Tax and Legal News

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Editorial

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What we might expect in the tax world in the foreseeable future

Half a year since my last post (more HERE), please allow me one more (last) personal reflection. This time, I won't turn my gaze to the past, but rather allow myself to speculate on what might await us in the tax world in the foreseeable future.

There are, of course, many possible scenarios – from the most optimistic rose gardens for all the people of the world to the more imaginable worlds of the Hunger Games, the Matrix and 1984. Despite the concentration of wealth and power, where the world goes may ultimately be decided by the mere flapping of a butterfly's wings, so I'd prefer to stay grounded and focus on trends in tax and tax advisory.

I have been intrigued by three pairs of mutually contradictory trends – trends sometimes quite obviously contradictory, other times less so.

The first trend is away from raising taxes – politicians have found that printing money is easier than raising taxes, and are driving budget deficits to unprecedented heights: inflation eats into people's savings and reduces national debt, yet somehow hurts the population less than if the tax rate on their paycheck were to be increased.

I speculate this will not be sustainable in the long run, one day the creditors will want to repay the debts and, in addition to selling off the remaining public assets, taxes will have to be raised.

Here a dilemma may arise: raise direct or indirect taxes? I think politicians are clear that it's always more painful to increase a direct tax that is visible on a tax slip or return than to increase (or better yet, introduce a new) indirect tax. We can expect a whole range of innovations from higher taxes on electricity (80 billion in fuel taxes will need to be replaced) to taxes on sugar, fat, plastic, etc.

The other apparent contradiction is the globalisation of the economy and the world, on the one hand, where an increasing part of the world economy is owned by the largest multinational corporations and financial institutions, and, on the other hand, de-globalisation, where, especially after the US elections, trade barriers are being created between countries, continents and economic blocs.

The effect of globalisation on taxation was transnational tax planning aimed at minimising the tax burden on companies (with interest, royalties and transfer pricing at the centre). The national response to this trend has been the 15-point interstate initiative under the OECD banner known as "BEPS" and its specific manifestations, which in my view will continue to shape much of the tax world, initiatives such as Pillar 2 (minimum effective

tax rate), ATAD, CbCR, MDR, MLI, MAP and a host of other incomprehensible, albeit internationally recognised, acronyms whose common denominator is a unified approach to tackling international tax planning.

The trend towards international cooperation is being countered by good old-fashioned protectionism, increasing tariffs and indirect taxes, from the standard ones, where it is enough to increase tariffs, to innovative instruments such as carbon tariffs protecting against environmental dumping (the EU is not protecting itself very much yet – I want to believe that it isn't waiting for European industry to lay down completely and there will be nothing to protect) or digital taxes on software and content imports. We can see and continue to expect support for domestic production from the developed countries – the Chinese have started massively, the US has joined in and the results are already visible – production is moving to China, to the US, from Europe, or at least from the Czech Republic. Neighbouring countries are trying to respond, adjusting incentive schemes, and the Czech Republic is just passively watching how Pillar 2 and the minimum tax will crack down on those who have already received incentives in the past.

The third contradiction I would like to point out is artificial intelligence and the green deal. How can these two seemingly positive trends be mutually exclusive?

AI is undoubtedly something that, like in many other fields, will change tax practice significantly. We can automate many processes, and with a bit of practice AI can research and investigate better than many novice and moderately advanced tax professionals. Weaknesses? It sometimes makes things up – not just conclusions, but sources. It occasionally draws the wrong conclusion, even if its argument looks beautifully reasoned and plausible. It will certainly improve, making it all the more difficult to distinguish between valid and invalid conclusions.

Two things bother me: the human ability to read maps and speak foreign languages is already atrophying thanks to navigators and translators. AI must necessarily lead to loss of the ability to think, analyze and synthesize – in a few years, will anyone be checking AI to see if it is right? How will a tax (or any other) expert who relies on AI in the early days of practice be trained? Will taxes then just be a battle between the taxman's AI and the taxpayer's AI? (I don't even want to think about fields like nuclear power or the military).

Now the contradiction with our green mission – do you know how much energy it takes an AI to answer a moderately complex query? For example, the energy consumed to do the research in writing this article would take the average car nearly half a kilometre. Today, that's still unknowable, but when AI use takes off, it could take a nasty toll on our carbon karma. Then again, maybe it will help fill the national budget deficit.

Here a dilemma may arise: raise direct or indirect taxes? I think politicians are clear – it is always more painful to increase direct tax, which is visible on a tax slip or return, than to increase (or better still, introduce a new) indirect tax. So we can expect a whole range of innovations from higher taxes on electricity (80 billion in fuel tax will need to be replaced) to taxes on sugar, fat, plastic etc.

Pillar 2

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Possible concessions and changes in favour of the US

The Polish Presidency of the Council of the EU has reportedly presented several proposals to mitigate the current negative attitude of the United States towards the Pillar 2 rules.

The first proposal is to change the scope of qualified refundable tax credits, which, once modified, should include US incentives. The modification could potentially be more general in nature, aiming at changing the qualification rules from the current refundability test a more substance-based test, which could eventually allow for the qualification of incentives and deductions granted by EU Member States.

The second option is to limit the mechanism of the Under-taxed Profits Rule (UTPR). It could be limited, for example, by extending the application of the UTPR safe harbour to groups whose ultimate parent entity is based in a jurisdiction with a statutory corporate tax rate of at least 20%. The alternative could then be to abolish the UTPR mechanism altogether, on which, however, the Pillar 2 rules are largely based.

Thirdly, the Polish Presidency is reportedly proposing to consider a specific US taxation, the so-called GILTI, as the equivalent of the Income Inclusion Rule (IIR). Conceptually, GILTI represents a kind of intermediate step between the CFC rules and the IIR, while not applying the jurisdictional approach that is crucial for Pillar 2 at the moment.

It will certainly be interesting to follow further the development of the US position on Pillar 2 and possibly the related changes to the existing rules that could accompany possible concessions to the US.

For more information on Pillar 2, please contact the authors or your usual EY team.

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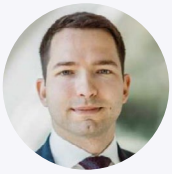
Law



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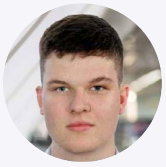

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News on consumer protection in online contracts

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At the beginning of last month, a Czech legislator started the legislative process of transposing the so-called DMFS (Distance Marketing Financial Services) Directive. The changes in the Czech legal system will mainly affect the Civil Code and the area of consumer protection.

In early April of this year, the Ministry of Finance of the Czech Republic submitted for comments a draft law implementing into the Czech legal system new measures and obligations from Directive (EU) 2023/2673 of the European Parliament and of the Council of 22 November 2023 amending Directive 2011/83/EU as regards distance contracts for financial services and repealing Directive 2002/65/EC ("DMFS Directive").

The changes under the DMFS Directive concern, in particular:

- the introduction of a contract withdrawal button,
- new obligations to remind the consumer of the option of withdrawing from a contract,
- layering of pre-contractual information (option to "unpack" or "wrap" certain, less important information),
- reversing the burden of proof regarding disclosure of key pre-contractual information, and
- a ban on what are known as dark patterns.

The largest number of changes in the Civil Code ("CC") has been made to the passage relating to financial services (i.e. § 1841 to § 1851 CC). However, some general provisions concerning the conclusion of distance contracts (§ 1820 to § 1840 CC) have also been significantly amended.

The first two changes below apply to all distance contracts concluded with consumers via an online interface.

The "WITHDRAW FROM CONTRACT" button

Of particular note is the introduction of an obligation to place a button (or similar control) in the online

interface of the supplier, by which the consumer can easily exercise his/her right to withdraw from the contract. This button must be accessible continuously throughout the rescission period.

The button should bear the text "withdraw from the contract "(here)" or equivalent unambiguous wording ("withdraw here", "withdraw from contract", etc.) to enable the consumer to clearly recognise that by using the feature he/she can exercise the right to withdraw from the contract.

Activation of the button should consist of two steps. After pressing the button mentioned above, the consumer will be asked to fill in a withdrawal declaration. Here he/she will provide (or confirm the pre-filled) identification data, the number (or other identification) of the contract he/she is withdrawing from and the address (e.g. e-mail address) to which the withdrawal confirmation will be delivered. The whole process is completed with a second confirmation to avoid inadvertent withdrawal. The confirmation should be marked "confirm withdrawal" or similar unambiguous text.

The aim of this regulation is to align the conditions under which a contract is concluded (in practice, it is often enough to "click" on a few contrastingly coloured, clearly visible buttons) with the conditions under which a contract can be rescinded. Thus, there should be no unreasonable obstacles to the exercise of the right of withdrawal (e.g. downloading an app if the contract being rescinded has not already been concluded through it).

Pre-contractual information obligation

All businesses are now obliged to indicate in the pre-contractual information notice when concluding consumer contracts online that consumers can withdraw from the contract via a button or other control.

The following changes apply only to the conclusion of consumer financial service contracts.

Modification of the catalogue of information to be disclosed before execution of a financial services contract

The list of information to be disclosed before execution of a financial services contract has undergone formal changes. For example, there is a new obligation to provide the contact details of the entrepreneur to whom the consumer can send a complaint, the consequences of the consumer's default (i.e. in particular, an explanation of default interest and other associated charges), or a reference to the public register in which the entrepreneur is registered and information on the competent supervisory authority.

Reminder of the option to withdraw from a financial services contract

If the consumer has not had the opportunity to read the pre-contractual information more than one day before concluding the financial services contract, the entrepreneur is now obliged to inform the consumer in text form within 1 to 7 days after the conclusion of the contract of the option of withdrawing from the contract.

Layering of communicated data

A new feature of a more technological nature is the explicit possibility to layer selected communications before concluding a financial services contract. This option applies only to the communication of pre-contractual information by electronic means. In practice, it means that the entrepreneur can "hide" some of the data, for example under headings or categories, and the consumer can only access the data by "un-clicking" it.

The purpose of this rule is to adapt the obligation to disclose pre-contractual information to the technical limitations of certain devices (typically the size of mobile phone displays), while complying with the obligation to disclose all such information.

The law divides pre-contractual information into two categories. It defines both "key" information, which must always be available in the first layer (i.e. it cannot just be available, for example, after "clicking"), and the residual group of information (which can be, for greater clarity and consumer orientation, in other layers, e.g. "click-through" lists).

The first layer of information must always include at least: the identity and main business of the entrepreneur, the main characteristics of the financial service, the total price including all taxes and charges (or at least the method of determining the final price if it is not possible to determine it at the time of contract execution) or a statement of the (im)possibility of contract withdrawal.

Changes to phone calls

The legal regulation of telephone communication has mostly undergone clarifying changes. It is now clearly stated that if a business records calls, or if these calls may be recorded (for example, in a situation where they are only recorded randomly), the consumer must be informed.

In addition, with the consumer's consent, only limited pre-contractual information (the scope of which is identical to the "key information" referred to in the preceding paragraphs on data layering) may be disclosed to the consumer during the call. The key information in its entirety must be disclosed to the consumer in text form after the conclusion of the contract.

Reversal of the burden of proof

A change with a relatively large practical impact is the introduction of the so-called reverse burden of proof in relation to the disclosure and explanation of mandatory data and information. If doubts arise as to whether the entrepreneur has properly communicated and explained pre-contractual information to the consumer to the extent required by law, it is for the entrepreneur to prove this.

Protecting consumers from deceptive and manipulative practices when concluding a contract

A new institution, the ban on dark patterns, has been introduced in the area of distance negotiation of financial services via online interfaces. These are deceptive and manipulative practices designed to direct or induce consumers to make choices or take actions that may be disadvantageous to them.

Dark patterns can take many different forms, e.g. fake countdown timers, colour coding of unfavourable options, pre-ticked boxes, difficult-to-meet conditions for receiving widely advertised bonuses, fake reviews, misleading comparisons with competitors, etc.

Financial services entrepreneurs should ensure that their websites and applications do not use any of the prohibited elements before these changes come into force in order to avoid possible sanctions by supervisory authorities.

Offences for breach of the new obligations

Together with the adoption of the above protective measures and instruments, the catalogue of offences under the Consumer Protection Act is being extended.

Most of the measures discussed in this article can result in a fine of up to CZK 5,000,000.

Several authorities, such as the Czech Trade Inspection Authority, the Czech National Bank, the Energy Regulatory Office, the Czech Telecommunications Office or trade licensing authorities, supervise compliance with the obligation to implement the opt-out button.

Supervision of compliance with the other obligations discussed (i.e. measures relating only to financial services) falls within the remit of the Czech National Bank.

If you have any questions, please contact the authors of this article or other members of EY Law or your usual EY team.

Together with the adoption of the above-mentioned protective measures and instruments, the catalogue of offences under the Consumer Protection Act has been expanded. Most of the measures discussed in this article can result in fines of up to CZK 5,000,000.

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VAT in the digital age – what's new?

In the context of increasing digitalisation and the growth of e-commerce transactions, the VAT in the Digital Age (ViDA) legislative package came into force on 15 April 2025.

The implementation of individual measures will be phased over the coming decade. The measures cover three key areas: mandatory e-invoicing for selected transactions and related (near) real-time reporting, a special taxation regime for selected supplies provided through electronic interfaces and an extension of the special single administrative point regime (OSS) together with an extension of the reverse charge mechanism. We have discussed this topic in more detail, e.g. here.

Against the background of these legislative changes, numerous expert groups comprising representatives of national tax administrations are meeting at the EU Commission level. The groups are intensively engaged, inter alia, in identifying problems and developing solutions in relation to the implementation of the new VAT rules. The following is a summary of the most important meetings and initiatives.

Strategy for further VAT system modernisation

At the end of March 2025, the 48th meeting of the Group for the Future of VAT (GFV) took place in Brussels, focusing on the future of the VAT system in the EU after the implementation of the ViDA package.

A delegation from the VAT Expert Group (VEG) presented a comprehensive report outlining strategies for improving the VAT system in the EU, highlighting priorities such as simplification, digitalisation and sustainability. Among the key points proposed are broadening the tax base, removing VAT exemptions and integrating new technologies. It also seeks to push for changes in financial services (taxation instead of exemption) and tourism.

The report gives an indication of the direction of the Commission's future VAT efforts. The Commission has already launched a study which will involve extensive consultation with public and private stakeholders at the EU, national and international levels. The study will run until the end of 2025.

Selected supplies provided through electronic interfaces

The Commission has also published several GFV working documents. Working Paper No. 144 contains information on selected supplies provided through electronic interfaces. It discussed, for example, the interaction of these rules with the special scheme for travel services, the application of VAT on the brokerage fee and others.

Uniform VAT registration

Working Paper No. 145 summarises the timetable for the implementation of the new import regime rules (Import One-Stop Shop – IOSS) and proposals for further improvements to the e-commerce rules. The Commission plans to revise the document on the basis of feedback from individual Member States.

Import regime (IOSS)

Working Paper No. 146 provides further information on the import regime, including the process for verifying IOSS numbers. The pilot test project will run until the third quarter of 2026.

Preparing the EU for electronic invoicing and real-time reporting

Following the aforementioned GFV working group meeting, a Fiscalis workshop was held in April 2025, during which experts from both the VEG and GFV working groups exchanged their views on strategies for implementing mandatory e-invoicing and real-time reporting.

The important news is that the EU Commission is already working on a "new" standard for e-invoicing within the EU, an updated version of which is expected in September 2025.

Peppol pilot project

The Commission is preparing for a revolution in real-time e-invoicing and reporting via the Peppol (Pan-European Public Procurement On-Line) pilot project.

The Peppol system enables the exchange of documents in electronic form within a defined standardised framework. It is a global solution, which is also widespread outside the EU. However, its importance in the EU is increasing with the drive for greater digitalisation of tax processes, e.g. in the context of the ViDA package.

The system uses a "4-corner" or "5-corner" model where four participants (buyers, sellers and their service providers) exchange documents electronically over the Peppol network. In the 5-corner model, the role of the tax administration is included.

The pilot project focuses on the exchange of invoices and other documents in electronic form between businesses (B2B) and between businesses and public bodies (B2G). With the help of Peppol, relevant use cases are to be documented and a comprehensive real-time e-invoicing and reporting architecture based on the "5 corners" model is to be designed. The project aims to demonstrate the usability and viability of Peppol in the context of ViDA requirements.

Conclusion

The ViDA legislative package represents a significant step towards the modernisation of the EU VAT system. The implementation of mandatory e-invoicing and real-time reporting for selected transactions, together with the extension of the special one-stop-shop and reverse charge schemes, will bring a number of benefits, whether simplifying and speeding up invoicing processes or increasing transparency and making tax collection more efficient. Businesses will need to prepare for the upcoming changes, in particular by adapting their processes and information systems to the new requirements in a timely manner.

If you have any questions on the above topic, please contact the author or your usual EY advisory team.

The measures cover three key areas: compulsory electronic invoicing for selected transactions and related (near) real-time reporting, a special tax regime for selected supplies provided through electronic interfaces and an extension of the special one-stop-shop regime together with an extension of the reverse charge mechanism.

Judicial window

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A revolution in the concept of the beneficial owner of income?

Recent Municipal Court in Prague case law on the concept of the beneficial owner of income has taken a surprising turn. According to this interpretation, the application of double taxation treaties could become very complicated in business models involving more than two elements.

Introduction to the issue of the beneficial owner

Income of legal entities – tax non-residents of the Czech Republic from interest and royalties is generally subject to withholding tax in the Czech Republic at a rate of 15% or 35%. However, under certain conditions it is possible to achieve:

- an exemption of income from withholding tax under the Income Tax Act, or
- a reduction of the withholding tax rate under the relevant international double taxation treaties concluded between the Czech Republic and the state of the income recipient.

Each of these mechanisms has its own conditions for application. However, the common condition is that the recipient of the interest or royalty must be the beneficial owner. This is satisfied under the Income Tax Act if the recipient receives the payments for their own benefit and not as an agent, representative or principal for another person.

This definition of beneficial owner is based on EU Council Directive 2003/49/EC on a common system of taxation of interest and royalties between associated companies of different Member States. A similar concept of beneficial owner can also be found in the OECD model double taxation treaties. The purpose is to prevent taxpayers from setting up artificial flows of interest and royalties through so-called conduit entities in order to obtain more favourable tax treatment (*treaty shopping*).

In commercial practice, it is common to encounter cases where one or more entities are between the interest or royalty payer and the original lender or IPR holder. These entities may have different functions in the business model, ranging from a mere agent to a completely independent trader/financial institution. In the case of these business models with more than two elements, the determination of the beneficial owner of the interest and royalties is crucial to determine the correct tax regime.

In practice, the following variations may occur:

a) The payer pays the interest or royalty to an intermediate entity that can be considered the beneficial owner of the income. In this case, the payer simply applies the double taxation treaty concluded between the Czech Republic and the state of residence of this intermediate entity.

b) The payer shall pay the interest or royalty to the agent, attorney or broker who deals with the payer on behalf of the beneficial owner. In this case, the payer shall apply the double taxation treaty concluded between the Czech Republic and the state of residence of the beneficial owner. In this case, the intermediate entity can never be the beneficial owner of the income and the payer is usually in a legal relationship with the beneficial owner.

c) The payer pays interest or royalties to an intermediate entity that deals with the payer in its own name and on its own account, but cannot be considered the beneficial owner of the income, e.g. because it is itself restricted in the use of the funds received by an obligation to its supplier. Neither the law nor international treaties explicitly regulate the procedure in this situation, where the payer is not formally in any legal relationship with the beneficial owner of the income. However, it follows from the OECD system of double taxation treaties that the payer should be entitled to apply the double taxation treaty between the Czech Republic and the state of residence of the beneficial owner in this situation as well. This approach is confirmed by the OECD Commentary to the Model Double Taxation Treaty and, in the CR, by the Communication of the Ministry of Finance on the issue of the concept of "place of management" and "beneficial owner".

For the first two categories, the regime for the application of double taxation treaties is clear. In the case of the latter category, there may be interpretive conflicts as to whether the taxpayer can invoke a double tax treaty on a beneficial owner with whom it does not have a legal relationship. These are relatively common business models involving, for example, sub-licensing or intra-group refinancing of loans.

Czech administrative courts have previously indicated that the abusive element may not play a role in the assessment of the beneficial owner of the income, i.e. whether the predominant objective of the structure in question was (or was not) to obtain an unjustified tax advantage and whether this was (or was not) done.

Now, it seems, the Municipal Court in Prague has come up with additional conditions for the application of the double taxation treaty regime.

Judgment of the Municipal Court in Prague

The issue of determining the beneficial owner of income is rather rarely raised before administrative courts. However, even from this sporadic case law, it appeared that courts, including the Supreme Administrative Court and the CJEU, accept the above procedure of applying a double taxation treaty to the beneficial owner even in the absence of a direct legal relationship.

The Municipal Court in Prague in a recent series of judgments (judgments of the Municipal Court in Prague No. 11 Af 37/2020 - 153, No. 11 Af 38/2020 - 141 and No. 11 Af 39/2020 - 142 of 4 February 2025) considered a situation where the taxpayer purchased licences from other companies in the group. These companies purchased the licences in bulk from the licensors and then distributed them within the group.

The taxpayer argued in both the tax and court proceedings that these group companies were the beneficial owners of the royalties and therefore applied a withholding tax rate reduced to 10% on the payments under the relevant international treaties. The tax administration rejected this claim by the taxpayer, arguing that the original licensors were the beneficial owners of the royalties.

The taxpayer responded by requesting that in such a case the tax authority apply the rate under the double taxation treaties with the licensor countries and provide the necessary evidence. Interestingly, in such a case, some payments would even be exempted from withholding tax altogether (i.e. the taxpayer in the proceedings originally applied a less favourable tax regime). However, the tax authorities refused to take account of this "alternative claim" by the taxpayer, arguing that the status of the original licensors was not at issue in the proceedings.

Surprisingly, the Municipal Court in Prague decided the case on the basis of another argument, namely that the benefits provided by double taxation treaties only accrue if there is a legal relationship between the payer and the beneficial owner and the payer pays the royalties directly to the beneficial owner. It therefore dismissed the taxpayer's action in all three judgments.

The Municipal Court expressly departed from a previous judgment of the Supreme Administrative Court (No 10 Afs 65/2023 - 68 of 20 June 2024) concerning an identical case of the same taxpayer but for a different tax period. In that judgment, the Supreme Administrative Court emphasised the relevance of the taxpayer's alternative claim regarding the actual ownership of the royalties and annulled the tax administration's decision for evidentiary defects and other procedural shortcomings. The Municipal Court seems to extend, without any legal support, the conditions for avoiding double taxation of income for the beneficial owner to the existence of a legal relationship between the beneficial owner and the payer and the direct payment of payments between these entities.

In our view, the conclusions of the Municipal Court may be perceived as contrary to the meaning and purpose of the beneficial owner concept. If adopted in practice in this form, it would in practice mean double taxation of normal and economically rational business models in which licensing or lending takes place through several separate legal relationships without tax optimisation aspects.

Appeals against the judgments of the Municipal Court were filed with the Supreme Administrative Court. Thus, it will probably soon be clear whether this fundamental shift in the understanding of the concept of beneficial owner will actually take hold.

If you are interested in this area, please contact the authors of the article or your usual EY team.

In our view, the conclusions of the Municipal Court may be perceived as contrary to the meaning and purpose of the beneficial owner concept. If adopted in practice in this form, it would in practice exclude business models in which licensing or lending is carried out through several separate legal relationships from the possibility of avoiding double taxation and therefore, in our view, unjustifiably impose multiple tax burdens on income in the case of normal and economically rational business structures without tax optimisation aspects.

Judicial window

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CJEU on exemption limits under the EU Directive on the common system of taxation of parent companies and subsidiaries

We would like to present an interesting case from Lithuania (C 228/24) dealt with by the Court of Justice of the European Union (CJEU) concerning the application of the EU Directive on the common system of taxation of parent companies and subsidiaries (EU PS Directive).

What didn't the Lithuanian authorities like?

- The Lithuanian parent company received dividends from a UK subsidiary (while the UK was still in the EU).
- Although the formal conditions for exemption under the EU PS Directive were met, the Lithuanian authorities questioned its application for the following reasons, among others:
  - Due to the nature of the activities (organisation of digital games distribution), the staffing of the subsidiary appeared insufficient (one manager managing seven other companies).
  - In the eyes of the tax authorities, the UK subsidiary had no real economic activity – it had no proper office (many companies registered at that address), no equipment, no website and no email.
  - In its investigation, the tax administrator concluded that the necessary activities were in fact carried out by the parent company.
  - The tax administrator therefore considered the structure in question to be artificial and not qualifying for the application of the exemption.

What was the taxpayer's view?

- The company disagreed with the view of the tax authorities – a selection of its arguments:
  - The business model was gradually changed – the role of the British subsidiary gradually diminished for objective reasons.

- The initial involvement of the UK company was necessary because in the early days of the activity it was not possible to conclude distribution agreements between the Lithuanian company and Apple/Google directly, so the role of the UK company was required.
- Due to the role of the company, no office space or website was needed.
- The rationale for the UK company's involvement must be considered in the context of the overall historical development – that is, not only through the lens of the moment when its activities were curtailed and the dividend was received.
- The situation cannot be regarded as a tax-avoiding structure, as the mere fact that the UK subsidiary realised a profit which, on distribution, is subsequently exempt in the hands of the Lithuanian parent does not amount to a denied tax advantage – especially as the tax paid in the UK was higher than the tax on a similar profit realised in Lithuania.

It is our understanding that the application of the exemption alone should not be sufficient to establish the existence of a prohibited tax benefit, particularly in a situation where the subsidiary taxes the gain as much or more than the parent would have taxed it.

View of the CJEU

- The CJEU has – in our view – taken a sensible view of the matter and says that the notion of a prohibited tax advantage should not be interpreted narrowly when applying abuse, but that it is necessary to look at the situation in the overall context.
- The application of the exemption should not, by itself, be sufficient to conclude the existence of a prohibited tax advantage, particularly in a situation where the subsidiary taxes the gain as much or more than the parent would have taxed it.
- Good news then. However, practice is colourful and in other situations elements may arise where it may not be clear whether the story would have turned out as positively, e.g. what if the tax administrator had identified the existence of some potential side benefit (e.g. a higher tax basis of the shares on an intra-group sale) or had inferred beneficial ownership of the income declared by the subsidiary (e.g. dividends received) by the parent.

If you are interested in this area, please contact the author of the article or your usual EY team.

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Did you know:

- The Supreme Administrative Court dealt with the legitimacy of the creation of a accrual for damage compensation?
- The head of the General Financial Directorate has suggested that the tax administration will now focus mainly on corporate income tax and employment tax?
- A flexi-amendment to the Labour Code has been signed by the Czech President?
- The number of private companies using the deductible item for research and development continues to decline?
- Cyprus has introduced defensive tax measures targeting low-tax jurisdictions and those on the *blacklist*?
- New rules on compulsory employment of people with disabilities apply?