Tax and Legal News

September 2026

The better the question.
The better the answer.
The better the world works.

Shape the future
with confidence

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

Editorial – A brief reflection on what has changed over the summer and what lies ahead this fall.

Financing and taxes – Over the past few years, Czech courts have been evolving their perspective on certain tax aspects of financing—here we summarize our selected observations on the matter.

Pillar 2 – The proposed amendment to the Czech Top-up Tax Act, among other things, implements changes resulting from the OECD Side-by-Side Package and introduces changes and clarifications regarding tax administration.

10 (topics) for 10 (areas) – We're returning to our popular "10 for 10" series, in which we've previously focused on the most common pitfalls when preparing tax returns. This time, we're tackling the rewarding topic of the R&D tax deduction.

VAT on transfer prices – We consider whether the rulings in the Arcomet and Stellantis cases are contradictory and what implications they have for legal practice.

Purchase of a business and criminal liability – In certain circumstances, criminal liability may also be transferred when a business is sold. We examine how the courts have clarified the rules.

Financial Administration activities – The Financial Administration publishes an annual report on its activities. We set out ten highlights from the latest report.

What else has caught our attention?

- ***Pillar 2*** – The interactive form for top-up tax returns is expected to be launched around mid-September.
- ***Real estate tax*** – The finance minister suggests she is "considering" the possibility of raising property taxes on "investment apartments".
- ***Binding VAT assessment*** – The Financial Administration reportedly would like to put an end in the future to the current practice whereby applicants indirectly seek confirmation of issues such as the place of supply, consideration or the status of a taxpayer through a binding assessment.
- ***Transfer pricing*** – The Court of Justice of the EU is being asked whether it is compatible with EU law for national transfer pricing rules to require adjustments based on the median (C-725/26).
- ***Investment incentives*** – There are ongoing discussions about whether the government could change (relax) the methodology for granting new investment incentives.
- ***Donation of goods*** – The Financial Administration has clarified the rules for determining the tax base in the case of the gratuitous supply of goods.
- ***Home office and permanent establishment*** – The Financial Administration has opined on the question of whether a foreign company establishes a permanent establishment in the CR if its employees work from home here.
- ***Startups*** – The Ministry of Industry and Trade is working on a law for startups, and specific tax incentives are reportedly being considered, such as certain relaxations regarding the carryforward of losses and the possibility for investors, under certain conditions and within a specified limit, to claim the value of their investment in a startup as a tax-deductible expense.

Editorial

Kateřina Dedková
Partner, Tax Services
katerina.dedkova@cz.ey.com
+420 603 577 890

Returns

The end of summer vacation is usually a time of returns. We return from our vacations, children return to their classrooms, lawmakers return to the Chamber of Deputies, and we turn our attention to what has changed over the summer and what awaits us in the fall. And what will happen next?

Following its approval by the Chamber of Deputies in July, the EET (revised electronic sales recording system) 2.0 amendment package is heading to the Senate, and with it, kindergarten tuition credit, student credit and still wine are making a comeback. And, of course, the EET itself. Past trends are reappearing on the catwalk—only this time in a modernized version, and still with the open question of what their impact on the public finances will be.

The past two years have shown that the main focus of tax and financial legislation is no longer the question of whether taxes will be higher or lower. Instead, there is much greater focus on what data will need to be collected, reported, shared and archived. Just look at ESG, Pillar 2 or equal pay regulations. From a corporate perspective, this means new processes, new systems and new competencies.

Tax and finance departments are thus gradually shifting from the actual calculation of taxes to working with data, technologies and the implementation of regulatory requirements. Terms such as "data quality," "single source of truth," "real-time tax reporting" and "human-in-the-loop" are entering our everyday vocabulary. And while we may have once thought that digitization meant mainly more convenient work, we now know that, in the beginning, it primarily involves hard work on data consolidation, setting up controls and integrating systems. And that it's not a six-month project.

And if anyone was hoping this was just a temporary blip, they need only look at the schedule for the coming years. In addition to the accounting and tax recodification, e-invoicing is a hot topic right now. Discussions on the recodification were suspended in late spring, and as for e-invoicing, a working group is currently being considered. Meanwhile, neighboring countries are showing that digital reporting is no longer in the distant future, but a current issue with specific deadlines and real-world impacts on the day-to-day operations of businesses.

As Indian summer draws to a close, negotiations on next year's state budget are wrapping up. The size of the deficit is a hot topic; it's possible it will approach 400 billion. In addition to mandatory spending, defense funding and the energy transition are major issues for the coming decade. And in addition to the investments required by the accounting and tax reforms for businesses, it will also be necessary to address the long-standing backlog in the digitization of public administration. It is difficult to demand ever more data from companies if the government cannot keep pace with its processing and utilization.

Who will pay for all this?

Local and Senate elections are coming up in October. During an election cycle, it's usually politically easier to talk about supporting growth than about raising taxes. The good news is that the number of young entrepreneurs has more than doubled over the past ten years. So there's no shortage of interest in entrepreneurship. Innovation is one of the government's stated priorities, so perhaps the startup bill currently being drafted will create better conditions for the creation and growth of new companies, including a stronger legal framework, greater flexibility and increased credibility. In the long term, higher public revenues are primarily the result of a thriving economy.

If only competitiveness and growth could keep pace with the technological advances in artificial intelligence that we are currently witnessing. And if only the improvements—which have been rather slow so far—could turn into a breakthrough, followed by exponential growth and a curve resembling the coveted hockey stick shape. And if only tax legislation—among other things—could help make that happen.

So, back to class!

In addition to accounting and tax reform, e-invoicing is a hot topic.

Financing

Radek Matuštík
Partner, Tax Services
radek.matustik@cz.ey.com
+420 603 577 841

Jakub Tměj
Senior Manager, Tax Services
jakub.tmej@cz.ey.com
+420 735 729 372

Financing and taxes – the view of the courts

Over the past few years, Czech courts have shifted their perspective on certain tax aspects of financing. Below, we summarize some of our related observations:

- **Debt push down** – can work provided there is economic (non-tax) rationality—typically in the context of an external acquisition; key aspects: external vs. related-party financing; bank requirements; revaluation effect; elimination of the tax base; non-taxation of interest income; upstream or downstream mergers.

- **Debt-financed capital distribution** – can work provided there is economic (non-tax) rationality; key aspects: external vs. related-party financing; elimination of the tax base; non-taxation of interest income; ordinary profits vs. revaluation.

- **Refinancing** – the courts examine economic rationality and ask: "Would an independent, rationally acting party acting in its own best interest agree to refinance under the given conditions?".

- **Beneficial ownership / eligibility for protection** – the risk profile will typically depend on the existence of a legitimate business (non-tax) reason for the structure in question and on the level of substance of the company; key aspects: important decisions—who makes them and where; adequate material and personnel resources; "back-to-back" flows and profit margin.

We would be happy to discuss any aspect relevant to your specific circumstances with you.

Debt push down can be effective provided there is economic (non-tax) rationality, typically in the context of an external acquisition.

Pillar 2

Karel Hronek
Partner, Tax Services
karel.hronek@cz.ey.com
+420 731 627 065
in

Top-up Tax amendment

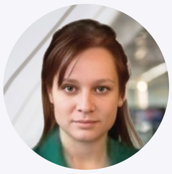
A recently published Top-up Tax Act amendment draft includes the following noteworthy points:

- Methodology for tracking deferred tax liabilities (DTL) for the purpose of determining recaptured deferred tax liabilities (DTL recapture rule) in accordance with OECD administrative guidelines (AG).
- Implementation of the changes resulting from the OECD Side-by-Side (SbS) package, i.e. in particular:
  - extension of the application of the transitional safe harbor rule based on the information contained in the country-by-country report (CbCR Safe Harbor);
  - a permanent rule based on a simplified calculation of the effective tax rate (Simplified ETR Safe Harbor);
  - a permanent safe harbor rule for qualified tax incentives based on economic substance (Substance-based Tax Incentive Safe Harbor));
  - a permanent safe harbor rule for the global taxation regime (Side-by-Side Safe Harbor));
  - a permanent safe harbor rule for the domestic taxation regime of the ultimate parent entity (UPE Safe Harbor).
- Selected changes/clarifications regarding tax administration, e.g.:
  - the deadline for filing a tax return is being shortened. It is now set at 3 months after the deadline for filing the GIR (transitional provision for periods beginning before the effective date of the amendment).
  - simplification regarding the notification of compliance with the obligation to file GIR–in simple terms, the principle of "notify once and then report any changes".
  - transfer of the tax liability for top-up tax upon the dissolution of a constituent entity without a legal successor (transitional provision for periods beginning before the effective date of the amendment).

The proposed Top-up Tax Act amendment introduces, among other things, changes resulting from the OECD Side-by-Side Package and changes/clarifications regarding tax administration.

10 (topics) for 10 (areas)

Martin Hladký
Senior Manager, Tax Services
martin.hladky@cz.ey.com
+420 731 627 030



Veronika Kruttová
Senior Consultant, Tax Services
veronika.kruttova@cz.ey.com
+420 730 191 757

Tax deduction to support research and development

After several years, we're returning to the **"10 for 10"** series, in which we previously focused on the most common pitfalls in preparing tax returns. Positive feedback from readers, along with the rapid pace at which tax legislation, tax authorities' approaches and taxpayer practices are evolving, have inspired us to prepare a new, updated series.

We would like to highlight topics we often address together with clients: from research and development—which, given its appeal, remains a subject of intense interest to tax authorities—to (future) tax losses, group services (including demonstrating their benefits), unrealized foreign exchange gains and losses, selected VAT topics, and, for example, expanded reporting obligations, including Pillar 2 and CbCR.

In addition to Supreme Administrative Court case law, we'd like to mention other areas that may have a significant impact in practice—whether they involve legislative changes, interpretive opinions, guidance from tax authorities or practical experience from tax audits.

1. Amount of the deduction

The amendment, effective as of 1 January 2026, increases the percentage of deductible expenses from 100% to 150%, subject to a newly established limit of CZK 50 million in expenses per tax period to which this increased rate may be applied. Expenses exceeding this limit may still be claimed at 100%. At the same time, the previous option to claim a 110% deduction in the event of a year-over-year increase in expenses is being eliminated. To prevent the deliberate splitting of research activities among multiple companies, a "tax deduction unit" rule is also being introduced, under which the CZK 50 million limit is assessed collectively for a group of related taxpayers. The proposed amendment thus strengthens the incentive to invest in research and development, while at the same time establishing safeguards against the artificial inflation of claims for the increased tax rate.

2. Carryover of the deduction

The above-described amendment significantly increases flexibility in claiming the research and development tax deduction by extending the period for claiming it from three to five subsequent tax periods, while also allowing the taxpayer to decide when to actually claim the deduction. A taxpayer will thus be able to intentionally forgo claiming the deduction even in a period in which they report a positive tax base and carry it forward to subsequent years, for example, in order to prioritize another tax benefit, such as a tax deduction for employees with disabilities. In contrast, recipients of investment incentives in the form of a tax deduction must continue to first claim the deductible research and development expense before utilizing the tax deduction.

3. Simplification of project documentation

The amendment in question also simplifies the administrative requirements for project documentation by eliminating the obligation to include in project details regarding the qualifications of individuals involved in the project and the nature of their employment relationship. Since this information can be reliably verified through the taxpayer's standard employment documents, including it directly in the project constituted nothing more than unnecessary duplication. The change is therefore intended to reduce the administrative burden and make project documentation clearer.

4. Formal particulars of a project

The Supreme Administrative Court has repeatedly affirmed that a properly prepared project is a key requirement for claiming a research and development tax deduction, and that formal deficiencies in the project alone may lead to the denial of the claim. In the case at hand,[1] the court concluded that the project did not include sufficiently specific objectives or a complete list of individuals involved in its implementation, a finding further supported by inaccurate timesheets and the involvement of employees who were not listed in the project. These shortcomings led both the tax administrator and the court to conclude that the taxpayer had failed to meet the basic formal requirements of the law, and therefore there was no need to examine the actual content of the research and development activities. During audits, tax authorities repeatedly argue that the objectives are insufficiently specified, particularly in the case of so-called "umbrella" projects (i.e. a single framework project encompassing multiple sub-projects of research and development activities).

5. Verification of the content requirements of project documentation through other means of evidence

The amendment, effective as of 1 January 2024, was partly a response to the long-standing legal uncertainty faced by taxpayers, whereby even relatively minor doubts on the part of the tax administrator regarding the specificity of project documentation led to the rejection of the entire deduction claim. The new regulation allows taxpayers to substantiate the project's requirements with additional evidence during tax proceedings, provided the project itself meets the statutory requirements and only needs to be clarified. The goal is not to tolerate formally flawed projects, but to increase legal certainty and encourage taxpayers to claim the deduction without administrative risks deterring even those who actually carry out research and development activities. However, given the facts described in the previous point, the benefits of this option are, to some extent, debatable.

6. Defining project monitoring and evaluation

The project documentation must include a clear definition of the method for monitoring and evaluating the implementation process and the results achieved. The court[2] found that this part of the documentation should not be described in overly general terms, without specifying concrete rules, intervals, responsible persons or required outputs, as this prevents administrative authorities from subsequently verifying whether the monitoring actually took place and how the project's results were evaluated on an ongoing basis.

7. Payroll cost records

In practice, payroll costs typically constitute the largest portion of the applicable deduction; therefore, their proper recording regularly becomes the focus of disputes between taxpayers and tax authorities. In another decision[3], the Supreme Administrative Court confirmed that, in order for payroll costs to be recognized as a tax deduction, it is essential to maintain transparent, objective and verifiable separate records that clearly document the actual

1 SAC Decision No. 5 Afs 56/2024 – 70 dated 22 November 2024
2 SAC Decision No. 9 Afs 215/2023 – 39 dated 28 March 2024
3 SAC Decision No. 3 Afs 115/2024 – 65 dated 21 November 2025

time employees spent working on the project. Although the taxpayer submitted records containing the names of employees, their job classifications and the percentage of their work allocated to the project, it was unable to demonstrate how these percentages were determined. The records were not based on actual hours worked, there was no formal time-keeping system, and the percentages were determined by agreement between employees and their supervisors without any objective supporting documentation. The court concluded that the data in the records were not sufficiently reliable and did not allow for the reported wage costs to be linked to specific project activities, which is a fundamental requirement for separate record-keeping. Although the taxpayer submitted a number of additional documents, these did not prove that the declared costs corresponded to reality; thus, the wage costs were not recognized for deduction.

8. Combining tax deductions with various forms of public support

The concurrent application of deductions and payroll cost subsidies requires the taxpayer to clearly document, in all cases, which portion of the wages was financed from public funds. As soon as any portion of an employee's wages is subsidized, that corresponding amount must be excluded from the deduction. However, if the taxpayer maintains reliable work records that allow for the precise distinction of time and costs associated with research and development activities, the unsubsidized portion of the wages may generally be claimed as a deduction. The issue of the concurrence of the research and development tax deduction and various forms of public support was also addressed within the Coordination Committee.[4]

9. Innovation and uniqueness of products

To qualify for a research and development tax deduction, it is not sufficient to demonstrate the creation of new or unique products; rather, it is necessary to prove the very nature of the development activities that led to them. According to the court[5], the taxpayer failed to meet the burden of proof because, despite repeated requests from the tax administrator, the taxpayer did not submit any specific evidence showing that, during production, the taxpayer utilized new methods of applying existing knowledge or proceeded in a manner that went beyond standard, professionally foreseeable practice. Based on the evidence presented, it could not be ruled out that this was merely the application of previously acquired procedures, a conclusion confirmed by the administrative authorities, the court and the expert witness.

10. Pilot (test) batches

The Supreme Administrative Court confirmed[6] that the costs of producing pilot batches may be included in the research and development tax deduction only if they are clearly linked to further experimental development, demonstrable innovation or the resolution of technical uncertainties. In the case at hand, the taxpayer failed to demonstrate that the production of pilot batches constituted ongoing research and development activity. The submitted reports indicated only the correction of routine defects, not activities bearing the characteristics of research and development within the meaning of the law. The court emphasized that the tax incentive is intended to support genuine research and development, not a general improvement in the quality of the final product.

What's next?

Although there have been decisions in recent years in which the court has sided with taxpayers and criticized the tax administrator's overly formalistic approach,[7] it cannot be generally inferred from them that the requirements for claiming a deduction have been relaxed. The Supreme Administrative Court continues to consistently emphasize that this is a tax incentive constituting an exception to the general taxation regime, for which it is legitimate to require compliance with statutory conditions and an appropriate level of evidence. As noted during a professional discussion between representatives of the Chamber of Tax Advisors of the Czech Republic

4 Contribution No. 435/18.11.14 combining income tax deductions for research and development with various forms of public support, from the meeting of the Coordinating Committee with the Chamber of Tax Advisors of the Czech Republic held on November 18 2014

5 SAC Decision No. 3 Afs 15/2025 – 46 dated 28 August 2025

6 SAC Decision No. 5 Afs 263/2023 – 32 dated 16 September 2024

7 For example, SAC No. 5 Afs 84/2025–56 dated October 24, 2025, and Supreme Administrative Court Decision No. 21 Afs 211/2025–57 dated June 29 2026

and Supreme Administrative Court President Karel Šimka, the research and development tax deduction can, in a sense, be viewed as a "quasi-subsidy," which justifies increased requirements for administration, record-keeping and documentation. Taxpayers should therefore continue to expect a thorough review of their projects, including related supporting documentation, and be prepared for the fact that the quality of their projects, ongoing records and supporting evidence will play a decisive role in the event of a tax audit. At the same time, however, the tax administrator's requirements do have their limits, and taxpayers cannot be required to do more than what is stipulated by law.

The goal of the "10 for 10" series is to highlight topics we frequently encounter and that may have (or may have already had) a material impact on taxpayers' tax positions. However, given the focus and scope of this article, the ten points selected here cannot serve as a comprehensive overview of all the issues we address together regarding the research and development tax deduction. Nevertheless, we believe that even this brief overview will provide you with at least a basic understanding and help you take advantage of the deduction's potential without unnecessary risks.

We're returning to the popular "10 for 10" series, in which we'd like to revisit topics we frequently discuss together: from research and development—which, given its appeal, remains a subject of intense interest to tax authorities—to (future) tax losses, group services—including demonstrating their benefits—unrealized foreign exchange gains, selected VAT topics, and even expanded reporting obligations, including Pillar 2 and CbCR.

VAT

Ivana Krylová
Partner, Tax Services
ivana.krylova@cz.ey.com
+420 731 627 005

Matyáš Kudrna
Assistant, Tax Services
matyas.kudrna@cz.ey.com
+420 705 620 224

VAT on transfer pricing: the missing service in the Stellantis Portugal case—what would have to be different?

In the March issues of our Tax and Legal News, we wrote about the rapidly developing Court of Justice of the European Union (CJEU) case law regarding the application of VAT to transfer pricing. We also focused on the anticipated ruling in Case C-603/24, Stellantis Portugal. The case was at the stage of the Advocate General's opinion, in which she took a broad view of the issue and defined the possible basic scenarios for the application of VAT to transfer pricing. In doing so, it advocated for greater contractual freedom regarding how costs passed on between related parties are treated for VAT purposes. The CJEU remained true to its "(bad) habit" of not answering questions it is not asked. We can only speculate as to whether the real reason was to uphold the principle of answering only the questions posed, or whether there was no broader consensus among the judges on the issue.

Subject of the dispute

As a distributor, Stellantis Portugal purchased vehicles from affiliated manufacturers across EU borders. It then sold the vehicles locally to independent authorized dealers, who in turn sold them to end customers. If the sold vehicles had manufacturing defects or defects covered by warranty, the repairs were performed by authorized dealers. The dealers then billed the distributor for the repair costs.

Repair costs, along with other expenses, were factored into the calculation of transfer price adjustments between the distributor and the manufacturer. The goal was to ensure that the distributor achieved a predetermined profit margin. Depending on the result, the manufacturers issued a credit note to the distributor or, conversely, a request for payment.

The Portuguese Tax Authority concluded that, by passing on repair costs to the manufacturer, the distributor provides the manufacturer with a taxable service consisting of arranging for vehicle repairs.

CJEU on standalone repair services

The CJEU rejected this argument, citing the facts described in the referring decision. The only legal relationship between the distributor and the manufacturers described in the referring decision was an agreement on the setting and subsequent adjustment of transfer prices for vehicles. However, this agreement did not impose an obligation on the distributor to provide repair services to the manufacturers in exchange for compensation. Nor were any other contractual or unwritten terms identified in the case file that would give rise to such an obligation.

The structure of the arrangement itself also played a significant role. Repair costs were only one of several factors affecting the distributor's ultimate profitability. Moreover, the distributor had no certainty that the manufacturers would actually reimburse these costs. Depending on the overall result, the cash flow could go either way. According to the CJEU, the link between the alleged repair service and the resulting transfer pricing adjustment was, at most, indirect.

A standalone service, or a price change for the original service?

The CJEU's conclusion cannot be interpreted in isolation to mean that transfer pricing adjustments calculated with regard to the target margin would automatically remain outside the scope of VAT. The CJEU left it to the Portuguese court to verify whether there were, after all, other obligations between the parties that were not described in the referring decision.

If such a legal relationship were to exist, it would further be necessary to assess whether the arrangement constitutes genuine consideration for a specific service provided by the distributor to the manufacturers. What is decisive, therefore, is not only the existence of a certain activity or expenditure, but also the corresponding obligation of one party to perform that activity and the obligation of the other party to pay for its result.

Even if the adjustment does not compensate for any service, the story may not be over from a VAT perspective. The CJEU has suggested that this could involve a subsequent change in the price of vehicles supplied by the manufacturer to the distributor, as argued by the Advocate General. In such a case, it would be necessary to examine the impact of the adjustment to the tax base on the original supply of goods.

Stellantis versus Arcomet

At first glance, the conclusions in the Stellantis case may appear to be a reversal of the conclusions in the C-726/23 Arcomet Towercranes judgment. In that case, the CJEU assessed the adjustment of the Romanian operating company's profitability according to a predetermined range. If the Romanian company achieved higher profitability, the Belgian parent company issued an invoice to it to recoup the excess profit. Conversely, if it had incurred a greater loss, the Romanian company would have invoiced the Belgian parent company. The CJEU ruled that the amount invoiced by the parent company constituted consideration for a service rendered and was subject to VAT.

However, the difference between these cases does not lie in the transfer pricing method used or in whether the resulting amount was derived purely from profitability. In the Arcomet case, the counterparties entered into service agreements in both directions—the parent company, among other things, determined the group's strategy, managed key risks and handled negotiations with suppliers. In contrast, the subsidiary undertook, among other things, to act in accordance with the parent company's instructions and requirements. It was thus possible to link the profitability adjustment to specific activities.

In the Stellantis case, the contractual terms were different. The agreement before the CJEU governed the price of vehicles and the distributor's guaranteed margin, not the provision of repair or related services to manufacturers. According to the CJEU, there was therefore no identifiable service to which the transfer pricing adjustment could be linked.

Two seemingly similar mechanisms for adjusting profitability therefore led the CJEU to opposite conclusions. The decisive factor was not the name or method of calculating the adjustment, but the substance of the legal relationship between the parties. A similar pattern can be observed in other CJEU judgments (e.g. in cases C-295/17 MEO and C-43/19 Vodafone Portugal).

In the following text, we therefore consider under what circumstances the existence of a repair service could be inferred.

When would this actually be a repair service?

The CJEU specifically mentions the absence of a legal relationship between the contracting parties and the absence of a direct link between the transfer pricing arrangement and an identifiable service.

The conclusions would thus clearly be different if the distributor were contractually obligated to provide warranty repairs on behalf of the manufacturers and the manufacturers were contractually entitled to demand such services. Although bearing the costs of repairs might have been economically linked to the manufacturers' liability for defects—even without an identifiable legal relationship under which the distributor acted on behalf of the manufacturers—it could not have constituted a service.

Similarly, in Case C-535/24 Svilosa—albeit in a different factual context—the CJEU concluded that the mere fact another person derives economic benefit from a particular activity does not in itself constitute the provision of a service for consideration if there is no mandate or agreement on reciprocal obligations between the parties.

Conversely, in Case C-707/18, Amărăşti Land Investment, the CJEU held that if one party contractually undertakes to perform certain acts and bear the costs thereof for the benefit of the other party, this constitutes the provision of a service for consideration. However, in the Stellantis Portugal case, precisely such an explicit obligation on the part of the distributor to arrange repairs on behalf of the manufacturers was lacking.

A direct link between the transfer pricing adjustment and the repair service would be better reflected if manufacturers paid for repairs separately, based on a separate invoice corresponding to the service work actually performed, or through a clearly identified payment component specifically tied to repairs.

Conversely, if repair costs are just one of many cost inputs in the calculation of profitability adjustments—where the resulting cash flow can, moreover, move in either direction depending on the entity's operating results—it will be difficult to establish a direct link.

Taking on one's own responsibility and risk for the repair services provided also plays a significant role, as the service provider's role is not limited to that of a mere intermediary in the chain who passively passes on third-party costs to another entity.

The situation would clearly be different as well in the case of procuring a repair service under a contract containing elements of a commission agreement, under which a person acting in their own name but on behalf of another is deemed, by virtue of a tax fiction, to be the person who both received and provided the service. Here, too, however, there would have to be a clear mandate from the manufacturers to the distributor and a clearly defined consideration. The tax administration inferred the existence of a commission-based relationship, for example, in the context of addressing the issue of VAT application to fuel cards.

In conclusion

The rulings in the Arcomet and Stellantis cases are not mutually contradictory. Neither of them automatically exempts a profitability adjustment from VAT, nor do they automatically include it within the scope of VAT. Depending on the circumstances, the adjustment may constitute consideration for a standalone service, a price change to the original supply or a correction that falls entirely outside the scope of VAT. What is always decisive is the actual substance of the contractual relationship between the parties, not the chosen transfer pricing method or calculation method.

When setting up intra-group transactions, therefore, the VAT aspect cannot be overlooked. Contracts, invoicing methods, accounting treatment and the practical functioning of the relationship should, when taken together, provide a clear answer to several fundamental questions: Who is providing what to whom? Does the other party have the right to demand the service? What exactly is being paid for? And does the payment represent genuine consideration for this service?

This time, the CJEU reminded us that including repair costs in a transfer pricing adjustment does not, in and of itself, constitute a taxable service. At the same time, however, it left the door open: where the contractual and factual arrangements demonstrate a specific supply, an actual service may be hidden behind the price adjustment. The key, therefore, lies in carefully structuring and documenting the relationship before the tax administrator becomes involved.

The rulings in the Arcomet and Stellantis cases are not mutually contradictory. Neither of them automatically exempts a profitability adjustment from VAT, nor do they automatically include it within the scope of VAT. Depending on the circumstances, the adjustment may constitute consideration for a standalone service, a price change to the original supply or a correction that falls entirely outside the scope of VAT. What is always decisive is the actual substance of the contractual relationship between the parties, not the chosen transfer pricing method or calculation method.

Law

Dalibor Šimeček
Attorney-at-law, EY Law
dalibor.simecek@cz.eylaw.com
+420 704 865 101

Tomáš Černý
Legal Assistant, EY Law
tomas.cerny@cz.eylaw.com
+420 705 520 656

Courts have confirmed that criminal liability may be transferred when a business is purchased

This December, Czech law will mark the 15th anniversary of the adoption of the Act on the Criminal Liability of Legal Entities and Proceedings Against Them, which broke with the historic principle of European criminal law under which only natural persons can be prosecuted and punished. After some initial growing pains, Czech corporate and criminal law practice has largely adapted to this fundamental change; nevertheless, several problematic areas persist to this day, stemming from ambiguities and imperfections in the new legislation. One of these contentious issues—which is, in fact, of fundamental importance to the entire system—namely, the question of the transfer of criminal liability of legal entities—was definitively resolved by the Constitutional Court this past April.

The transfer of criminal liability as a long-standing contentious issue

The possibility that a legal entity's criminal liability could be transferred to another entity that played no part in the original act may seem counterintuitive. In the case of natural persons, criminal liability is inseparably linked to the perpetrator, who bears it until death, and under no circumstances is it transferred to other persons.

However, the situation is different for legal entities. Business corporations may undergo mergers, divisions, transfers of business operations or other reorganizations that result in a transfer of their assets and legal status. If criminal law did not take these processes into account, companies could relatively easily avoid criminal liability through a suitably structured transaction.

However, the legal provisions governing the transfer of criminal liability were formulated ambiguously from the outset and gave rise to difficulties in interpretation. Consequently, a dispute arose over whether such a transfer could occur only when all rights and obligations associated with the dissolution of the original legal entity's legal personality were transferred (for example, in a merger), or whether it could also occur with the transfer of only a portion of the rights and obligations—typically in the sale of a business—provided that the transferred assets were closely linked to criminal activity.

Another problematic area was the absence of procedural rules for situations in which criminal liability is transferred during ongoing criminal proceedings. Although the law allows for such a situation, it does not provide guidance on how law enforcement authorities should proceed.

How can you get around a ban on participating in public procurement contracts?

These issues came to the forefront in the case of a Czech construction company convicted of subsidy fraud. In addition to other penalties, the company was also barred from participating in public procurement. Shortly after the guilty verdict was handed down, the company sold part of its operations to a previously virtually inactive subsidiary, to which it transferred key assets. The goal was apparently to preserve the ability to participate in public procurement through another entity within the group.

The High Court in Prague, which ruled on the matter as the appellate court, was not swayed by this approach, however. In its view, part of the criminal liability had been transferred to the subsidiary, and in the middle of the appellate proceedings, it expanded the circle of defendants to include the subsidiary through an informal procedure (without reopening the criminal prosecution or filing a new indictment). In the further course of the proceedings, the subsidiary was also convicted; it challenged the entire procedure before the Supreme Court and subsequently before the Constitutional Court.

Selling a business may not be enough to avoid criminal liability

The Supreme Court first definitively resolved the dispute outlined above and issued an authoritative ruling on the issue of the transfer of criminal liability in the event of the transfer of only certain rights. In its view, such an outcome is possible. In the case of the sale of a business, the court held that such a conclusion is particularly appropriate, as it involves the transfer of an extensive set of property and legal interests that shares certain characteristics with cases involving the transfer of all rights and obligations. If criminal law were unable to address the type of scheme described in this case, the court held that this would significantly limit its effectiveness; therefore, a broader interpretation was necessary. At the same time, when assets are transferred in this manner, the original perpetrator retains its share of criminal liability and cannot simply absolve itself of guilt through such a course of action.

It is important to note, however, that criminal liability is not transferred in all transactions involving the business of a criminally liable legal entity. On the contrary, the Supreme Court explicitly links this consequence only to cases in which the parties involved in such a transaction attempt to purposefully exclude, circumvent or mitigate the consequences of the legal predecessor's criminal liability. In reaching such a conclusion, the courts must, above all, base their decision on the established facts and take into account, in particular, when the transaction took place, whether it makes any economic sense apart from circumventing criminal proceedings, and what assets are being transferred.

The right to a fair trial has not been violated

The second set of objections, which was subsequently reviewed by the Constitutional Court, concerned the right to a fair trial. The subsidiary was drawn into the criminal proceedings only during the appellate phase, without any criminal investigation having been initiated against it or any charges having been filed. This raises the question of whether such a course of action is justifiable.

Both the Constitutional Court and the Supreme Court sided with the lower courts in this regard, which had to deal with the entire situation without explicit statutory support. In their view, the lower courts had chosen a procedural approach that respected the rights of the subsidiary. After criminal liability was transferred to the subsidiary, it was served with a copy of the indictment and all substantive decisions, and at the same time was given sufficient time to review the case file. The Constitutional Court has thus effectively endorsed a procedure that may serve as a guide for similar cases in the future, while also defining a standard for the protection of procedural rights, failure to comply with which could lead to intervention on the grounds of a violation of the right to a fair trial.

What does this mean in practice?

At this point, this controversial legal issue can be considered largely settled, and legal practice can be adapted to the courts' conclusions. However, the fact that the debate may not be definitively over is suggested by the dissenting opinion of one of the three members of the Constitutional Court's panel, who criticized, in particular, the assessment of the procedural aspects of the entire case.

In her dissenting opinion, the judge emphasized in particular that, although it is a legitimate goal to prevent companies from evading criminal liability through strategic transfers of assets, in her view, the courts cannot substitute their own procedural solutions for the lack of statutory regulation. Her key objection was that the successor company had been "dragged" into the criminal proceedings without criminal charges having been filed or an indictment having been issued. In her view, the substantive transfer of criminal liability under the Act on Criminal Liability of Legal Entities does not automatically give rise to procedural succession in ongoing criminal proceedings, and any applicable procedural rules must be established by the legislature, not by judicial practice.

For business entities, the Constitutional Court's ruling means they must exercise greater caution when conducting legal due diligence prior to significant transactions. If they fail to exercise sufficient caution, they may "purchase" not only the counterparty's business but also its criminal liability. Indeed, both the Supreme Court and the Constitutional Court explicitly emphasize the importance of thorough due diligence.

At the same time, companies now enjoy a greater degree of legal certainty regarding their procedural rights, with which the Constitutional Court's ruling provides them compared to the previous situation.

In certain circumstances, criminal liability may also be transferred when a business is sold. The courts have clarified the rules.

Financial Administration

Radek Matuštík
Partner, Tax Services
radek.matustik@cz.ey.com
+420 603 577 841

Petr Sedláček
Senior Consultant, Tax Services
petr.sedlacek@cz.ey.com
+420 704 651 391

Highlights from the Activities of the Financial Administration and Customs Administration of the Czech Republic

The Financial Administration publishes an annual report on its activities. We've selected ten highlights from the report.

1. There were fewer tax audits, but they more often resulted in additional tax assessments

In 2025, the Financial Administration conducted 11.3% fewer tax audits than in the previous year. However, the proportion of audits resulting in additional tax assessments rose from 72.3% to 76.2%. This trend suggests that the tax administrator is increasingly focusing its audit activities on cases with a higher probability of detecting tax irregularities. At the same time, this may indicate a more effective use of analytical tools and risk indicators in selecting entities to be audited.

2. The average additional tax assessment resulting from a tax audit exceeded CZK 1 million

Despite a decline in the number of tax audits, the Financial Administration assessed additional taxes totaling CZK 7.2 billion for 2025, representing a year-over-year increase of 20.3%. The average additional tax assessment per audit in which tax was assessed thus exceeded the CZK 1 million mark for the first time, reaching approximately CZK 1.1 million, excluding penalties and other tax accessories. This suggests that the Financial Administration is also focusing more on cases with a more significant fiscal impact.

3. When it comes to VAT, tax deductions and supply chain fraud remain the focus of attention

In the area of VAT, the Financial Administration, as in the past, focused primarily on investigating supply chain fraud, unauthorized claims for tax deductions and the failure to report taxable transactions. At the same time, the VAT tax gap continued to narrow, falling to 8.0%. This trend may indicate that the Financial Administration's measures to prevent and detect tax evasion are yielding results. Both more targeted audit activities and an increasing level of tax compliance among taxpayers may be contributing to this.

4. For legal entities, the audits focused on expenses, revenues and transfer prices

There are no significant changes regarding corporate income tax audits. Additional tax assessments for this tax resulted primarily from audit findings concerning the failure to substantiate expenses for the purposes of determining the tax base, the failure to include income from business activities in the tax base and the setting of transfer prices between related parties.

5. For individuals, authorities are investigating unreported income and the illegal provision of labor

Personal income tax audits focused primarily on the failure to report all taxable income, incorrectly maintained tax records and the failure to substantiate the tax deductibility of expenses. With regard to income from employment, the audits also focused on the illegal provision of labor. This area may therefore be relevant not only to individuals themselves, but also to companies that use external workers or other forms of labor provision.

6. Nearly 80% of customs inspections resulted in the discovery of discrepancies

In 2025, the Customs Administration initiated 93 tax audits and completed 103 audits in the area of excise and energy taxes. Of the total number of completed audits, 82 were concluded with a discrepancy, representing 79.6%. The greatest attention was paid to the mineral oil tax, particularly the verification of tax refund claims by entities using mineral oils in primary agricultural production, forestry and heat generation. Another significant audit area was the natural gas tax, primarily among biogas plant operators.

7. The highest proportion of successful appeals was for personal income tax

Financial Administration statistics show that filing an appeal against a tax assessment decision can be of practical significance in many cases. For corporate income tax, the Financial Appeals Directorate partially or fully granted the appeals in favor of the taxpayers in 38% of cases. For individual income tax based on tax returns, the success rate for taxpayers was as high as 45%. In contrast, for VAT, taxpayers' appeals were upheld in only 19.6% of cases. The results therefore vary significantly depending on the type of tax.

8. Taxpayers were granted relief totaling CZK 1.2 billion in appeal proceedings

Taxpayers challenged tax assessments totaling CZK 4 billion before the Financial Appeals Directorate. The Financial Appeals Directorate subsequently granted their appeals in the total amount of CZK 1.2 billion. This confirms that the appeals process serves as a significant corrective to the decision-making of first-instance tax administrators. Taxpayers should therefore not underestimate the importance of the appeals process—an active procedural defense in the appeals process can lead to a significant reduction in the additional tax liability even before any potential judicial review.

At the same time, in 2025, tax penalties totaling CZK 129.3 million were waived, which confirms that, in justified cases, it may make sense to also request a waiver of interest, late payment penalties or other tax penalties.

9. The Financial Administration's success rate in regional courts and the Supreme Administrative Court has increased

In 2025, regional courts largely upheld the positions of the Financial Administration. The success rate of administrative lawsuits filed by taxpayers fell year-over-year from 20% to 13%. The situation was similar in the case of the Supreme Administrative Court's rulings on cassation appeals. In 2025, the Supreme Administrative Court reviewed a total of 421 cassation appeals, ruling in favor of taxpayers in only 20% of the cases—a decline from 25% the previous year.

Recent developments show that legal defense remains a viable option; however, the Financial Administration is becoming increasingly capable of defending its decisions before administrative courts. Taxpayers should therefore pay closer attention to the course of the tax audit and the subsequent appeal proceedings, as the scope for overturning a decision only before administrative courts is narrowing.

10. The importance of international cooperation and interest in binding transfer pricing rulings are on the rise

In 2025, the number of domestic requests for international assistance among tax authorities increased. At the same time, the Financial Administration handled 62 cases of international mutual agreement procedures (MAPs), which aim to eliminate taxation that is not in accordance with relevant international treaties. In 2024, it had handled 55 MAP cases. At the same time, it handled 27 requests for advance pricing agreements (APAs). This trend may indicate a growing willingness on the part of taxpayers to address complex tax issues proactively and seek a higher degree of legal certainty. Particularly in the area of transfer pricing, the predictability of tax treatment remains a significant factor in structuring cross-border transactions.

Recent developments show that legal defense remains a viable option; however, the Financial Administration is becoming increasingly capable of defending its decisions before administrative courts. Taxpayers should therefore pay closer attention to the course of the tax audit and the subsequent appeal proceedings, as the scope for overturning a decision only before administrative courts is narrowing.

CONTACTS

For further information please contact either your usual partner or manager.

Corporate taxation

Lucie Říhová	+420 731 627 058
Jana Wintrová	+420 731 627 020
Radek Matuštík	+420 603 577 841
Kateřina Dedková	+420 603 577 890
Karel Hronek	+420 731 627 065
Martin Novák	+420 603 577 929

VAT and customs

David Kužela	+420 731 627 085
Stanislav Kryl	+420 731 627 021

Personal taxation

Martina Kneiflová	+420 731 627 041
Ondřej Polívka	+420 731 627 088

Law

Ondřej Havránek	+420 703 891 387

EY
+420 225 335 111
ey@cz.ey.com
www.ey.com/cz

Subscription
If you would like one of your colleagues or acquaintances to receive our Tax and Legal News by e-mail, please forward this e-mail to him and he can subscribe here.

Unsubscribe
If you do not wish to receive EY Tax and Legal News, please contact Linda Laurichová: linda.laurichova@cz.ey.com.

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multidisciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.