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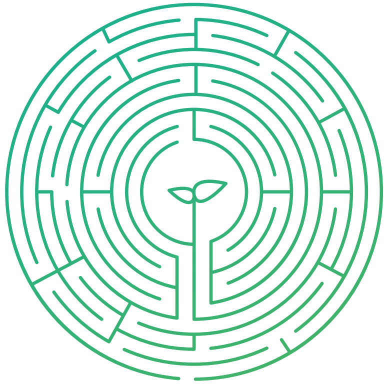

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The Amendment to the Accounting Act Issued and Valid from 1 January 2017

On 30 December 2016, the amendment to Act No. 563/1991 Coll., on Accounting, as amended (the "Amendment") was published in the Collection of Laws under number 462/2016 Coll. This Amendment came into force on 1 January 2017.

The reason for the Amendment was the transposition of Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, on the disclosure of non-financial information. The obligation to disclose non-financial information applies only to large reporting entities and consolidating reporting entities of large groups if they are public interest entities and have more than 500 employees.

The Amendment also contains some other adjustments, related primarily to the completion of the recodification of private law, and changes of a technical nature.

We provided more detailed information about the Amendment in our dReport in December 2016. The full version of the Amendment is available here.

What audited companies should know about the most recent developments in auditing?

This article provides a summary of the key changes in auditing for audited companies that have occurred as a result of the adoption of the Amendment to the Accounting Act valid as of 1 January 2016 and the amendment to the Act on Auditors valid as of 1 October 2016.

Change in the range of mandatorily-audited reporting entities

After 1 January 2016, the guidance on auditing financial statements continues to be provided in Section 20 of the Accounting Act where the first paragraph has been reworded as follows:

"The entities having the obligation stipulated in a special legal regulation and the entities set out below are obliged to have their general-purpose or special-purpose **financial statements audited by an auditor**:

a. **Large reporting entities** except for selected reporting entities that are not public-interest entities;
b. **Medium-sized reporting entities**;
c. **Small reporting entities that are joint-stock companies** or trust funds as defined in the Civil Code and exceeded or achieved at least one of the following values at the balance sheet date of the reporting period for which the financial statements are audited and the immediately preceding reporting period:
   1. Total assets of CZK 40 million;
   2. Total annual net turnover of CZK 80 million; and
   3. Average number of employees in the reporting period – 50;

- **Other small reporting entities** that exceeded or achieved at least two values specified in point c) (1) to (3) at the balance sheet date of the reporting period for which the financial statements are audited or the immediately preceding reporting period."

The obligation to have financial statements audited by an auditor has thus been expanded to include non-business reporting entities (eg associations, churches, foundations, charitable trusts and apartment associations). By contrast, micro entities are required to have their financial statements audited only if a special legal regulation stipulates so.

Effectively shifting the mandatory audit threshold

Starting from 1 January 2016, the substance definition of the term 'total assets' has been revised to indicate 'net assets' instead of 'gross assets'. In addition, the calculation of the total annual net turnover has changed as a result of the reclassification of the presentation of the items of 'own work capitalised' and 'change in internally produced inventory'.

Only one single audit report on the financial statements and annual report

Starting from 1 January 2016, the auditor has been obliged to prepare only one single audit report in respect of all mandatory audits, containing an audit opinion on the financial statements as well as a statement on the annual report. As of 1 January 2016, Section 20 (1e) of the Act on Auditors sets out that the auditor will also state in its audit report whether the information included in the annual report describing matters that are also presented in the financial statements is, in all material respects, consistent with the relevant financial statements. The amendment to the Act on Auditors newly requires in Section 20b that the auditor also comment on whether the annual report was prepared in accordance with legal regulations and, based on the statutory audit findings, whether it is free from material misstatements.

As such, the auditor will issue only one report when it completes the audit of both the financial statements and annual report. If the reporting entity fails to provide the auditor with the annual report prior to the date of the auditor's report, the audit report will state that the auditor does not report with respect to the information in the annual report on account of not having obtained it.

Amendment to the Act on Auditors and Related EC Regulations

On 21 September 2016, an extensive amendment to Act No. 93/2009 Coll., on Auditors (the "Amendment to the Act on Auditors") was promulgated in the Collections of Laws under number 299/2016, implementing the EU directive on statutory audits[1]. The Amendment to the Act on Auditors has been in effect since 1 October 2016. Additionally, Regulation No. 537/2014 on specific requirements for the statutory audits of public interest entities (the "Regulation") took effect on 17 June 2016.

Most of the revisions relate to auditors and audit firms, dealing with, for example, auditor's independence, quality assurance system, public oversight and auditor's work documentation.

1 Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts, as amended by Directive 2014/56/EU of the European Parliament and of the Council.

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Changes applicable only to public interest entities

For audited companies, the Amendment to the Act on Auditors and the Regulation bring changes primarily for public interest entities. In terms of Section 1a of the Accounting Act, public interest entities include business corporations that are issuers of investment securities accepted for trading on the European regulated market, banks, savings and lending associations, insurers and re-insurers, pension companies and health insurers.

Key changes for public interest entities are summarised below.

Mandatory rotation of the auditor

The public interest entity may appoint an auditor for no more than 20 years while also fulfilling the condition that a tender for audit services is conducted after 10 years.

Limitation on providing non-audit services

A cap on non-audit services has been set at 70% of the audit fees, some non-audit services have been banned altogether. The provision of non-audit services must be approved by an audit committee.

Increase in the role of the audit committee

Public interest entities and state-owned entities are required to establish an audit committee. A series of provisions relating to the audit committee have been in effect since 1 January 2016, the Amendment to the Act on Auditors outlines additional specifications and new obligations for members of the audit committee. The audit committee should comprise no fewer than three members, the majority of which must be independent; members of the audit committee are selected from among non-executive members of the supervisory body or third parties.

The audit committee's role in selecting an auditor has increased since the supervisory body must explain why it has not followed the audit committee's recommendations in appointing an auditor. The audit committee is tasked with monitoring the activities of a company's internal controls, risk management system and internal audit.

The auditor is newly obliged to prepare an additional non-public report intended for the audit committee to inform it about the course of the audit engagement, used methodology and audit findings.

Changes valid for other audited companies

Withdrawing from a contract

The Amendment to the Act on Auditors also provides more detailed guidance for reporting entities on the process of withdrawing from the statutory audit contract. The difference in opinions on an accounting treatment or audit procedures does not constitute grounds for terminating a contractual relation. It also holds that the withdrawal from a statutory audit contract by any party to the contract must be reported by the withdrawing party to the Public Audit Oversight Board.

Expanding the content and changing the structure of the audit report

Given the concurrent adoption of the revised International Standards on Auditing, the structure of the report will also be subject to significant changes, with the audit opinion being presented at the beginning of the report.

The explanatory section on the responsibility of the company's management and of the auditor for the audit of the financial statements will also be extended. Given that the audit report also contains the auditor's opinion on the annual report (refer to the "Only one single audit report" section above), in practice the audit report will no longer fit one A4 page.

In respect of public interest entities, the audit report will additionally include a description of key audit matters and the auditor's responses thereto.

In conclusion, please note that the company's statutory body has the right to acquaint itself with the draft audit report so as to obtain a better understanding of the changes outlined above.

You can find the Amendment to the Act on Auditors here.

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Closing Out 2016

This article provides a high-level overview of the new and revised Standards and Interpretations that are effective for December 2016 calendar year-ends and subsequent accounting periods. Entities are, however, generally permitted to adopt the new and revised Standards and Interpretations in advance of their effective dates (refer to individual Standards and Interpretations for additional details).This article provides a summary of IFRSs and interpretations that an entity may elect to apply for the year ended 31 December 2016.

A word of caution regarding early adoption of Standards and Interpretations in the case of entities that prepare financial statements according to IFRS as adopted by the European Union (EU). Standards, Interpretations and amendments to the existing standards, which were not endorsed for use in the EU, cannot be applied by the entities preparing their financial statements in accordance with IFRS as adopted by the EU.

Where applicable, we have made reference to past issues of Accounting News dealing with the specific Standard or Interpretation in greater detail. These past newsletters are also available at www.deloitte.cz. As always, entities should refer to the Standards and Interpretations themselves to identify all of the changes that may affect their particular circumstances.

Where a Standard or Interpretation is adopted in advance of its effective date, disclosure of that fact is generally required. Even where there is no intention to implement a Standard or Interpretation in advance of its effective date, entities need to be aware of new Standards and Interpretations as they are issued, in order to comply with the requirement included in IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* to disclose in their financial statements the potential impact of Standards and Interpretations in issue but not yet effective. This requirement is valid irrespective of whether a Standard or Interpretation have already been endorsed in the EU.

We therefore recommend reviewing further newly issued amendments to standards and interpretations that will be approved by the date of the issuance of a company's financial statements. We will be providing updates on these developments on www.iasplus.com and in our Accounting News.

The effective dates of IFRSs issued by the IASB and IFRSs as adopted by the EU can be different.

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New and Revised Standards and Interpretations
The following tables provide a list of new and revised Standards and Interpretations in issue as of 20 January 2017 that are either effective, or available for early adoption, for 31 December 2016 calendar year-ends.

All of the newsletters referred to may be found at http://www.deloitte.com/cz/newsletters/accounting-news/archive

Effective for the 31 December 2016 year-ends

New Standard		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRS 14	*Regulatory Deferral Accounts*	1 January 2016	Will not be endorsed for use in the EU	March 2014
Amendments to Standards		**Effective for annual periods beginning on or after**	**Effective in the EU for annual periods beginning on or after**	**Accounting news**
IFRS 10, IFRS 12 and IAS 28	Amendments to IFRS 10, IFRS 12 and IAS 28 *Investment Entities - Applying the Consolidation Exception*	1 January 2016	**1 January 2016**	February 2015 November 2016
IFRS 10 and IAS 28	Amendments to IFRS 10 and IAS 28 *Sale or Contribution of Assets between an Investor and its Associate or Joint Venture*	No effective date	Not endorsed for use in the EU yet	October 2014

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IFRS 11	Amendments to IFRS 11 *Accounting for Acquisitions of Interests in Joint Operations*	1 January 2016	**1 January 2016**	June 2014
IAS 1	Amendments to IAS 1 *Disclosure Initiative*	1 January 2016	**1 January 2016**	February 2015
IAS 16 and IAS 38	Amendments to IAS 16 and IAS 38 *Clarification of Acceptable Methods of Depreciation and Amortisation*	1 January 2016	**1 January 2016**	June 2014
IAS 16 and IAS 41	Amendments to IAS 16 and IAS 41 *Agriculture: Bearer Plants*	1 January 2016	**1 January 2016**	September 2014
IAS 19	Amendments to IAS 19 *Defined Benefit Plans: Employee Contributions*	1 July 2014	**1 February 2015**	January 2014
IAS 27	Amendments to IAS 27 *Equity Method in Separate Financial Statements*	1 January 2016	**1 January 2016**	September 2014
Various IFRS	*Annual Improvements to IFRSs 2010–2012 Cycle*	1 July 2014	**1 February 2015**	January 2014
Various IFRS	*Annual Improvements to IFRSs 2012–2014 Cycle*	1 January 2016	**1 January 2016**	November 2014

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Available for early adoption for the 31 December 2016 year-ends

New Standards		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRS 9	*Financial Instruments*	1 January 2018	**1 January 2018**	December 2009 November 2010 September 2012 January 2014 September 2014 December 2016
IFRS 15	*Revenue from Contracts with Customers*	1 January 2018	**1 January 2018**	July 2014 December 2016
IFRS 16	*Leases*	1 January 2019	Not endorsed for use in the EU yet	February 2016 March 2016 April 2016 July 2016

Amendments to Standards		Effective for annual periods beginning on or after	Effective in the EU for annual periods beginning on or after	Accounting news
IFRS 2	Amendments to IFRS 2 *Classification and Measurement of Share-based Payment Transactions*	1 January 2018	Not endorsed for use in the EU yet	September 2016

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IFRS 4	Amendments to IFRS 4 *Applying IFRS 9 Financial Instruments with IFRS 4 Insurance Contracts*	1 January 2018	Not endorsed for use in the EU yet	October 2016
IFRS 15	Amendments to IFRS 15 *Clarifications to IFRS 15 Revenue from Contracts with Customers*	1 January 2018	Not endorsed for use in the EU yet	May 2016
IAS 7	Amendments to IAS 7 *Disclosure Initiative*	1 January 2017	Not endorsed for use in the EU yet	March 2016
IAS 12	Amendments to IAS 12 *Recognition of Deferred Tax Assets for Unrealised Losses*	1 January 2017	Not endorsed for use in the EU yet	February 2016
IAS 40	Amendments to IAS 40 *Transfers of Investment Property*	1 January 2018	Not endorsed for use in the EU yet	December 2016
Various IFRS	*Annual Improvements to IFRSs 2014–2016 Cycle*	1 January 2017/2018	Not endorsed for use in the EU yet	December 2016
Interpretation		**Effective for annual periods beginning on or after**	**Effective in the EU for annual periods beginning on or after**	**Accounting news**
IFRIC 22	*Foreign Currency Transactions and Advance Consideration*	1 January 2018	Not endorsed for use in the EU yet	December 2016

New IFRS Publications by Deloitte Czech Republic

Model Financial Statements under IFRS as adopted by the EU for the year ended 31 December 2016 in Czech and English

The version of the model consolidated financial statements under IFRSs as adopted by the EU prepared by the Prague office of Deloitte is available on www.deloitte.cz in both the Czech and English languages.

This version should be used by the entities that prepare financial statements **in compliance with IFRSs as adopted by the EU for the year ended 31 December 2016**. The main difference between IFRSs issued by the IASB and IFRSs as adopted by the EU as of 31 December 2016 is in the effective date of some amendments to IFRSs and new interpretations.

The version of IFRS model consolidated financial statements issued by the IASB for the year ended 31 December 2016 is available on www.iasplus.com. This version with early adoption of IFRS 9 *Financial instruments* is also available.

The model financial statements are intended to illustrate the presentation and disclosure requirements of IFRSs as adopted by the EU. They also contain additional disclosures that are considered to be best practice, particularly where such disclosures are included in illustrative examples provided with a specific Standard. The publication includes:

- Section 1 — Overview of new and revised IFRSs issued **as of 31 December 2016**:
  - An overview of new and revised IFRSs adopted by the EU that are mandatorily effective for the year ended 31 December 2016.
  - An overview of new and revised IFRSs adopted by the EU that are not yet mandatorily effective but allow early application for the year ended 31 December 2016.
  - An overview of new and revised IFRSs issued by the IASB but not yet adopted by the EU.
- Section 2 — Model financial statements of International GAAP Holdings Limited for the year ended 31 December 2016 under IFRSs as adopted by the EU.

IFRS compliance, presentation and disclosure checklist 2016

In October 2016, Deloitte's Global IFRS Office released the IFRS compliance, presentation and disclosure checklist for 2016.

This checklist is developed to assist the users in determining whether they complied with:

- The recognition, and measurement requirements; and
- Presentation and disclosure requirements

set out in the IFRSs in issue as of 30 April 2016.

The items in this questionnaire are referenced to the applicable sections of the IFRSs. The checklist is in Excel, formatted to allow the recording of a review of financial statements, with a place to indicate yes/no/irrelevant for each recognition, measurement, presentation and disclosure item.

You can download the IFRS Compliance, Presentation and Disclosure checklist 2016 for free.

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IFRS EU Endorsement Process

The European Financial Reporting Advisory Group (EFRAG) updated its report showing the status of endorsement of each IFRS, including standards, interpretations, and amendments, most recently on 13 January 2017.

As of 21 January 2017, the following IASB pronouncements are awaiting European Commission endorsement for use in the EU:

Standards

- IFRS 14 *Regulatory Deferral Accounts* (issued in January 2014) – the European Commission has decided not to launch the endorsement process of this interim standard and to wait for the final standard
- IFRS 16 *Leases* (issued in January 2016)

Amendments

- Amendments to IFRS 2 *Classification and Measurement of Share-based Payment Transactions* (issued in June 2016)
- Amendments to IFRS 4 *Applying IFRS 9 Financial Instruments with IFRS 4 Insurance Contracts* (issued in September 2016)
- Amendments to IFRS 10 and IAS 28 *Sale or Contribution of Assets between an Investor and its Associate or Joint Venture* (issued in September 2014)
- Amendments to IFRS 15 *Clarifications to IFRS 15* (issued in April 2016)
- Amendments to IAS 7 *Disclosure Initiative* (issued in January 2016)
- Amendments to IAS 12 *Recognition of Deferred Tax Assets for Unrealised Losses* (issued in January 2016)
- Amendments to IAS 40 *Transfers of Investment Property* (issued in December 2016)
- *Annual Improvements to IFRS Standards 2014–2016 Cycle* (issued in December 2016)

Interpretation

- IFRIC 22 *Foreign Currency Transactions and Advance Consideration* (issued in December 2016)

Click here for the Endorsement Status Report

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Sale of business or Sale of assets?

The FASB has recently issued guidance that changes the definition of what is a sale of a business vs. sale of an asset. This change affects quite a few accounting areas.

In January 2017 the FASB issued a new accounting update ASU 2017-01 **'Clarifying the Definition of a Business'**.

The changes are the result of the experience and comments of stakeholders about inconsistent and often costly application of the current guidance.

Currently, the definition of a business is identical for companies applying IFRS as well as US GAAP. At the same time, it appears that due to a broad definition of what a business is, the interpretation of the guidance and subsequent application is not consistent and companies in US GAAP regions tend to interpret and apply the guidance more broadly than those in IFRS regions.

With this in mind, changes of the guidance were issued by the FASB, and the IASB has also taken this topic to its agenda and currently issued an Exposure Draft **Definition of a Business and Accounting for Previously Held Interests** with a similar topic.

It is expected that with the new guidance less transactions will be evaluated as a sale/purchase of business and will be considered as a sale/purchase of an asset.

The distinction between business acquisition and asset acquisition makes quite a difference in many areas of accounting, it impacts areas such as consolidations, acquisition accounting, disposals, and goodwill. For example in a business combination the transaction costs are expensed however when an asset is purchased, they are capitalized. Also, it influences existence of goodwill which is created in a business combination, while when assets are purchased, there is no goodwill.

The current definition of Business in chapter 805: "An integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing a return in the form of dividends, lower costs, or other economic benefits directly to investors or other owners, members, or participants." This guidance often led to too broad application and difficult and costly assessment. For example, many acquisitions of assets may still generate profit or savings in some way, i.e. purchase of machinery, which could lead to the conclusion that it is a purchase of a business, although it is rather a purchase of an asset.

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Key provisions

The guidance works with three main elements that define business – inputs, processes and outputs. While all of those do not need to be present to qualify as a business, the new guidance establishes a "screen" to decide when a **set of assets and activities** is not a business. Due to this screen many entities will not need to continue with further assessment and will conclude the set to be an asset.

The screen is following: if substantially all of the fair value of the gross assets acquired or sold in a transaction is concentrated in a single identifiable asset or a group of similar identifiable assets, then such set is not a business. If such conclusion is not reached, further evaluation needs to be performed.

The Update requires that in order to conclude the transaction to be a sale or acquisition of a business the set of assets and activities "must include, at a minimum, an input and a substantive process that together significantly contribute to the ability to create output."

Effective dates

The changes of the guidance become effective for public companies for the fiscal years beginning after 15 December 2017, including interim periods within these periods. Other entities shall apply the changes for the years beginning after 15 December 2018 and interim periods within fiscal years beginning after 15 December 2019. The changes should be applied prospectively with no disclosures required.

Source: fasb.org

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Tax Package News

Proposed Amendment with Motions Passed in the Chamber of Deputies

On Friday, 13 January, the deputies approved the so-called 'tax package' (draft act amending certain acts in the area of taxation, especially the Income Tax Act, the VAT Act, the Tax Code etc) in third reading.

As we have already informed you in the December issue of dReport, the tax package did not bring any revolutionary changes in relation to income tax (as e.g., clarifications or minor changes in definitions and adjustments of guidance on asset depreciation, finance lease etc), major changes are in the technical amendment of VAT, please see also below. One of the few major changes is the possibility for a non-owner to depreciate technical improvements or an increase in tax relief in respect of children.

The approval process also included voting on a large number of amending motions, some of them suggesting rather substantial changes to the amended acts.

As part of the voting, e.g., additional changes to and potential exemptions from electronic sales reporting (suggested by the Ministry of Finance and other deputies), cancellation of the solidarity tax surcharge or proposed changes in VAT rates (decrease in the basic rate to 19%, reclassification of catering services into the reduced rate category or introduction of only two VAT rates) or expansion of the possibility of VAT correction in respect of debtors in the case of reorganisation, **were rejected**.

By contrast, the deputies **approved** the deferral of the effectiveness of the draft act to 1 April 2017, an increase in tax relief for the second (of CZK 2,400 per annum) an the third and next child (of CZK 3,600 Kč per annum) – already for the full year of 2017, if the draft act is finally approved. In addition, changes were approved introducing the possibility of obtaining advance rulings in determining profits allocated to permanent establishments or maintaining the tax credit on partial severance payments on supplementary pension insurance. In the VAT area amending motions were approved changing the VAT treatment for radio and TV broadcasting and decreasing the limit for VAT refunds to tourists to CZK 1,500.

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Other changes also included putting a limit on the flat expense charge-off on income from independent activities only for income amounting to less than CZK 1 million, any income in excess of this limit will be taxed without any flat expense charge-off being claimed in the tax return. However, entrepreneurs with the flat expense charge-off will have the possibility of seeking tax credit in respect of their children and tax relief in respect of their spouse. This change would become mandatorily effective as late as 2018, entrepreneurs can opt in voluntarily already for 2017.

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Statutory Executive to Be the VAT Payers? Paid discharge of the function of a business corporation's statutory executive by a natural person can be subjected to VAT

In a recently issued ruling (ref. no. 2 Afs 100/2016-29), the Supreme Administrative Court undertook an in-depth analysis of the conditions of discharging the function of the statutory executive of a limited liability company. Based on the direct effect of the relevant EU directive, it then held that an individual carrying out the duties of a company´s statutory executive is a VAT liable person and the discharge of this function is an economic activity in terms of the VAT Act.

Up until now, the Tax Administrator's approach to natural persons acting as the bodies of business corporations was based on provision of the VAT Act, which the court has declared to be inconsistent with EU law. The VAT Act has so far not considered the activity of natural persons discharging functions in bodies of business corporations to be an economic activity for VAT purposes, since the income arising from it is formally taxed as income from employment. These natural persons were therefore not considered VAT liable persons.

It therefore follows from the above mentioned court ruling that a limited liability company, which is a VAT payer, is entitled to deduct input VAT paid to the statutory executive (natural person) along with the remuneration for the discharge of the function, provided that the statutory executive is also a VAT payer. A statutory executive who is a VAT payer is also entitled to deduct input VAT on received taxable supplies that he/she will use to perform his/her economic activity, i.e. to discharge his/her function in a company´s body.

Just in case, the Court also alerted the Tax Administration Authorities that the direct effect of the directive does not authorise them to assess VAT ex officio to statutory executives of limited liability companies, neither retrospectively nor in the future. The VAT Act will first have to be amended accordingly.

New group of potential value added tax payers

The Supreme Administrative Court's ruling has therefore designated a potential new circle of VAT payers and it now remains to be seen what the reaction of the Ministry of Finance and the policy makers will be. As the Court has noted, the direct effect regime of the directive can be used unilaterally only to the benefit of the rights of the persons who discharge the paid function of a member of a company's body as their economic activity. Until the VAT Act is amended, they can freely choose whether they will register as VAT payers or not.

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Registration for VAT is, however, a necessary precondition for members of a business corporation's body to be able to deduct VAT from the received taxable supplies they used to perform their economic activity, i.e. to discharge their function in a business corporation's body. A business corporation can also deduct VAT only from taxable supplies received from a VAT payer.

It also needs to be mentioned that the basis for the Supreme Administrative Court's ruling that the paid discharge of the function of a member of a business corporation's statutory body by a natural person is an economic activity in terms of the VAT Act can generally apply to other paid functions in other bodies of a business corporation or cooperative whose members are elected, appointed or otherwise designated. However, membership in the supreme body of a business corporation (i.e. the general meeting of a limited liability company or joint-stock company or member meetings of a cooperative) cannot be considered an economic activity for VAT purposes on the basis of this ruling.

Rights, but obligations too

As was already indicated, if a person discharging the function of a member of a business corporation's body decides to make use of the direct effect of the EU directive and voluntarily register as VAT payer, they also have to be aware of the related obligations. Above all, they will be obliged to file tax returns and local sales/purchases reports every month, issue tax documents (invoices) conforming to the VAT Act requirements, keep records for VAT proposes and naturally also pay the tax (unless an excessive input VAT deduction is assessed).

Further questions

Following the possibility of imposing VAT on the paid discharge of the function of a member of a business corporation's body by a natural person, it will also be necessary for the relationship between business corporations and affected natural persons to have a clear definition of what is part of their entire remuneration for the discharge of the function, and thus the base for VAT. The VAT base shall include the entire consideration (financial and material) provided by a business company to the member of its body in return for discharge of his/her function.

As for the affected members of a business corporation's body, they will have to distinguish which received taxable supplies can be considered supplies used for the purposes of discharging the function under the VAT Act, and if VAT paid upon their acquisition can be deducted.

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Potential imposing of VAT on the remuneration for the function of a member of a business corporation's body by an individual does not, however, have any impact on the income tax treatment, which should remain the same.

The quoted ruling of the Supreme Administrative Court indicates the VAT Act to be amended; we will keep you informed about the prospective legislative development in the area.

Listen to more information on this topic in our webcast.

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Amendment to the VAT Act

An amendment was approved introducing a 10% VAT rate for the sale of newspapers and magazines. The act is expected to become effective upon being published. The impossibility to foreseeing the effective date may cause difficulty in practice.
If you need to find a solution, please do not hesitate to contact us.

As already mentioned above, a major technical amendment to the VAT Act (which is a part of the Tax Package) was discussed by the Chamber of Deputies on 13 January and passed on to the Senate. With effect from 1 April 2017, we should see new procedures to be applied to, for example, taxing payments received in advance, different guidance on determining taxable supply dates or new reverse charge regimes.

Proposed Information by the General Financial Directorate – Telecommunication Services

The General Financial Directorate is working to revise its original guidance note on the application of the reverse charge regime to telecommunication services (issued in September 2016). The GFD's original opinions prove to be no longer sustainable; according to the GFD's current position, the reverse charge application should be relatively limited.

The Constitutional Court's Opinion on Local Sales/Purchases Reporting ("kontrolní hlášení")

Under the Constitutional Court's judgement, it runs counter to the constitutional order to consider the Tax Authority's call relating to Local Sales/Purchases Reporting as delivered by sending it to an email address. The Constitutional Court rendered the relevant provision in the Act null and void without any substitution. In addition, the Constitutional Court determined that the scope of information to be reported by taxpayers must not be specified in a methodological guidance note issued by the General Financial Directorate (providing the tax authorities with a time period ending on 31 December 2017 in which to take appropriate remedial action).

Case Law of the Court of Justice of the European Union ('CJEU')

In case C 699/15 Brockenhurst College, an Advocate General's opinion was issued indicating a very narrow applicability of tax exemption to the provision of goods/services to third parties in relation to VAT-exempt education. In the past, the Czech Tax Authorities took the position that most

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of such related deliveries are tax exempt. We expect that the CJEU will finally uphold the Advocate General's opinion, which may result in a change in the Czech practice in the application of Section 57 of the VAT Act.

In the CJEU's opinion on case C 378/15 Mercedes Benz Italia SpA, member states may authorise or obligate a taxable person to make a VAT deduction applying a coefficient to all purchased goods and services (ie including such input expenses that are exclusively used for taxable supplies). Although the Czech VAT Act does not include any such specific treatment of claiming an input VAT deduction, this case may trigger considerations regarding its future change.

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Parametric Changes

Minimal Salary, Maximal Assessment Base and Other Changes

As of 1 January 2017, several changes have been made to parameters that are important not only for HR officers

Like every year, modifications need to be made at the outset in respect of social security, health insurance and other HR issues. This year's figures are as follows:

- **Minimal salary:** CZK 11,000 per month
  - The same amount is applied as the minimal assessment base for health insurance premiums (unless some of the exceptions apply to the policy holder);
  - The limit for childcare tax relief is equally increased (per year);
  - The amount of tax-exempt pensions is analogically increased to CZK 396,000 per year (36 times the minimal salary);
  - The minimal income for tax bonus claims has also changed (CZK 66,000 a year).
- **Maximal assessment base for social security premiums:** CZK 112,928 per month / CZK 1,355,136 per year.
- **Limit for the solidarity tax surcharge (and a compulsory tax return filing):** CZK 1,355,136 per year (or CZK 112,928 per month for a solidarity surcharge in respect of prepayments).
- **Decisive amount for the participation of self-employed people in pension insurance:** CZK 67,756 per year.
- **The minimal pension insurance prepayment in respect of self-employed people** for whom self-employment is the principal activity amounts to CZK 2,061 per month / if self-employment is a side activity, this amounts to CZK 825 per month.
- **Minimal healthcare insurance prepayment in respect of self-employed people** amounts to CZK 1,906 per month.

Further changes are to follow with the amendment to the Income Taxes Act, which is yet to be approved. If you need the latest information, do not hesitate to contact us.

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Impact of EU Regulation on Employee Assignment

An integral part of the European Single Market is the temporary provision of services in different EU countries and the related free movement of employees. So as to perform their business activities, employees often assign their employees to other member states for a temporary performance of work without acting on the foreign labour market as employers. The basic rules for assigning employees to work abroad have been set out by the European Union in Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services. The primary aim of the directive was to ensure at least minimal standards for the working conditions of employees performing work in other than their home country.

So as to increase the efficiency and effectiveness of enforcing the rules of temporary employee assignment, the European Union went on to adopt Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of the directive concerning the posting of workers in the framework of the provision of services, the transposition period of which expired on 18 June 2016. To date, the directive has been transposed by 21 member states and is primarily aimed at removing deficiencies in cross-border administrative cooperation, insufficient information exchange and the low enforcement rate of the original directive.

Individual member states have adopted different approaches to transposing the measures stipulated by the directive. As a result, marked differences currently exist among the administrative and financial conditions of employee assignment to individual member states. In this respect, the introduction of a minimal salary for employees assigned in Germany and France has been much debated, and still is. There are views that the legislation of the two countries exceeds the measures of which the implementation has been envisaged by the directive. At present, its compliance with EU law is being reviewed by the European Commission.

The legal treatment applied locally by individual countries during implementation has imposed additional administrative duties which burden not only domestic employers, but foreign (assigning) ones as well. For example, an employer assigning its employee to provide services to a client in Italy, Poland or Slovakia is obliged to inform the relevant bodies having competence over labour arrangements of the employee being assigned to their territory, and provide a substantial amount of details (duration of the assignment, identification details of the employee and the receiving employer etc.). Furthermore, the countries require that certain labour-law documents (e.g. the employee contract or the payroll) be at the disposal of relevant labour

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inspectorate bodies at the place of assignment. Should the obligations be violated, sanctions of differing amounts have been put in place. Moreover, certain countries govern the co-responsibility or liability of the receiving employer for the provision of salary and the payment of social security contributions of the assigned employee.

The Czech Republic has yet to transpose the implementing guideline. The relevant draft Employment Act amendment is currently being debated by the Chamber of Deputies. According to its current wording, the receiving employers in the territory of the Czech Republic will continue to be obliged to maintain records on the employees assigned to them. The Czech Republic has thus not opted to impose the reporting duty on the foreign employer as is the case in the countries referred to above. As with the above stated countries, the assigning employer will be obliged to ensure that copies of the documents substantiating the existence of the labour arrangement of the given employee are present in his or her Czech workplace. The documents will need to be translated into Czech. In contrast, in relation to the obligation to provide a salary (up to the minimal or guaranteed amount of the salary) to the assigned employee, the Czech employer will act as a guarantor in situations where the salary is not provided to the employee by the assigning employer.

Further tightening of the conditions of temporary employee assignment to EU member states may be expected in the future. The EU has already been preparing a review of the employee posting directive, particularly seeking to enshrine the limitation of the assignment duration to 24 months, new rules for sub-supplier chains and work agencies, and the replacement of the minimal salary provision by a provision on remuneration that is necessary for employee protection.

In view of the matters outlined above, employers assigning their employees abroad must pay careful attention to the legislative developments in individual countries and the current financial and administrative requirements that these countries place on assigning employers.

Listen to more information on this topic in our webcast.

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Gambling Act

Along with Act No. 186/2016 Coll., on Gambling, Act No. 187/2016, on Gambling Tax (hereinafter "GT"), came into force on 1 January 2017, replacing, among others, Act No. 202/1990 Coll., on Lotteries and Other Similar Games. Starting from 2017, the taxation of gambling thus reflects the philosophy of the new legal treatment of gambling, especially with respect to the intention to regulate (and therefore tax) entities that operate gambling games in the Czech Republic remotely via the internet.

Main Criterium? Aiming to the Czech Market.

A gambling tax payer is therefore both the entity which holds a basic permit or has reported the gambling (in accordance with the Gambling Act) and the entity that operates gambling games without the basic permit or without notification; in other words, an illegal operator is still legally a GT payer. The subject of this tax is the operation of gambling games on the territory of the Czech Republic, which can concern physical operation or operation via the internet, where the crucial criterion is whether the operation is at least partially aimed at or focused on the Czech market.

The GT base now consists of eight partial tax bases, namely partial tax bases from lottery, fixed-odds betting, totalisator games, bingo, technical games, live games, raffles and tournaments. The individual tax bases are equal to the amount by which the total received and unreturned stakes exceed the total of winnings paid out, where stake refers not only to a bet but any other performance that authorises a gambling participant to take part in a gambling game. The GT amount is calculated as a sum of the partial taxes, which amount to the product of the partial tax base and the relevant rate. The rate for the individual tax bases amounts to 23%, with the exception of technical games, which are subject to a 35% rate. The taxation period for GT is the calendar quarter.

Changes also in the taxation of win prizes

GT generally uses the principle of self-assessment, meaning that the tax assessment or additional assessment primarily takes place based on a submitted tax return, the tax administrator therefore does not issue a payment assessment. Although the GT does not obligate taxpayers to register separately for GT, it can be expected that particularly at the time of submission of the first GT return, the tax administrator will actively look for entities who may be subject to tax liability despite not having filed the tax return. A key role in this process should be played by munic-

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ipalities, because the GT Act imposes the obligation of information on municipalities in relation to the tax administrator, as part of which municipalities now provide information e.g. about newly granted permits or the operation of unreported gambling games.

In relation to the amended legislation concerning gambling and taxation thereof, the taxation of gambling winnings received by the participants has also changed. Exemption from personal income tax applies only for winnings in raffles with a game principal of no more than CZK 100,000 and winnings from gambling games operated based on a proper notification or permit as per the Gambling Act, or a similar legal regulation in another EU member state. Other winnings are subject to the personal income tax as other income as per Section 10 of the Income Taxes Act, and costs incurred in achieving them can be deducted from them. In addition, the regime of taxation of prizes from consumer lotteries is unified with the regime for prizes from promotional contests and promotional draws, since both are subject to the Gambling Act – prizes from both will be taxed with a withholding tax.

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Practical Implementation of the CbC into the Czech Tax Practice

The governmental amendment to the Act on International Cooperation in Tax Administration, which will govern the obligations of country-by-country (CbC) reporting in Czech law, is currently awaiting consultation in the Chamber of Deputies. The concept is promoted by the European Union and the Organisation for Economic Cooperation and Development (OECD), and the Czech Republic undertook to implement it by signing the international treaty of January 2016.

The newly implemented statement, referred to as a country-by-country report, is designed to provide individual tax authorities with the summary of activities, income generated and taxes paid in the respective tax jurisdictions in which the group operates.

The amendment is proposed to become effective on 5 June 2017

The CbC report will be mandatory for multinational groups of entities whose aggregate consolidated income amounts to at least EUR 750 million. The CbC report is to be prepared on behalf of a multinational group of entities by the ultimate parent company, or by a representing company or another member of the multinational group of companies provided additional requirements are met (e.g. if the ultimate parent company is based in a country in which it is not obliged to prepare the CbC report, or if the country does not exchange CbC reports etc). Therefore, a Czech company will be obliged to prepare a CbC report on behalf of the entire multinational group if it is the ultimate parent company of the group or if it has been designated (for the purposes of CbC reporting) as a representing company or if it is obliged to do so for another reason – refer to the above.

The First reporting period? Starting from 1 January 2016

The first reporting periods in which CbC reports should be prepared are periods beginning on or after 1 January 2016. Additionally, the reporting period must follow up the consolidated reporting period of the multinational group. The deadline for filing CbC reports is 12 months from the end of the reporting period in question. For reporting periods beginning on or after 1 January 2016, the deadline for preparing and announcing CbC reports will be the end of 2017.

In addition to the potential obligation of preparing the CbC report, Czech companies that are members of multinational groups will also be subject to the reporting duty. This will entail a duty to report the ultimate parent company of the group and the company which will prepare the CbC report on behalf of the multinational group to the tax authority (i.e. the General Finan-

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cial Directorate as the central liaison body). The deadline for meeting the reporting duty related to the reporting periods ending before 30 September 2017 is proposed to be 30 September 2017. In other cases (other reporting periods and the reporting of changes to details that have already been provided), the deadline for meeting the reporting duty is proposed at the end of the reporting period.

The CbC report is to be announced, with the announcement to be made via a data box using the relevant form. Detailed information on the form and the structure of the data report are yet to be provided/made public by the tax administration.

Any violation of the obligation relating to the announcement of the CbC report or any violation of the reporting duty or the duty to cooperate with the ultimate parent company may, as the amendment proposes, carry a fine of up to CZK 500 thousand or CZK 3 million, respectively.

Our recommendation: Make sure whether your company is forming part of the multinational group

From a practical point of view, we recommend that Czech companies forming part of multinational groups of companies verify whether the group meets the requirements for filing the CbC report. If it does, the ultimate parent company of the group needs to be identified, as must the company which will file the CbC report on behalf of the group. The information will need to be reported to the tax authority, as outlined above.

So as to provide the necessary information relating to its own business activities, the Czech company will have to work closely with the company preparing the CbC report.

If the Czech company prepares the CbC report itself, all the member companies of the group will need to be informed of the fact and it will be necessary to further communicate with them so that all the details that are necessary for preparing the CbC report may be obtained.

The first CbC reports will be exchanged between individual jurisdictions in mid-2018. Since this date, tax administrations will have another tool at their disposal with which to monitor multinational group transactions.

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Automated exchange of information among tax administrations

A draft amendment to the Act on International Cooperation in Tax Administration passed third reading in the Chamber of Deputies.

The amendment should implement into the Czech legislation another amendment to the European Directive regulating cooperation of tax administrations of member states (the so-called DAC3 Directive on Administrative Cooperation). On the basis thereof an automated exchange of the so-called tax opinions with a cross-border element (advance cross-border rulings and advance pricing arrangements – "APA") will take place among the member states of the European Union. The member states of the European Union will start, at regular half-year intervals, to exchange information concerning the rulings of financial and tax administrations that are issued to multinational companies, especially in the area of transfer pricing. From 2017 the exchange will take place twice a year and on behalf of the Czech Republic it will be ensured by the appointed liaison body, the General Financial Directorate. The information on opinions issued in the past, between 1 January 2012 and 31 December 2016, will be exchanged in one single go. The decisions issued from 1 January 2012 and 31 December 2013 will be exchanged only if effective as of 1 January 2014.

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Automatic Exchange of Information on Financial Accounts

The Ministry of Finance has published an updated full list of countries with which the automatic exchange of information on financial accounts will take place, including relevant decisive days. This list is substantial for all entities (financial institutions) that are obliged to identify reportable data and that will report it for the first time to the tax administrator by the end of June 2017 as the reporting and identification of the information should take place only in relation to persons (clients) who are potential tax residents of these countries. The updated list also includes countries with which accession to the automatic exchange of information on financial accounts was agreed directly by the EU (Andorra, Lichtenstein, Monaco, San Marino and Switzerland).

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EU Countries movements towards CbC reporting

The BEPS Action 13 Report (Transfer Pricing Documentation and Country-by-Country Reporting) provides a template for multinational enterprises (MNEs) on how to annually report financial information to each tax jurisdiction in which they do business. This report has been, in recent days, known as the Country-by-Country (CbC) Report.

The following list provides an update on movement towards implementing the CbC reports in EU countries:

European Union – the EU presidency has released a compromise on proposal for the public CbC reporting directive allowing member states to omit the reporting of required information under specific circumstances, i.e. "when the nature of information is such that it would be seriously prejudicial to the commercial position of the undertakings to which it relates, including when only a single affiliated undertaking operates in a tax jurisdiction which is not listed in the EU list of non-cooperative jurisdictions for tax purposes." However, any such omission shall be disclosed in the report."

Belgium – the Federal Public Service for Finance announced an extension of the deadline until 30 September 2017 to notify the tax authority that the ultimate parent company will file a consolidated CbC report for 2016 in another jurisdiction.

Cyprus – the Ministry of Finance issued a decree pursuant to article 6(16) of the Law on Assessment and Collection of Taxes in relation to CbC reporting. Cyprus tax resident entities that are the ultimate parent entity or the surrogate parent entity of such a multinational group have to notify the tax authorities in terms of the reporting framework. The notification has to be done before the end of the entity's financial reporting period.

Czech Republic – CbC reports should be submitted to the Czech tax authorities first with respect to the fiscal year starting 1 January 2016, within 12 months from the end of the particular fiscal year. The first due date for CbC report filling is thus 31 December 2017. For the reporting period ending prior to 30 September 2017, the due date for first notification shall be 30 September 2017. For reporting periods ending after 30 September 2017, the due date for the notification shall be the end of the first reporting period. You can find more information on this topic in the special article above.

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Germany – the upper house of parliament has approved a bill introducing CbC reporting rules for fiscal years beginning after 31 December 2015 (secondary reporting will apply only for fiscal years beginning after 31 December 2016).

Ireland – the Irish Revenue has issued updated CbC reporting guidance. The update includes a number of technical amendments and clarifications. Provided a global multinational group is required to file a CbC report for the year ended 31 December 2016, the Irish resident constituent entities of the group shall provide notification to Irish Revenue before the end of December 2016. The notification shall be performed on the Revenue Online System (ROS) platform and the guidance notes published by Irish Revenue contain a step-by-step guide that provides detailed instruction.

Luxembourg – the deadline for the first CbC report for the fiscal year 2016 is postponed until 31 March 2017 and the tax administration has set up an online reporting platform on which entities constituting a group of multinational companies resident in the Grand Duchy of Luxembourg can deposit the relevant notifications.

Spain – The tax authorities recently published a communication announcing the submission of a model CbC reporting form (231), a model form to comply with this obligation on an individual or aggregated basis. CbC reporting form 231 has been approved and is effective from 1 January 2017.

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Interest Deductibility under BEPS 4

The updated OECD report sets new rules for financial institutions

Following the BEPS (Base Erosion and Profit Shifting) initiative that the OECD presented as part of its activities in late 2015, an update of the Action 4 Report was published in December 2016.

Action 4 concerns restrictions of tax applicability/deductibility of financing expenses and it is, among others, one of the actions that the EU has decided to include in the Anti-Tax Avoidance Directive (ATAD). The changes made in the updated version did not concern the concept of the document from 2015. A new methodology was added, as well as details concerning the method of determining the amount of deductible interest at the group level, which should help OECD member states implement the specific measures.

The original version of the initiative from 2015 already stated that unifying the application of the rules for bank and insurance institutions at the level of OECD member states may not be entirely appropriate. For this reason, the updated version gives each country the option to decide if it will include bank and insurance institutions within Action 4 or not. Exemptions of these institutions from Action 4 should be made after assessing the extent of the risk of abuse of the current system that the country faces. If such a risk exists, the country should implement appropriate measures. The updated versions also discusses how these rules should be set up for entities in the financial sector and includes examples of rules that are applied at present.

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Double Taxation Treaty with Respect to Income Taxes Concluded between the Czech Republic and Chile

The Double Taxation Treaty between the Czech Republic and the Republic of Chile became valid on 21 December 2016, with effect from 1 January 2017. The Treaty will be published in the Collection of International Treaties in January 2017. Aside from the methods of avoiding double taxation with respect to income taxes and property, the countries also agreed on information exchange.EU transparency rules for tax rulings enter into force

From 1 January 2017, EU Member States are obliged to automatically exchange information on all new cross-border tax rulings that they issue. National tax authorities will send a report listing all such rulings to a central repository every six months. The first exchange should take place by 1 September 2017 at the latest. By 1 January 2018, Member States will also have to provide the same information for all cross-border rulings issued since the beginning of 2012.

France announces progressive reduction of corporate income tax rate

The corporate income tax rate in France will be progressively reduced from the current 33.3% to 28% over the period of 2017 to 2020. The existing 15% reduced tax rate will be maintained for companies whose turnover does not exceed EUR 7.63 million, but only for the first EUR 38,120 of taxable income, and in 2019 this will also extend to small and medium-sized enterprises (SMEs).

German parliament approves additional relief from change-in-ownership rules

The general change-in-ownership rule (which may result in the forfeiture of net operating loss and interest carryforwards, and current year losses) will not apply where the business operations of the loss corporation continue and are unchanged from the earlier of the company's date of incorporation or the three fiscal year prior to the change in ownership.

Italy introduces an extension of depreciation of certain assets and announces a corporate income tax rate reduction

Italy's budget law extends the extra 40% depreciation deduction (i.e. total tax depreciation of up to 140% of the cost) for tangible assets whose depreciation rate for tax purposes exceeds 6.5 %. This measure will now be applicable to new assets that are purchased (or leased under a finance lease agreement) by 31 December 2017. The extra 150% depreciation deduction (i.e. total tax depreciation of up to 250 % of the costs) may be newly applied for new

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assets acquired for the technological transformation of enterprise. Additionally, the corporate income tax is reduced to 24% (from 27.5 %) as from 1 January 2017.

Luxembourg circular on group financing activities

The circular results from the codification of the arm's length principle in legislation and explains areas including the application of the principle to intra-group financing activities and determining substance in Luxembourg. All agreements before the introduction of the new legislation are no longer binding on the Luxembourg administration for direct taxes from 1 January 2017. A new ruling must be requested.

CJEU rules on Spanish state aid cases involving amortisation of goodwill

The Court of Justice of the European Union (CJEU) issued its long-awaited decision in the Spanish financial goodwill amortisation state aid cases. As a result of the CJEU decision, the two decisions of the European Commission which considered the financial goodwill amortisation regime to be state aid are reinstated and Spain must recover the aid granted. The CJEU has referred the cases back to the EU General Court for reassessment in light of the CJEU's conclusion.

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Thursday 9	Consumption tax	• Tax maturity for December 2016 (except the consumption tax on alcohol)
Tuesday 14	Intrastat	• Submission of statements for intrastat for January 2017, paper form
Wednesday 15	Income tax	• Taxpayers to sign annual tax settlement on employment and fringe benefits for 2017 tax year and the annual settlement advance tax and tax relief for 2016 tax year • Application for the annual tax settlement
Thursday 16	Intrastat	• The Intrastat statement for January 2017, electronic version
Monday 20	Income tax	• Monthly payment of deducted advance payments on personal income tax from employment
Friday 24	Consumption tax	• Tax maturity for December 2016 (only the consumption tax on alcohol)
Monday 27	Value added tax	• Tax return and tax for January 2017 • Recapitulative statement for January 2017 • VAT control statement for January 2017
	Energy taxes	• Tax return and tax maturity on gas, solid fuels and electricity for January 2017
	Consumption tax	• Tax return for January 2017 • Tax return for claiming of refund of consumption tax for example on fuel oil and other petrol (benzine) for January 2017 (if applicable)

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Wednesday 1	Income tax	• Submission of income tax from employment settlement for taxable period 2016.
	Lotteries and other similar games	• Tax return from lotteries and other like games for 2016 and payment for levy period 2016
Monday 13	Consumption tax	• Tax maturity for January 2017 (except the consumption tax on alcohol)
Tuesday 14	Intrastat	• The Intrastat statement for February 2017, paper version
Wednesday 15	Income tax	• Quarterly advance payment on tax
Thursday 16	Intrastat	• The Intrastat statement for February 2017, electronic version
Monday 20	Income tax	• Monthly payment of deducted advance payments on personal income tax from employment • E-submission of income tax from employment settlement for taxable period 2016
Monday 27	Value added tax	• Tax return and tax for February 2017 • Recapitulative statement for February 2017 • Control statement for February 2017
	Energy taxes	• Tax return and tax maturity on gas, solid fuels and electricity for February 2017
	Consumption tax	• Tax return for February 2017 • Tax return for claiming of refund of consumption tax for example on fuel oil and other petrol (benzine) for February 2017 (if applicable) • Tax maturity for January 2017 (only the consumption tax on alcohol)
Friday 31	Income tax	• Payment of withholding tax according to the special rate for February 2017

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Legal news

Deloitte Czech Republic

February 2017

Paid discharge of the function of a business corporation's statutory executive by a natural person can be subjected to VAT

Amendment of the AML Act

Paid discharge of the function of a business corporation's statutory executive by a natural person can be subjected to VAT

In a recently issued ruling (ref. no. 2 Afs 100/2016-29), the Supreme Administrative Court undertook an in-depth analysis of the conditions of discharging the function of the statutory executive of a limited liability company. Based on the direct effect of the relevant EU directive, it then held that an individual carrying out the duties of a company´s statutory executive is a VAT liable person and the discharge of this function is an economic activity in terms of the VAT Act.

Up until now, the Tax Administrator's approach to natural persons acting as the bodies of business corporations was based on provision of the VAT Act, which the court has declared to be inconsistent with EU law. The VAT Act has so far not considered the activity of natural persons discharging functions in bodies of business corporations to be an economic activity for VAT purposes, since the income arising from it is formally taxed as income from employment. These natural persons were therefore not considered VAT liable persons.

It therefore follows from the above mentioned court ruling that a limited liability company, which is a VAT payer, is entitled to deduct input VAT paid to the statutory executive (natural person) along with the remuneration for the discharge of the function, provided that the statutory executive is also a VAT payer. A statutory executive who is a VAT payer is also entitled to deduct input VAT on received taxable supplies that he/she will use to perform his/her economic activity, i.e. to discharge his/her function in a company´s body.

Just in case, the Court also alerted the Tax Administration Authorities that the direct effect of the directive does not authorise them to assess VAT ex officio to statutory executives of limited liability companies, neither retrospectively nor in the future. The VAT Act will first have to be amended accordingly.

New group of potential value added tax payers

The Supreme Administrative Court's ruling has therefore designated a potential new circle of VAT payers and it now remains to be seen what the reaction of the Ministry of Finance and the policy makers will be. As the Court has noted, the direct effect regime of the directive can be used unilaterally only to the benefit of the rights of the persons who discharge the paid function of a member of a company's body as their economic activity. Until the VAT Act is amended, they can freely choose whether they will register as VAT payers or not.

Registration for VAT is, however, a necessary precondition for members of a business corporation's body to be able to deduct VAT from the received taxable supplies they used to perform their economic activity, i.e. to discharge their function in a business corporation's body. A business corporation can also deduct VAT only from taxable supplies received from a VAT payer.

It also needs to be mentioned that the basis for the Supreme Administrative Court's ruling that the paid discharge of the function of a member of a business corporation's statutory body by a natural person is an economic activity in terms of the VAT Act can generally apply to other paid functions in other bodies of a business corporation or cooperative whose members are elected, appointed or otherwise designated. However, membership in the supreme body of a business corporation (i.e. the general meeting of a limited liability company or joint-stock company or member meetings of a cooperative) cannot be considered an economic activity for VAT purposes on the basis of this ruling.

Rights, but obligations too

As was already indicated, if a person discharging the function of a member of a business corporation's body decides to make use of the direct effect of the EU directive and voluntarily register as VAT payer, they also have to be aware of the related obligations. Above all, they will be obliged to file tax returns and local sales/purchases reports every month, issue tax documents (invoices) conforming to the VAT Act requirements, keep records for VAT proposes and naturally also pay the tax (unless an excessive input VAT deduction is assessed).

Further questions

Following the possibility of imposing VAT on the paid discharge of the function of a member of a business corporation's body by a natural person, it will also be necessary for the relationship between business corporations and affected natural persons to have a clear definition of what is part of their entire remuneration for the discharge of the function, and thus the base for VAT. The VAT base shall include the entire consideration (financial and material) provided by a business company to the member of its body in return for discharge of his/her function.

As for the affected members of a business corporation's body, they will have to distinguish which received taxable supplies can be considered supplies used for the purposes of discharging the function under the VAT Act, and if VAT paid upon their acquisition can be deducted.

Potential imposing of VAT on the remuneration for the function of a member of a business corporation's body by an individual does not, however, have any impact on the income tax treatment, which should remain the same.

The quoted ruling of the Supreme Administrative Court indicates the VAT Act to be amended; we will keep you informed about the prospective legislative development in the area.

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Amendment of the AML Act

Amendment of the AML Act

On 1 January 2017, an amendment to the AML Act (Act No. 253/2008 Coll., on Certain Measures Against Money Laundering and Terrorist Financing) became effective, implementing Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. The amendment extends the obligations within prevention of money laundering and terrorist financing, especially for obliged entities.

Extension of the circle of obliged entities and their obligations

The amendment extends the circle of obliged entities. Obliged entities now also include gambling services providers (with the exception of operators of money, material, immediate or number lotteries, bingo or raffles) or entities providing services connected with virtual currencies, e.g. operators of online stores accepting payments in virtual currencies or providers of virtual wallets.

The limit of cash payments for the determination of obliged entities has been lowered from EUR 15,000 to EUR 10,000 and the obligations related to cash payments have been extended to businesses and corporate entities performing trades, i.e. to all cash transactions, not only the acceptance of cash payments. Trades exceeding the set limit will have to be subject to preventive measures against money laundering and terrorist financing, including client identification and due diligence, rejection of a transaction or reporting a suspicious transaction. Suspicious transaction are now to be reported to the Financial Analytical Office.

The definition of a politically exposed person has also been extended to *"a natural person that holds or has held an important public function with national or regional importance"*. Obliged persons will therefore have to perform client due diligence, including taking appropriate measures to find out the origin of their assets, also with regard to the current and former municipality and city mayors, or regional governors. The definition does not apply to members of municipal and city councils. The obliged entities will have to detect and record information whether the client is a politically exposed person as part of client identification.

Obligation to identify and assess risks

Obliged entities have the obligation to identify and assess risks of money laundering and terrorist financing. In addition, obliged persons that have to prepare

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a written system of internal principles, especially banks and other financial institutions, have to prepare assessment of risks in written within the scope of the services provided, and regularly update it. The risk assessment should primarily take into account risk factors such as client type, purpose, regularity and duration of the business relation, value and method of the business performed, or the degree of risk of certain geographical areas. The assessment should include appropriate control measures.

Following the risk assessment, a system of internal principles should be prepared with risk assessment as its obligatory component. Obliged entities have to prepare and approve the risk assessment by 1 July 2017. Failure to meet the obligation to prepare a risk assessment in written or the obligation to regularly update it can be sanctioned with a fine of up to CZK 1,000,000. Every obliged entity that does not adopt or apply appropriate prevention and control measures to mitigate the identified risks of money laundering or terrorist financing can be sanctioned with a fine of up to CZK 5,000,000.

Information about beneficial owners

The definition of beneficial owner has also been extended to *"a natural person that has a factual or legal possibility to exert direct or indirect control over a corporate entity, a trust fund or another legal organisation without legal personality"*. The Act gives other conditions for determining the beneficial owner for different types of companies. For business corporations, the beneficial owner is a natural person that:

a. Holds more than 25% of the voting rights or an investment in share capital of more than 25%, either alone or together with persons acting in concert with him/her;
b. Controls the entity described in a), either alone or together with persons acting in concert with him/her;
c. Is to be the recipient of at least 25% of the profits of this business corporation;
d. Is a member of the statutory body, a representative of the corporate entity in this body or has a similar position, if the beneficial owner cannot be determined using the above criteria.

All corporate entities and trust funds (not only obliged entities) also have to keep records of the beneficial owner, including the reason why this person is considered the beneficial owner. The records have to be kept throughout the time when the person is the beneficial owner and at least 10 years after this relationship ceases to apply.

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From 1 January 2018, it will be obligatory for legal entities registered into a public register and trusts to record information about their beneficial owner into the register of beneficial owners established by the amendment to Act No. 304/2013, on Public Registers of Corporate Entities and Natural Persons. The register will be non-public and it will include information in the following extent:

a. Name and address of permanent residence (or temporary residence if different form the permanent residence);

b. Date of birth and birth number, if applicable;

c. Nationality; and

d. Information about the fact that establishes the position of beneficial owner (share in voting rights, share in divided profits or the fact that the person is a member of a statutory body).

Extracts from the register of beneficial owners can be obtained by the registered person and, in a limited extent, by a person who proves interest in relation to the prevention of crimes related to, money laundering or terrorism. Remote access to information in the register will be made available especially to courts, law enforcement authorities, the tax administrator, the Financial Analytical Office, the Czech National Bank and obliged entities in connection with client identification and due diligence. The establishment of the register of beneficial owners should simplify the processes of client due diligence performed by the obliged entities.

What steps should companies take?

Obliged entities should review their internal rules and documents and amend them in accordance with the current wording of the Act. They should focus particularly on the processes related to client identification and due diligence and the setting of prevention and control measures, including risk assessment.

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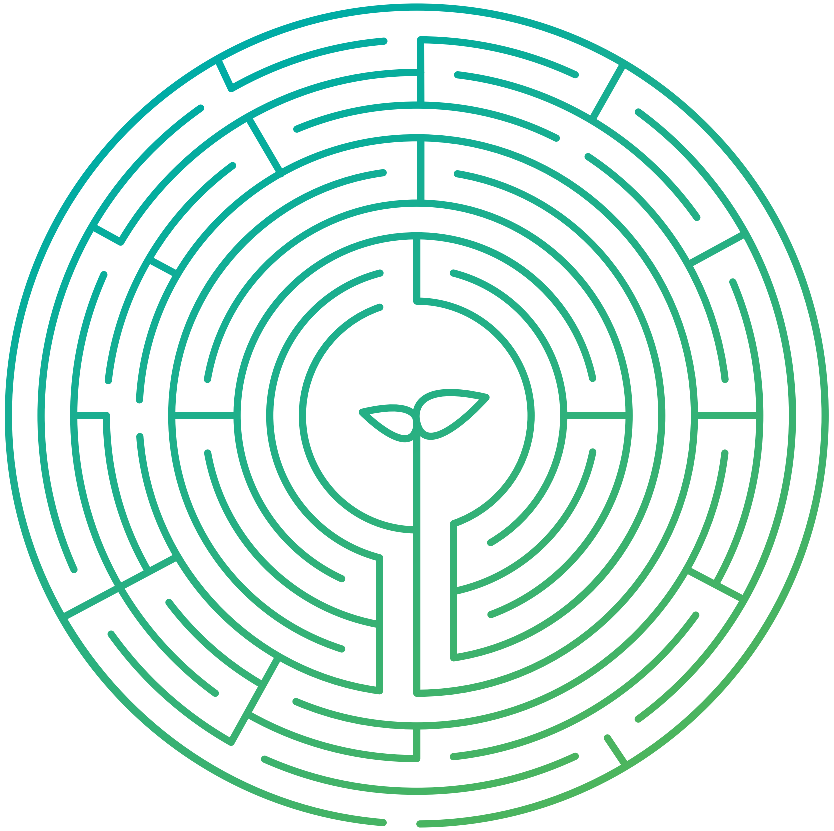

Grants & Incentives news
Deloitte Czech Republic

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Timetable of Integrated Territorial Investments (ITI) under the Operational Programme Enterprise and Innovations for Competitiveness (OP EIC)

Operational Programme Research and Innovation – Slovakia

Timetable of Integrated Territorial Investments (ITI) under the Operational Programme Enterprise and Innovations for Competitiveness (OP EIC)

The Ministry of Industry and Trade (MIT) has published an **updated timetable** of ITI calls under the OP EIC for 2017.

ITI represent a **territorial development tool** which allows for efficient and transparent implementation of territorial strategy. The ITI tools are based on the Europe 2020 Strategy and other documents at European and national levels and they will be used in the largest **metropolitan areas of nationwide importance**. The OP EIC programme expects the use of ITI in five metropolitan areas:

- ITI of the Hradec Králové – Pardubice agglomeration.
- ITI of the Plzeň metropolitan area.
- ITI of the Brno metropolitan area.
- ITI of the Olomouc agglomeration.
- ITI of the Ostrava metropolitan area.

The integrated strategy of metropolitan areas is based on the specific needs of the territories and it must contribute towards reaching the goals and binding indicators of the EU operational programmes that fund it. One of the advantages of integrated projects can be the fact that the OP EIC Management Body (MIT) **reserves a financial allocation in the operational programme** for the implementation of integrated strategies.

The projects presented within the integrated strategies in response to OP EIC calls must respect the conditions set by the calls that the MIT will announce for the integrated projects. The city, as the bearer of the integrated strategy, will be authorised by a public contract concluded with the MIT to perform the function of an **intermediary subject**. From this position, the city will review the acceptability and formal requirements as well as perform factual assessment. Based on the assessment of the projects by the city, the MIT will then make decisions about the allocation of support.

The table below shows the most interesting grant titles within OP EIC ITI that the MIT plans to announce during **March 2017**.

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Programme name	Programme focus	Call type	Supported area	Recipient types*	Aid applications accepted
1st Call Innovation – Innovation project – ITI	Purchase of production technology in order to introduce new or innovated products to production or to the market.	Continuous	ITI Olomouc, ITI Plzeň, ITI Hradec-Pardubice	SME, LE	from 3/2017 to 2/2018
1st Call Potential - ITI	Establishment or expansion of centres of industrial research, development and innovation.	Continuous	ITI Olomouc, ITI Plzeň, ITI Hradec-Pardubice	SME, LE	from 3/2017 to 2/2018
1st Call Application - ITI	R&D activities with results in the form of prototypes, industrial or utility models, software, etc.	Continuous	ITI Olomouc, ITI Hradec-Pardubice, ITI Ostrava	SME, LE	from 3/2017 to 2/2018
1st Call Real Estate - ITI	Development of business real estate.	Continuous	ITI Olomouc, ITI Hradec-Pardubice, ITI Ostrava	SME	from 3/2017 to 2/2018

*SE – Small Enterprise, ME – Medium-Sized Enterprise, LE – Large Enterprise.

Timetable of Integrated Territorial Investments (ITI) under the Operational Programme Enterprise and Innovations for Competitiveness (OP EIC)

Operational Programme Research and Innovation – Slovakia

Operational Programme Research and Innovation – Slovakia

The Ministry of Education, Science, Research and Sport of the Slovakia as the coordinating body for the Operational Programme Research and Innovation published Indicative schedule of calls for applications for grants for 2017. The table below shows the most interesting grant titles.

Title	Description	Scheduled date	Eligible applicants	Indicative amount of funds (EUR)
Research and development	Increase of the research activity through better coordination and consolidation of R&D of Research organisations	January 2017	• R&D Organisations. • Public institutions. • Research organisations from EU.	76 000 000
Research and development	Increase of the private investments through cooperation between Research organisations and business.	February 2017	• R&D Organisations. • Public institutions. • Research organisations from EU.	15 000 000
Research and development	Increase of the Slovak republic participation in international projects cooperation.	March 2017	• R&D Organisations. • Public institutions. • Research organisations from EU.	14 000 000

Timetable of Integrated Territorial Investments (ITI) under the Operational Programme Enterprise and Innovations for Competitiveness (OP EIC)

Operational Programme Research and Innovation – Slovakia

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If these issues relate to your company, we would be happy to provide you with more detailed information.
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