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Information on Law, Taxes and Economics in the Czech Republic

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Czech Law Firm of The Year 2022

Czech Law Firm of the Year 2012–2022

Content:

→ Law

Teleworking under new framework agreements

The Czech Republic has concluded two new framework agreements with Germany and Austria, effective from 1 March 2023. They concern cross-border teleworking, so-called telework, in accordance with Article 16(1) of Regulation (EC) No 883/2004, which allows for a derogation in the interest of certain categories of persons if the competent institutions of the contracting (Member) States agree.

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Framework agreements apply only to workers who meet the following conditions:
- They have only one employer,
- They telework (usually from home), which means that their place of residence from which they usually telework is in the Czech Republic and the employer's registered office/business location from which they usually telework is in Germany/Austria OR their place of residence from which they usually telework is in Germany/Austria and the employer's registered office/business location from which they usually telework is in the Czech Republic,
- Teleworking is equivalent to working at the employer's registered office/business location,
- Information technology is used for telework,
- Telework in the country of residence is between 25% and 40% of full-time employment,
- It is in their interest to be exempted.

However, framework agreements do not apply to the following persons:
- Self-employed persons who telework from home,
- Workers who are engaged in other employment or who are self-employed,
- Persons in a cross-border situation involving another Member State.

The decisive factor is the extent to which the worker teleworks in the State of residence.

a) A worker who teleworks between 25% and 40% in the State of residence and who is otherwise subject to the legislation of the Member State of residence, but in whose interest it is also to be subject to the legislation of the State of establishment of the employer, may apply for a derogation. Provided that the worker meets the relevant conditions of the Framework Agreement, he or she will be legally entitled to an exemption, which is a revolutionary development.

b) A worker who teleworks less than 25% in the State of residence will automatically be subject to the law of the State in which the employer is established.

c) A worker who teleworks more than 40% in the State of residence will not be covered by the Framework Agreements. However, such an employee may also apply for an exemption, but unlike a worker under (a) above, he or she has no legal right to an exemption even if the conditions are met.

Requests for exemption from the Framework Agreement can be submitted to the competent institution of the Member State whose legislation the employee wishes to follow for up to two years. Requests to opt out under the Framework Agreement may be made repeatedly.

In the Czech Republic, requests for exemption can be submitted to the local social security authority. If the conditions for determining the applicability of the Czech legislation under the Framework Agreement are met, the Social Security Administration will issue an A1 certificate.

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→ Taxes

Can court proceedings interrupt the time limit for claiming a tax loss?

In its recent decision, the Supreme Administrative Court (SAC) considered whether court proceedings in relation to a tax loss can interrupt the 5-year time limit for claiming a tax loss. In its decision, the SAC builds on its previous case law on tax losses. This case law has clarified a number of controversial issues. Has the SAC again succeeded in clarifying the issue?

Jakub Šotník
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The SAC recently dealt with an interesting case concerning tax losses. The dispute was about whether, in its corporate income tax returns for the tax years 2014 and 2015, the taxpayer could only claim the tax loss incurred in the tax years 2007 and 2008. Under the law, a tax loss incurred in tax years 2007 and 2008 could be claimed no later than tax years 2012 and 2013.

The tax loss incurred in the tax years 2007 and 2008 was not assessed until after the tax years 2012 and 2013, respectively. That is, after the expiry of the 5-year period for claiming the tax loss. This was due to a dispute over the amount of this tax loss, which was only resolved by administrative court rulings. The taxpayer claimed the tax loss from 2007 and 2008 in the tax returns for the tax years 2014 and 2015.

The taxpayer was unsuccessful both before the tax authority and the Regional Court. So it lodged a cassation complaint with the Supreme Administrative Court and in so doing it sought to claim a tax loss in its tax returns for the tax years 2014 and 2015.

The taxpayer disagreed that the tax loss could be claimed at the latest in the 2012 and 2013 tax years. The taxpayer argued that the tax loss simply did not exist in those periods. In the taxpayer's view, such an interpretation would be absurd because, at the time of the assessment of the tax loss for the tax years 2007 and 2008, the tax loss could no longer be claimed because the five-year period for its claim had expired. For this reason, the taxpayer requested that the 5-year period for claiming the tax loss be calculated from the tax year in which the tax loss was assessed and not from the tax year in which it was incurred. The taxpayer also argued that the substantive 5-year period for claiming the tax loss under Section 41 of the Administrative Procedure Act did not apply as a result of the litigation it had brought before the administrative courts to determine the amount of the tax loss for 2007 and 2008.

The SAC rejected the taxpayer's arguments and came to the conclusion that the tax loss can be deducted from the tax base only within 5 tax periods immediately after the period for which the tax loss is determined. The date on which the tax loss was finally determined is not relevant. Therefore, the Supreme Administrative Court confirmed that the tax loss for the tax years 2007 and 2008 can be used in the tax years 2012 and 2013 at the latest.

With regard to the taxpayer's argument that the deadline for claiming the tax loss did not expire during the court proceedings, the SAC stated: "The provisions of Section 41 of the Administrative Procedure Act apply, in particular, to the deadlines for the termination of the right to assess or impose tax." In the case of the Income Tax Act, which regulates the time limit for the claiming of a tax loss, it is not a time limit for the extinction of a right in the strict sense of the word, but it is a determination of the tax periods in which a tax loss can be claimed. This argument was also rejected by the SAC.

A number of questions have arisen in this context. Perhaps the most pressing is how a taxpayer should proceed in similar cases to avoid losing the ability to claim a tax loss.

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→ Taxes

Russia now on the list of non-cooperative jurisdictions

At the end of February 2023, the Czech Ministry of Finance updated the list of non-cooperative jurisdictions for tax purposes in accordance with the Council of the European Union. Russia was added to the list as of 21 February 2023. There are two implications:

a) If Russia is still on the list at the end of 2023, Czech trading companies that directly or indirectly hold more than 50 per cent of the voting rights or share capital of a Russian trading company, or are entitled to more than 50 per cent of the profits, will have to include the income of such Russian subsidiary trading company in the tax base of the Czech parent trading company in its tax return. The CFC rules are less strict.

b) The second implication is that payments made to a foreign affiliate of a Russian trading company after this date may need to be reported to the tax authorities according to DAC6. These must be payments from the Czech Republic to Russia (not vice versa) that represent a tax-deductible expense for the Czech company. Such reports must be made during the year and within relatively short deadlines.

We expect Belarus to be added to the list of non-cooperative jurisdictions for tax purposes in the autumn of this year.

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→ Taxes

NAC interpretation I-48: Valuation of assets and liabilities involving a plant or a part of a plant

The National Accounting Council has approved another interpretation, this time numbered I-48. The interpretation relates to the valuation of assets and liabilities in transactions involving a plant or part of a plant, and makes clear that the choice between the goodwill method and the valuation difference method is not arbitrary – the goodwill method is preferred.

Ivan Brož
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In its Interpretation, the National Accounting Council proposes solutions to 4 basic accounting questions that arise in this context, namely:

a) When is it appropriate to value at fair value with goodwill recognised?
b) When is it appropriate to assume valuation from the depositor/seller with recognition of a valuation difference on the acquired asset?
c) How to determine the amortisation period for goodwill or the valuation difference on the acquired asset?
d) In what situations does deferred tax arise and how can it be accounted for?

The choice of method is not arbitrary – the goodwill method has a clear preference

The main message of the Interpretation is to favour the recognition of goodwill over a valuation difference with reference to a true and fair view of the subject matter of the accounting. The valuation difference method is retained in the Interpretation as marginally applicable when the cost of obtaining a fair valuation of the individual components of a plant exceeds the benefit of such information.

If an individual valuation results in negative goodwill, an entity should specifically consider whether it is in fact a bargain purchase and whether, in the case of acquisitions or transformations, the valuation of the plant as a whole is correct.

The amortisation period for goodwill should reflect the period (in justified cases longer than 120 months, i.e. longer than that allowed by Section 56(2) of Decree 500/2002 Sb.) over which the entity expects to derive economic benefits from the transaction giving rise to the goodwill. The amortisation period of a recognised valuation difference, if any, should, in exceptional cases, reflect the amortisation period of the related fixed assets. Goodwill and the valuation difference should naturally be tested for impairment.

It is particularly necessary to review any negative goodwill arising as a result of the valuation

Deferred tax is briefly touched on. Deferred tax arises on restructurings and acquisitions where there is no change in the tax bases of assets and liabilities and, conversely, does not arise on the purchase of an asset.

The Interpretation also addresses the questionable requirement in Czech Accounting Standard No. 011 that value adjustments and val-

ue re-adjustments on the sale of a plant or part of a plant should be subsequently reversed with a corresponding effect, even though the risks reflected in the provisions are reflected in the valuation (purchase price) of the plant and the provisions. Therefore, the related provisions should be included in the valuation of the acquired assets and liabilities with an impact on the amount of goodwill (or the valuation difference).

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