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Temporary assignment of staff and VAT uncertainty

4th May 2020

Is your company, at the time of coronavirus, considering temporarily assigning idle employees to another company whose business is currently in need of more staff pursuant to Section 43a of the Labor Code? Or have you already done so? In such case, read the following text carefully.

The Court of Justice of the EU (“CJEU”) in its recent judgment C 94/19 San Domenico Vetraria stated that national legislation, under which the secondment of staff carried out in return for only the reimbursement of the related costs is not subject to VAT, contradicts the EU law. In other words, according to the CJEU, the secondment constitutes supply of service for consideration.

Although the Czech VAT Act does not contain any specific provisions in this respect, VAT payers have so far relied on the conclusions of the Chamber of Tax Advisors of the Czech Republic (KDPČR) Coordination Committee 358/22.02.12, according to which reimbursement of an employee’s wage costs and the relevant insurance contribution costs does not constitute consideration for a supply and, therefore, is not subject to VAT. This interpretation clearly contradicts the EU law; the question is, to what extent the conclusions can continue to be used, e.g. with reference to the existing administrative practice. The necessary considerations involve not just the risk on the part of the supplier, but also the possible entitlement to VAT deduction of the recipient.

If this topic is of interest to you, we will be happy to discuss it with you in more detail; together, we can consider the question of whether, in this case, the established administrative practice outweighs the direct binding nature of the case law of the CJEU.



David Kužela

david.kuzela@cz.ey.com
+420 731 627 085



Jevgenija Bajžíková

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