

Interest paid by tax administrator must correspond to market price of money



15th May 2020

In the recent judgment of the Court of Justice of the European Union in **Case C-13/18 Sole-Mizo**, the CJEU considered the question whether a national procedural rule could provide for interest on unlawfully withheld excess VAT deduction at the level of base rate of the national central bank.

According to the CJEU, excess VAT deduction that is withheld contrary to EU law must bear interest corresponding to the rate the taxpayer could have obtained to borrow the same amount on the open market. A taxpayer who is not itself a credit institution will not have access to loans at the central bank base rate, but only at the standard market interest rates. Unjustified withholding of VAT deductions should therefore bear interest at those rates.

The Czech Tax Code recognizes two types of interest levied upon the tax administrator: interest on unjustified conduct of the tax administrator corresponding to the CNB repo rate increased by 14 percentage points, and interest on retained VAT overpayments; the latter is much lower, amounting to the CNB repo rate increased by only 2 percentage points.

We believe that, although the above judgment dealt with unjustified conduct of the Hungarian tax administrator, the positive conclusions of the Court could be used in the Czech context to apply for higher interest on retained VAT overpayments than that stipulated by law, which is currently very low.

For the sake of completeness, we note that under the amendment to the Tax Code (Document of the Chamber of Deputies No. 841), the amount of both interest rates is expected to change, but the interest on retained VAT overpayments will still remain low (half of the amount of the other interest rate).

We will be happy to discuss this issue with you in more detail.



Stanislav Kryl

stanislav.kryl@cz.ey.com
+420 731 627 021



Jevgenija Bajžíková

jevgenija.bajzikova@cz.ey.com
+420 731 627 061