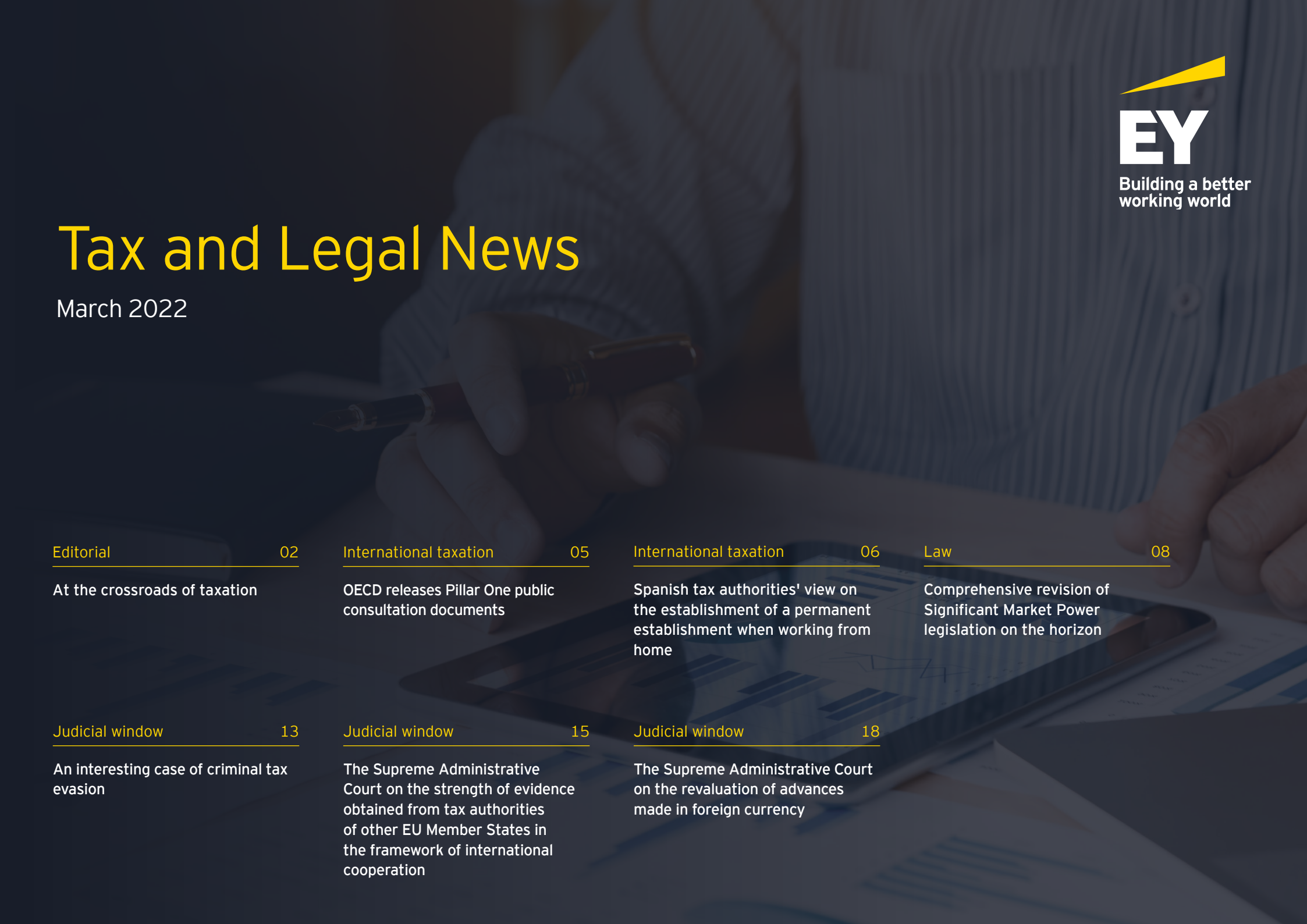

Tax and Legal News

March 2022

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At the crossroads of taxation

The world is standing at several strategic crossroads at once. Energy, sustainability, the European order, etc. But, like a good cobbler, I'll stick to my last and only talk about the crossroads of taxation and the directions in which the tax world and Czech taxation will go.

The latest report on tax administration activities says most tax evasion occurs in transfer prices, deductible items (i.e. non-deductible costs including services) and so called crown bonds. I'll leave aside crown bonds as a historically insignificant legislative, practical and control anomaly. Logically, the state administration and taxpayers spend the most time where there are the most assessments. We all spend tens, hundreds, thousands .... of hours to produce documentation and play with more or less comparable numbers with the sole aim of determining whether we'll be paying tax in one country or the other. At best. Here at home, I might even just be deciding whether I'll pay the same tax to the same state budget in Teplice or Karviná. That's why I produce dozens or hundreds of pages of documentation and follow a methodology that is itself hundreds of pages long and constantly growing. From today's perspective, it certainly makes sense, because the economy and business are getting more complex and tax collection has to respond accordingly.

The second of the greatest hits of tax audits – proving the cost of services – offers a similar adventure. A cost must be incurred to generate, assure and maintain income. There must be a direct and immediate link between expense and income. The cost must be reasonable. I have to prove I received the service, when and how exactly, what I did with it, what I used it for and convince the tax authorities it was of use to me. Nice theory, makes sense; some taxpayers try to abuse the system, and the tax administrator needs to be strict. Practice is evolving, tax administrators are getting tougher and the courts – through the lens of the here and now – are backing them. The courts say a contract and an invoice are not enough, nor is a general description of services; they'd like to see specific time worked and a specific price for a specific part of services. The unfortunate taxpayer with 1000+ pages of documentation in several binders is told they didn't provide enough proof because the documentation is too general.

So we should already be expending substantial resources and time just to prove our tax statements. There's no other added value to this activity. If I try to extrapolate from current developments, we must logically reach a point down the road in (many? few?) years when the whole thing is no longer worthwhile. The cost of proof will exceed the tax paid.

So isn't it time to draw a line somehow and start all over again in a different way? Wouldn't the current two-pillar reform of the OECD be that line? Initially, it will only affect big taxpayers, but we have to start somehow. Pillar One could be a forward-looking solution. I'll calculate the profit for the whole group and distribute it around the world by consumption/end

customers. I completely ignore transfer prices and services within the group because they fall away in consolidation anyway. The right direction, a light at the end of the tunnel, an end to the production of monstrous useless documentation. It needs to be brought to a close. The format proposed today provides for such a distribution of only a part of profit, the rest is still to be treated in the old way.

Pillar Two goes in the opposite direction. Let's first tackle profit and tax paid by companies in each country with conventional weapons (and masses of documentation), and then make someone in the group pay the tax if it's insufficient for the jurisdiction. This won't rid us of transfer pricing and the production of proof. But maybe it's just an interim measure to help us bridge the period until Pillar One is completed.

The future will show whether we'll make the increasingly complex world even more complex for taxes or look for a way to simplify and spend the time saved on something more useful. We're standing at that crossroads now.

Practice is evolving, tax administrators are becoming stricter and the courts – through the lens of the here and now – support them. The courts say a contract and an invoice are not enough, nor is a general description of services; they'd like to see the specific time worked and the specific price of a specific part of the services.

International taxation

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OECD releases Pillar One public consultation documents

On 4 and 18 February 2022, OECD released two public consultation documents in connection with Pillar One of the OECD/G20 project on Addressing the Tax Challenges Arising from the Digitalisation of the Economy (the so-called BEPS 2.0 project).

Just a reminder - the scope of Amount A within Pillar One will be multinational enterprises (MNEs) with global turnover above €20 billion and profitability above 10%, calculated using an averaging mechanism. Under Amount A, 25% of "residual profits," defined as profit in excess of 10% of revenue, will be allocated to market jurisdictions where the in-scope MNE has nexus.

These consultation documents address draft rules on (i) nexus and revenue sourcing and (ii) tax base determinations under Amount A.

Pillar One involves the development of the new nexus and profit allocation rules that assign a greater share of the taxing rights over global business profits to the market jurisdictions done through an approach, by first determining the global profits of the group and then allocating a portion of these profits to the market jurisdictions by using a revenue-based formula. The starting point is the consolidated group financial accounts. The draft rules in the consultation document provide specifics on the calculation of the tax base, including book-to-tax adjustments, treatment of restatements, carryforward of losses and taking into account changes in the group structure.

The new nexus rules are intended to apply solely for purposes of determining whether a jurisdiction qualifies for profit re-allocation under Amount A of Pillar One. Under the draft model rules included in the consultation document, nexus in a particular jurisdiction is determined based solely on revenue arising there and revenue is to be sourced on a transaction-by-transaction basis using a reliable indicator or, as a back-stop, a specified allocation key. Different sourcing rules, indicators and allocation keys are provided for the different categories of revenue that are identified in the draft rules (e.g., sale of finished goods, advertising services).

The consultation documents indicate that it is a working document released to obtain input from stakeholders.

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

OECD consultation documents concerning Pillar One address draft rules on (i) nexus and revenue sourcing and (ii) tax base determinations under Amount A.

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Spanish tax authorities' view on the establishment of a permanent establishment when working from home

The widespread use of (cross-border) home-office in pandemic times has triggered intense discussions on the establishment of a permanent establishment. For more information on homeworking from abroad from a tax perspective or the social security and health insurance implications, see our article Working from home abroad - possible tax, social security and health insurance implications.

The Spanish General Directorate of Taxes (GDT) has recently issued its first decision which, in line with OECD standards (we informed you about the updated methodology here - OECD Updated Methodology on the Impact of Covid-19 on Double Taxation Treaties), provides some guidance to assess the establishment of a permanent establishment not only during the lockdown but also after the end of the travel ban measures.

In this (not yet published) decision, the GDT concluded that during the COVID-19 pandemic, individuals who remain at home and work remotely do so as a result of an emergency, not as a result of a business requirement. Such activity lacks a sufficient degree of permanency or continuity and thus should not lead to a permanent establishment.

If the employee continues to work from home after the end of the restrictive measures and travel ban, the GDT tests whether the location, where the company's activity is carried out, has a degree of permanency and is at disposal of the company. In this particular case, GDT confirmed the absence of a fixed place of business primarily for these reasons:

- the activity previously carried out by the employee (in the UK) has not changed as a result of his move to Spain;
- the move to Spain was a purely personal decision by the employee and the UK employer did not ask or require the employee to move to Spain for any particular business reason;
- the UK company did not bear any costs caused by the employee's stay in Spain;

- the UK company had an office in the UK which the employee could continue to use to carry out his day-to-day work without being in Spain.

The above may be useful for arguments in other jurisdictions, although of course it will always depend on the position of the local tax administration.

For more information on the ruling, see EY global Spain's Tax Authority issues ruling on remote workers and permanent establishments during and after COVID-19 restrictions.

We have summarised some extra practical tips for assessment of permanent establishment creation in our article Practical tips when examining permanent establishments.

If you have any questions, please contact the author or your usual EY team.

If the employee continues to work from home after the end of the restrictive measures and the travel ban, the Spanish GDT tests whether the place where the company's activities are carried out has a certain degree of permanence and is at the disposal of the company.

Law

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Comprehensive revision of Significant Market Power legislation on the horizon

By 1 May last year, European Directive 2019/633 on unfair business-to-business commercial practices in the agricultural and food supply chain ("the Directive") was to be transposed into Czech law, with the national legislation thus implemented to be applicable from 1 November 2021, at the latest.

Relations between buyers and suppliers of agricultural and food products are still governed by Act No. 395/2009 Coll. on significant market power in the sale of agricultural and food products and its abuse ("the Act"), which was last significantly amended in early 2016. In connection with the transposition of the Directive, it has been discussed whether it would be better to amend the Act or to adopt completely new legislation. The first option prevailed and a draft amendment to the Act was published in the last few days after a comment procedure (which took place in 2019).

Let's start with one apparent formality – the amendment will change the name of the Act so that it will now be called "on significant market power and unfair commercial practices in the sale of agricultural and food products". This change reflects, among other things, the main purpose of the new legislation, namely the transposition of the Directive.

The key passages of the Act will be comprehensively revised –the definition of significant market power, modification of the particulars of the contract and, in particular, the modification and definition of unfair commercial practices, which will be generally prohibited in the relationship between a customer with significant market power and a supplier.

For the assessment of significant market power, five turnover ranges will now be established in accordance with the Directive. Thus, for example, in the first range, a customer whose annual turnover exceeds EUR 2,000,000 will have significant market power in relation to a supplier whose annual turnover does not exceed EUR 2,000,000; in the last range, a customer whose annual turnover exceeds EUR 350,000,000 will have significant market power in relation to a supplier whose annual turnover exceeds EUR 150,000,000 but does not exceed EUR 350,000,000. These ranges are intended to emphasise the protection of small and medium-sized enterprises. For the assessment of the fulfilment of the concept of significant market power, only the annual turnover of the customer and its suppliers will continue to be examined, reflecting their relative bargaining power while providing them with predictability as to their rights and obligations. It is clear from these

ranges that neither a supplier who achieves a turnover of EUR 350 million nor a supplier who has a higher turnover than the customer or is in the same turnover range as the customer will benefit from the statutory protection against unfair commercial practices.

It is not without interest that significant market power is also held by a buyer, which is a state, a local authority, another legal person governed by public law or an association thereof, vis-à-vis a supplier whose annual turnover does not exceed EUR 350 million.Even after the amendment, the law will set out the requirements for the elements of the contract concluded between the customer and the supplier. In addition to the written form already required today and the principle of a maximum 30-day repayment period, the contract will have to include, inter alia, the specification of the service related to the sale of agricultural products or food products (if agreed) that is received or provided, as to the subject matter and scope of such service, the price for such service or the manner of its determination, the manner of its payment, the time for payment and the estimate of its cost, as well as the basis on which the customer with significant market power arrived at such estimate. Another requirement for the content of the contract relates to the specification (not defined in the Act) of the purchase event (if agreed), the estimated quantity of agricultural products or food products to be covered by the purchase event, including the purchase price for these products or goods and the duration of the purchase event.

Probably the most significant change will be the regulation of unfair commercial practices (so far regulated in the Act as "abuse of significant market power"). In addition to the classic general clause prohibiting the application of unfair commercial practices, the Act will now contain a full (exhaustive) list of their factual elements (until now, the list of factual elements of abuse of significant market power was only demonstrative, and therefore it was always up to the supervisory authority to assess whether an abuse of significant market power had been committed by conduct other than that provided for in the Act). This change will therefore greatly enhance legal certainty for both customers and suppliers.

Some unfair commercial practices will always be prohibited; some will only be prohibited if the terms of the supply of agricultural products or food products or related services have not been agreed in writing before the supply begins. As an example, below are at least some of the acts of unfair commercial practices (some of which are identical to those listed in the Act today) that will be punishable as misdemeanors under the Act. It should be added that the authors of the draft amendment to the Act have unfortunately failed to remove or at least improve some of the formulations in the published text, which in current practice have created or are creating interpretation problems and, in some cases, are even subject to supervisory authority investigation.

A customer with significant market power will always commit unfair commercial practices, e.g.

- by negotiating or applying contractual terms and conditions that create a significant imbalance in the rights and obligations of the contracting parties to the detriment of the supplier;

- by applying or receiving a payment, discount or other consideration, where the amount, subject matter and extent of the consideration to be provided for such payment, discount or other consideration was not agreed in writing prior to the commencement of the supply or processing of the products or provision of the related services to which the payment, discount or other consideration relates;

- by unequally treating a supplier by negotiating or applying different contractual terms for the purchase or sale of products or for the provision of related services for comparable performance, without just cause;

- by arbitrarily changing the contractual terms and conditions of purchase or sale of products relating to the frequency, manner, place, timing or quantity of individual deliveries, quality standards, payment terms or prices, or the terms and conditions of related services

provided, as well as the arrangements permitting such change;

- tying consent to the conclusion of a contract for the purchase or sale of products or the provision of related services to the condition of subscription for further performance;
- by requiring payment or other consideration unrelated to the purchase or sale of products or the provision of related services, or that is disproportionate to the value of the services provided;
- by threatening or applying retaliatory measures where the supplier of a customer with significant market power exercises its contractual or legal rights; or
- by negotiating or exercising a right to the return of purchased products, without payment by the buyer with significant market power for the unsold products or for their removal.

Where the terms and conditions of such supplies or services have not been agreed in writing prior to the commencement of the supply of agricultural products or food products or the provision of related services, it shall also be considered an unfair commercial practice for a customer with significant market power to negotiate or apply a payment or other consideration

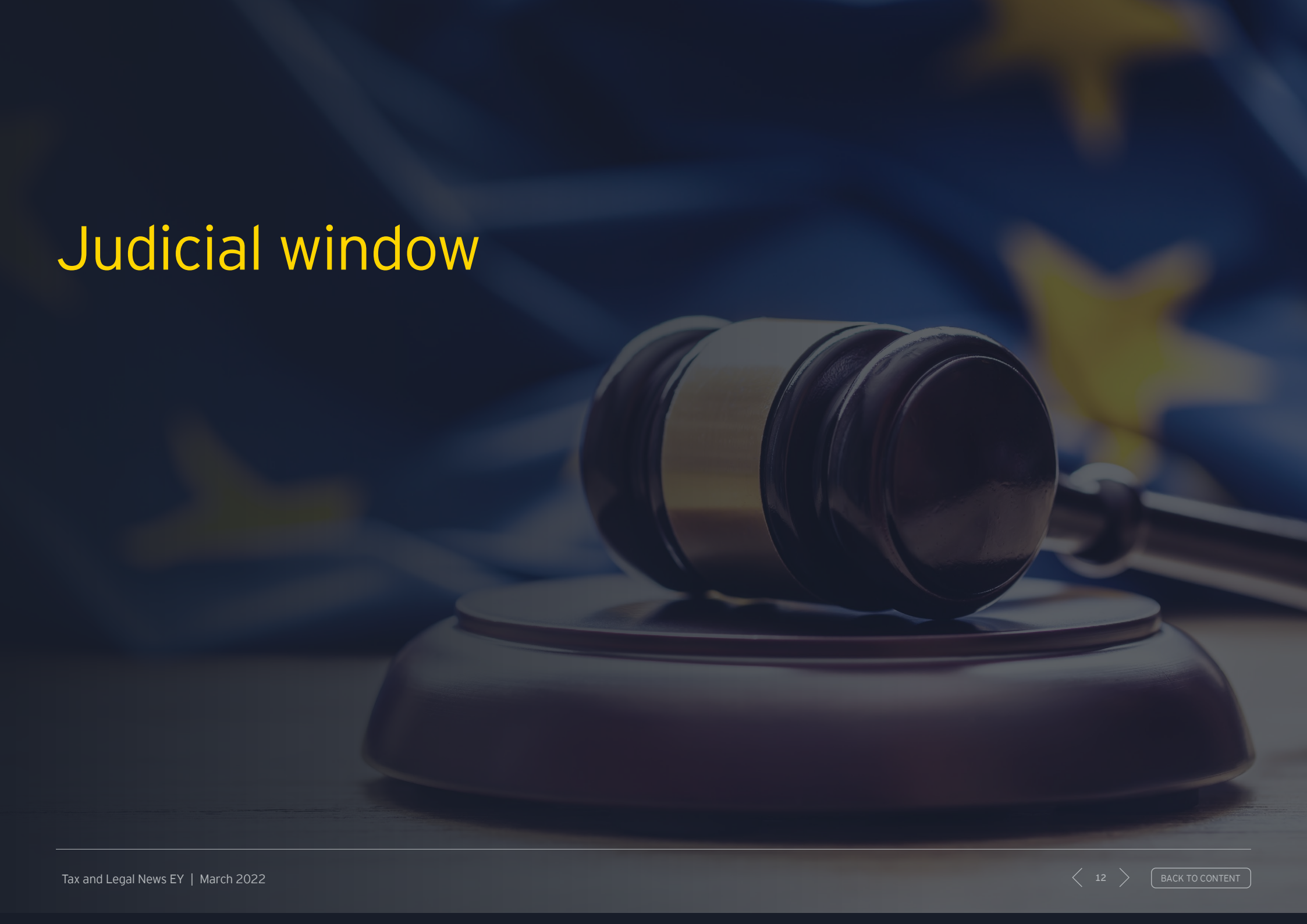
- for full or partial reimbursement of the cost of discounting products sold by the customer as part of a promotion;
- for advertising of products provided by the customer; or
- for workers arranging premises for the sale of agricultural products or food products.

It's difficult to estimate when the amendment to the Act will be approved; the proposed effective date is the first day of the second calendar month following promulgation. We will continue to monitor the fate of the amendment and will keep you informed of legislative developments.

If you would like more detailed information, please contact the author of this article or other members of EY Law or your usual EY team.

Significant market power and unfair commercial practices in the sale of agricultural and food products will soon be subject to new legal regulation. The draft amendment to the Act on Significant Market Power fundamentally changes both the definition of significant market power itself and the catalogue of prohibited unfair commercial practices in relations between customers with significant market power and their suppliers.

Judicial window



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An interesting case of criminal tax evasion

In this issue, we'd like to draw your attention to an interesting case of the criminal offence of tax evasion. The case was decided at first instance by the Municipal Court in Prague and recently followed by an appeal decision of the High Court in Prague.

In the case in question, two individuals were convicted of tax evasion because, according to the courts, two Cypriot companies had failed to file corporate income tax returns in the Czech Republic and to pay the related tax (amounting to just under CZK 30 million). The Cypriot companies obtained proceeds from the sale of their shareholding in the Czech corporation when they both bought and sold shares in the Czech corporation (first among themselves and then to a third party) during 2015. The value of the assets of the traded Czech company consisted of approximately 90% of land in the Czech Republic.

Taxation in the CR

The Czech Republic's right to tax income from the sale of shares in a Czech corporation by foreign tax residents is generally derived from the Income Tax Act (§ 22[1][h][1]). Given the timing of the transactions, in neither case was the 12-month time test for exemption of the proceeds from the sale of the subsidiary met.

In the present case, the Czech tax was not excluded by the relevant double tax treaty. Indeed, Article 13 of the Double Tax Treaty between the Republic of Cyprus and the Czech Republic allows the taxation of income from the sale of a business share in the source State, if the value of the share sold derives more than 50% from immovable property situated in the source State.[2]

Criminal liability of individuals

In the presented case, it is worth noting that the convicted individuals were neither the statutory bodies nor the direct owners of the companies concerned.

The Municipal Court recalled that the perpetrator of a tax offence may be not only the tax entity directly concerned, or its statutory representative, but anyone who by his or her deliberate actions causes, or together with other persons, knowingly participates in tax evasion (i.e. the tax is not levied at all or is levied in an amount lower than the statutory amount).

1 Since 2009, it does not have to be income from a payment from a Czech tax resident, it is sufficient that a share in a Czech corporation be sold.
2 We recently addressed similar double tax treaty rules in our alert "Stories from Practice – Share Sales and Double Tax Treaties", available here.

In the case at hand, a partner of a Czech law firm, who was not formally present in the companies in question, was identified as the perpetrator with a greater share in the crime. However, according to the Municipal Court, there was no doubt that he had effectively managed the companies. Furthermore, the fact that the lawyer was probably accountable to another person standing in the background does not change the conclusion. The Municipal Court in Prague described the defendant's position as follows:

"(...) the defendant behaved in the same way as the head of the company, the most senior representative of the company, regardless of whether he is called a director or managing director or chairman of the statutory body. It was the defendant who made the key decisions, who decided the amount of fees and commissions (and with whom these fees and commissions were negotiated), who decided the reimbursements to the service providers, and completely autonomously, immediately, without the need for cooperation or consultation, decided what amount (and from what title) would be invoiced to which company, it was the defendant who made decisions and accepted proposals to invoice financial amounts without any economic justification (...)"

According to the Municipal Court, the second perpetrator was a so-called white horse who established the Cypriot companies, indirectly owned them and ensured their formal management by Cypriot companies specialising, inter alia, in the provision of statutory body services. At the same time, he allowed the aforementioned formal and seemingly disguised relationship between the first perpetrator and the Cypriot entities.

The guilt of both perpetrators was proven largely through extensive wiretapping. The City Court confirmed that the acquisition of the audio recordings in this manner was lawful, even though the wiretapping had originally been carried out in another criminal case in the law office of the first defendant.

The evidence also included findings from tracking the law firm's mail and interviews with witnesses, including Cypriot persons acting as statutory bodies of the companies concerned.

Conclusion

Both defendants were sentenced by the Municipal Court to an unconditional prison sentence of 5 years and a fine of CZK 3 million and CZK 0.5 million, respectively. The High Court upheld the guilty verdict and even increased the sentence for the defendant lawyer to 6 years' imprisonment, increased the fine to CZK 3.65 million and added a 10-year ban on practising law.

In our opinion, this case is significant because Czech individuals have been convicted of tax evasion by foreign companies – in the case of the main perpetrator, without any formal link to the companies.

It is also worth noting that the conviction was not prevented by the fact that the Czech tax authorities did not assess the evaded tax of Cyprus companies. It also looks like from the circumstances that the manner in which the transaction was carried out was not primarily motivated by tax planning, but was rather a gross underestimation and neglect of basic tax obligations.

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

The Municipal Court recalled that the perpetrator of a tax offence may be not only the tax entity directly concerned, or its statutory representative, but anyone who by his or her intentional conduct causes, or together with other persons knowingly participates in, tax evasion.

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The Supreme Administrative Court on the strength of evidence obtained from tax authorities of other EU Member States in the framework of international cooperation

The Supreme Administrative Court (SAC) dismissed the cassation complaint of a commodity trader (complainant) (SAC judgment HERE) against a decision of the Regional Court in Hradec Králové (RC) (RC judgment HERE), by which the RC dismissed the complainant's action against a decision of the Appellate Financial Directorate (AFD) concerning the legal procedure of the tax authorities in the exchange of information within the framework of international cooperation.

The SAC concluded it is unnecessary for the Czech tax administrator to carry out any further investigation or special evidence production of its own just to introduce information obtained from tax authorities from other Member States into the Czech tax proceedings. On the contrary, it may use such documents as any other means of evidence in accordance with the Tax Code[3].

Statement of facts

The tax administrator assessed VAT and imposed a penalty on the complainant for non-compliance with the conditions for the acquisition and supply of goods in the form of a triangular transaction[4] and, furthermore, when goods were delivered to another Member State[5].

3 § 93(1) of Act No. 280/2009 Coll., the Tax Code.
4 § 17 of Act No. 235/2004 Coll. on value added tax
5 § 64 of Act No. 235/2004 Coll. on value added tax

In making its decision, the tax administrator relied, inter alia, on information obtained on the basis of a request for international cooperation pursuant to Article 7 of Council Regulation (EU) No 904/2010 on administrative cooperation and combating fraud in the field of VAT (the Regulation).[6]

Pursuant to the Regulation, the requested authority of another Member State shall communicate all relevant information it obtains or has in its possession, as well as the results of administrative enquiries in the form of reports, statements and any other documents or certified copies or extracts thereof. These may then be used as evidence by the competent authorities of the Member State of the requesting authority in the same way as similar documents provided by another authority of the Member State of the requesting authority.

The complainant objected to the formal procedure of the tax authorities, which, in the complainant's view, merely mechanically adopted the conclusions of the Polish tax administration without examining them in detail or conducting their own investigations or finding of evidence.

The complainant objected both to the procedure for the exchange of information and its use in Czech tax proceedings and to its content.

From the SAC findings

The SAC found no tax authority error the in the exchange of information. However, the SAC corrected the reasoning of the AFD and the RC regarding their use in Czech tax proceedings, but not to the extent that it would render the decision unlawful.

(i) The probative value of information obtained in the context of international cooperation

The SAC concluded that the use of information and documents obtained in the framework of the exchange of information under the Regulation does not necessarily require the Czech tax administrator to carry out any further investigation or special finding of evidence of its own just to introduce the information thus obtained into the Czech tax proceedings. Conversely, the Czech administrator may use these documents in the same manner as any other means of evidence.

However, the SAC stressed that foreign tax authorities cannot merely communicate the result of their own investigation without stating their procedures, the sources of their information or providing related supporting documents. Information from an international request in the form of a mere communication of the result of an investigation will be of limited probative value and will only be used in conjunction with other evidence.

According to the SAC, the tax administrator did not obtain only unverifiable and unsubstantiated information from Poland, but a relatively large amount of specific documents that were part of the public section of the tax file. The complainant, through his representative, consulted and made copies of them. He was able to comment on the documents and, where appropriate, to propose additional evidence.

For part of the findings of the Polish tax administration, additional information and supporting documents attesting to the procedure and conclusions of the Polish authorities were missing. The SAC therefore distinguished the findings as sufficiently and insufficiently substantiated. According to the SAC, the tax authorities could have acted with greater care. Those criticisms do not, however, mean that they committed an error which would render the decision unlawful. Even without the exchange of information with the Polish authorities, the tax authorities concluded that the complainant had failed to prove the supply to Poland.

6 The VAT Regulation regulates the procedures for cooperation and exchange of information between tax authorities from different EU Member States. It does not contain any specific rights for taxable persons. It is directly applicable.

The conclusions of the Polish and Hungarian tax authorities then confirmed that conclusion.

(ii) Proving cross-border supplies

The SAC pointed out that the essential characteristic of an exempt supply to another Member State is its actual, not merely formal, transfer. The burden of proof is then on the taxable person. It is for the taxable person to decide by what means he will bear the burden of proof. Referring to another recent judgment of the SAC (HERE), the Court stated that incomplete CMR documents have a reduced testimonial value. Moreover, even formally perfect documents can be called into question.

In the present case, it was necessary to prove not only that the goods were transported at the Polish border or were destined for Poland, but also that they were actually delivered there. However, none of the proposed evidence proved that fact.

(iii) Presence at the inquiry / failure to interview a witness

The SAC stated that the complainant does not have a general right to be present at an investigation by the tax authorities of another Member State. However, the conclusions regarding the presence of the taxpayer at the examination of a witness conducted abroad apply.[7]

The Czech tax administrator did not attempt to ensure the presence of the complainant at the examination of the witness, which it should have done. This does not preclude the tax authorities or administrative courts from attributing limited probative value to the records or information from such an interview. However, the complainant's failure to attend the interview does not cast a shadow over the exchange of information.

The SAC also dealt with objections to the failure to interview witnesses.

In the case of the foreign witness, the date of the witness's testimony was postponed and the witness failed to appear for the third time. According to the SAC, the tax administrator does not have to grant the request to take a witness statement if the witness is abroad and apparently does not intend to come to the Czech Republic for questioning.

Similarly, according to the SAC, the failure to take the testimony of a customs agency employee who assisted the complainant with the clearance of the goods in the Czech Republic, without being present during the actual transport of the goods from the Czech Republic to Poland, could not logically certify the actual transfer of the goods to another Member State.

The SAC concluded that the tax administration had reached a convincing conclusion that the conditions for triangular trade and the exempt supply of goods to another Member State were not met, since it had relied on relevant and sufficiently substantiated findings, including information from the Polish tax administration.

Information obtained by the Czech tax administration in the context of an international request has relevant evidentiary value to the extent that it is duly substantiated and supported by relevant documents and source information. Otherwise, they have limited probative value and must be supported by further evidence. In the event of an investigation by the tax authorities, we recommend a careful revision of the tax file and a timely proposal to supplement the evidence.

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

The SAC concluded that it is not necessary for the Czech tax administrator to carry out any further investigations or special evidence production of its own just to introduce information obtained from the tax authorities of other Member States into Czech tax proceedings.

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The Supreme Administrative Court on the revaluation of advances made in foreign currency

In this article, we look at an SAC decision[8] in a case of the revaluation of advances made in foreign currency. We informed you about the previous Regional Court ruling earlier HERE.

At the heart of the dispute in the case was the question of whether the taxpayer was obliged to revalue an advance for the acquisition of fixed assets paid to a supplier in a foreign currency as at the balance sheet date. Any exchange difference would affect the tax base in the respective tax period.

The Supreme Administrative Court dismissed the cassation complaint of the Appellate Tax Directorate. It rejected its argument that, in view of the existence of a risk that the transaction would not be carried out, the advances granted must be treated as receivables until the actual realisation of the transaction and, as such, revalued at the balance sheet date.

The Supreme Administrative Court agreed with the interpretation of the Regional Court and the taxpayer that the obligation to revalue assets only makes sense if the exchange rate has an impact on the future value of those assets.

According to the SAC, this is generally not the case for an advance paid for the acquisition of fixed assets, which in essence represents a part of the payment of total purchase price of the asset. In practice, the actual realisation of the advance transaction is still the most common way of concluding a business case. According to the Supreme Administrative Court, the above procedure is thus the most consistent with the fundamental principle of a true and fair view of the accounts.

According to the SAC, the revaluation of advances could only take place in a situation where it was highly probable that the delivery of the assets would not take place and the advance would be returned (an indication could be a delay in delivery or a dispute with the supplier).

The interpretation of the SAC is consistent with the conclusions of the National Accounting Council's Interpretation I-43 on the same topic (we informed you HERE). Some parts of it are quoted by the SAC in the reasoning of the judgment. For the sake of completeness, we would

8 See the judgment of the Supreme Administrative Court of 14 February 2022, no. 4 Afs 170/2021-35.

like to add that the National Accounting Council has recently issued Interpretation I-47, in which it applies the same principles to advances received (we informed you HERE).

Although the impact on the tax base was not material in this case, from a general perspective, this is an important judicial decision with implications for the practice of a number of taxpayers.

We are therefore pleased to have been able to represent the client together with our colleagues at EY in the Regional Court and to formulate the arguments before the SAC.

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

According to the SAC, it would be possible to revalue the advances provided only in a situation where it is highly probable that in a particular case the delivery of the property will not take place and the advance will be returned (an indication could be a delay in delivery or a dispute with the supplier).

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

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Did you know:

- The Ministry of Finance is preparing an amendment to address some of the tax implications of aid to Ukraine?
- MPs approved a law on a pan-European personal pension product?
- The European Commission has proposed the extension of two mechanisms to fight tax fraud?
- MPs approved an amendment of the Excise Duty Act?
- Social security treaties between the Czech Republic and Brazil, Bosnia and Herzegovina and Mongolia respectively were submitted to Parliament?