Tax and Legal News

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Building a better working world

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So here we are in 2024. At this point, everyone is probably working at full speed, the holidays forgotten. Still, I'd like to wish you all the best of luck for the rest of the year. There were a lot of healthy people on the Titanic, and it didn't make any difference to them. So, wishing you all-encompassing happiness in everything you touch.

And what would I wish specifically for all those involved in tax administration? As a citizen, and therefore a taxpayer, the two statements that have the greatest emotional response for me are "the resources are there" and "we'll try to push it through courts". The former is usually uttered by a person who had no part in the accumulation of the resources in question, the latter by a government authority. The first is not directly related to taxes, but indirectly, of course, it is. The second concerns taxes directly, and of course other areas. Here, the government doesn't know whether or not it's in the right, and wants to find out. Wanting to know is in itself a godly thing, curiosity is definitely a positive trait. It's just that the method is unfortunate in that the other side of the fact-finding process is a person for whom the whole thing can be, without exaggeration, a life-changing, unreservedly negative event. Few people come out of years of litigation in the same state as they went into it, and money is not the main impact, though it is far from insignificant.

And so my wish for everyone – taxpayers, tax administrators and anyone else affected by taxes – is predictable government behaviour. Perhaps not ideal and all-encompassing, everything has its flaws and loopholes, but when the tax aspect of a step is being considered, let it be reasonably known at all times how the government will approach it. Thus, for example, I perceive the methodological information on taxation of benefits and other compensation provided by employers to employees as positive. I don't care if it's conceptual or if it's an insight into how to deal with a specific situation. But if the government decides to go in a certain direction and suspects ambiguity, let them know in advance. It's up to the taxpayer to decide.

Once again, good luck for 2024. Make it your year.

Employee benefits


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Methodology for taxation of benefits issued

The Tax Administration has given us a compelling read for Christmas in the form of the Methodological Information on the taxation of benefits provided by employers to employees from 1 January 2024 (from the perspective of the Income Tax Act - ITA). It is a comprehensive document covering a wide range of areas and practical situations.

Below we provide you with selected simplified insights:

- Further answers/opinions on issues that arise in practice are likely to be published in the future.

- **Food**
  - Business breakfasts, lunches, dinners with business partners - generally understood as performance of work and not subject to tax according to §6/7/e of the ITA (proportionality/normality must be respected). *Deductibility* - according to the methodology, this is a non-deductible cost under §25/1/t of the ITA.
  - Minor refreshments at the workplace (not reaching the intensity of a main meal) - generally not subject to tax under §6/7/e of the ITA (proportionality/normality must be respected). *Deductibility* - according to the methodology, this is a non-deductible cost under §25/1/t ITA.
  - A full main meal generally falls under the category of employer-provided meal allowance within the meaning of the exemption limit under section 6(9)(b) of the ITA (need for record keeping). *Deductibility* - tax deductible costs if they meet the conditions of §24/2/j/4 of the ITA, i.e. as employee rights arising from a collective agreement, an employer's internal regulation, or an employment or other contract.

- **Sports equipment at the workplace** - not subject to tax under §6/7/e of the ITA if:
  - in temporal connection with the performance of work;
  - used for recreational purposes;
  - located at the workplace;
  - it is proportional;
  - It is not a full-fledged alternative to a commercial sport/service.
  - *Deductibility* - according to the methodology, tax deductible costs under §24/1 or 24/2/ j/4 of the ITA.

- **Non-monetary benefits according to §6/9/d of the Income Tax Act (e.g. health benefits, culture, sport)**
  - The exemption limit for 2024 is CZK 21,983.50.
  - If provided by more than one employer, then limit applied by each employer separately.
  - Benefits for family members are also included in the limit.
  - Proof of record required.
  - *Deductibility* - the costs of those benefits that are exempt income for the employee will not be tax deductible under §25/1/h of the ITA, any "over-limit" portion of the benefit will be a tax deductible expense under §24/2/j/4 of the ITA if it concerns employee rights arising from a collective agreement, an employer's internal regulation, employment or other contract; this also generally applies to expenses incurred for social conditions or health care for a family member of the employee, if these are employee rights arising from a collective agreement, an employer's internal regulation, an employment or other contract.
- **Events organised by the employer (§6/9/g ITA) - special exemption (not included in the limit under §6/9/d ITA) if**
  - The organiser is the employer.
  - Limited circle of participants.
  - It is not a recreation/trip.
  - Proportionality and normality met (exotic destinations or regular events may be an issue).
  - Importance of documentation.
  - *Deductibility* - according to the methodology, not deductible under §25/1/h ITA or 25/1/t ITA for refreshments.
- **Valuation of non-monetary income**
  - General reference to valuation under the Valuation of Assets Act. The methodology indicates possible specific approaches:
    - Situations where an employer provides an employee with a non-monetary benefit generated by the employer's own activities that
      - provides in return for consideration to others, charging those third parties a price depending on the quantity of the purchase - if it is the case that a group of employees or other persons who would join together to acquire the supply in question to a similar extent would also obtain a lower price, it is acceptable to use that price charged to third parties - however, this price must be in accordance with normal commercial relations and not influenced by a specific relationship or intention (e.g. barter or below cost price);
      - does not provide to other parties - reference to TP of CUP and cost+ methods (under certain conditions possibility of simplification according to GFD Instruction D-10).
  - Situation of benefits procured by employer from third parties - employee's income generally derivable from cost incurred by employer (assuming price is not affected by specific relationship or circumstances - sponsorship, barter, etc.).

- **Benefit cards - the moment of income recognition**
  - In general, the specific legal setting needs to be assessed. Indications given:
    - For food stamp cards - generally upon credit.
    - Employer pays monthly lump sum for individual cardholders (e.g. Multisport) - generally monthly.
    - Employer "charges points" to the card and usage is not charged - points are fully at the employee's disposal (usage is not charged to the employer, employer has no further control over usage by individual employees and nothing is refunded) - generally by crediting points.
    - Employer "charges points" to card and usage is accounted for - provider accounts for actual usage by employee and so employer has information regarding when and how much the employee has drawn) - generally only when the employee actually draws down.
  - The methodology includes a warning against crediting an excessive amount of funds/points at the end of 2023.

The above summary is not complete and does not constitute tax advice. We will be happy to assist you with any assessment of your particular situation.

If you have any questions, please contact the authors of this article or the EY advisory team you are working with.

The Tax Administration has given us a compelling read for Christmas in the form of the Methodological Information on the taxation of benefits provided by employers to employees from 1 January 2024 (from the perspective of the Income Tax Act). It is a comprehensive document covering a wide range of areas and practical situations.

VAT

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New VAT methodology

These days the Tax Administration is finalising several methodological updates that should clarify the application of VAT from January 2024. Although the final text is not yet available[1], we will try to summarize selected areas that should be affected by the new interpretation.

Changes in VAT rates

For a more comprehensive overview of the changes included in the consolidation package, please refer to our November Tax News. We also covered some of the areas of concern in our December issue.

Among the main areas to be addressed in the General Financial Directorate's (GFD) forthcoming methodological update:

- **The sale of beverages** is now subject to a 21% rate, albeit with certain exceptions. This also applies to their supply in the context of catering services. The methodology should confirm the broader interpretation of plant-based alternatives to milk, e.g. almond, coconut or hemp drinks should be included in the reduced rate.

  Beverages made from milk and its alternatives, which will be subject to a reduced rate, should also be clarified. An example would be a coffee-flavoured milkshake subject to 12% VAT, while café lattes will move to the standard rate.

  The reduced rate will also apply to syrups, infant formula and powdered drinks. However, the information cannot be expected to resolve all uncertainties. In addition to setting the rate for specific items (e.g. liquid dietary supplements), apportioning the tax base may be problematic, for example when bottomless beverages are consumed as part of a fixed menu.

- **Drinking water** is subject to the reduced rate only when delivered through the water supply system without any further treatment. This also applies to supply through a vending machine that is connected to an indoor water supply. When served in a restaurant, 12% VAT is also applied, but the water must not be flavoured; garnishes in the form of mint or fruit or topping up with ice is fine. On the other hand, bottled drinking water or slushies move to the standard rate.

1 The external comment procedure ends on the closing date of this issue.

- **Leaflets and pamphlets** are reclassified from the reduced to the standard rate. Unlike, for example, brochures, they are not exempt from VAT. It is not yet clear whether the tax administration will provide more specific guidance for distinguishing between these categories, e.g. where and under what conditions, for example, product instructions or package leaflets for medicines fall.

- **Medical devices** represent a complex category that is only very briefly addressed in the current version of the update and does not provide clear guidance for many of the products at issue. We therefore recommend that you pay close attention to this area. However, it should be confirmed that blood pressure measuring devices (classified under CN 9018 9010) are subject to the standard rate.

In disputed cases, a request for a binding assessment of the tax rate may be considered.

Limitation of the deduction for cars

From January 2024, the right to deduct input VAT on the purchase of a passenger car that is a fixed asset is limited to CZK 420 thousand. The limitation does not apply, for example, to cars purchased as goods or for specific purposes (taxi, ambulance, hearse etc.).

The forthcoming methodology should, inter alia, confirm that:

- In the case of finance leases, the tax deduction limitation applies only to the lessee.

- The limit will apply to the purchase of a car from abroad even in cases where a deposit was paid before the amendment came into force.

- "Unusual" advances (not in line with normal practice) made for domestic supplies in 2023 may be treated by the tax authorities as an abuse of the law.

- A reduction of the input VAT deduction cannot be taken into account when selling a vehicle – the GFD states that it is necessary to pay VAT on the entire sale price and it is not possible to recover unclaimed VAT, or a part thereof.

Unfortunately, the current version of the update does not explicitly address some controversial areas, such as the (non-)application of the deduction limitation in the case of demonstrator vehicles.

VAT on immoveable property

It appears that the release of the forthcoming methodological information will be delayed to correspond with the forthcoming amendment to the law as of next year.

Therefore, the information published in 2016 remains current. Some parts of it have, however, been overtaken by case law in the intervening period and we therefore advise caution.

We would like to highlight a few selected areas:

- **The substantive building change** that restores the 5-year test for taxing the supply of real property should be retained as is. Thus, there should be no tightening before the new methodology is published (e.g. a reduction in the existing value limit or inclusion of certain repairs was considered).

- In practice, **the supply of a building set to be demolished** often gives rise to disputes over the application of VAT. Recent CJEU judgments suggest that the Tax Administration's historical interpretation is too broad. In particular, in the case of the supply of land with a functional building, its existence cannot normally be ignored on the sole basis that the purchaser plans to demolish the building and erect another building in the future.

- **A change of use of a building** in the absence of structural modifications (e.g. the re-licensing of a guesthouse into an apartment dwelling) should not in itself lead to the application of VAT on the subsequent sale.

- **Energy and other rent-related services** tend to be billed in different ways, which are not always in line with CJEU case law. The crucial question for the correct determination of the VAT rate and possible exemption is whether the lessor provides a separate supply or whether it is part of the lease. The chosen approach should be adequately supported by contractual documentation. Similar problems and fragmented market practice are encountered in the case of billing for parking spaces.

- **Self-created assets** are a specific category that can have a very significant impact in the form of additional VAT when a building is brought into use. Typically, these are apartment buildings or commercial properties rented (partly) without VAT. Although this rule is expected to be abolished in the future, it should still be taken into account for buildings completed in the meantime.

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

The Tax Administration is preparing methodological updates on VAT rates and deductions for cars. Although it cannot be expected to cover all problematic areas, it should be monitored. On the other hand, the update of the methodology on VAT on real estate has been postponed. In the meantime, taxpayers have to deal with the fact that some older interpretations are outdated.

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Protecting the good faith of third parties when withdrawing from a contract

In September last year, the Supreme Court addressed for the first time the issue of protecting the good faith of a third party when withdrawing from a contract in the context of the new Civil Code (see the Supreme Court of the Czech Republic Resolution of 20 September 2023, Case No. 27 Cdo 485/2023). So far, it has not been clear whether the established case law of the Constitutional Court and the Supreme Court relating to the previous legislation (i.e. the Civil Code of 1964), which was formed over many years and was intertwined with disputes between the courts, can be used in this case.

The core of a long-standing dispute between the Constitutional Court and the Supreme Court was how to assess a situation where person A and person B entered into a contract of sale, after which A withdrew from the contract, but only after B transferred the ownership of the property to person C. Can such a withdrawal from a contract between A and B have substantive effects against C? In other words, who is the owner of the property? Person A as the original transferor or Person C as the good faith transferee?

According to § 48(2) of the old Civil Code (1964), *"withdrawal from a contract terminates the contract from the outset, unless otherwise provided by law or agreed by the parties."* The old legislation did not contain provisions presupposing the good faith of (third) parties.

The figurative legal battle between the courts ended with the victory of the Constitutional Court, which in its key plenary ruling of October 2007 (Case No. Pl. ÚS 78/06) stated, with reference to the quoted wording of the old Civil Code, that: *"withdrawal from a contract – unless otherwise agreed by law or by the parties – terminates the contract from the outset, but only with effects between the parties. The ownership right of other purchasers, if they acquired their ownership right in good faith before the withdrawal, shall be protected in accordance with Article 11 of the Charter of Fundamental Rights and Freedoms (note: protecting the right of ownership) and the constitutional principles of legal certainty and the protection of acquired rights arising from the concept of a democratic state governed by the rule of law within the meaning of Article 1(1) of the Constitution, and does not terminate."*

The Supreme Court had no choice but to accept the opinion of the Constitutional Court and to further respect and expand upon it in its decisions. On the basis of the ruling of the Constitutional Court, the Supreme Court in a number of its decisions (e.g. judgments of 30 January 2008, Case No. 31 Cdo 3177/2005, of 19 October 2011, Case No. 30 Cdo 2371/2010, of 31 May 2017, Case No. 30 Cdo 307/2017, or of 14 November 2018, Case No. 30 Cdo 252/2018) confirmed the protection of good faith purchasers and held that in the absence of a statutory presumption of good faith, the burden of proof as to good faith rests with the third party (in the position of the acquirer), i.e. the person who benefits from the good faith.

Under the new legal regime in force since 1 January 2014, pursuant to § 2005(1) of the Civil Code, *withdrawal from a contract terminates the rights and obligations of the parties to the extent of its effects. This shall be without prejudice to the rights of third parties acquired in good faith*. Moreover, the Civil Code provides for the so-called presumption (or rebuttable legal presumption) of honesty and good faith of persons for all private law (according to § 7 of the Civil Code).

Factual background

On 7 April 2020, Company A duly transferred 20 (certificated) shares in the name of Company X to the transferee, Company B, for an agreed price of CZK 500,000, with CZK 250,000 to be paid in cash in advance and a further CZK 250,000 to be paid in cash within 10 days of signing the agreement. A day later, Company B transferred part of the shares thus acquired to Company C.

In December 2020, Company A decided to cancel the share purchase agreement with Company B due to the non-payment of the remaining part of the purchase price by Company B. It delivered its withdrawal to the registered office of company B on 8 December 2020 to the hands of the receptionist. It also called on Company B to return the shares in question and refunded part of the purchase price paid.

On 9 December 2020, the General Meeting of X was held. The validity of the resolution adopted at that general meeting was subsequently challenged by Company C on the grounds that the general meeting had not been duly convened because Company C, as the owner of the shares in Company X, had not been notified of the meeting.

In the proceedings for the annulment of the resolution of the general meeting of Company X, the court thus had to address the active substantive standing of the plaintiff, Company C. Thus, it had to assess whether or not it was the owner of the shares in question at the time of the general meeting.

The lower courts held that C did not have standing to challenge the validity of the resolution of the general meeting of X as it could not acquire ownership of the shares. They concluded that, since appellant C was a wholly owned subsidiary of B, the two companies acted in concert and as close persons. Therefore, the protection of third parties afforded by the second sentence of § 2005(1) of the Civil Code could not apply in this case between close persons. There was therefore no need whatsoever to examine the good faith of Company C.

Based on these conclusions of the lower courts, Company C appealed to the Supreme Court. The Court of Appeal thus addressed whether the property links between legal persons preclude the protection of good faith third parties. In addition, it also touched upon the effect of service at the registered office of the company.

Opinion of the Supreme Court

The Supreme Court rejected the conclusions of the lower courts and adhered to its earlier case law, despite the fact that it arose under the previous legislation. Thus, if the seller A withdrew from the purchase contract after the buyer B had already transferred the same property to a third party C, the realised withdrawal from the contract between A and B cannot affect the substantive position of C, since the latter was acquiring ownership of such property from B at a time when B was still its owner.

Furthermore, in relation to the new legal regulation and the burden of proof, it stated that § 7 of the Civil Code expresses a rebuttable presumption of good faith; the person who denies it must allege facts which exclude it and bears the burden of proof with regard to them. The party defending against the legal consequences which the law attaches to an act in good faith (here A) is obliged to allege and prove facts excluding the objectively assessed good faith of the opposing party (here C).Thus, as a result of the presumption of good faith, there has been a shift from the previous judicial conclusions on the old rules.

In the case of legal persons, the good faith of the persons who form its will, i.e. in principle its statutory body, is relevant for the conclusion of the good faith of the legal person (company). In the present case, there was a family relationship between the statutory bodies of the two companies (B and C). The Supreme Court held that the companies' property links or the fact that they may be close persons are not in themselves capable of excluding the good faith of the person acting. Thus, even the relationship between the statutory bodies of companies B and C is not in itself sufficient to exclude good faith.

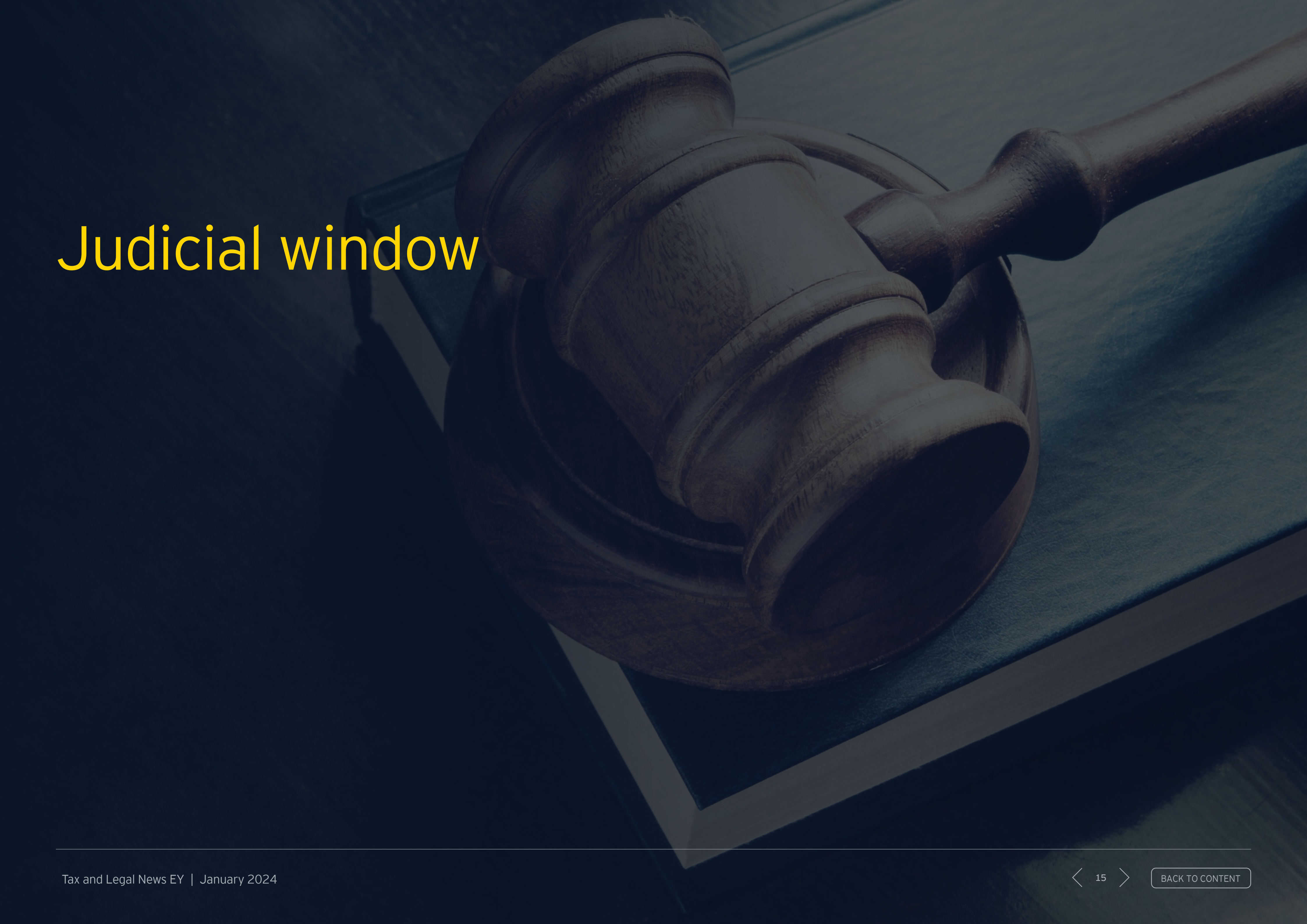
In summary, even under the new legislation, the protection of good faith of third parties in the acquisition of property rights is favoured. The new legislation, by establishing a presumption of good faith, has further deepened this protection and made it easier for third parties to prove their position in any disputes.

Effects of delivery to the registered office of the entrepreneur (company)

It should be added that the Supreme Court also commented in the above-mentioned decision on how documents of a commercial company can be served in the context of the new legislation. It agreed with the Court of Appeal that: *"if a reception is established at the address of a company's registered office, it can be reasonably assumed without any further doubt (knowing that the reception handles normal day-to-day administrative activities / mediates contact with third parties / which normally include the receipt of documents) that a parcel delivered to the company's registered office equipped with a reception is duly delivered to the company."*

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

In September last year, the Supreme Court addressed for the first time the issue of the protection of the good faith of a third party when withdrawing from a contract in the context of the new Civil Code.



Judicial window

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The Supreme Administrative Court on the tax regime of financing costs related to holding a share

In this issue, we bring you an interesting judgment of the Supreme Administrative Court (SAC) regarding the application of § 25(1)(i) and (zk) of the Income Tax Act (ITA).

Background

- On 11 December 2012, a Company issued bonds and used part of the proceeds from the bond issue to purchase a 100% stake in another company.

- It held this stake until 1 January 2014, when it transferred it to the buyer as part of the sale of part of the business (no exemption was applied[2]).

- According to the tax administrator, the interest related to the acquisition of the share in question was not tax deductible under § 25(1)(i) of the ITA in the period from 11 December 2012 to 10 December 2013 and under § 25(1)(zk) of the ITA in the period from 11 December 2013 (i.e. after the time test for subsidiaries and parent companies was met). From the tax administrator's perspective, the funds raised by the bond issue were used to purchase 100% of the company's shares and were therefore used to purchase shares that clearly generate dividend income. The link between the interest expense on the bonds and the tax-exempt income is therefore clear, as the company met the statutory conditions for the exemption of income. This income is never subject to taxation and therefore the expenditure incurred to earn it can never be tax deductible according to the tax authorities.

- The tax administrator also responded to the company's argument that it generated taxable income in the form of the sale of part of the business in connection with the holding of the share. In this regard, the tax authority stated that the sale of the part of the business was only made on 1 January 2014, whereas the tax period under consideration was 2013. Therefore, this fact has no impact on the assessment of the correctness of the tax assessed for 2013. The interest costs on bonds incurred in 2013 cannot be treated as costs under § 24(8) of the Income Tax Act relating to income realised in 2014 as a result of the sale of part of the business. The

2 In the judgment, the following was said in the company's reasoning section: "...*The tax authorities then confirmed that the transfer of the plant could not be treated as a separate transfer of shares that could be exempted from tax under § 19 of the ITA...*".

tax (dis)deductibility of the interest on the bonds related to the income from the profit share in the tax year 2013 was assessed, not the income from the sale of a part of the company and the related acquisition price of the share. According to the tax authorities, the proceeds from the sale of a part of the business are related to the expenditure corresponding to the purchase price of the share, not to the financial costs at issue.

- The Regional Court (RC) subsequently sided with the company, concluding that only an expense that is immediately and directly incurred for tax-exempt income is not tax deductible. In the present case, however, the company did not have exempt income and, therefore, the expense claimed could not, according to the RC, have been incurred on that non-existent income.

View of the SAC

The SAC reversed the judgment of the RC, while not fully endorsing the arguments of either side of the dispute:

- The SAC held that it was not decisive for the assessment of the tax (non-) deductibility of the interest costs incurred whether the company actually received tax-exempt income in the period under assessment. What is relevant is the purpose for which the company incurred the interest costs in question, i.e. the purpose for which it purchased the shares. The reasoning of the RC that if the corresponding exempt income has not yet been earned in respect of the expense, it cannot be an expense subject to § 25(1)(i) of the ITA, is therefore abbreviated.
- The SAC further stated that the company can only be agreed with in so far as the exclusion of interest related to the holding of a stake is not an automatic procedure. It is always necessary to assess what the purpose of the purchase of the stake was in the particular circumstances. If the company points out that the sale of the shareholding could take place before the 12-month time test has expired, this is not the situation in the present case, and it is not for the courts to resolve hypothetical examples.
- According to the SAC, it is appropriate to assess in further proceedings whether the tax authorities erred in concluding, on the basis of the evidence and the circumstances of the case, that the shares were purchased for the purpose of earning income which is not included in the tax base, and therefore the relevant interest costs to that extent are not tax deductible under § 25(1)(i) of the ITA. In order to answer this question, according to the SAC, it is not enough to determine whether the company actually received dividend income in the audited period. What is relevant is the purpose and reason for the purchase of the shares, i.e. the determination of what income it was intended to achieve.
- In this context, the SAC added that it could not comment on the arguments concerning the existence of a direct causal link between the disputed interest costs and the proceeds from the sale of part of the business plant realised by the company in 2014. This assessment must be made by the RC.

So we'll have to wait for the finale.

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

The SAC stated that it is not decisive for the assessment of the tax (non-)deductibility of the interest costs incurred whether the company actually received tax-exempt income in the period under review. What is relevant is the purpose for which the company incurred the interest costs in question, i.e. the purpose for which it purchased the shares.

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An atypically (sort of) favourable view of the Supreme Administrative Court on the issue of (sort of) crown bonds

In its recent judgment (Case No. 2 Afs 200/2021), the Supreme Administrative Court dealt with a situation where an entity, a joint stock company, issued bonds for the declared purpose of paying dividends to shareholders, expanding and refurbishing machinery and building a new plant.

Long-term bonds with a nominal value of CZK 2,000 had an interest rate of 9.2% and a weekly yield period (which, given the rounding rules in force at the time, effectively resulted in the interest income being tax-free for the beneficiaries – here specifically the company's shareholders). The tax administrator, the Appellate Financial Directorate and the Regional Court did not consider the interest costs on the bonds to be tax deductible, mainly due to the lack of economic justification for the issue and the failure to prove that the funds were spent for the declared purposes. However, the tax administrator did not use the argument of possible abuse of law.

The SAC first of all submits that the present case effectively touches on the issue of crown bonds, or the non-taxation of interest income derived from them, although the case does not concern traditional crown bonds. Recent case law has seen abuse of law in the majority of crown bond issues, while only in a small number of cases has tax been levied for disallowance of interest due to non-compliance with § 24(1) of the Income Tax Act (ITA).

The SAC disagreed with the argument that the funds had not been spent for the declared purposes, as the Regional Court had incorrectly effectively made the use of the funds conditional on their being deposited in a special earmarked account. Where a sum of money has been received and at least the same amount of money has subsequently been spent for the purpose of generating, assuring or maintaining taxable income (investment in new equipment, purchase of land, etc.), the SAC considers that it is established that the money received has been spent for that purpose. Therefore, the interest on the bonds, which were used to obtain the funds, is a tax deductible expense within the meaning of § 24(1) of the ITA (the tax administrator does not claim anywhere that it is a non-tax deductible expense within the meaning of § 25 of the ITA).

The SAC did not accept the second argument about the lack of economic justification for the issue either. The taxpayer argued in the proceedings that the issue was made for the declared purpose of paying dividends to shareholders, expanding and refurbishing machinery and building a new plant. The Regional Court, according to the Supreme Administrative Court, impermissibly strictly and effectively demanded that the final negotiations for the purchase of the land should already be underway at the time of obtaining the funds, thereby placing the taxpayer in a very precarious position. It seems to the SAC that it is perfectly rational to raise funds in advance of the actual implementation of the project. With regard to the payment of dividends, the SAC, referring to the OKD decision, stated that it depends solely on the business decision of the taxpayer whether it is more advantageous for it to finance the dividend payment from its own sources or from debt. Nor did the SAC find the investment in the expansion and refurbishment of machinery irrational. The SAC disagreed with the Regional Court's view that the company could have financed this investment from its own resources without issuing bonds. Even if the company had its own resources, according to the SAC, this does not mean that it could not also obtain funding from other sources. As in the case of the choice of financing for the payment of dividends, according to the SAC, this is a business decision which is solely at the discretion of the company.

The SAC concludes that, although the reasoning of the Regional Court and the tax administrator does not stand up, there are many indications in the contested decision that could potentially serve as a basis for concluding that the elements of abuse of law have been fulfilled.

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

The SAC did not agree with the Regional Court's view that the company had not proved that the funds raised from the bond issue were spent for the declared purposes, or that none of the purposes of the bond issue were economically rationally justified. The Supreme Administrative Court nevertheless suggested the existence of indications for the application of abuse of law.

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Did you know:

- The Ministry of Finance has commented on the taxation of employee stock and option plans?
- An Australian court has issued an interesting ruling on a hidden royalty?
- The DAC7 notification form has been published on the MY taxes (MOJE daně) portal?
- In 2024, there are changes to Intrastat 2024 reporting?
- Amendments to the Accounting Decrees were published in the Collection of Laws?