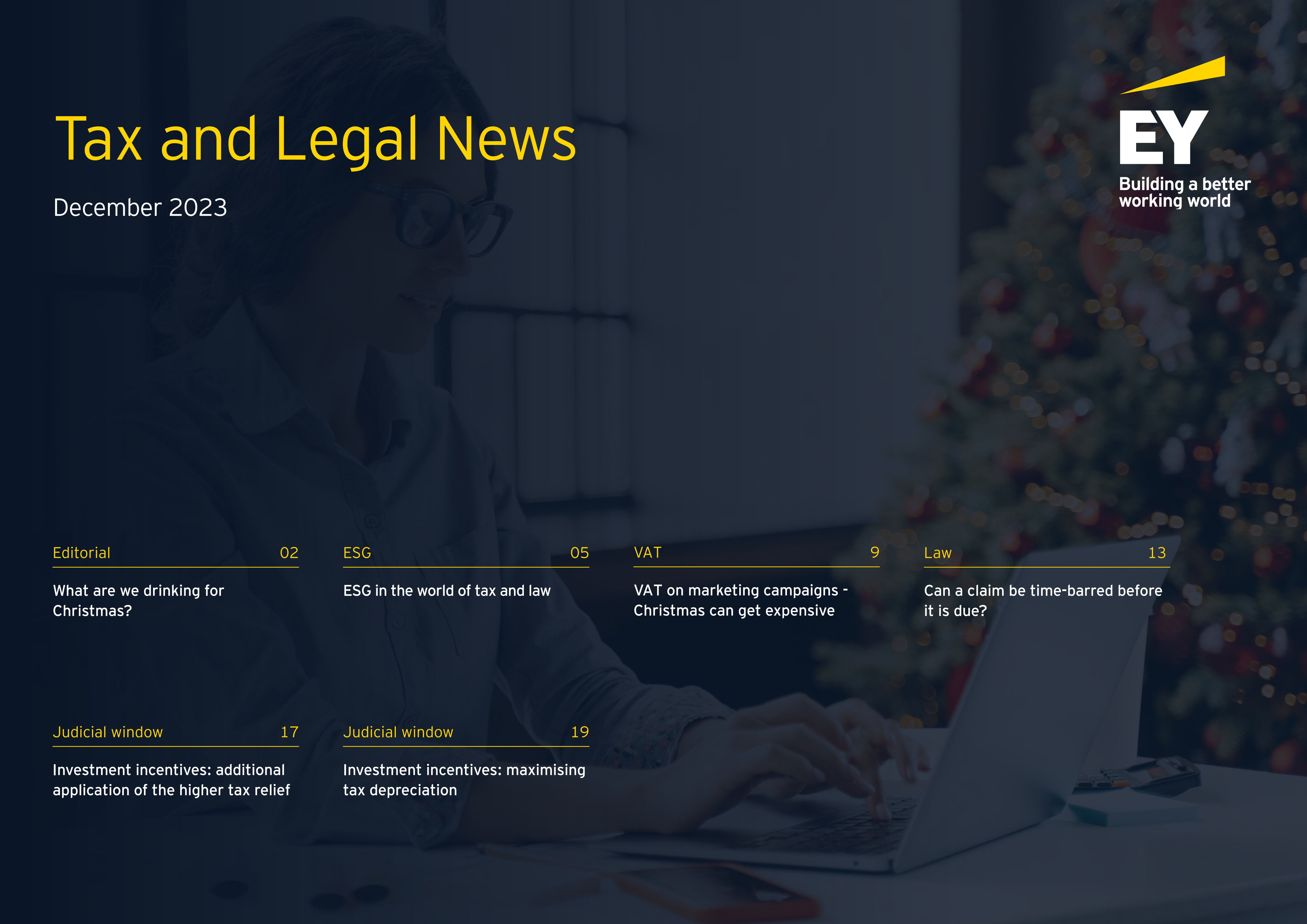

Tax and Legal News

December 2023

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What are we drinking for Christmas?

A demonstration at Letná in Prague. The first thing that comes to mind – they want to make beer more expensive again. And indeed, VAT on beer is going up to 21% across the board.

Until now, I thought the most complicated tax product was Pillar 2: a few hundred pages of text on how to collect 15% tax on everything. But now I have another close favourite – the change in Czech VAT rates. Back to beer. Brewers are sad; VAT is going up to 21%. Beer non-drinkers tax technicians are happy because it's going to be so much simpler with one rate for everything. Of the sad beer drinkers, the ones who are kind of sad are those who drink non-alcoholic beer in an establishment without facilities – they're getting it for 15% these days. The really sad ones are the ones who go to a taproom with facilities, but don't order a pitcher to go. They're getting it for 10% today. As well as those who drink soft drinks in the same establishment – whether on tap or not. I'm going to miss the variability.

In fact, almost all drinks will now be at the 21% rate. Almost. So, I'm wondering if I could put more milk in my coffee at a restaurant and get it to 12%. But the legislature has it figured out, and specifically says neither macchiato nor latte nor flat white, I've looked it up, and no matter how much milk you have in there, it's still coffee at 21%. A milkshake with some strawberry ice cream is 12%, but if I put a dash of coffee in it, it's a 21% milkshake. So I guess I'll just order the coffee and the milk separately and mix it myself. If it's the right milk, that is, because there's no such thing as "milk". For example, the 12% should also be for plant milks, i.e. soya, coconut, rice, oat etc. That seems consistent. Except that, for example, an almond is technically not a botanical nut and almond milk could theoretically fall into the 21% range (though the explanatory memorandum proudly keeps it at 12%).

Perhaps it might be easier with plain water. All 21% water, great. Only tap could be 12%. But I mustn't flavour it with anything. Added juice, syrup, fruit - bad, back to 21%. Here's a quick digression – it's different than milk, I can flavour it six ways from Sunday, and it's still 12% (except for the coffee flavouring). I don't mind decorations in tap water, like mint leaves, that's still 12%. But I have to make sure they don't crush too many leaves in and it becomes flavoured all of a sudden; that would make it 21% again. And I don't know if a slice of lemon can be purely decorative if I can taste it.

I give up. I'm going to go turn on the tap at home. Nice 12% VAT. And that'll be even for small minicipalities with less than 50 customers, which today have it at 15%, as if it were bottled. I'm sure the 12% will be for cold water, but what if the cold water makes my teeth chatter and I need to swirl some warm water in? Warm water may not be 12%. It will only be at this rate if supplied through a service water pipe or a water main that's structurally connected by a mixer tap to a potable water supply pipe. So now I don't quite know – I'm off to the developer to ask if he fitted the right battery for my mixer all those years ago.

If those rates are starting to make your blood pressure rise, I recommend getting regular blood pressure readings. If you're going to buy a blood pressure monitor before Christmas, make sure it's the type that's "typically for personal use only". That's the only way you'll get it at a reduced rate. Any other type would be at the basic rate. If you're going to get one after the New Year, there's a device "for measuring...the pressure... of liquids... which is a medical device under the Medical Devices Regulations". Although it fits my blood pressure gauge exactly, it does not have to be there.

Anyway, tax consultancy was (if we don't look at the period before EU accession), is and will be at the basic rate. We'll be glad if you keep us in your good graces and we wish you a Merry Christmas.

In fact, almost all drinks will now be at the 21% rate. Almost. So I'm wondering if I could put more milk in my coffee in a restaurant and get it to 12%. But the legislature has thought this through and specifically says neither macchiato nor latte nor flat white, I've looked it all up, and no matter how much milk you put in there, it's still coffee and 21%. On the other hand, a milkshake with some strawberry ice cream is 12%, but if I put a dash of coffee in it, it's a 21% milkshake.

ESG


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ESG in the world of tax and law

The interest of legislators and companies in the field of ESG (environmental, social and corporate governance) has been growing recently. In addition to the ambition to redress economic and social inequalities, states and regional groups see it as an opportunity to generate additional revenue for their budgets. For companies, new ESG regulations may represent a threat or an opportunity that may soon turn into a significant competitive advantage or disadvantage.

As the name implies, ESG encompasses the full spectrum of environmental, social and corporate governance aspects. The European Union (EU) is trying to name the important aspects of ESG, assign specific targets to them and get companies to meet them. This is why it has recently been increasingly active in coming up with new legislation to regulate these areas. The new regulations will undoubtedly have an impact on companies' investment decisions, so we've decided to describe those that have an impact on tax and law in this article.

CBAM (carbon duty)

CBAM, or Carbon Border Adjustment Mechanism, has become a buzzword in the last year. This is logical – CBAM has a very wide reach, the speed of its introduction has surprised not only companies but also some EU Member States, and most importantly, the new legislation has come in the form of comprehensive regulations which, moreover, do not require transposition into national legislation.

CBAM aims to ensure a level playing field for European producers by making imports of products with a higher environmental footprint into the EU subject to an additional payment in the form of CBAM certificates. In addition to its contribution to climate protection, the EU expects CBAM to support EU production and to generate additional revenue for its budget.

The CBAM legislation has applied since 1 October 2023 and now requires importers of fertiliser, electricity, hydrogen or aluminium, iron and steel products to report quarterly. The first report must be submitted by the end of January 2024. However, reporting is preceded by complex preparation, which requires an analysis of the structure of imports and a check on the availability and quality of data for report preparation. In order to successfully manage these activities, it will be necessary to involve various departments within a company as well as the manufacturers and suppliers of the selected products. Digital solutions can help, but will not replace all roles in the preparation process.

From January 2026, importers will then pay for the emissions contained in imported products, which could have a significant impact on entire supply chains, giving those who prepare properly a major competitive advantage. However, our experience so far shows that importers underestimate the preparation for the new obligations and CBAM becomes a "hot potato" within a company. Anyone who doesn't get to it until after the New Year may not be able to manage it.

Deforestation-free products

In addition to CBAM, other important European environmental legislation has been approved, albeit somewhat unnoticed. It addresses unsustainable logging, forest degradation and biodiversity loss. Similar to CBAM, this area is regulated by a directly binding regulation. The essential part of the regulation will enter into force on 30 December 2024.

The regulation prohibits placing on, or supplying to, the EU market any products that may cause the expansion of agricultural land and that cannot be shown not to have caused deforestation or to have been produced in accordance with the relevant legislation of the country of production. Specifically, these are commodities that can be collectively referred to as cattle, cocoa, coffee, oil palm, rubber (including tires), soybeans or timber.

Producers and importers will be required to demonstrate compliance with the conditions of the regulation, such as reporting the geolocation of the land on which production takes place, or proving that the goods in question do not come from recently deforested land or have not contributed to forest degradation.

It is advisable not to underestimate compliance, as penalties can be both financial (up to 4% of annual turnover in the EU) and non-financial (confiscation of products or a ban on placing the product on the European market). Early and thorough preparation will be all the more important.

EU Pay Transparency Directive

The Pay Transparency Directive, adopted in April 2023, introduces new obligations for employers in the area of equal pay for women and men. From 2026, the directive is to be transposed into national law. However, employers should not delay in preparing for the upcoming changes due to the complexity of the issue.

Since equal treatment is already regulated by the Czech Labour Code, the application of the European Directive is not a step into the unknown. However, the new EU regulation goes more in depth and, in addition to the obligation to report gender pay gaps, also aims to increase pay system transparency.

In practice, this will mean, for example, ensuring that employees have access to information on individual pay levels and on average pay levels by gender. Candidates will be provided with information on starting salary or salary range. In addition, contractual confidentiality clauses relating to remuneration will be prohibited for the purposes of enforcing the principle of equal pay.

Many companies will find it challenging to comply with the reporting obligation to the supervisory authority, as this too goes beyond simply reporting the gender pay gap. The obligation also includes, for example, the reporting of the proportion of women and men in each quartile of the pay range or the difference between employees according to the breakdown between regular basic pay and supplementary or variable components.

The employer will be obliged to justify any gender pay gap found to be higher than 5%, the threshold set by the EU, with objective and gender-neutral criteria. Thus, in preparation, companies should consider the current rules and criteria for variable pay, for setting employee goals and succession plans with pay implications, so that they can justify any pay differentials. Employers are recommended to conduct a complete review of the current remuneration system, in particular the quality of job descriptions and job evaluations and their correct placement in the relevant salary ranges, or to ensure that salary ranges are divided into quartiles. This can avoid unnecessary differences in remuneration.

While the new directive introduces a number of new obligations and, for many companies, necessary changes to processes and compensation arrangements, it is also an opportunity to set the changes in the wider context of diversity and inclusion, which is gradually becoming an integral part of the ESG agenda. At the same time, employers can improve their position in the labour market if they can present themselves as an "equal employer".

Social aspect of ESG already in the Labour Code

The social aspect of ESG, or S for short, is already regulated mainly by the Labour Code, which requires employers to fulfil a number of obligations. Two of its most important areas are the health and safety of employees and compliance with the prohibition of discrimination and equal treatment of all employees, not only in relation to the aforementioned equal pay.

Employers are obliged to provide a safe and healthy working environment and related working conditions for employees. This includes, for example, the provision of personal protective equipment, regular training or general adaptation of the working environment. In addition, the employer is liable for all costs associated with ensuring the health and safety of employees.

The current Labour Code requires ensuring the health and safety of employees not only at the employer's workplace but also, to the same extent, at the employee's home workplace when working remotely, including the investigation of any accidents at work. Employers should therefore consider setting up internal controls to ensure compliance with safe and healthy working practices when they allow their employees to work from home.

Furthermore, employers are obliged to respect the prohibition of discrimination and to ensure equal treatment of all employees, both with regard to equal working conditions and, as mentioned above, with regard to remuneration for work. Employees who perform the same work or work of equal value for an employer should receive equal pay for that work. Differences in remuneration can only be justified by objective criteria exhaustively defined in the Labour Code.

Currently, there is no legal obligation for employers to carry out regular compliance checks on their employees. As a result, many companies only conduct internal audits focusing on sub-areas, the results of which are not officially reported or published to anyone. However, this is likely to change in the near future, not only as a result of the adoption of the Pay Transparency Directive, but also of the Corporate Sustainability Due Diligence Directive. Employers should therefore closely monitor the new changes and associated obligations to be able to demonstrate compliance with ESG principles, where appropriate.

In conclusion

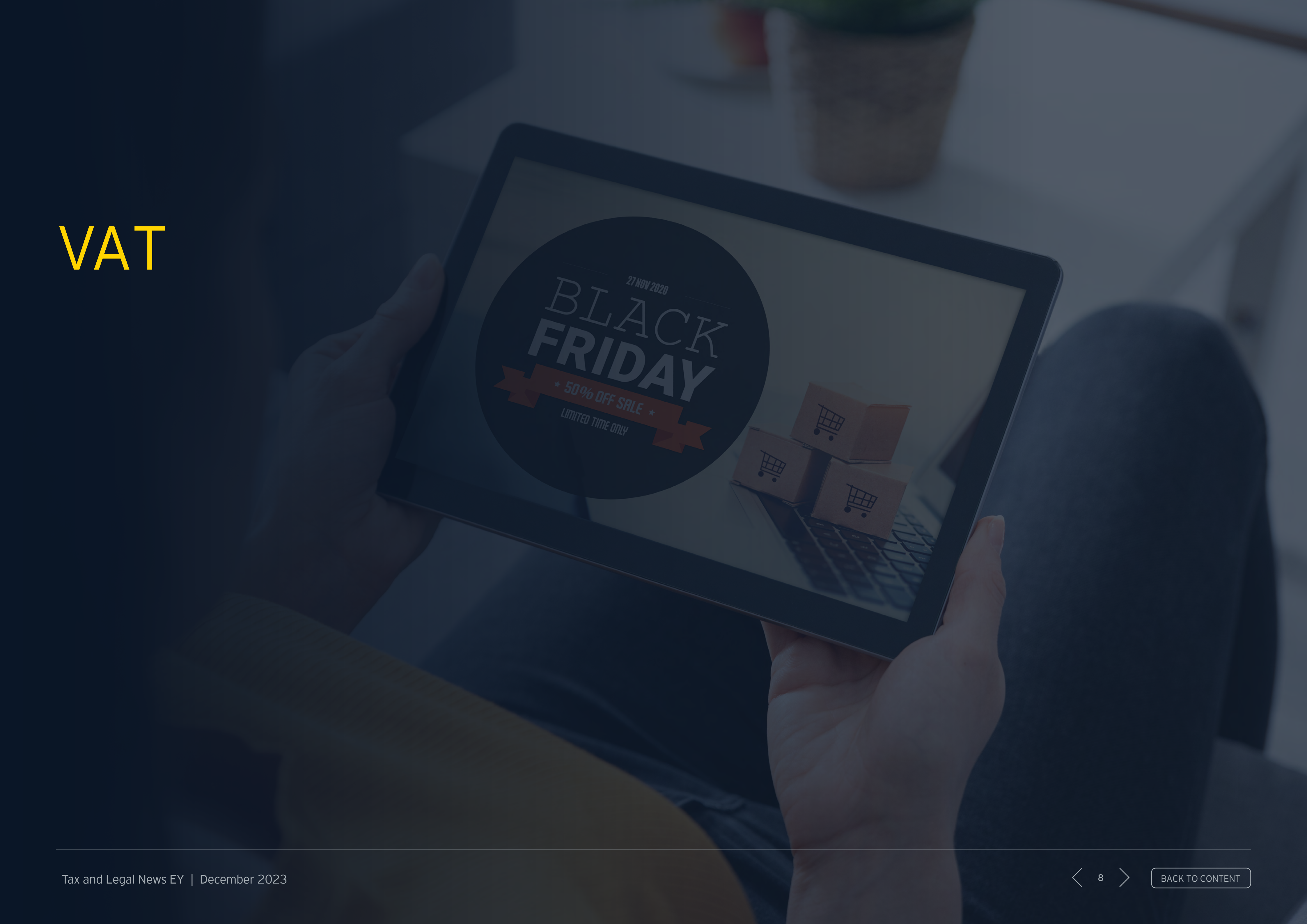
Although it may seem that ESG is only a peripheral topic, or that it is not related to tax and law, with rapidly evolving legislation, sooner or later you will encounter it. For example, if you supply customers in Germany (with more than 3,000 employees), you will have already encountered the requirements of the new German legislation effective from January 2023 (Lieferkettengesetz), which requires human rights controls, a ban on child labour and environmental protection throughout the supply chain.

Compliance in this area will not necessarily be based only on various EU regulations and national rules – customers, business partners, banks, government institutions and, last but not least, your employees will gradually demand a clear approach to the ESG agenda. Whoever succeeds in turning threats into opportunities will win.

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

For companies, new ESG regulations may represent a threat or an opportunity that may soon turn into a significant competitive advantage or disadvantage.

VAT



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VAT on marketing campaigns - Christmas can get expensive

With Christmas approaching, retailers are offering a large number of marketing events for customers and also gifts are being given to business partners. For such promotions and gifts to be effective from a VAT perspective, their set-up needs to be well thought out. In our article, we outline some pitfalls to avoid and highlight new interpretations.

There are countless types of marketing campaigns. From the popular Black Friday, collecting points at gas stations and on trains, gifts with purchase, direct and indirect sales bonuses, "3 for the price of 2" campaigns, discounts printed from ATMs, free shipping, free drink with your meal, to more complex campaigns like "old washing machine for a new one" and "free car wash voucher with purchase over X CZK".

In principle, from a VAT perspective, marketing campaign rewards can be divided into two types – financial and in-kind. While at first glance this looks simple, in practice this may not be the case. This is confirmed by a recent judgment[1] of the Court of Justice of the EU, which surprisingly did not consider a tablet for new subscribers of a magazine to be a free supply with an obligation to apply VAT. It should be added that the circumstances of the case showed that the tablet was not so free, even though it was marketed as a gift.

Some historical interpretations of the tax administration also point to a blurred line between a discount and a gift. For example, the Tax Administration has in the past required different tax treatment for campaigns that are objectively the same economically but are presented differently on the surface – surprisingly, "3 shampoos for the price of 2" may not be the same as "buy 2 shampoos and get one free". For a long time, tax administrators have also been reserved about the possibility of providing discounts in the form of so-called bonuses in kind.

Discounts and bonuses

The financial type of marketing reward is probably the most common. Basically, these are various discounts, either given directly at the time of purchase or afterwards when points are accumulated/sales exceeded. If

1 C-505/22 Deco Proteste – Editores Lda

a discount is given immediately upon purchase, the supplier simply reduces the tax base by the discount and pays VAT on the difference. If the discount is given later (yes, the obligatory question – do you have our card?), it depends on whether the discount applies to a future purchase or whether the tax base of purchases already made is adjusted. Retrospective adjustments usually involve more administration and potentially a higher risk of errors and disputes with the tax administrator, but if set up correctly they can work.

Slightly trickier are indirect discounts and bonuses, where the manufacturer bypasses an intermediate link in the supply chain and gives the bonus to a person other than the direct customer, for example to ensure that the full discount reaches the end customer. Such a campaign may be more tax complex if the bonus is given to a person outside the original supply chain.

For discounts on *your next purchase*, be wary of 100% discounts and the potential risk of reclassification to free supply in kind. Also, an additional discount that causes the original consideration to become a token payment may not be the right tax treatment, particularly for more expensive goods.

Vouchers

It is necessary to distinguish between the various discount coupons and single-purpose and multi-purpose vouchers, which entail an obligation to accept them as payment for a transaction or part thereof. Vouchers have completely different VAT rules and can also be part of different marketing campaigns, e.g. delivering a single-purpose voucher as part of a campaign for less than its face value (or the list price of related goods or services).

The single-purpose vouchers can also be used to bring forward VAT and secure a better tax rate this year. A discount coupon does not have these advantages.

Gifts

The in-kind type of marketing rewards and gifts for business partners is a bit more problematic. In these cases, the VAT law works with a restriction on input tax deduction or output tax. The right to deduct generally does not arise for entertainment expenses (with reference to the definition in the Income Tax Act – entertainment, refreshments). The tax deduction is generally retained in cases where the purchase price of the gift does not exceed CZK 500 excluding VAT and is provided as part of an economic activity (unlike the Income Tax Act, the VAT Act does not impose any other conditions).

Many marketing campaigns are therefore set up precisely to meet the conditions of a "small value gift". However, it is necessary to avoid artificially dividing gifts into several smaller ones, which individually will not exceed the value of CZK 500.

Since the value of CZK 500 for a small gift has been the same for many years, it can be increasingly difficult to keep it at today's prices. A classic bottle of wine for customers at Christmas can probably still work, but a gift basket can already be a problem.

For tangible gifts exceeding CZK 500, it should be remembered that output taxation may not always be the right solution. If it is already obvious at the time of purchase that they will be given away free of charge, there is no right to deduct the VAT at all – if VAT is paid on output in a later period, this may result in VAT and related penalties being charged.

In practice, it is also sometimes forgotten that gifts outside economic activity (e.g. to employees for private consumption) are not eligible for deduction regardless of their value.

Samples

On the other hand, there is no limitation on the value of commercial samples, but the term "sample" itself has certain assumptions – the aim is for the customer to try out a product. I can hardly say that when I sell two shampoos, I give the third one as a sample so that the customer can test its properties. Nor can I provide a product I do not sell as a sample.

The appropriateness and quantity of samples that need to be defended before the tax administrator, if necessary, should not be forgotten. On the other hand, the tax administrator cannot require the taxpayer to prove that the recipient of the samples subsequently started to purchase the goods. The case law also admits that samples can be handed over in larger quantities, for example to a distributor who will be obliged to distribute them to their customers; however, even here it is necessary to bear in mind the burden of proof on the taxpayer in the event of an inspection.

Symbolic reward

Various symbolic price rewards are inherent in marketing campaigns. If the turnover is exceeded, the customer receives a voucher for a week at a spa for CZK 1. In addition to the customers themselves, these campaigns can also attract the tax office. On the other hand, free services can certainly be part of marketing campaigns and it is up to the taxpayer to prove their benefit for their business and their appropriateness. For example, a cable TV company that offers its subscribers premium channels on a trial basis or a shopping mall that provides transportation for its customers from the nearest subway station will probably not bother the tax administrator.

We can only wish for our clients to avoid the inappropriate configurations described above and to enjoy a carefree and tax-neutral pre-Christmas campaign.

If you have any questions about the above topic, please contact the authors of the article or your usual EY team.

Some historical interpretations of the tax administration also point to a blurred line between a discount and a gift. For example, the tax administration has historically required different tax treatment for campaigns that are objectively the same in economic terms but present themselves differently on the surface – "3 shampoos for the price of 2" may not, surprisingly, be the same as "buy 2 shampoos and get one free". In the long term, tax administrators have also been reticent about the possibility of giving discounts in the form of 'bonuses in kind'.

Law

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Can a claim be time-barred before it is due?

The fact that legal claims need to be brought in a timely manner is probably not surprising. In some situations, however, determining what "timely" means can be challenging.

Such a question was addressed by the Supreme Court, which in judgment No. 31 Cdo 3125/2022 issued on 31 May this year dealt with the beginning of the limitation period for payment of remuneration, the payment of which was agreed in a contract as *"within 14 days from the date of invoice receipt"*. And the result may be somewhat surprising.

The Supreme Court's opinion on this relatively frequent contractual arrangement regulating the payment of the price on the basis of an invoice may have unexpected consequences for commercial practice. According to the Supreme Court, a claim for payment becomes time-barred before the invoice is even issued and becomes payable. It is therefore necessary to pay close attention not only to whether the business partner pays the invoice, but also to when it may have been issued and when it actually was issued.

The judgment of the Supreme Court is also significant for another reason – it was handed down by the so-called Grand Chamber. Within the Grand Chamber, which is always composed of one-third of the judges of the relevant chamber (in this case, 17 Supreme Court judges ruled), the Supreme Court decides in cases where a "standard" chamber consisting of 3 Supreme Court judges reaches a conclusion in a particular case that differs from the legal opinion expressed earlier in a Supreme Court decision. With this decision, the Supreme Court changed its previous decision-making practice, according to which it was held that for claims for which the time limit for payment starts to run upon delivery of the invoice, the limitation period starts to run only at the moment when the relevant claims become payable.

Factual circumstances

In the above-mentioned case before the Supreme Court, a contract was concluded between the parties, the subject of which was the provision of services leading to the realization of a construction project. The price for the services rendered was to be paid on the basis of invoices issued after each individual part of the agreed services had been duly rendered.

At the heart of the case was the payment of the price for a part of the services which the parties were informed had been duly completed on 2 July 2015, but the plaintiff did not issue an invoice until 31 May 2018.

The defendant, the customer of the services (in legal terms, the principal), argued that the claim for payment of the price for the services was already time-barred, since the subjective limitation period of 3 years began to run in 2015, i.e. at the time when the relevant part of the services was provided and the invoice could therefore be issued. However, the plaintiff, the service provider (in the words of the law, the agent), argued that the limitation period did not begin to run until the invoice was due.

While the Court of First Instance agreed with the plaintiff that the limitation period had not expired and ordered the defendant to pay the amount in question, the Court of Appeal sided with the defendant and decided that the claim was already time-barred and dismissed the action. The case thus reached the Supreme Court.

The Supreme Court's position in the case

In its judgment, the Supreme Court relied on the 1981 decision of the Supreme Court of the Czechoslovak Republic 3 Cz 99/81, according to which the statute of limitations begins to run on the date on which the debtor's creditor could have demanded performance of the debt.

On the question of when the limitation period began to run, the Supreme Court concluded that an arrangement for the payment of a price on the basis of an invoice is a situation in which the time of performance of the debt is not agreed and the determination of the time of performance is left to the creditor, and the limitation period thus begins to run when the creditor learns (or could and should have learned) that the right to determine the time of performance of the debt has arisen.

The Supreme Court stated that there is no doubt that the right to demand performance (payment of the price for services) arose in 2015, when the agreed services were provided and the invoice could be issued for the first time. Therefore, in the present case, according to the Supreme Court, the statute of limitations began to run as early as July 2, 2015, the date on which the service provider learned that an invoice could be issued. It should be noted that the actual date is the date on which the invoice could first have been issued – not the date on which it would have become payable.

Thus, in 2019, when the lawsuit was filed, the claim was time-barred even though the invoice was not issued until 2018. According to this view, the three-year statute of limitations had run almost entirely before the invoice was issued. Therefore, if the service provider wanted to prevent its claim for payment of remuneration from becoming time-barred, it would have had to file a claim for payment of remuneration no later than 2 July 2018 (as the filing of the claim in court stops the limitation period from running).

Legal opinions

In its judgment, the Supreme Court itself mentioned that this conclusion has been criticised by part of the professional community and that commentaries on the regulation of limitation in the new Civil Code differ. However, it stated that *"fully aware of the risks entailed by different solutions to the same problem, it chose for civil law relations the path set out in the conclusions of [the decision of the Supreme Court of the Czechoslovak Republic 3 Cz 99/81]"*. Although the Supreme Court, in its words, is aware of the legislative shift of the new Civil Code, it finds no reason for a different interpretation of the law.

The Supreme Court's view that the statute of limitations begins to run even earlier than when the debt is due has been a source of debate for many years and has sparked a rather heated debate in professional circles this time as well.

It is also worth noting the Supreme Court's conclusion that a change in legislation does not require a change in case law. Although there are legal institutes that have remained unchanged at their core for several decades and therefore their interpretation by the courts does not need to be changed, there are a number of opinions of legal experts according to which the change of the statute of limitations legislation expressed the will to depart from the previous state of affairs. The fact that the Supreme Court provides the same solution to the question despite the change in the law has been criticized by the professional community.

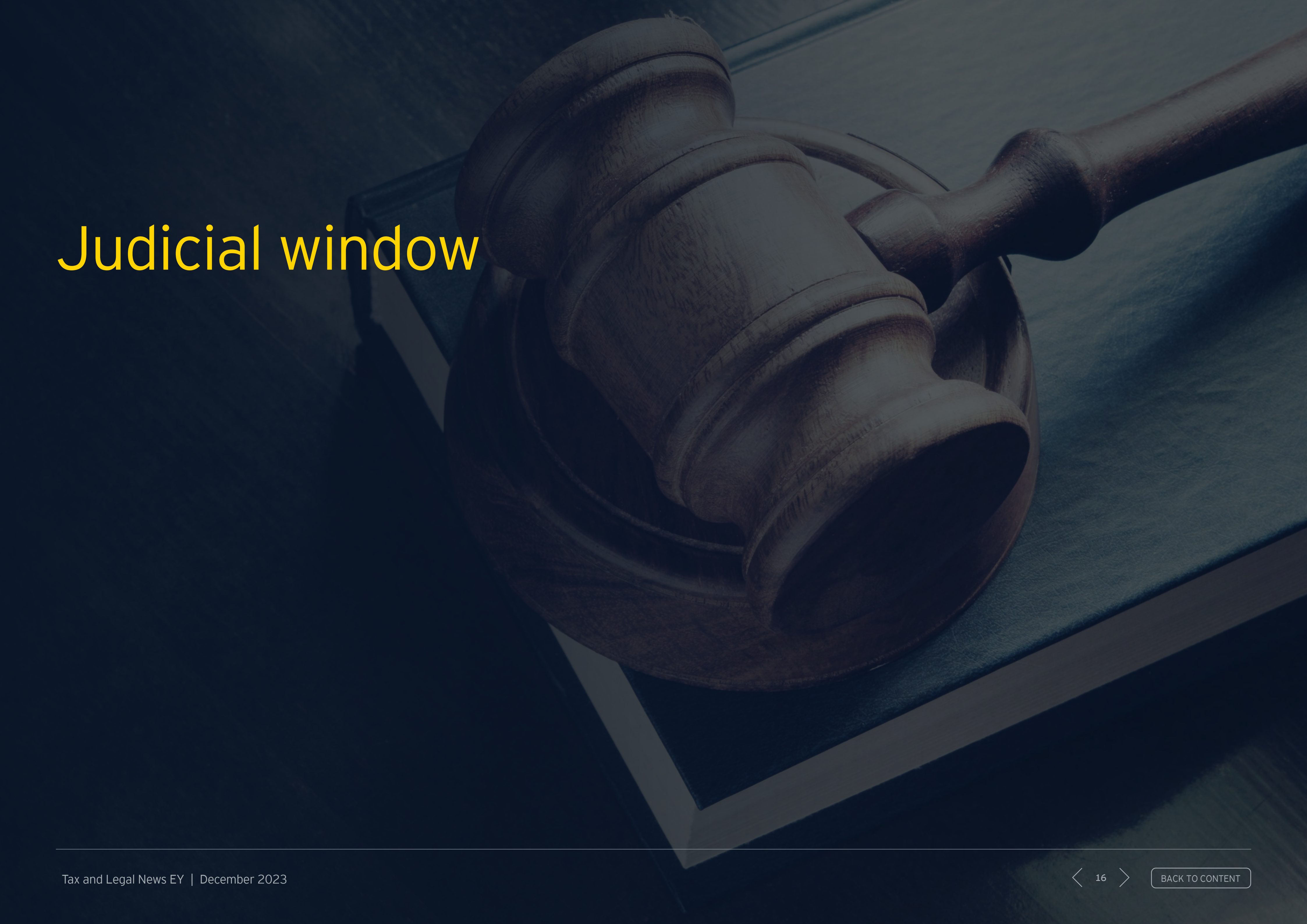
One of the interesting consequences of the solution chosen by the Supreme Court is the fact that the three-year subjective limitation period starts to run earlier than the ten-year objective limitation period. Until now, the primary rule has been that the objective and subjective limitation periods begin to run at the same time. The objective limitation period begins to run at the moment when the right has matured, by which the Civil Code generally means that it has become payable. According to the newly pronounced opinion of the Supreme Court, the subjective limitation period begins to run from the moment when the creditor learns (or could have learned and should have learned) that the right to determine the time of performance of the debt has arisen, and therefore before the debt is due.

However, the question of the start of the limitation period was decided by the Grand Chamber of the Supreme Court and it would again be for the Grand Chamber to decide whether to depart from the legal opinion described above. Given the ongoing debates, the question remains whether the Supreme Court will continue to hold this view or whether it will decide to change its decision-making practice. Before this happens, however, it is important to remember that the claim may be time-barred before the invoice is even issued and not to delay invoicing or any recovery procedures.

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

The Supreme Court decided a dispute in which the start of the limitation period when the contract provides for the payment of the price on the basis of an invoice was a crucial issue. The decision sparked considerable debate among legal scholars, including Supreme Court justices.

Judicial window



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Investment incentives: additional application of a higher tax relief

In its recent decision, the Supreme Administrative Court (SAC) dealt with the question of whether a tax relief on investment incentives can be claimed in an additional tax return. We informed you about this case last year, when the Regional Court ruled on the dispute. The Supreme Administrative Court sided with the taxpayer and agreed with the opinion of the Regional Court in Prague. As a reminder, we summarize the subject matter of the case and the main arguments.

Additional tax return

The taxpayer filed a regular tax return for the tax year 2014, in which it applied a tax relief under § 35b of the Income Tax Act (ITA). Due to the applied tax relief, the resulting tax liability was zero. In 2017, the taxpayer filed a supplementary tax return for 2014 in which it reported a higher tax base and claimed a higher tax relief. The resulting tax liability was thus again zero. The taxpayer followed a similar procedure in the regular tax return for the 2015 tax year and the subsequent additional tax return for 2015.

The Specialised Tax Office disagreed with the application of a higher tax relief in a supplementary tax return on the grounds that the amount of the tax relief could not be increased if a higher tax liability was subsequently assessed.

The essence of the dispute is the interpretation of the sentence after the semicolon in § 35b(1)(a) of the ITA, according to which: *"A taxpayer who has been granted a promise of an investment incentive under a special legal regulation and who is not subject to the provisions of § 35a may, if he has fulfilled the general conditions laid down in the special legal regulation and the special conditions laid down in this Act, apply a tax rebate calculated according to the formula S1 minus S2, whereby (a) S1 equals the amount of tax calculated according to paragraph 2 for the tax period for which the rebate is to be applied;* ***this amount shall not be increased if a higher tax liability is additionally assessed.***

Consideration by the Regional Court

The Regional Court concludes that the amount of S1 cannot be increased if a higher tax liability is additionally assessed, i.e. a higher final tax amount is assessed. The taxpayer reported a final tax liability of zero in both the regular tax returns and the supplementary tax returns, so that there was no change in the additional tax liability. The Regional Court therefore annulled the decision of the Specialised Tax Office.

The litigants referred to another judgment of the Regional Court in Brno,[2] which dealt with the same issue, though the taxpayer's initial situation was different. The taxpayer filed a regular tax return claiming a tax rebate in the amount of S1. Following a tax audit, the tax administrator issued a supplementary payment order increasing the tax base and reassessing a higher tax liability (compared to the last known tax liability), whereby the tax administrator used the same S1 value as the taxpayer in the regular tax return. The taxpayer then filed a supplementary tax return claiming a higher S1 tax rebate based on the higher tax base determined by the tax administrator. According to the court, this was a case where a higher tax liability had been additionally assessed by the tax administrator, therefore it was no longer possible to increase the S1 amount in the taxpayer's additional tax return.

Reasoning of the Supreme Administrative Court

The SAC agrees with the Regional Court that the higher tax liability in this provision means a higher resulting tax amount. Both the regular tax returns and the supplementary tax returns showed a final tax liability of zero, so the supplementary tax liability did not change.

The SAC also agrees with the Appellate Tax Directorate that it is not decisive whether the higher tax assessment is made on the initiative of the taxpayer (by filing an additional tax return) or of the tax administrator (during a tax audit). Only the assessment of a higher amount of tax is relevant. The restriction on increasing the amount of S1 may be triggered, for example, when a supplementary tax return is filed with an increased amount of tax credit after a higher tax has been assessed following a tax audit.

The decisions of the courts are in line with the historical position of the Ministry of Finance of the Czech Republic expressed in the minutes of the meeting of the Coordination Committee with the Chamber of Tax Advisors.[3]

If you have any questions about the above topic or the area of investment incentives or tax audits, please contact the authors of the article or your usual EY team.

The S1 amount (tax relief) cannot be increased if a higher tax liability is subsequently assessed. The taxpayer has reported a resulting zero tax liability in both the regular and additional tax returns, regardless of the higher tax relief claimed – the additional tax liability has therefore not changed and the restriction on not increasing the tax relief described above does not apply in this situation.

2 Regional Court in Brno Decision No. 62 Af 5/2012 - 44 of 2 April 2013

3 Coordination Committee Paper No. 195/27.11.07 – Tax rebate on the basis of a promise of investment incentives under a special legal regulation (complex issue), available on page 33 HERE

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Investment incentives: maximising tax depreciation

In a recent judgment[4], the SAC dealt with the issue of tax depreciation for recipients of an investment incentive in the form of a tax rebate.

A taxpayer who is in the investment incentive scheme is obliged to reduce the tax base by the maximum amount of otherwise generally optionally applicable items, in particular those whose application can be postponed in time on the basis of the taxpayer's decision. These include, for example, tax depreciation of assets, tax allowances for receivables, tax losses, deductions to support research and development or deductions to support vocational training. The taxpayer is obliged to do this starting from the tax year in which it has fulfilled the general conditions under the law governing investment incentives.

In the case of tax depreciation, the taxpayer can choose the method of depreciation and can therefore choose (simplified) between straight-line depreciation, accelerated depreciation or, if necessary, extraordinary depreciation. For selected assets, the taxpayer has the option to increase the straight-line or accelerated depreciation in the first year of depreciation by 10% to 20%, if it is the first depreciator of the asset.

The issue in question

The subject matter of the dispute was whether a taxpayer in the investment incentive scheme was obliged to apply increased depreciation in the first year of depreciation if it met the conditions for its use.

The recipient of the investment incentive tax rebate applied straight-line tax depreciation to the asset, but did not use the option to increase depreciation in the first year of depreciation. The tax administrator disagreed with the failure to apply the increase in depreciation in the first year of depreciation and assessed the taxpayer for corporation tax including penalties. The Regional Court agreed with the taxpayer's reasoning.

4 Supreme Administrative Court Decision No. 7 Afs 13/2022-48 of 29 November 2023

Opinion of the Supreme Administrative Court

However, the SAC sided with the tax administrator and concluded that in the case of tangible property for which increased depreciation can be applied in the first year of depreciation, the taxpayer in the regime of investment incentives must use this reduction of the tax base.

It should be added that the opinion of the SAC is in line with professional interpretations and was confirmed during the meeting of the Coordination Committee of the Chamber of Tax Advisors with representatives of the Ministry of Finance.

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

A taxpayer in the investment incentive regime is obliged to apply the increased depreciation in the first year of depreciation if it meets the statutory conditions for its use.

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

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- An Investment Incentives Act amendment was approved by the Senate?
- The Chamber of Deputies approved a Pharmaceuticals Act amendment?
- One area affected by the changes in the so-called consolidation package is meals and catering allowances provided to employees?
- The Chamber of Deputies approved a long-term investment product in a reduced form?
- An updated draft decree updating certain decrees implementing the Accounting Act in connection with keeping accounting records in a currency other than the Czech currency has been published?