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→ Law

Whistleblowing – what companies may expect in 2022

We have been keeping you up-to-date, in detail, on the preparations initiated in view of implementing the requirements of Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of whistleblowers in the legal environment of the Czech Republic. Given that the Czech Republic failed to adopt general whistleblowing legislation in the form of the Whistleblower Protection Act in 2021, the obligations of companies to establish an internal whistleblowing system and to protect whistleblowers have not, of course, ceased to exist, but have merely been moved up to the new year 2022.

Pavel Koukal
Rödl & Partner Prague

EU Member States should have transposed the European Whistleblowing Directive by 17 December 2021. The Czech Republic has not fulfilled this obligation. The speedy adoption of the Czech Whistleblower Protection Act is thus a mighty challenge to be met early on in 2022, as the European Commission will strongly enforce the transposition obligation against the Member States.

The methodology of the Ministry of Justice

The Ministry of Justice, as the designated guarantor of this agenda, has issued a special methodology to avoid any interpretative doubts regarding the direct effects of the European Directive due to non-compliance with the transposition obligation. This methodology, which we have already informed you about in our News of 18 November 2021, deals in detail with both the direct effects of the EU Directive and the range of entities affected by it, as well as specific whistleblowing issues that need to be addressed immediately before the Whistleblower Protection Act is adopted.

According to the methodological interpretation of the Ministry of Justice, private commercial companies are not directly effected by the Directive as they are already obliged to implement an internal whistleblowing system after 17 December 2021 and to fulfil other related obligations directly on the basis of the Directive.

Nonetheless, that does not mean that commercial companies should not start preparations for the introduction of their own internal reporting system and related internal procedures as soon as possible. This is not only because the new law is expected to be adopted very soon, but also because the Ministry of Justice has already launched a special web portal for whistleblowers, which includes an external whistleblowing system.

This means, among other things, that employees of companies that have not yet implemented an internal whistleblowing system can now also file external whistleblowing reports with the Ministry of Justice.

The Whistleblower Protection Act

In what concerns the new draft Whistleblower Protection Act, it may be reasonably assumed that it will be very similar in content to the draft law that was already under discussion last year but which was not passed. In view of this, we can therefore also expect a similar set of parameters and requirements for the internal whistleblowing system that commercial companies will be required to put in place, allowing their employees and other au-

thorised persons (suppliers of goods and services, temporary workers, trainees and interns) to be able to report infringements primarily through this internal channel.

In this respect, the only open question is whether the obligation to introduce an internal reporting system in the new draft law will also apply to all commercial companies with more than 25 employees, or whether it will be based on the 50-employee threshold of the European Directive.

On the other hand, it is clear that the resource sharing concept for internal reporting in the context of a corporate group structure, which is generally allowed under the Directive, will apply exclusively to companies (members of a group) with up to 249 employees. The European Commission has already issued several opinions stating that no exceptions or broader interpretations will be allowed in this respect.

Our recommendations

Given that significant pressure for the adoption of the Whistleblower Protection Act can be expected in the near future, we recommend you not wait for the new law to come into force. It would be wise to already now start preparing the gradual introduction of an internal whistleblowing system.

As we have already informed you, the introduction of an internal whistleblowing system involves a number of very complex issues which must always be appropriately taken into account when setting up the system. Not only are the specific forms and methods of internal reporting and the internal process for investigating and handling whistleblowing to be chosen, but also a number of organisational, technical and legal issues, including the security and documentation requirements of the internal reporting system, need to be comprehensively addressed.

In addition thereto, a number of related requirements for the processing and protection of personal data under the GDPR must be addressed and, of course, labour law implications cannot be overlooked. Our Law Firm is happy to provide you with all the support, experience and qualified professionals you may need.

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→ Taxes

New OECD Transfer Pricing Guidelines

The OECD has just issued another update of the OECD Transfer Pricing Guidelines to respond to the current challenges in transfer pricing.

Petr Tomeš, Martin Koldinský
Rödl & Partner Prague

At the outset, let us note that the OECD Transfer Pricing Guidelines constitute a fundamental document that influences not only the Czech financial administration's approach to transfer pricing. The just released updated version (dated 20 January 2022) has expanded the original version from 2017 with parts or chapters concerning the profit split method, hard to value intangible assets and intragroup financing. In fact, these are not major methodological innovations on the part of the OECD. They are additions to previously separately issued guidance documents, which, however, will carry more weight in the form of a guideline. The Czech financial administration also often refers to these Guidelines in its methodological documents.

The profit split method

In what concerns the profit split method, the OECD incorporates the already separately issued June 2018 Revised Guidance on the Application of the Transactional Profit Split Method, which is based on Action Plan 10 of the BEPS initiative. This updates Chapter II of the Guidelines and adds a new Annex to the Chapter. The basic principles of the

method remain the same as in the previous revision, but practical recommendations on how and in which cases to apply the method have been added, including a list of practical examples of how to apply the method. Newly specified is the definition of the profits that may be distributed using the method and the use of the factors on the basis of which the profits are distributed.

Intangible assets that are difficult to value

Where intangible assets are concerned, the currently issued version of the OECD Guidelines incorporates a separate document issued in 2018. This part of the Guidelines is aimed primarily at tax administrators and seeks to provide them with guidance on how to approach the assessment of transactions involving complex intangible assets. The purpose is to ensure a consistent and transparent approach. The OECD thus aims to ensure that tax administrations in all Member States view complex intangible assets in the same way as much as possible and that they follow the same approach to their assessment. Should this not be the case, transactions with complex intangible assets could result in double taxation of income.

Intra-group financing

When it comes to intra-group financing, the OECD Guidelines essentially incorporate The Transfer Pricing Guidance on Financial Transactions, a separate document from 2020, which for the first time generated a comprehensive OECD view on intra-group financing. The document is now incorporated as an entirely new chapter (Chapter X). As the methodology involved has been around since 2020, this chapter does not bring any practical changes to the view on intra-group financing. Crucially, financing will continue to look at whether the interest rate reflects the riskiness of the borrower (in terms of its ability to repay its debts) and also whether it reflects the time and other characteristics of the financial instrument on which the interest is paid. It is also important that all factors that affect the interest rate should be analysed on an ongoing basis and, in the event of significant changes, the interest rate should be recalculated. Related persons are placed under a greater obligation in this respect and are in fact bound rather than just advised to reflect such changes and recalculate interest rates.

In conclusion, we may say that the newly released OECD Transfer Pricing Guidelines do not bring any fundamental changes, as they basically only incorporate previously issued methodological documents created by the OECD. However, it is certainly a good thing that the OECD clearly demonstrates with the new version of the Guidelines that it is trying to respond to current trends and that this document should still function as the most basic methodological document not only for OECD member states.

From a Czech perspective, it is very important that the Czech financial administration also follows the methodology described in the Guidelines, and that the representatives of Czech companies carrying out transactions with related parties should be sure that they have their methodology set in accordance with the principles set out in the Guidelines.

If you would like to check whether your methodology is on track, please do not hesitate to contact our transfer pricing experts.

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→ Taxes

New international meal allowance rates for 2022

The Ministry of Finance has issued a new decree on international meal allowance rates for 2022.

Where less exotic countries are concerned, the following adjustments have been made:

- Croatia (from EUR 35/day to EUR 40/day)
- France (from EUR 45/day to EUR 50/day)
- Georgia (from EUR 35/day to EUR 40/day)
- Liechtenstein (from EUR 60/day to EUR 65/day)
- Hungary (from EUR 35/day to EUR 40/day)
- Romania (from EUR 35/day to EUR 40/day)

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→ Taxes

Two papers by the Coordination Committee from the end of 2021

The Coordination Committee and the Chamber of Tax Advisors of the Czech Republic met at the end of 2021 to approve, without any reservations, two papers on VAT. The objective of the first was to unify the interpretation of European case law in relation to domestic practice concerning the provision of back payments to health insurance companies by pharmaceutical companies. The second aimed to clarify how to apply VAT to regular compensation for the right of superficies.

Michael Pleva, Klára Sauerová,
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Rödl & Partner Prague

586/15.09.21 Adjustment of the tax base for back payments to health insurance companies

Indirect bonuses and tax base adjustments

At the meeting of the Coordination Committee, a paper was discussed regarding the additional adjustment of the tax base for importers (distributors of pharmaceuticals) when providing a return bonus to health insurance companies. The bonus is usually paid when the annual cost of a drug exceeds the limit of the annual cost of the drug still covered by the health insurance company.

The pharmaceutical company (drug manufacturer) negotiates the return bonus, if any, with the health insurance company with an aim to promote the sales of a given product, and the distributor pays out the bonus. Since the contract is not concluded directly between the distributor and the health insurance company, the question then arises whether the distributor can make a tax base adjustment when the bonus is paid.

In its paper, the General Financial Directorate confirmed the submitters' view that the distributor may make a tax base adjustment when paying the return bonus to the health insurance company as it pays and economically bears the cost. However, the GFD adds the condition that the distributor must also be named in the contract between the health insurance company and the holder of the marketing registration or he must be in a contractual relationship with the drug manu-

The method of applying VAT does not change over the years depending on the change of the building.

facturer. Even though this specific situation is linked to the pharmaceutical environment, we believe that the conclusions may also be applied to other similar cases. At the same time, it is important to note that tax authorities adopted rather formal approach in these cases, as they insist that contractual arrangements be in place at all times that would require distributors to pay bonuses to third parties.

589/24.11.21 VAT and the right of superficies

Compensation for the right of superficies is defined as the money paid the builder to the owner for the establishment of the right to build on the land. The amount of these payments may be fixed or variable depending on various criteria. The VAT Act contains a legal fiction that the right of superficies is considered to be an asset, while the Civil Code further specifies it as a real right in rem and an immovable property. This may lead to the assumption that it should be taxed at the outset (on the date the property is handed over to the acquirer for use), based on the sum of future compensation for the right of superficies.

Compensation for the right of superficies cannot be precisely determined in advance (for example, due to indexation) and the VAT Act allows for tax base adjustments only 3 years after the end of the tax year in which the VAT liability arose. Thus, in practice, it is not possible to adjust the tax base for the entire period that the right of superficies remains in place. Therefore, subject to the mutual agreement of both parties, the tax compensation for the right of superficies may be taxed on an ongoing basis.

When it comes to such taxation of compensation for the right of superficies, the method of taxation will be determined in view of the condition of the land or building on the date of registration in the Land Register, which does not change over time. The method of taxation of compensation for the right of superficies will consequently remain the same over the applicable years.

If the owner is a taxable person but not a VAT payer, this does not prevent the ongoing taxation of compensation for the right of superficies. The owner includes the compensation for the right of superficies in the turnover for VAT registration purposes and, when it exceeds the statutory turnover threshold, the owner registers for tax and starts to tax the compensation for the right of superficies VAT purposes.

If you are interested in the above, please do not hesitate to contact your tax advisor or the contacts below.

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→ Taxes

Domestic meal allowance for 2022

A decree issued by the Ministry of Labour and Social Affairs sets new limits on domestic meal allowances for 2022, the rates of basic compensation for the use of road motor vehicles and the average price of fuel to be used in particular for the purpose of calculating compensation for the use of one's own car for business trips.

Where cars are concerned, the basic allowance is increased to CZK 4.70/km and the fuel allowance is set at CZK 37.10/litre for 95 octane petrol, CZK 36.10/litre for diesel and CZK 4.10/kWh for electricity.

The meal allowance ranges from CZK 99 to CZK 118 for a business trip of 5 to 12 hours.

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→ Taxes

What is the most tax-efficient meal allowance for 2022?

A meal allowance during working hours is one of the most popular employee benefits Employers currently have several options, as meal allowances can be provided either in-kind (paper or electronic meal vouchers, in-house catering facilities) or in cash (flat-rate meal voucher). Putting aside the specifics of meal allowances provided in the form of the employer's own catering facility, we would like to focus on meal vouchers and flat-rate meal vouchers. What is the most favourable meal allowance to be provided in 2022?

Josef Krátký, Markéta Čonková
Rödl & Partner Prague

At the end of the year, the Ministry of Labour and Social Affairs adjusted by way of a decree[1] the amount and limits of the domestic meal allowance that will apply the following year. The decree regulates the meal allowances due to employees during a business trip. We provide an overview of the newly applicable meal allowance rates in the table below.

Length of business trip	Corporate	State
5 to 12 hours	CZK 99	CZK 99–118
Longer than 12 hours, but no longer than 18 hours	CZK 151	CZK 151–182
Longer than 18 hours	CZK 237	CZK 237–283

In addition to domestic travel allowances, meal vouchers and flat-rate meal vouchers also affect the amount of the meal allowance. Now how's that? Here's a simple example:

An employer has decided to provide a meal allowance of CZK 150 to its employees. What are the tax implications for the employer on the one hand and the employee on the other?

First, we'll look at the tax implications for the employee.

[1]) Decree 511/2021 Sb. of 15 December 2021 on the change in the rate of basic compensation for the use of road motor vehicles and meal allowances and on the determination of the average price of fuel for the purpose of providing travel allowances.

Employee

	Exempt	Added	Net income
Meal voucher	CZK 150	CZK 0	CZK 150
Flat-rate meal voucher	CZK 82.60	CZK 67.40	CZK 82.60 + (CZK 67.40 – tax, SS, HI) = CZK 109.69

According to the Income Tax Act, tax benefits apply only to one meal voucher provided per shift worked. The entire value of the meal voucher is exempt for the employee, regardless of its value. The meal voucher is also not subject to social security (SS) and health insurance contributions (HI). In our example, the entire CZK 150 is therefore exempt and constitutes the employee's net income.

For the employee, the flat-rate meal voucher they get is exempt from income tax up to 70% of the upper limit of the domestic meal allowance[2]. The upper limit of the meal allowance is CZK 118 in 2022, 70% of this amount corresponds to CZK 82.60. This amount is not subject to income tax or social security and health insurance contributions. Any value of the meal allowance that exceeds the 70% limit is, however, subject to contributions, as shown in the table above. It is clear from the above that tax-wise, the employee is better off if they get a meal voucher.

In 2022, the best meal voucher is the CZK 150 one.

And what about the employer?

Employer

	Tax expense	Tax expense plus employee contributions
Meal voucher	55% of CZK 150 = CZK 82.50	CZK 82.50
Flat-rate meal voucher	CZK 150.00	CZK 150 + social security and health insurance contributions for the employee out of CZK 67.40 = CZK 172.78

[2]) This is a domestic meal allowance payable to an employee during a business trip lasting between 5 and 12 hours during a working day.

Things are a bit more complicated for the employer. The tax deductible expense for the employer is set at 55% of the value of the meal voucher. The amount of the tax deductible expense is also limited to an amount corresponding to 70% of the upper limit of the domestic meal allowance (see above). Going back to the example we gave you, the employer's tax deductible expense is 55% of the total nominal value of the CZK 150 meal voucher, i.e. CZK 82.50. So, for the employer, the best meal voucher for 2022 is the CZK 150 one for which the employer can claim the maximum tax deductible expense. The remaining value of the meal voucher of CZK 67.50 is a non-tax deductible expense for the employer. The employer pays 19% on this amount in corporate tax.

Where flat-rate meal vouchers are concerned, the employer can claim the entire amount of the allowance as a tax deductible expense. Looking back at our example, the employer can deduct the full CZK 150 as a tax deductible expense. And let's not forget that it also pays social security and health insurance contributions for the employee on the amount that exceeds the exemption. These contributions are also a tax deductible for the employer. In total, the employer will be able to claim CZK 172.78 as a tax deductible expense after providing the CZK 150 flat-rate meal voucher.

The employer may combine flat-rate meal vouchers and meal vouchers. Some employees may receive a meal voucher and others a flat-rate meal voucher. An employee may even receive a meal voucher on some days and a flat-rate meal voucher on others. However, we recommend that the rules for the provision of meal allowances are laid down in the employer's internal regulations.

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→ Taxes

Have you violated budgetary disciplinary rules and are you asking for a waiver?

The General Financial Directorate has issued Instruction No. GFD-D-52, which sets out uniform rules for assessing applications for waiver of levies for breach of budgetary discipline or penalties for delay in payment of such levies.

Instruction No. GFD-D-52 is of particular interest to recipients of subsidies provided from the budget of territorial self-government units (regions, cities, municipalities) or Regional Councils of Cohesion Regions who would commit a breach of budgetary discipline. Subsequently, the assessed levy or penalty may be waived by the tax authority at the request of the taxpayer, and the Instruction aims to ensure identical decision-making on the requests of taxpayers in identical or similar cases.

The Instruction defines specific criteria, which are, in particular, objective reasons which are completely outside the hands of the recipient of the subsidy, the adverse financial situation of the natural person, marginal misconduct and, finally, cases of late payment of withheld funds. If the taxpayer meets any of these criteria, there is a very real chance that at least part of the levy or penalty will be waived.

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→ Taxes

Notification to the tax authority of the acquisition of funds for meeting one's own housing needs

The amending bill to the Income Tax Act that took effect as of 1 January 2021 brought, among other things, a tightening of the conditions for exemption of income from the sale of real estate property in cases where such exemption was conditional on the use of the acquired funds for meeting one's own housing needs. What all needs to be fulfilled in order for such sale proceeds obtained in 2021 to be exempt from personal income tax and what role does the notification of receipt of such funds play in the exemption?

Josef Krátký, Dominika Havrdová
Rödl Partner Prague

The Income Tax Act makes it possible to exempt from income tax income obtained by an individual from the sale of real estate properties, provided that the following type of income is involved:

- Income from the sale of a family home and associated land or a unit that does not include non-residential space other than a garage, cellar or storage room, and associated land, if the seller has resided in the property immediately prior to the sale for at least 2 years;
- Income from the sale of a real estate property not mentioned above (other real estate property) if the period between the acquisition of ownership title and the sale exceeds 10 years. In the case of the sale of real estate property acquired before 2021, it is sufficient if this period exceeds 5 years.

However, it is possible to exempt income from the sale of real estate property even before the above-

mentioned time-related conditions are met, i.e. even if the taxpayer has resided in the real estate property for less than 2 years or has owned a real estate property classified as other real estate property for less than 10 years. This exemption is possible if the taxpayer uses the proceeds from the sale to meet the taxpayer's own housing needs. For the purposes of the exemption in this case, two basic conditions must be met, namely:

If the taxpayer fails to submit the notification within the time limit for filing a tax return, the taxpayer cannot claim the income tax exemption.

- The proceeds obtained were used to meet the taxpayer's own housing needs;
- The taxpayer submitted a notification of the acquisition of the funds concerned to the tax authorities within the time limit for filing a tax return in respect of the tax period in which the funds were acquired.

Both of the two basic conditions mentioned above must be fulfilled simultaneously; the mere expenditure of funds to meet one's own housing needs is not sufficient for the purposes of the exemption. The taxpayer is also obliged to notify the tax authorities of this fact within the time limit for filing a tax return. If the taxpayer fails to notify the tax authorities within the time limit for filing a tax return, the taxpayer cannot claim the income tax exemption. The time limit for filing a tax return for the 2021 tax year, and also for filing a notice of exempt income from the sale of real property, is 1 April 2022, or 2 May 2022 (if the return is filed electronically), or 1 July 2022 (if the return is filed by a tax advisor or attorney). The tax administration recommends using distance methods of communication with the tax authority for filing the notice, in particular through the MOJE daně (MY Taxes) portal, where the form of a "general document" can be used for filing the notice.

In addition to the fulfilment of the above-described basic conditions, the time-related condition must be met as well. The condition of using the funds obtained to meet one's own housing needs is deemed fulfilled, for the purposes of the exemption from income tax, if the taxpayer:

- Uses the obtained funds for meeting the taxpayer's own housing needs no later than by the end of the tax period following the tax period in which the taxpayer obtained the funds, or
- If the taxpayer uses an amount corresponding to the obtained funds for meeting the taxpayer's own housing needs before obtaining the actual proceeds from the sale of the real estate property, but no earlier than in the course of the tax period in which the taxpayer obtained the funds.

The above may be stated in simplified terms as follows: The funds for meeting one's own housing needs must be expended on one's own housing no earlier than one year before, and no later than one year after, obtaining the relevant income from the sale of a real estate property.

If the above conditions for exemption are not met, the income from the sale is taxed as other income under § 10 of the Income Tax Act in the tax period immediately following the period in which the taxpayer received the funds.

The obligation to notify the tax authorities of the acquisition of the funds is also a condition for being eligible to claim the exemption from personal income tax in the case of an exemption relating to compensation for vacating an apartment.

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→ Taxes

Remission of administrative fees

The outgoing Minister of Finance has taken the opportunity provided by the Tax Code to waive, from 25 November 2021 to 31 December 2021, administrative fees associated with the receipt of an application for:

- Waiver of the penalty for late tax claim
- Waiver of interest on late payment or interest on the amount overdue
- Waiver of the penalty for failure to submit a control statement
- Authorisation to postpone the payment of tax, advance payment of tax or to spread the payment of tax in instalments
- Repayment of taxes on importation or for the remission of customs arrears
- Authorisation of a tax or duty credit

By waiving these fees, the Minister of Finance is responding to the impact of the SARS-CoV-2 pandemic, particularly in light of the filing deadlines for October and November 2021 VAT returns and the on-going state of emergency. There is no need to demonstrate a link to the impact of the spread of SARS-CoV-2 in order for the fee to be waived. Relevant in 2022 are the three waivers first mentioned above.

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→ Taxes

The Supreme Administrative Court has set yet another threshold for the tax authority

At the end of last year, the Supreme Administrative Court issued a long-awaited judgment in the case of Eli Lilly ČR, which concerned the provision of marketing services to a foreign company from the same group in the field of the distribution of pharmaceuticals in the Czech Republic.

Jakub Šotník, Michal Gola
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Eli Lilly ČR, as a distributor of pharmaceuticals, purchased pharmaceuticals from Swiss-based Eli Lilly Export S.A. and supplied them to hospitals and wholesale distributors in the Czech Republic. At the same time, it received marketing payments from Eli Lilly Export S.A., which it treated as a supply of services with a place of supply outside the country and on which it therefore did not charge VAT.

The tax authority, however, concluded that the marketing services were an integral part of the main supply provided by Eli Lilly ČR, i.e. the distribution (sale) of pharmaceuticals in the Czech Republic, and that, therefore, under the VAT Act, the payments for these services should also have been included in the tax base. The tax authority thus assessed VAT on Eli Lilly ČR for the provision of marketing services and also notified it of its obligation to pay a penalty on the tax assessed.

Eli Lilly ČR disagreed with the tax authority's conclusion and the matter ended up before the Supreme Administrative Court. The core of the dispute was, first of all, the identification of the actual recipient of the marketing services provided by Eli Lilly ČR. In this respect, the Supreme Administrative Court concluded that the recipient of the marketing services was Swiss-based Eli Lilly

Export S.A. This is because the company commissioned and benefited from the provision of the services in question and had an interest in the final sale of the pharmaceuticals which it itself sold to Eli Lilly ČR. The fact that Eli Lilly Export S.A. has a place of business abroad does not in any way preclude it from exporting goods to the Czech Republic and it is therefore entirely within the scope of its business to arrange for the promotion of its goods by Eli Lilly ČR.

The second key issue was whether the distribution of pharmaceuticals and the marketing services provided by Eli Lilly ČR constituted a single supply or different supplies for VAT purposes. The Supreme Administrative Court assumed that each supply was provided to a different person, i.e. the marketing services were provided to Eli Lilly Export S.A. and the pharmaceuticals were distributed to Eli Lilly ČR's direct customers, i.e. the purchasers of the pharmaceuticals. Here, the Supreme Administrative Court referred to the extensive case-law of the Court of Justice of the European Union, according to which the tax base must not exceed the total consideration received from the final customer, and also how the 'average customer' perceives the unity of the supply.

If these conclusions are applied to Eli Lilly ČR and if the regulated price of pharmaceuticals on the Czech market is taken into account, it is clear that the tax base thus determined cannot include payments for marketing services, since the tax base would exceed the amount of the consideration which Eli Lilly ČR collects from the customer (the purchaser of the pharmaceuticals). Moreover, the 'average customer' may not even be aware of the marketing activities in question or of the payments for those services by Eli Lilly Export S.A. The Supreme Administrative Court therefore concluded that the distribution of pharmaceuticals and the provision of marketing services by Eli Lilly CR constitute different supplies and not a single supply. Thus, only the distribution of pharmaceuticals could be included in the VAT base.

Even though the above judgment is to some extent ground breaking and undoubtedly represents a major milestone for pharmaceutical companies in tax proceedings, it remains the case that the criterion 'the tax base may not exceed the total consideration received from the final customer' cannot be applied absolutely. The case described above concerns the regulated pharmaceutical market, where, among other things, price ceilings are set by law. Therefore, the above criterion cannot be applied without further ado to any transactions within a group which equalises the profitability of the Czech companies.

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→ Taxes

Real estate tax return – transactions at the turn of the year

Regular real estate tax returns for 2022 had to be filed by 31 January 2022. Unlike 2021, the Ministry of Finance did not extend the deadline. Nonetheless, the Real Estate Tax Act itself takes into account specific situations that may arise in practice and makes it possible for owners to file the return within an extended deadline.

Such a situation occurs when an owner submits an application for the entry of his ownership right into the land register in 2021 (during December 2021, for example), but the Land Registry fails to process it by the end of the year and records it into the land register the following year (during January 2022, for example). In standard cases, the entry in the land register has legal effects on the date of the application for entry.

In this case, the deadline for filing the real estate tax return is set at the end of the third calendar month following the month in which the entry of the ownership right in the land register was registered. Thus, if, for example, an owner submitted an application for the entry of his ownership right into the land register on 14 December 2021, but the entry was not made until January 2022 (with legal effects on 14 December 2021), the new owner is already obliged to file a 2022 real estate tax return listing the newly acquired real estate. The owner has time until 30 April 2022 to file a 2022 real estate tax return.

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→ Taxes

Proof of on-line advertising

The Supreme Administrative Court requires a screenshot to prove that an advertisement has been placed on the Internet.

Jakub Šotník, Adam Macek
Rödl Partner Prague

Advertising services are a popular item often included by taxpayers in their tax deductible expenses. In doing so, they need to keep in mind that they have to prove this item in case of a tax audit. Tax authorities often set a very high standard of proof and if the taxpayer's documentation is feeble, they are then in grave need of proof as it is often very complicated for them to prove advertising. In its recent judgment, the Supreme Administrative Court addressed the issue of proving the placement of an advertisement on the Internet. The question at issue is whether the taxpayer has proved that it actually received the advertising to the extent claimed and therefore whether the advertising is tax deductible.

The best possible way of proving advertising services on the internet is a screenshot..

In the present case, the supplier provided the taxpayer with advertising on the Internet. Specifically, the service was based on the fact that the website was displayed on the first pages of a search engine with a link stating that it was a paid advertisement and that Google charged a certain amount for each click on the site; the

amount depending on the number of clicks. In addition, there were services consisting in optimising the client's website so that the most common search engines ranked the client's page first. And then there was also a cookie-based remarketing service. The tax authorities wondered whether the ad had actually been placed on the Internet and, following a tax audit, declined to recognise the taxpayer's internet advertising costs on the grounds that the taxpayer failed to sufficiently demonstrate any on-line advertising.

In this context, the Supreme Administrative Court first commented on the evidence submitted by the taxpayer. It produced statements that a tax entity received from its advertising supplier. However, according to the tax authority and the administrative courts, these did not prove the actual receipt of the advertisement. In particular, the taxpayer was criticised for the fact that the statements submitted did indeed establish the alleged service provided by Google AdWords (number of keyword searches, number of times the website was opened, price of the service), but that they were simple data records which, in themselves, could not prove the actual receipt of the advertisement, since they could have been produced subsequently, even if the service had not actually taken place.

The taxpayer further suggested that the tax authority should also examine the Google AdWords administrator account from which the advertising was provided. The Supreme Administrative Court acknowledged that the account could also prove receipt of the transaction. However, in the present case, the taxpayer failed to identify sufficiently the means of proof, which makes it impossible to assess whether it would be capable of proving the actual execution of the advertisement.

Thus, according to the Supreme Administrative Court, it was necessary for the taxpayer to prove the receipt of the advertisement by means of screenshots which capture the advertisement directly on the Google internet search engine. Although the taxpayer attached the images to the individual tax documents, all the images were identical and always contained the same information, which, according to the tax authority and the Supreme Administrative Court, undermined their credibility. Therefore, the Supreme Administrative Court concluded that the only way to verify such online advertising is a screenshot in which the advertisement is shown.

For tax entities, this means that they should regularly check and document the receipt of the advertisement. Although such conduct may in practice come across as excessively administratively demanding and very far from reality, the Supreme Administrative Court will not budge in this regard. The Court even went as far as adding that any person acting with due care should check whether the supply has been made to them and, if necessary, choose (or require from the supplier) a different method of documentation. Having failed to do so, the Supreme Administrative Court held that the tax entity could not legitimately rely on the tax authorities to assess their advertising costs as tax deductible.

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→ Taxes

End of VAT waiver on respirators and energy

Last year, the Minister of Finance issued a number of decisions on VAT waivers, on which we reported in our previous Newsletters.

The VAT wavier on filtering respirators and class FFP2 and above respirators, effective from 3 February 2021, has been consistently extended. Due to current sufficient supplies on the Czech market and sufficient production capacities, there is no longer a risk of a sharp increase in respirator prices. Therefore, the government decided not to extend the VAT waiver. As of 1 January 2022, filtering respirators and respirators are taxed at the basic VAT rate of 21%.

Notwithstanding the above said, the VAT waiver remains in force when it comes to medical devices for testing COVID 19 diseases and vaccines.

The VAT waiver for electricity and gas will also not be extended. Electricity and gas are subject to the standard VAT rate of 21% from the new year, both on advance payments and on any bills. A reduction in the VAT rate for these commodities is under negotiation. A reduction in the VAT rate to 5% is more likely than zero-rating.

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→ Taxes

CJEU: Overpriced advertising is not a reason to deny VAT deduction

The Court of Justice of the European Union has again ruled in favour of taxpayers. In its judgment in Case C-334/20 Amper Metal Kft., the Court rejected the tax authority's view that a disproportionately high advertising price and failure to prove an increase in sales could lead to a denial of the right to deduct VAT.

Michael Pleva, Paulína Kesziová
Rödl Partner Prague

The Hungarian tax authority denied the company the right to deduct VAT on the advertising provided, which consisted of placing advertisements on racing cars during the Hungarian motor racing championship.

The tax authority found the amount of the costs to be disproportionately high and that sticking the company's business name on the racing cars could not have led to an increase in the company's turnover. The Hungarian tax authority considered the advertising services unnecessary, especially in view of the company's customers, which were paper manufacturers, mills and other industrial enterprises. According to the tax authority, it was unlikely that their business decisions would be influenced by the stickers on the racing cars and therefore the company was not entitled to the tax deduction.

The Court rejected such an argument and recalled that, with exceptions, the tax base is the amount agreed between the parties and not the reference or market value determined by the tax authorities. The arm's length price may be relevant only in the case of related parties, which was not the case here.

The Court also rejected the tax authority's claim that entitlement to the deduction

had to be conditional on an increase in the company's turnover. The CJEU also emphasised that, apart from expenditure on luxury goods, entertainment or hospitality, under the Directive, the right to deduct VAT is preserved if the supply is directly related to taxable outputs or to the overall economic activity of the company. It is for the taxable person to prove whether the advertising costs were part of the overheads or for the national court to consider that; in any event, disproportionately high costs cannot lead to a denial of the right to deduct VAT.

Disproportionate cost of advertising cannot lead to denial of VAT deduction.

Given the current approach adopted by tax authorities, the CJEU's conclusions may be very useful in practice. In the context of tax audits, tax authorities often question the tax deductibility of marketing costs, both from the perspective of corporate income tax and VAT deduction, mainly due to disproportionately high prices. As the CJEU has confirmed, the price alone can never lead to this conclusion. Taxpayers must, however, always be able to prove the actual supply of the service, a direct link to the company's revenue or at least the inclusion of the costs in the company's overheads.

If necessary, we will of course be happy to assist you in defending the tax deductibility of your costs.

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→ Economy

Inter-ministerial comment procedures are soon to be initiated as regards the new Act on Accounting

It is anticipated that, in March 2022, inter-ministerial comment procedures will be initiated as regards the new Act on Accounting that should become effective in January 2024.

Ladislav Čížek
Rödl Partner Prague

The draft of the completely new Act on Accounting is currently being subjected to intra-group comment procedures from the work group at the Ministry of Finance of the Czech Republic. This draft provides for and proposes a number of (r)evolutionary solutions. Following the inter-ministerial comment procedures, these proposed changes may still be modified. To the best of our knowledge, the following can be expected:

– Technical improvements and betterments – technical improvements and betterments will be deemed to be such changes and alterations to be made to depreciated assets as will result in changing their purpose and technical parameters or in broadening their utilisation, as long as the amounts spent during the reporting period will amount to a certain percentage of the original value of the assets in question and the value defined for the recognition of fixed assets. The condition of reaching a certain percentage of the original value of the assets is a completely new concept

that does not feature in International Accounting Standards. The reporting entity itself defines the percentage under its internal guideline. However, the Income Taxes Act will determine the cap for this percentage up to which these expenses will be treated as tax-deductible.

- The concept of the closing financial statements (or the opening balance sheet) will no longer be applied during transformations – newly, the current period will no longer be closed and the new accounting period will no longer will be opened as at the effective date of the transformation. Instead, an entity that is affected by the transformation and not dissolved as a result of the transformation will continue to keep its accounting records from the effective date onwards and reflect the change resulting from the transformation (i.e. the transfer of assets). In addition, its accounting period will continue to run. Thanks to this change, transformations could, inter alia, be performed during the accounting period (and not primarily as at 1 January) and without the need to spend additional costs on the preparation and audit of the financial statements.

- The concept of the so-called functional currency that has been already discussed in the past will be introduced. Such functional currency may be, however, only the USA dollar, euro or British pound. To minimize an entity's administrative burden, it will be possible to complete the corporate income tax return in the selected functional currency and to translate only the final income tax obligation into CZK.

- Newly, an exemption from consolidation will be introduced for groups that qualify as mid-sized consolidation groups. A group (a consolidation group) that does not exceed 2 of the thresholds for a consolidated base (the aggregate amount of turnover does not exceed CZK 1 billion, the aggregate balance sheet total does not exceed CZK 0.5 billion net and the aggregate average number of employees does not exceed 250) will be exempt from the duty to prepare consolidated financial statements. However, the exemption can also be based merely on the total sum (of the non-consolidated values). In such case, the limits for the aggregate amount of turnover and balance sheet total will be increased by 20%.

- The value of long-term receivables, long-term payables and provisions will have to be reduced to the current value.

- In addition, some definitions in the area of valuation will be abandoned. The so-called costs of production (used for the valuation of internally produced inventories) will be replaced by a broader definition of the acquisition cost. The so-called reproduction cost will be included in the fair value.

Did you find these changes interesting? We did. Thus, for a number of years, we have been diligent and have been closely monitoring and assessing the preparation process of this new Act on Accounting. As soon as the approved wording of the new Act on Accounting is available, we will be more than happy to prepare training on the changes introduced by this new act. However, should you already have any questions, do not hesitate to contact us and we will gladly assist you in preparing for the new Act on Accounting.

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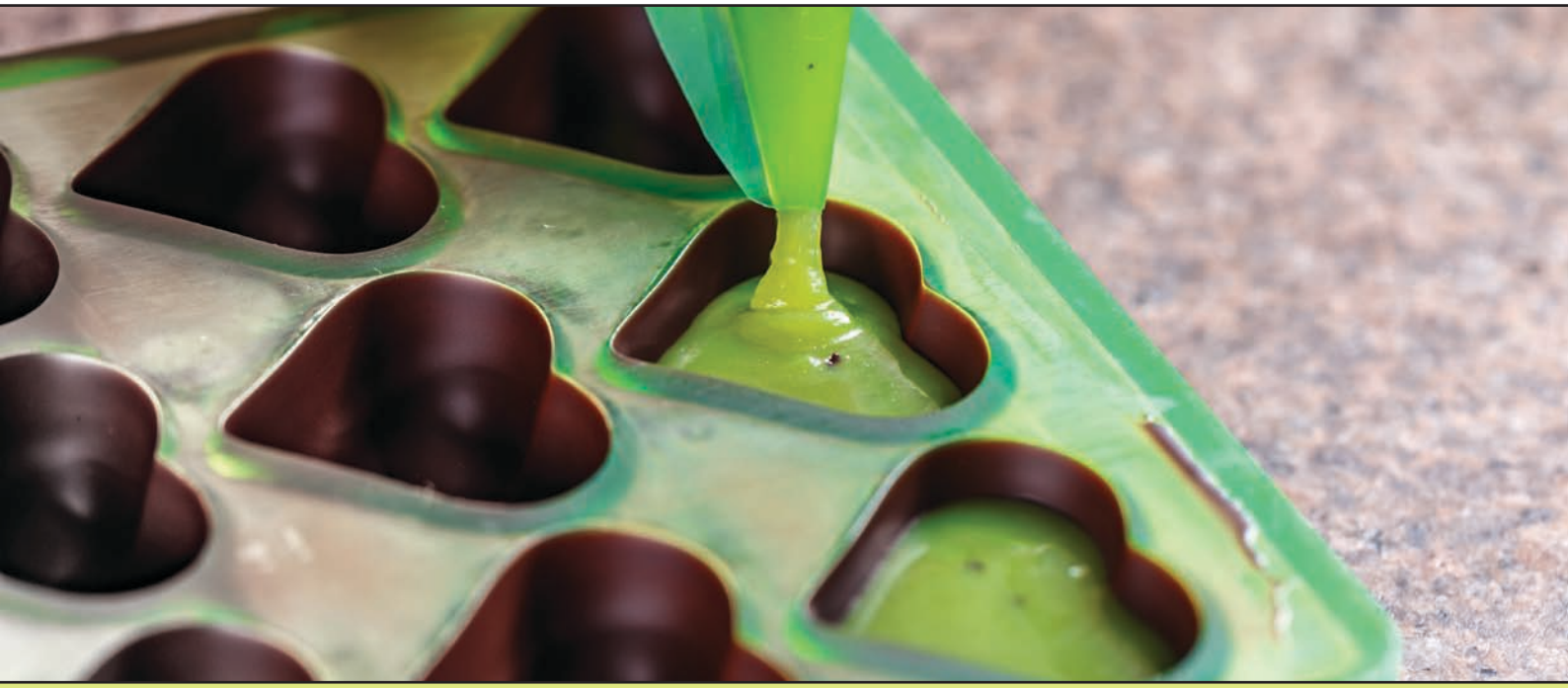

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