Tax and Legal News

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Windfall tax

The biggest tax issue of the day: highly political, a search for fairness, lots of strong opinions. I always find it unfortunate when yet another economic problem is solved by taxes. When this happens, it's usually more or less a deserved tax advantage in the form of a tax exemption or other relief. Although everyone wants to fight against tax exemptions, I guess in the end we can live with tax relief for church collections, the Wine Fund and the Czech-German Future Fund.

But a measure that works the other way around and imposes an additional tax is in a different league. We don't have many similar examples on this scale in the past, and experience is therefore scarce. Some historical experiments illustrate the difficulty of such measures. The bank tax, the digital tax, the plastics tax, etc. Despite systemic consensus, implementation has dragged horribly (and in some places failed completely), simply because it is complex and hard to find fairness in.

Another Czech (not so) nice experience is the solar levy introduced more than ten years ago – an industry where we created the conditions for making significant (unexpected?) profits and then wanted to take some of those profits away. While seemingly logical, it nonetheless yielded implementation woes and left a wake of angry investors and international arbitrations. An experiment with a gift tax on emission allowances also failed to convince the courts and ended in a tax refund. In addition, the state paid billions in interest to the affected taxpayers.

On the other hand, the war in Ukraine and its consequences are force majeure, and when else but now should extraordinary measures be taken. Moreover, we're starting from a certain consensus at the EU level, and the parameters are therefore not a completely arbitrary decision of the Czech legislator. However, there is still a great deal of latitude. The Finance Ministry's proposal and the subsequent long list of amendments tabled in the Chamber of Deputies during the second reading illustrate the variability and creativity. Choosing the sectors and entities that we "think" will have windfall profits is probably the most difficult. Interestingly, the Czech list of sectors is not exactly the same as the European one (why?); the amendment attempting to take out some sectors thus comes as no surprise. The de-minimis limit with the justification not to burden small and medium-sized enterprises is probably factually correct, but its level represents another conundrum. The same for everyone? Higher for banks? Group vs. individual? Another set of amendments.

Probably the biggest injustice I personally feel is in the case of entities that fall under the tax because of their group, but actually pay the tax on completely different activities than the legislator intended. The EU proposal foresees a 75% test of the listed activities (somewhat fair), but the Czech proposal doesn't adopt it. I don't know. I'm probably not alone with such feelings; some amendments have tried to address this. One suggested a 50% limit (why not the EU's 75%?). The other subtle one basically said that by spinning off other activities I would materially escape the tax (under the government's proposal, spin-off does not have to help). It will be very interesting to see how the tax authorities deal with such a potential spin-off. On one hand, a law that can be read as saying I escape tax by spinning off in certain circumstances, and on the other, perhaps a textbook abuse of the law where I'm effecting the transaction with the sole purpose of not paying tax. A "reasonable" conclusion is offered: well, if the law allows it... But it reminds us a bit of crown bonds: "well, if Kalousek did it with state bonds...", and today it's one of the most frequently (tax) assessed items. Let's see.

The 60% rate looks scary – probably the highest rate that has ever appeared in Czech law. So in the end effect, we tax windfall profits at 79%. The possibility of a reduction to 33% in some situations under the EU proposal is again not taken on board. Some amendments proposed 40%.

The third reading took place on Friday 4 November, and now we have the Senate and the President.

Extraordinary measures without historical experience will logically encourage those affected (and angry) to use equally extraordinary means to defend themselves. We will see what they choose from the palette of the obvious, or less obvious, options. Bad legislative process in the form of a attachment? Could it even be imposed for the years after 2023? Discrimination against certain other similar entities? Is the 79% tax strangling? And what else... ?

The 60% rate looks scary. Probably the highest rate that has ever appeared in Czech law. So in the final effect, we tax windfall profits at 79%.

Windfall tax

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Windfall tax approved by MPs

We keep you informed about the process of introducing a special tax aimed at "windfall" profits - the so-called windfall tax. Two weeks ago, a proposal aimed at introducing the windfall tax was officially published in the form of an amendment to the Parliamentary Document 254.

Things are moving fast, and as early as Friday, November 4, 2022, the third reading of this document was held in the Chamber of Deputies.

Although there were initially a number of amendments relating to various parameters of the windfall tax - none of which were ultimately adopted (apart from a minor legislative clarification)

The main parameters of the windfall tax after the third reading thus correspond to the original ministerial proposal – i.e.:

Period of application/prepayment

- The new tax would be applied in the years 2023-2025, with advances payable as early as 2023 based on 2022 figures.

Companies in scope

- The new tax is to apply to companies with significant activities in the areas of electricity and gas production and trade, banking, fossil fuel extraction and production and distribution of petroleum and coke products.[1]

1 More precisely, these should be activities listed in the NACE classification under the codes:
05.10 - Mining and preparation of hard coal,
06 - Extraction of crude petroleum and natural gas,
19.1 - Manufacture of coke oven products,
19.2 - Manufacture of refined petroleum products,
35.1 - Production, transmission and distribution of electricity, except combined production of electricity and heat with a ratio of electricity produced to useful heat supplied of less than 4.4,
35.2 - Production of gas; distribution of gaseous fuels through networks,
46.71.2 - Wholesale of liquid fuels and related products,
46.71.3 - Wholesale of gaseous fuels and related products,
49.50.1 - Oil transportation by pipeline,

- The entry criteria should be as follows:
  - for banks - an individual criterion of (domestic[2]) net interest income (for 2021) of at least CZK 6 billion and, in addition, an individual criterion of (domestic) net interest income in the current year of at least CZK 50 million;
  - for others - the group criterion of (domestic) net turnover from the respective activities (for 2021 and excluding banks) of at least CZK 2 billion and in addition the individual criterion of (domestic) net turnover from the respective activities in the current year of at least CZK 50 million;
  - additional criterion for mining/treatment of hard coal / extraction of oil and gas / production of coke and refined petroleum products - it is sufficient to meet the individual criterion of (domestic) net turnover from these activities in the current year of at least CZK 50 million if these revenues represent at least 25% of the annual turnover of the taxpayer.

Rate

- The windfall tax rate should be 60% and would be applied to the companies concerned as a kind of surcharge on top of the 19% corporate income tax on their "windfall profits".

Tax base

- This windfall profit should be calculated by comparing the current year's tax base[3] with the arithmetic average of the 2018-2021 historical bases increased by 20%.

We will continue to monitor the next stages of the approval process (Senate and President).

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

The windfall tax rate would be 60% and would be applied to the companies concerned as a kind of surcharge on top of the 19% corporate tax on their "windfall profits". The amendment is going to the Senate.

49.50.2 - Gas transportation by pipeline,
64 - Financial intermediation, except insurance and pension funding, except for the activities listed in the NACE classification under code 64.11 - Central banking, if the taxpayer is a bank.

2 I.e. for a Czech tax resident, apart from income from sources abroad that can be taxed abroad according to an international treaty, or for a non-tax resident, income from sources in the Czech Republic apart from income that cannot be taxed in the Czech Republic according to an international treaty. The bill also contains an exception from inclusion in the relevant income for selected intra-group supplies of electricity or gas.

3 Before the application of reducing/deductible items and without the inclusion of income from foreign sources that may be taxed abroad under an international treaty (and related expenses). Similarly, this applies to historical tax bases.

VAT

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Partial supplies from the VAT perspective and some practical pitfalls

In this issue, we'd like to focus on the treatment of partial supply for VAT purposes and draw attention to some ambiguities and pitfalls we've encountered in practice, especially unsuccessful formulations or the confusion of partial supply with advances, or a confusing combination of both. These often result in the supplier being in delay of VAT remittance and/or the recipient claiming a tax deduction before it is permitted to do so. Last year's waiver of VAT on electricity and gas shined a spotlight on some of these problems and highlighted deeper interpretative ambiguities.

The VAT Act defines a partial supply as a taxable supply which, according to a contract, takes place within an agreed scope and time limit and is not a complete supply. The Ministry of Finance's legislative documents show that it should constitute the implementation of Article 64 of the European Directive. A comparison of the two provisions makes clear that this is loose inspiration rather than a literal transcription. The main specificity of the Czech wording is that the date of the taxable supply ("DTS") is considered to be the date specified in the contract.

The VAT Act previously listed the types of contracts for which partial supply could be negotiated: lease contract, business lease contract, vehicle lease contract, finance lease contract, contract on work or other similar contracts. These examples are no longer found in the law today, but it is still true that partial supply may be agreed in them, as well as in many other contracts in which the provision of services/goods of a long-term nature is agreed (e.g. a contract for the establishment of a building right or a contract for the provision of consultancy services). Contracts under which the supply is provided at the outset, but payment for which is conditional on future circumstances (e.g. success fees) are also considered. Conversely, partial supply is not to be confused with a situation where goods/services are provided in a lump sum and paid for subsequently in instalments.

The contractual arrangement itself is essential for defining partial supplies. In our experience, various vague formulations are often seen in contracts, which complicate rather than facilitate the correct application of VAT. Here are some of the problematic areas we encounter:

- Combination of a partial supply arrangement with a tax settlement document after the end of the year. If partial payments are agreed, then a corrective tax document (credit note/receipt) is to be issued

upon the subsequent "settlement". In contrast to advances, the DTS for partial transactions is set according to the contract, and subsequent changes must be dealt with by correcting the tax base. The parties to the contract should then clearly agree whether the post-DTS adjustment relates to a specific partial period or to all of them pro rata. On the other hand, in the case of advances, the law makes clear the procedure for settling an underpayment or overpayment.

- The confusion between instalments and advances is also often linked to the incorrect use of instalment and payment schedules. Issuing either of these documents does not result in a taxable supply (they are the same in this respect). The payment calendar is issued for advances that are paid before the DTS (eliminates the need to issue individual advance invoices and receipts for payments received). However, if the payment is made after the DTS, this document can no longer be considered a tax document and the tax deduction cannot be claimed on its basis. Conversely, an instalment plan is typically used for partial supply agreed in lease contracts where payment occurs after the DTS.

- However, there are also advances for partial supply. If payment is made before the contractually-agreed DTS, the supplier must issue a separate tax document for the received payment. In such a case, it may be problematic for the customer to claim the VAT deduction from the instalment schedule for the period in question. In practice, this causes problems because customers already have an instalment schedule in place in their accounting system.

- The law does not preclude a supplier who is not yet subject to VAT, and whose turnover is yet to exceed the threshold, from negotiating partial supply in a contract. Correct determination of VAT may be crucial for correct (non-)application of VAT for the period immediately before and after VAT registration. Increased attention should also be paid to this issue by the customer – if the supplier incorrectly states a higher VAT figure on the invoice, the customer may not claim the corresponding tax deduction.

- Related to the previous point is the question of whether the DTS for partial supply can be determined in advance of the start of the partial period. The law does not expressly prevent this and it is quite common in practice (but the potential risk could be borne by the customer).

- On the other hand, when arranging a DTS with a longer delay after the end of a given period, we recommend exercising increased caution. It should be remembered, among other things, that for taxable supplies made over a period of more than 12 months, the law imposes the fiction of a DTS on the last day of each year starting from the second year (subject to other conditions).

- The VAT Act also does not prevent different lengths of partial periods from being agreed. Such an arrangement may be very practical in specific cases. We encounter it, for example, in certain types of leases or in the case of building rights.

- Another interesting area is the combination of a contract on work and partial supplies. In this situation, the DTS commences on the date of acceptance or delivery of part of the work or on the date specified in the contract, whichever is earlier. With such a combination, you need to watch for two different moments as well as possible payment before the DTS. It is often difficult to determine clearly from the wording of work contracts what is and is not a handover of a part of the work.

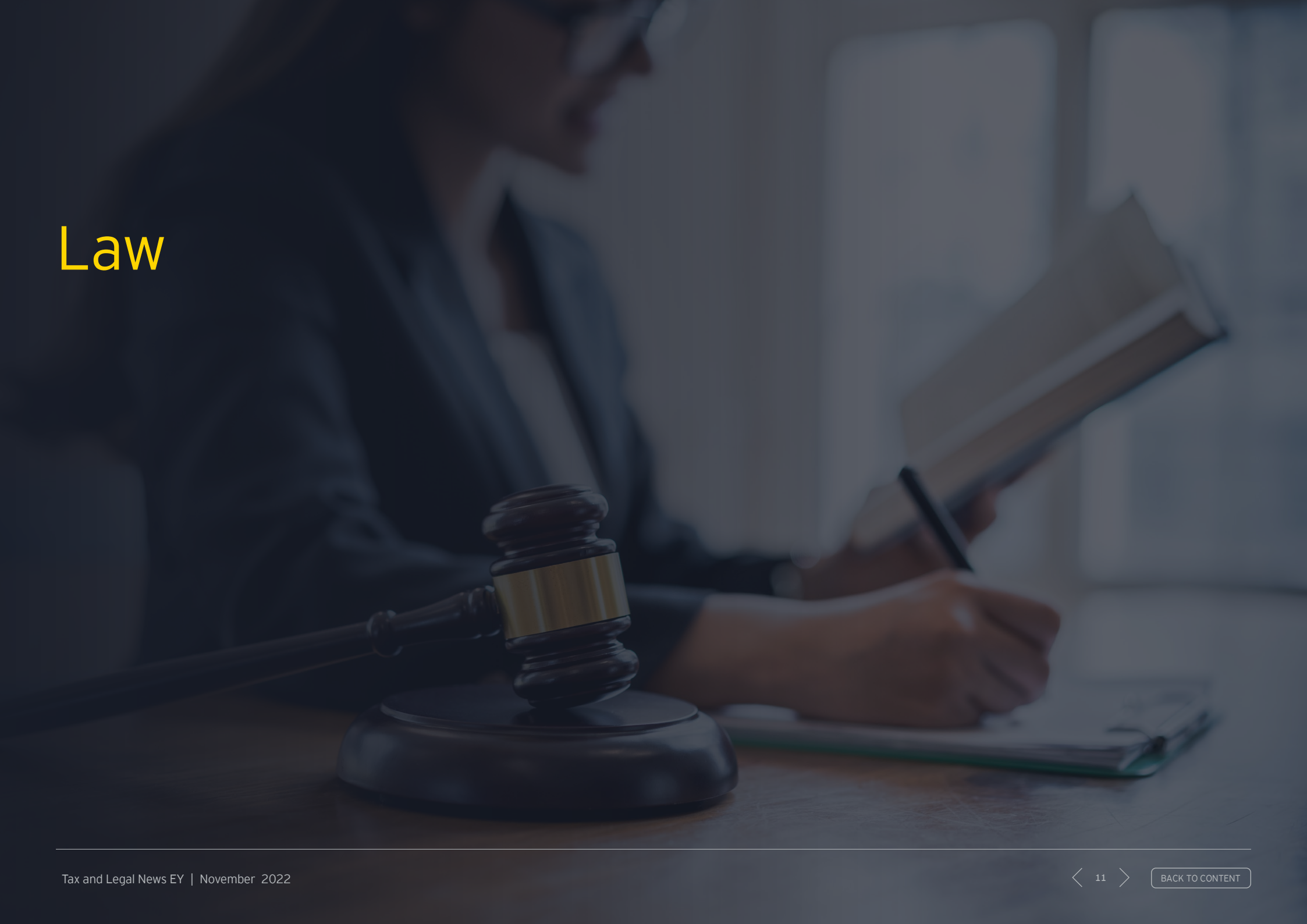
- The negotiation of partial supplies for energy deliveries may also be contentious. If the energy is provided as a separate supply, the law does not rule out the application of partial supplies (though in practice the payment of advances and subsequent billing is more common). However, we've encountered a tax administration interpretation whereby partial transactions for separate energy supplies cannot be negotiated. Although this view is, at the very least, controversial, we recommend increased caution in these situations, too.

In all of these cases, a clear, high-quality contractual arrangement can address problems before they arise. We therefore recommend that before being signed, long-term contracts are thoroughly reviewed by our VAT experts.

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

The contractual arrangement itself is essential for defining partial supplies. In our experience, contracts quite often contain various vague formulations that complicate rather than facilitate the correct application of VAT.

Law



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The Supreme Court commented on the consequences of a violation of the rules on conflicts of interest of an executive

One of the basic duties of a member of an elected body of a corporation is to perform their duties with due care and loyalty to the corporation. The duty of loyalty of a member of an elected body is manifested, for example, in a non-compete clause, a duty of confidentiality or a duty of disclosure in the event of a conflict of interest. The decision of the Grand Chamber of the Supreme Court of 5 October 2022, Case No. 31 Cdo 1640/2022, concerns precisely the conflict of interest and the consequences of violating the rules for its notification.

Pursuant to § 55 of Act No. 90/2012 Coll. on business corporations and cooperatives (the "BCA"), a member of an elected body of a business corporation who intends to enter into a contract with the corporation that does not fall within the scope of normal commercial dealings is obliged to inform the relevant body of the business corporation of their intention without undue delay. The latter may prohibit the conclusion of the contract in question. Similarly, a member of an elected body is obliged to inform the corporation pursuant to § 54 of the BCA if they become aware that in the performance of their duties there may be a conflict of interest with the interests of the corporation. In such a case, the competent authority has the option of suspending the member of the elected body from holding office.

A member of an elected body who complies with the information obligation described above is in a legal safe harbor and acting loyally in respect of their business corporation (provided, of course, that they do not violate the prohibition on entering into a contract or act in a situation in which they have been suspended). But what if a member of an elected body fails to declare a conflict of interest? Until recently, it was not entirely clear what the consequences of such a breach of the notification obligation would be for the validity of the legal acts of a member of the statutory body of a corporation.

In a resolution of December 2015 (Case No. 29 Cdo 4384/2015), the Supreme Court formulated and justified the conclusion that if a member of a statutory body violates the obligation to report a (potential) conflict of

interest, the existing conflict of interest of that member of the statutory body with the interests of the business corporation prevents them from acting legally on behalf of the business corporation, and their actions are subject to Section 437(1) of the Civil Code ("CC"), which regulates the impossibility of representation in the event of a conflict between the interests of the representative and the represented. While it did not explicitly state that the (relative) nullity of the legal act is a consequence, such a conclusion has been accepted by a significant part of the professional community with reference to this decision.

In the Supreme Court resolution of 23 October 2018 in Case No. 20 Cdo 3298/2018, another panel of the Supreme Court formulated a more specific conclusion, according to which the conflict between the interests of the representative and the interests of the represented person allows the principal to object to the relative invalidity of the legal act of the agent.

In the case to which the present decision of the Grand Chamber relates, the subject-matter of the dispute was the assessment of the validity of an arbitration clause concluded in the context of a settlement agreement with a limited liability company by its former executive who was also a shareholder. In concluding the agreement, the former executive not only acted as a party to the agreement on his own behalf, but should also have acted for the company as the other party as its statutory body, without informing the company's general meeting without undue delay of his intention to conclude the settlement agreement.

As this issue was not dealt with consistently within the Supreme Court, Chamber No. 27 (formerly Chamber No. 29) of the Supreme Court referred the dispute to the Grand Chamber (Chamber No. 31).

In its judgment, the Court evaluated the existing case law and literature. In doing so, it stated *"If a member of an elected body complies with the requirements of § 54 et seq. of the BCA and is not suspended from office or prohibited from entering into a contract by the competent authority, no conflict of interest with the interests of the corporation shall prevent them from representing the corporation in the relevant legal act. In accordance with the requirement of § 159(1) CC, they must maintain the necessary loyalty and give priority to the interests of the business corporation over their own interests or those of persons related to them."*

Subsequently, the court dealt with the situation in which an executive (member of the elected body) fails to comply with the requirements of § 54 et seq. of the BCA, i.e. fails to declare a conflict of interest or intention to conclude a contract, or when the competent authority suspends them or prohibits them from concluding the contract in question. The Grand Chamber sided with the minority view so far presented in the literature. It stated that in the event there is a conflict between the interests of the agent (the executive) and the interests of the represented party (the company), the provisions of § 437(1) of the CC, in the event of lack of good faith of the third party in the agent's authority, removes the agent's authority to represent. Thus, if an executive fails to comply with the reporting obligation or acts on behalf of the company even though they have been suspended or prohibited from entering into a specific contract, they cannot represent the company in such legal act due to a conflict of interest. The consequence of such an act without representative authority, or exceeding the representative authority, is not (relative or absolute) invalidity or apparent invalidity of the legal act made by the (unauthorized) executive. However, the company will in no way be bound by such a legal act of the executive.

The company may additionally approve the legal act of the executive, what is known as *ratihabitio* [approbation of a contract], (only) without undue delay after becoming aware of it (pursuant to § 440[1] of the CC). If, however, it does not subsequently approve the legal act, it shows, according to the Supreme Court, that it does not want to be bound by that act – in the words of § 437(2), first sentence, of the CC, it "pleads" the lack of the executive's authority to perform the legal act on its behalf, provided that the third party with whom the executive acted knew or should have known about the executive's conflict of interest.

Further to the above, the Grand Chamber also held that *"if the third party has a good faith belief, taking into account all the circumstances, that there is no conflict between the interests of the representative and the interests of the represented party, or that the existing conflict does not limit the representative's authority (i.e. that the representative is not suspended or prohibited from entering into the contract in question), the represented party is bound by the acts of the representative, irrespective of the fact that the representative has exceeded their representative authority. In other words, the represented party in this case is bound by the acts of a person who was not authorized to represent it in the legal act. The legislator here gives priority to the protection of the good faith of the third party over the protection of the interests of the represented party. Any claims of the represented party against the representative (exceeding his representative's authority) are not affected."*

In practice, the conclusions cited above may have significant implications. If, for example, the validity and binding nature of legal acts taken by a company's executive is subject to retrospective review, it will generally no longer be possible, once the relatively short period for ratihabitio has expired, to make the disputed legal acts (taken in relation to a non bona fide third party) binding on the company.

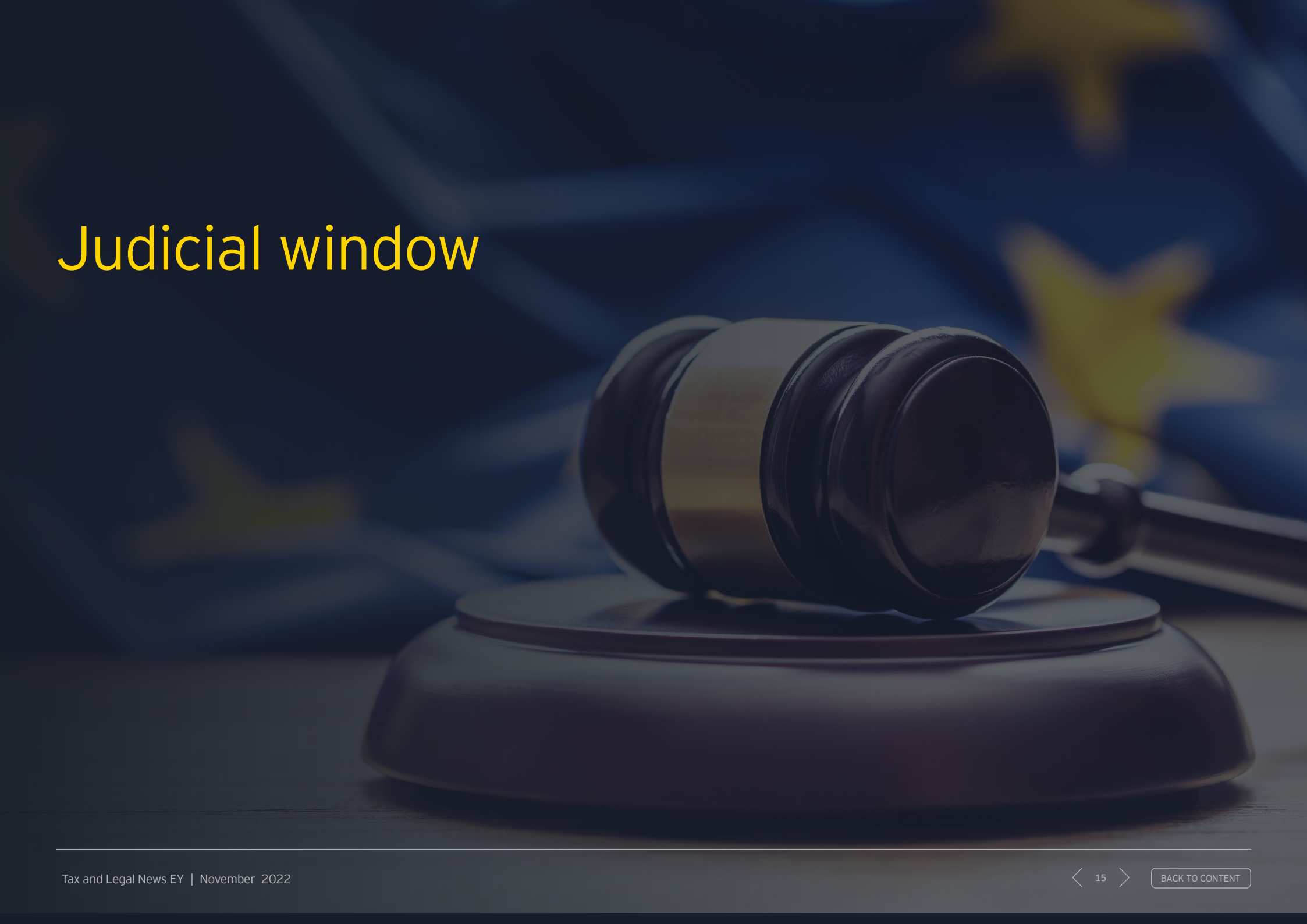
The Supreme Court also concluded that the aforementioned findings are not altered by the fact that another executive, i.e. another representative of the company, will conclude the contract with the executive (as the other contracting party) on behalf of the company. The conflict of interest rules, in particular the disclosure obligations under § 55 of the BCA, cannot be circumvented by this change in the persons representing the company.

Let us add that the foregoing decision was adopted in the context of the legal regulation of the Business Corporations Act in force before the so-called Great Amendment (Act No. 33/2020 Coll.), i.e. until 31 December 2020. However, the conclusions will also apply in the context of the current and effective legal regulation.

For more detailed information, please contact the authors of the article or other members of EY Law or your usual EY team.

The Grand Chamber of the Supreme Court has clarified the consequences of the existence of a conflict of interest of the executive for the validity of their acts on behalf of the company.

Judicial window



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SAC case-law on the effect of an international request on the running of the tax assessment period

The Supreme Administrative Court (SAC) has recently supplemented its case law on the effect of an international request on the running of the tax assessment period with another judgment. In our article we briefly summarize the general rules and attach the relevant SAC decisions.

The Tax Code operates with a basic 3-year time limit for the determination of tax (assessment or additional assessment). One of the factors affecting the running of this time limit is a so-called international request. This is a situation where the tax administrator in the proceedings issues a request for international cooperation in tax administration. From the date of dispatch of such a request until the date of receipt of the reply to it, the time limit for the assessment of tax does not run. In practice, the processing of the request takes a considerable amount of time (normally hundreds of days).

The case law of the Supreme Administrative Court in relation to international requests addresses two issues in particular:

i. the reasonableness of the request as a condition for pausing the time limit;
ii. the impact of changing legislation depending on the type of tax (direct vs. indirect) and the start of the time limit.

Reasonableness of a request

In the decision-making practice of the SAC, there have been cases where taxpayers have objected to the alleged use of an international request by the tax administrator for the sole purpose of postponing the end of the tax assessment period.

The conclusions of the SAC on this issue can be summarized by stating that a request for an international request cannot be denied the effect of pausing a time limit simply because it did not produce the desired result; however, it must be justified.

The request may be justified and thus pause a time limit even in a situation where the tax administrator decides on the matter without having received an answer to the questions from abroad. However, the tax administrator must specifically state why it has done so, so that it can be assessed in the future whether the outcome of the international request is grounds for a renewal of the proceeding[4].

The situation would be different if the request had been doomed to failure from the outset, not because of uncertainty as to whether the requested entity could be contacted, but because the questions asked by the tax authorities could not, by their nature, provide answers relevant to the assessment of the tax[5]. Such an application for an international request would not pause a time limit for the assessment of tax.

Impact of changing legislation

Until the end of 2013, the rule on pausing the time limit for tax assessment was not contained in the Tax Code, but in a special law on international cooperation in tax administration. The scope of this special law was limited to direct taxes only, i.e. it did not, for example, cover VAT proceedings.

In this context, the SAC addressed the question of whether and to what effect a request for an international request sent by the tax administrator after 1 January 2014 has in a VAT tax audit initiated before 1 January 2014. The Supreme Administrative Court concluded that in such a situation, the legislation cannot be interpreted against the taxpayer and the international request does not pause the time limit[6].

However, the legislation on direct taxes has not been unchanged either. Until 1 January 2011, an international request was considered to interrupt, not to pause, the time limit for the assessment of tax, i.e. the time limit started to run again from that moment. Thus, as in the previous case, the SAC considered a situation where the time limit for the assessment of tax began to run under the previous regulation, but the request itself took place under the new regulation. From the transitory provisions of the Tax Code, the SAC concluded that the new rules (although not contained directly in the Tax Code, but in a special law) apply to the running and duration of the time limit, i.e. an international request made after 1 January 2011 pause the time limit even though it started to run under the earlier law[7].

Complexity of the tax assessment period calculation

The above cases show how the calculation of the time limit for assessment can be complex, and that the international request is only one of a number of factors affecting its running. The possible expiry of the time limit for assessment is a crucial point in tax proceedings. We therefore recommend that you pay due attention to this topic and, if necessary, consult specific situations with experts.

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

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4 See SAC Judgment No. 2 Afs 190/2021 - 74 of 19 September 2022.
5 See SAC Judgment No. 10 Afs 228/2019 – 53 of 26 November 2020.
6 See SAC Judgment No. 10 Afs 206/2017 – 45 of 26 November 2020.
7 See SAC Judgments No. 8 Afs 282/2017 - 44 of 28 August 2019 and 2 Afs 190/2021 – 74 of 19 September 2022.

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SAC on the taxability of income from the point of view of the application of personal income tax

We present an interesting Supreme Administrative Court (SAC) judgment on the topic of real vs. seeming income from the perspective of the application of personal income tax.

Background

- An individual (FO1) bought a residential unit from another individual (FO2) for CZK 2.3 million.
- Subsequently, FO1 entered into a collateral agreement with another natural person (FO3), which granted FO3, as the beneficiary, a lien on the property in question for a claim arising from a loan agreement in the amount of CZK 7.2 million concluded between FO3 and FO2.
- FO1 explained the circumstances of the mortgage by saying that FO2 had promised it that if it collateralized its apartment, it would valorize the loan from FO3 and later buy the apartment at a higher price.
- FO2, however, found itself insolvent – it did not buy the apartment and a lien remained on it for FO3.
- FO1 then sold the apartment for CZK 6.5 million. According to the attorney escrow agreement, CZK 6 million was paid to FO3 as final payment of the debt owed to FO2 and CZK 500,000 to FO1.

Subject of dispute

The issue in dispute is what amount constituted income to FO1 within the meaning of § 10 of the Income Tax Act (ITA), i.e. whether it was

(a) the entire purchase price for which the subject property was sold, or

(b) the part of it that was paid into its account and which FO1 considered to be its actual income?

View of the SAC

The SAC opted for option (a), which meant an additional taxpayer assessment – a selection of the arguments presented by the SAC:

- The SAC does not judge the fact of income by the flow of money, as the taxpayer interprets it, but considers it essential whether the taxpayer can freely dispose of the increased property (whether this property is directly in the form of money or otherwise).
- It is irrelevant for what purpose the income received was further used. The actual income was the entire purchase price. Even if part of the purchase price was used to repay another person's debt, it was still income to the taxpayer. The taxpayer chose to dispose of this income by using it to pay the debt of a third party. The fact that those funds were income to the taxpayer was reflected in its ability to pay the debt on behalf of the third party.
- The entire purchase price of the apartment was actual income. The increase in the property must actually be reflected in the taxpayer's legal affairs, so it is not necessary that money actually comes into the taxpayer's account. The taxpayer already had the money at its disposal when it entered into the escrow agreement, because that was the only way it could agree to pay a third party's debt. If it did not have the money, it could not even agree to its transfer to another person's account, or its consent would not be essential. The fact that the taxpayer agreed that part of the purchase price would not be paid into its account upon the sale of its flat is not decisive for an assessment of the reality of the increase in its property.

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

The SAC does not judge the fact of income by the flow of money, as the taxpayer interprets it, but considers it essential whether the taxpayer can freely dispose of the increased property (whether this property is directly in the form of money or otherwise).

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

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Did you know:

- Changes are being made to the receipt and dispatch of consignments of selected products transported under the free circulation procedure between EU Member States?
- The amendment of the Act on the Registration of Beneficial Owners has already entered into force and the six-month period for updating the data in the register is now running?
- According to a draft amendment of the Electronic Acts Act, the automatic establishment of data boxes for natural persons is not to be introduced from 1 January 2023?
- The Government just approved a Ministry of Finance proposal to negotiate a new double tax treaty between the Czech Republic and the UAE?