under the Convention is relatively limited, and the entire mechanism can also be relatively time-consuming and administratively burdensome, which can entail increased costs.

Procedure under the Directive

Taxpayers also have the option of using the procedure set out in the EU Council Directive or the Czech Act on International Cooperation in Resolving Tax Disputes in the EU, which fully implements this directive. The Czech Act applies only to disputes relating to tax periods after 1 January 2018. The Directive and its Czech transposition harmonize procedures within the EU and provide a clearly structured process with fixed deadlines, which protects taxpayers' rights and provides them with a high degree of certainty thanks to the condition of binding arbitration in cases where the competent authorities of the Member States fail to reach agreement. The procedure under the Directive is not as well established in practice as that under the Convention, but thanks to clear rules, it can be very effective as it removes the shortcomings and ambiguities of the DTT and the Arbitration Convention.

Supplementary return

In addition to the above procedures, there is also the option of unilateral redress through a Czech supplementary corporate income tax return. This solution is quick and complies with Czech tax regulations, but it is subject to the discretion of the Czech tax administrator. It therefore does not guarantee the elimination of double taxation or the intended solution to the situation in question.

A practical overview and the OECD Manual

The most appropriate tool appears to be the procedure under the Arbitration Convention or the European Directive (or the Czech law that transposed it). Both offer clear rules that protect taxpayers, and their main advantage is that they contain a condition for arbitration in specific cases. As regards the update of the aforementioned manual, it incorporates the results of BEPS Action 14, reflects the current OECD Model Tax Convention and now includes templates for selected documents (e.g. MAP request). It was created based on suggestions from the relevant authorities and the business community to address areas that have been problematic to date.

MEMAP has been restructured according to the individual stages of MAP (from pre-MAP through bilateral negotiations to arbitration itself). The document focuses on three main areas:

- dispute prevention and organization of relevant authorities,
- access to MAP and unilateral solutions,
- bilateral negotiations, including practical recommendations for arbitration.

This structural change reflects a shift in the approach to these disputes and emphasizes not only the resolution of existing disputes, but especially their prevention, which is reflected in the manual in a number of recommendations and procedures aimed at improving processes and effective communication with taxpayers.

One of the important areas newly addressed by the manual is the organization and functioning of the relevant authorities. The manual emphasizes that effective MAP cannot be implemented unless these authorities have adequate resources, staffing, and independence from control and appeal bodies. The manual therefore provides detailed recommendations on the internal organization of these bodies, capacity management, working methods, the establishment of a solution-oriented approach and independence from audit teams. Particular emphasis is placed on ensuring that countries maintain realistic volumes of pending MAP cases and publish transparent statistics.

The manual also addresses previously unaddressed topics, such as the possibility of deviating from non-final administrative or court decisions, the prohibition of using the threat of criminal sanctions to deter MAP, the contradiction between the requirement for broad availability of MAP and the condition of access to it being subject to payment of tax, and the obligation to first assess the possibility of a unilateral solution before initiating bilateral negotiations.

The manual update is intended to simplify and harmonize MAP procedures across countries, which should bring greater predictability for Czech taxpayers. Its aim is to offer practical guidance that will help reduce differences in approach between countries and increase the effectiveness of dispute resolution. The OECD expects that the updated manual will lead to faster resolution of cases, better access to MAP for taxpayers, and thus a reduction in the number of unresolved disputes and the prevention of long-term double taxation. However, the rules are not legally binding, and it remains to be seen what their actual impact will be.

The most appropriate tool therefore appears to be the procedure under the Arbitration Convention or the European Directive (or the Czech law that transposed it). Both offer clear rules that protect taxpayers, and their main advantage is that they contain a condition of arbitration in specific cases.

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Development of CJEU case law on the application of VAT to transfer pricing and practical challenges

The application of VAT to transactions between related parties remains one of the most hotly debated topics. The Court of Justice of the European Union (CJEU) has devoted unprecedented attention to this issue over the past two years. Its conclusions significantly advance the current interpretations across EU Member States and, at the same time, raise new questions that are still awaiting resolution.

VAT versus income tax

The conflict between VAT and income tax in the area of transfer pricing and its adjustments is evident. Income tax approaches transfer pricing from a "global" perspective. The aim is for related parties to report taxable profit or loss for the tax period in accordance with the arm's length principle. In some cases, income tax may therefore refrain from assigning an adjustment directly to a specific transfer price.

In contrast, VAT is strictly a transaction tax applied to specific supplies, deliveries of goods or provision of services, where the place of supply, tax base, rate, deduction entitlement, etc. are assessed separately for each individual supply.

It is always necessary to test whether specific financial compensation represents a change in consideration for identifiable performance provided between specific parties. The CJEU consistently reiterates that for a taxable supply to exist, there must be consideration, a direct link between that consideration and the supply provided, as well as a legal relationship between the parties within which the supply is made. This may lead to the conclusion that transfer pricing adjustments fall outside the scope of VAT.

However, the method of applying VAT depends on the actual nature of the case. Transfer pricing adjustments may qualify as a change in the price of the underlying supply, consideration for (other) separate supplies or corrections with no impact on VAT. This approach is also confirmed by recent CJEU case law, whose development we will review here.

CJEU case law: when the resolution of a case raises new questions

Usual price limits for VAT

The very first significant ruling by the CJEU was case *C-621/10 Balkan and Sea*. The CJEU confirmed that Member States cannot extend the application of the usual price in the field of VAT beyond the cases specified in the Directive.

Impact of the transaction method of profit allocation on customs value

This was followed by the judgment in case *C-529/16 Hamamatsu*. The CJEU concluded that in the case of downward transfer pricing adjustments using the transaction profit split method, a change in customs value is not possible. Although the judgment concerned customs issues, the absence of judgments in the area of VAT made it a fertile ground for conspiracy theories in this area as well.

Allocation of costs according to allocation key to multiple companies

In its judgment in case *C-527/23 Weatherford Atlas*, the CJEU addresses the scope of the deduction applied to services received and allocated to several companies within a group according to a specified allocation key. With this judgment, the CJEU (somewhat surprisingly) challenges the traditional view that the VAT deduction for transactions between entities with full deduction rights depends on the actual agreed consideration. According to the CJEU, in order to claim a VAT deduction, the recipient of the supply must prove that it has received the services to the extent declared.

Does this mean that the right to deduct tax on a service received may not automatically be fully justifiable if the provider allocates the same service to multiple recipients? Should the recipient of the service be liable for the provider's incorrect determination/estimation of the allocation key? Or should it actively investigate who the other recipients are and examine whether the allocated amount is adequate? Is the risk lower if the reverse charge mechanism is applied to the received service (which, incidentally, was also the situation in the Romanian case)? We could go on with the list... .

According to the available information, the Romanian tax authorities responded to the ruling by further tightening their requirements for proving the economic rationality and meaningfulness of costs.

Costs "filtered" through a so-called active holding company

Another piece in the mosaic of CJEU judgments is case *C-808/23 Högkullen AB*. The holding company provided various management services to subsidiaries with limited tax deduction rights. It did not perform any other economic activity. It claimed the full tax deduction, which was significantly higher than what it paid for the provided services. It valued the services using the cost plus method, without including certain received supplies in the costs. The tax administrator assessed the supply as a single unique service for which the tax base should be determined as the total cost of providing the service.

In its conclusions, the CJEU limited itself to stating that the individual investment, accounting, IT, financial and other services provided are separate and can in principle be valued separately according to the prices of comparable services on the market. The CJEU did not address the significant disproportion between the tax applied at the input stage and the tax paid at the output stage. Paradoxically, the judgment is particularly interesting for what it does not contain. In her opinion, the Advocate General questioned the applicability of the existing CJEU case law on so-called active holding companies in the sense of a broad approach to the application of tax deduction claims.

The silence of the CJEU can be interpreted in various ways. The CJEU does not have to (and probably does not) comment beyond the questions asked by the national court. In practice, however, this is not always the case, especially when the Advocate General herself raises doubts. Alternatively, it can be assumed that there was no broader consensus among the judges on the issue. However, interpreting the decision as confirmation of the full right to tax deduction for active holding companies could be overly optimistic.

Adjustment of profitability as remuneration for a separate service

The most discussed judgment in recent times is case *C-726/23 Arcomet Towercranes*. A parent and subsidiary entered into contracts for the provision of mutual services. The sub's profit margin was determined using the net margin transaction method. The sub achieved higher profitability, so the parent "withdrew" part of the sub's profit by invoicing services under a pre-concluded contract for the provision of support services.

The CJEU ruled that the transfer pricing adjustment due to the required reduction in profitability in this case constitutes consideration for a separately provided service that is subject to VAT. According to the CJEU, the remuneration determined by the net margin transaction method is not random. However, the CJEU did not address the VAT regime for a possible reverse cash flow, i.e. if the subsidiary incurred an excessive loss and, conversely, invoiced the parent company itself.

Is it correct to reduce mutually defined performances to a single service provided according to the flow of the required correction? If the CJEU does not question the existence of parallel provision of services from the parent to the subsidiary and from the subsidiary to the parent (based on concluded contracts), is this not rather a barter with an additional payment? Would the CJEU assess the situation in the same way if the service agreements between related parties were worded differently or had not been concluded at all? Situations where there is no underlying transaction are very dangerous, yet in practice we see that tax administrators insist on applying VAT.

The Advocate General's fight for contractual freedom

Case *C-603/24 Stellantis Portugal* is awaiting resolution. The dispute concerns the application of VAT to adjustments to transfer prices of cars between related parties caused by the transfer of repair costs. It follows from the case law of the CJEU that the transfer of costs to the counterparty may also give rise to a separate taxable supply for VAT purposes. It will therefore be interesting to see whether the CJEU ultimately accepts the conclusion proposed by the Advocate General, who argues for contractual freedom regarding the method of transferring costs between counterparties and, consequently, the method of applying VAT. The CJEU has been handed a pragmatic smash. The question is whether the ball will end up in the net.

In summary

Transactions between related parties are currently one of the most dynamic topics in the field of VAT. The CJEU has confirmed that the link between transfer prices (including their adjustments) and specific transactions carried out plays a key role. It is this link that usually determines whether a transaction is subject to VAT or not, or which VAT regime applies.

Some of the issues have been resolved by case law, but at the same time, some new ambiguities have arisen. The approach of individual Member States is not always consistent. For some topics, it is necessary to prepare for a possible shift in interpretation in future CJEU decisions. If it turns out retrospectively that a chosen tax treatment was incorrect, additional tax assessments and related penalties may follow.

The tax administration's interest in transfer pricing is not waning. On the contrary, even before taking office, the new government signaled its intention to further strengthen controls in this area.

Ten takeaways:

1. Transfer pricing adjustments made primarily for income tax purposes but linked to specific taxable transactions will generally be subject to VAT.
2. The use of the profit transaction method does not automatically exclude transfer pricing adjustments from the scope of VAT.
3. With such adjustments, it may be more difficult to prove how they are reflected in specific identifiable transactions.
4. The structure of the services provided to both parties may be assessed as barter for VAT purposes.
5. Artificial construction of supplies (usually services) for VAT purposes due to transfer pricing adjustments increases the requirements for proving their use for economic activity.
6. Problematic situations arise when the payment or part thereof is made to the service provider by a party other than the actual recipient of the service.
7. In the case of centrally allocated supplies to multiple companies, there may be greater pressure to prove the exact scope of the supply received.
8. The scope of tax deduction entitlement for so-called active holding companies remains unclear.
9. Different application of rules across countries increases the demands on correct VAT application in cross-border structures.
10. Transfer prices for income tax and VAT purposes are closely related. Harmonizing them at the stage of preparing contractual documentation reduces the risk of disputes over the nature and scope of the provided services.

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Building Act amendment promises major changes

The Chamber of Deputies is currently discussing a comprehensive amendment to Act No. 283/2021 Coll., the Building Act and related regulations, which has already passed its first reading. The proposal mainly affects the areas of spatial planning, building regulations and the building permit process. In terms of the scope and nature of the changes, the amendment is similar to new legislation, as it modifies some of the basic principles of the current building law system and may significantly affect building practices.

Return to centralized building administration

Probably the most significant change is the return to centralization of building administration. This model was originally part of the 2021 Building Act, but was abandoned in favor of a decentralized system in a subsequent 2023 amendment. Under the current arrangement, building authorities operate within municipal and regional authorities, and their decisions are supplemented by the activities of so-called affected authorities, which issue separate binding opinions and statements on the protection of individual public interests (e.g. nature conservation, agricultural land fund, water management, etc.).

The amendment proposes to centralize building administration and create a system of state spatial development offices. The system will be headed by the Spatial Development Authority of the Czech Republic, which will be the central administrative authority with jurisdiction over spatial planning, building regulations and expropriation. The authority is to be created by combining the powers currently exercised mainly by the Ministry of Regional Development, the Ministry of Industry and Trade, the Ministry of Transport and the Transport and Energy Construction Authority. At the regional level, there will be a total of fourteen Regional Development Offices based in regional capitals, which will establish local offices in municipalities with extended powers, or in other municipalities, if appropriate. In addition to the powers of the existing building authorities, these offices will also take over a substantial part of the agenda of the authorities concerned.

The amendment aims to consolidate the building permit process into a single procedure conducted by a single state building authority, with the stated goal of unifying methodologies and procedures across decision-making practices. The integration

of the current fragmented structure of building authorities operating under municipalities or various ministries should also reduce the risk of similar cases being decided differently. Greater concentration of responsibility in a single administrative body can be expected, but at the same time, the practical readiness of the new system of authorities will be crucial.

"One office = one proceeding = one stamp"

As outlined above, one of the key objectives of the amendment is to concentrate the permitting process into a single proceeding before a single building authority. Public interests (e.g. in the areas of public health, the environment or transport) are now to be assessed primarily within the framework of the project approval proceedings, with their protection integrated into the decision-making activities of building authorities, with a few exceptions, instead of separate binding opinions.

The integration will affect, for example, permits for tree felling, consent to the withdrawal of land from the agricultural land fund and permits for the management of surface or groundwater. It is also proposed to abolish the obligation to obtain a positive unified environmental opinion, which currently replaces the partial binding opinions of various environmental authorities. However, the EIA opinion issued by the Ministry of the Environment or regional authorities as part of the environmental impact assessment of a project will be retained.

In the event of a conflict between protected interests, the authority will be obliged to weigh them up itself and decide in accordance with the prevailing public interest. The law prefers the establishment of conditions or compensatory measures rather than the rejection of the proposal.

Support for (residential) construction

The amendment also contains a set of measures designed to support the scope and flexibility of residential construction. It introduces the term "mass housing construction," defined as a building or group of buildings with a predominant residential function and a total floor area of 10,000 m² or more, which, according to the explanatory memorandum, corresponds to a building with approximately 100 to 200 apartments. This type of construction will be included in the list of designated buildings, which will be decided on in a single stage by the Czech Land Development Authority. The approval of larger residential projects will thus be carried out centrally through a single authority.

At the same time, the construction of designated buildings will be considered an activity in the public interest, which should facilitate their preparation and approval. In practice, this would mean that, for example, in expropriation proceedings or when obtaining permission to interfere with specially protected species, developers would no longer have to prove the existence of public interest for a specific mass housing construction project, as this would be directly implied by law. However, administrative authorities will still be required to balance the public interest against conflicting interests in specific cases.

Another significant change is the replacement of the term "built-up area" with "developable area." The new definition is intended to better reflect the developmental function of spatial planning, the purpose of which is not to describe the current state but to determine future development. Developable areas will be defined as the sum of developable land, corridors and non-buildable land.

The change in terminology is linked to the introduction of a rebuttable presumption that a construction project in a buildable area is in compliance with all other laws if it complies with the zoning plan and construction requirements. The protection of the landscape character or the protection of agricultural land would thus no longer be assessed in the case of a project in a buildable area, as these issues should be resolved when defining the buildable area.

Acceleration of proceedings and review

The amendment also contains a number of procedural measures designed to speed up proceedings and their review. For example, the possibility for the authorities concerned to extend the deadline for issuing a statement or binding opinion is to be abolished. The new rule is that opinions must always be issued within 30 days, without the possibility of extension, and if they are not issued on time, consent will be deemed to have been given. This will now also apply in appeal proceedings: if the superior authority does not confirm or change the binding opinion under review within 30 days, it will be deemed to have confirmed it.

The possibility of subsequent review of binding opinions is also being tightened. The superior authority concerned will only be able to amend or

revoke the opinion issued until the decision of the building authority becomes final, and in the case of a fictitious opinion, it will only be able to amend it. This will prevent the case from being reopened after the decision becomes final. Another significant change is that the building authority will always assess compliance with the conditions as of the date of submission of the application, even in appeal, review or court proceedings. The obligation to refund the administrative fee to the builder if the authority does not decide in time is also intended to motivate faster decision-making.

In the area of judicial review, a uniform one-month deadline is being introduced for filing a lawsuit and for asserting all claims, as opposed to the current option of extending the lawsuit to two months from the notification of the decision. A motion for suspensive effect must be filed together with the lawsuit (or cassation complaint); later motions will not be considered. Furthermore, the court will not be able to overturn a decision by the building authority if doing so would cause disproportionately greater harm to other persons or the public interest than leaving the contested decision in force, even if the action were well-founded.

When can the proposed changes be expected to take effect?

If the proposed material successfully passes through the legislative process, it will be the umpteenth amendment to the new Building Act since its adoption in 2021. The amendment is proposed to take effect on 1 July 2026. The transfer of powers from the existing regional and municipal building authorities to the regional development authorities is to take place within six months of the amendment coming into force, so the new centralized building administration is expected to be fully operational by the beginning of 2027. However, it should be noted that the proposal is not yet in its final form. Its wording may still change during discussions in the Chamber of Deputies and the Senate.

Only the coming months will show whether and in what form the amendment to the Building Act will be approved. However, it is already possible to anticipate that the proposed amendment could significantly contribute to speeding up the building permit process. Whether the positive effects will actually materialize in practice will depend not only on the final version of the amendment, but also on its implementation in practice.

Case law

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Advertising services from abroad and abuse of law

We bring you another interesting view of the Supreme Administrative Court on abuse of law, this time in the context of advertising services from abroad.

The core of the dispute

- The dispute concerned corporate income tax assessments due to alleged abuse of law in claiming advertising costs provided through foreign companies.
- The tax authorities considered that the advertising costs were primarily used to transfer funds to the chairman of the company's board of directors.

Background

- The company claimed as a tax expense the costs of advertising provided through a foreign company that held the advertising rights of a Czech basketball club.
- According to the tax authorities, the advertising did indeed take place, but the funds were subsequently transferred between foreign entities and ended up partly with the chairman of the company's board of directors.
- The structure included Dutch, British, Cypriot, Seychelles and American companies and significant amounts of cash withdrawals. According to the tax authorities, the advertising itself was therefore a cover-up.
- The Regional Court sided with the tax authorities and concluded that the advertising was only a "side effect" of the transaction, while the main purpose of the structure was to obtain a tax advantage (in the form of a reduction in the Czech company's tax base) and to transfer funds.
- The company defended itself against this, arguing, among other things, that the funds spent on advertising had brought it economic benefits, and that the objective test of abuse of rights had therefore been incorrectly assessed.

View of the SAC

- The SAC stated that the tax authorities did not claim or prove that the price for advertising services was overvalued and that these costs were therefore unnecessary or artificially created (without economic rationality) or that the advertising was meaningless or clearly unbeneficial for the company's business. On the contrary, they admitted that the advertising services had been provided and could have fulfilled their intended economic purpose.

- Under these circumstances, according to the SAC, it cannot be concluded that by claiming these expenses, the company would obtain a tax advantage that would be contrary to the meaning and purpose of § 24(1) of the Income Tax Act (ITA).
- In general, according to the SAC, it can be stated that in cases of "normal" purchases of goods or services, abuse of rights will only exceptionally be considered in connection with corporate income tax.
- In general, according to the SAC, it will be difficult to find arguments as to why expenses used for purposes provided for by law specifically contradict the purpose of the legal regulation.
- The SAC emphasized that, for the objective condition of abuse of rights, it is essential whether the tax advantage obtained is contrary to the spirit of the law, which was not the case here.
- The SAC criticized that the tax authorities had accepted the expediency of the costs, but at the same time claimed that their real purpose was to transfer money, which is internally contradictory.
- If the tax authorities considered that the purpose of the advertising costs was solely to obtain a tax advantage, then, according to the SAC, from the company's point of view, these could not be considered effectively incurred costs pursuant to § 24(1) of the IITA, and the evidence and legal conclusions of the tax authorities should have been oriented in this direction, which, however, did not happen.
- According to the SAC, business transactions between related parties are not prohibited per se and do not preclude the deduction of expenses under § 24(1) of the ITA, provided that they meet the conditions under which they would be negotiated by unrelated parties in normal business relations.
- The result was that, according to the SAC, the objective condition of abuse of rights was not met.

What is the takeaway?

- The reasoning of the SAC in this decision is interesting. In this situation, it primarily sees advertising services, and if these services were actually provided and meaningful, then it is not a case of abuse.
- That's an interesting point of view. Would the conclusion be the same in a situation where it was clear that the income of the foreign company providing the advertising services was lowly taxed and that its personnel and material resources were limited?
- In further proceedings, the tax authorities could focus more on the aspect of transfer pricing (not only for services provided, but also in the context of the initial transfer of advertising rights) rather than on the issue of abuse. We will see.

An interesting statement by the SAC is that in cases of "normal" purchases of goods or services, abuse of law will only exceptionally be considered in connection with corporate income tax. According to the SAC, it will generally be difficult to find arguments as to why expenses used for purposes provided for by law specifically contradict the purpose of the legal regulation.

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