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NEWSLETTER CZECH REPUBLIC

Issue: September 2023

Information on Law, Taxes and Economics in the Czech Republic

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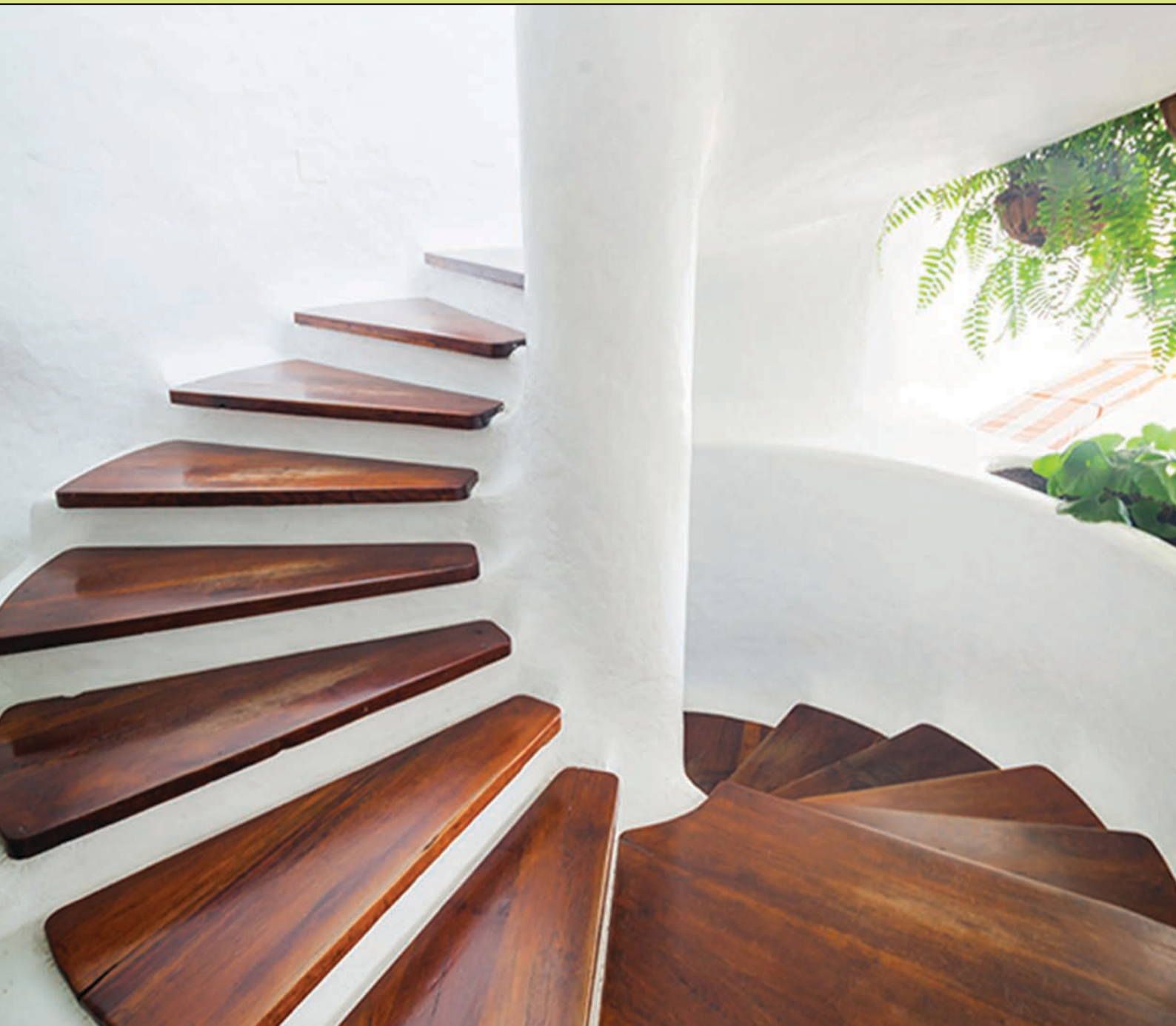

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Content:

→ Law

New possibilities to change the length of the term of office of members of elected corporate bodies

In May 2023, the Supreme Court issued two interesting decisions (file numbers 27 Cdo 1915/2012 and 27 Cdo 2554/2022) concerning the issue of the length of the term of office of members of elected bodies of a joint stock company. What was the specific issue addressed by the court?

Petra Budíková, Šimon Med
Rödl & Partner Prague

At the time of the election of the members of the elected body of the joint-stock company concerned, the Articles of Association of the joint-stock company stipulated that the term of office of these members was five years. A few months later, new Articles of Association were adopted, according to which the term of office of the members was to be unlimited. A few years later, further Articles of Association were adopted which provided that the term of office of those members was ten years.

Unlimited term of office of the members of the bodies of a joint stock company

The case was addressed by the court administering the Commercial Register as well as by the Court of Appeal. The Supreme Court had the final say and came to the following conclusions: If the Articles of Association are amended, the amendment of the Articles of Association, consisting in an extension or shortening of the term of office of the members, is in principle effective against the existing members and future members at the time when the general meeting decides on it, unless otherwise stated in the decision of the general meeting, the law or the Articles of Association.

Shortening or extending the existing term of office by amending the Articles of Association. What does the Supreme Court say?

In particular, the Supreme Court argued that the general meeting can remove members (whom it elects) from office at any time, even without giving reasons. Thus, even the term of office of those members that are currently in office at the time may be shortened. However, a shortening of the term of office must not result in the termination of a member's office retroactively, but at the earliest with effect from the date of the relevant amendment to the Articles of Association. If, on the other hand, the term of office of a member were to be extended by an amendment to the Articles of Association, the consent originally given by the member at the time of the member's election would be deemed to have been exceeded (it is assumed that the consent to the election was given for the term of office stipulated in the Articles of Association in force at the time when the member was elected). Therefore, if the extension of the term of office is to be effective against a member, the member must consent to it in the same manner as if he or she had been re-elected. A member may also give his or her consent tacitly (by implication).

The Supreme Court also addressed the question of whether a provision in the Articles of Association which states that the term of office of members is unlimited is permissible. It concluded that the regulation of the length of the term of office of members under the law is discretionary, i.e. it is possible to deviate from it, and therefore the court found no reason why it should not be possible to stipulate in the Articles of Association that the term of office of members of elected bodies is unlimited in duration.

If the above issues impact your company and if would like more information on this topic, please do not hesitate to contact us.

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→ Taxes

How to apply VAT when donating goods

The General Financial Directorate (GFD) issued a new Information in early August 2023 regarding the issue of gratuitous supply of goods by businesses. The Information focuses primarily on charitable activities of business corporations and entrepreneurs, but the conclusions are of general application and can therefore be applied to other cases where goods are being donated.

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The GFD information focuses primarily on situations where the taxpayer has acquired goods for the purpose of carrying out the taxpayer's economic activities (e.g. for resale), has claimed the deduction because the taxpayer has fulfilled the statutory conditions and has subsequently donated the goods for various reasons. However, the Information does not deal with cases where goods are purchased for the purpose of donation, as in such cases the taxpayer is not entitled to deduct VAT and the donation of such goods does not in and of itself bring any further VAT consequences for the taxpayer. This GFD Information supersedes the original 2014 Information on the application of VAT on donations of goods to food banks.

The tax base for VAT in the case of goods being donated may be close to zero

At the time of the donation of the goods for which the taxpayer was entitled to claim the VAT deduction, the taxpayer is obliged to pay output VAT. However, the question is on what amount the taxpayer is obliged to declare the tax. To determine the taxable amount, the GFD Information divides goods into those purchased and those acquired by other means.

In the case of purchased goods, the tax base for VAT is determined as the current residual value of the goods, which corresponds to the purchase price, taking into account the costs incurred for any improvement of the goods as well as the value of physical or moral wear and tear. The market price of the goods at the time of donation may serve as a guide. Should such price exceed the price at which the goods were originally acquired, the taxable amount shall be set only at the original cost.

In the case of goods acquired by other means, the tax base for VAT is determined as the price of similar goods at the time of the donation. If the goods are only sporadically available on the market, the tax base is set at the total cost incurred.

Finally, it is important to note that some types of goods may be worth close to zero or very little at the time of donation. This situation occurs mainly with goods that are damaged, perishable, etc. These are usually foodstuffs approaching their expiry date, drugstore goods with damaged packaging, pharmaceuticals, etc. In determining the tax base for such goods, it is necessary to assess all relevant circumstances, such as the marketability of the goods, their physical condition, etc. If the taxpayer establishes a tax base for VAT that is significantly lower than the normal or market price or close to zero, it is essential to ensure that such a tax base is economically explainable. The taxpayer may be called upon by the tax authorities to prove the facts that led the taxpayer to set the tax base at that level and we would therefore recommend that all relevant evidence be available at all times.

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→ Taxes

The Supreme Administrative Court has again ruled in the matter of management services

After a very short period of time, the Supreme Administrative Court has issued another decision on the tax deductibility of costs for so-called management services. It again sided with the Tax Authority and rejected the taxable entity's argumentation, assessing the costs for the services in question as tax ineffective in their entirety.

Petr Tomeš
Rödl & Partner Prague

The aforementioned decision contains two very interesting conclusions.

The first of these is that the Supreme Administrative Court rejected the taxpayer's argument regarding the taxpayer's legitimate expectation of uniformity in the Tax Authority's treatment of intercompany service costs. The Tax Authority had in fact audited the same service costs several years earlier, but had only examined the invoices for those services and assessed the costs as tax deductible.

As the Tax Authority's approach in terms of auditing group services has shifted significantly over the years, in the current audit the Tax Authority has requested a much wider range of supporting documents for these services.

The Tax Authority assessed these supporting documents as not conclusive and declared the costs in their entirety as non-tax deductible. The Supreme Administrative Court justified the Tax Authority's opposite conclusion on the basis of the fact that the documents examined were different. Such a different approach on the part of the Tax Authority is something that we have repeatedly encountered in our practice in recent times.

The second conclusion relates to the costs of the activities of the foreign managing director of the taxable entity, costs which were part of the invoiced remuneration of the group service provider. In the view of both the Tax Authority and the court, the managing director should have performed the managerial activities in the managing director's capacity as the company's statutory body (and under a fee-based Managing Director Service Contract), not as part of the management services. For this reason, the costs of the services performed by the managing director were assessed as non-tax deductible.

In view of the foregoing facts, we recommend carefully considering the method companies wish to use for the payment of remuneration for the work of foreign managing directors, and to also carefully consider other aspects in the area of personal income tax, social security and health insurance.

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