Rödl & Partner

NEWSLETTER CZECH REPUBLIC

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Information on Law, Taxes and Economics in the Czech Republic

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Czech Law Firm
of the Year 2012–2023

Rödl & Partner

NEWSLETTER
CZECH REPUBLIC

Issue:
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Content:

→ Law

- Amendment to the Labour Code (2023): Summary of the most important changes

→ Taxes

- Real Estate Tax in 2023: The time to make the second instalment is around the corner…
- The Recovery Package also amends the Road Tax Act
- SAC's opinion on managing director's costs in the context of management services
- Double Tax Treaty with Russia suspended
- End of trade secrets?
- Tax authorities spotlight agreements to perform a work task
- Rödl & Partner scores another win at the Supreme Administrative Court
- Supreme Administrative Court declares unjustifed tax authority's claim for compensation of costs by the parent company

→ Economy

- Recovery Package from the Accounting Perspective

→ Law

Amendment to the Labour Code (2023): Summary of the most important changes

The amendment to the Labour Code, published under Act 281/2023 Sb., has rightly attracted the attention of both employers and employees. Below we present a very brief and basic description of some of the changes brought about by the amendment.

Václav Vlk
Rödl & Partner Prague

The amendment to the Labour Code is effective from 1 October 2023.

Only the granting of leave to certain employees working under an agreement for work outside the employment relationship ("contract workers") and the new regulation of continuous weekly rest only apply from 1 January 2024.

Area	What's going to change?	What needs to be done?
Agreements to complete a job and agreements for work	Contract workers are now entitled to: – Extra pay for working on Saturdays and Sundays; – Extra pay for night work; – Extra pay for working on public holidays; – Extra pay for working in difficult working environments.	Pay contract workers the extra pay.
	Contract workers who work at least 4 weeks in a calendar year and at least 80 hours at the same time will be entitled to leave from 1 January 2024.	Get ready for the change, which will come about 1 January 2024.
	Employers must schedule contract workers' working hours (determine when to work) at least 3 days in advance.	Take the new obligation into account. Alternatively, agree in writing with the contract worker a shorter period of time than 3 days for giving notice of the schedule.
Employer's information obligation towards employees	That the employer must now inform the employee about a broader scope of things at the start of the employment relationship.	Modify the content of information provided to employees in the employment relationship.
	A completely new information obligation is also introduced for contract workers.	The new information should also be provided to contract workers who start after 30 September 2023.

Area	What's going to change?	What needs to be done?
Teleworking	A written teleworking agreement must be concluded with all employees (whether employed or contracted) who telework. The agreement should address, among other things, costs incurred by the employee when working remotely. It may be agreed that: – that the employee is not entitled to such reimbursement, or – that the employee will be entitled to a lump sum according to the Decree of the Ministry of Labour and Social Affairs (CZK 4.60 per hour of telework).	Prepare and conclude written teleworking agreements with all employees working permanently or occasionally away from the employer's workplace (e.g. so-called home office).
Uninterrupted daily rest and uninterrupted weekly rest	If an employee is both an employee and a contract worker of the same employer, they may not be ordered to work under the agreement during the period of rest from the employment relationship. According to the refined definition of uninterrupted daily rest, this rest may not be interrupted by overtime.	The new rules must be taken into account when scheduling working time.
Changes regarding the service of documents on employees	Under certain conditions, it is possible to serve documents on employees electronically or via a data box.	You should familiarise yourself with the terms and conditions of this service if you wish to use it.
Electronic conclusion of employment contracts	Under certain conditions, an employment contract can be concluded electronically.	If you are interested in concluding contracts electronically, you should familiarise yourself with the conditions set out in the Labour Code.
Obligation to provide the employee with a written justification for the employer's action	In certain cases, the employer must provide a written justification to the employee: – why it has terminated the agreement for work outside the employment relationship; – why it did not transfer the contract worker to the position of employee; – why it did not allow him to telework.	In these situations, the employer must be aware of the legal obligation and comply with it.

Please do not take the above overview as a complete interpretation of the new legislation. Should you require further information, including the preparation of documents, please do not hesitate to contact us.

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→ Taxes

Real Estate Tax in 2023: The time to make the second instalment is around the corner...

The January deadline for filing real estate tax returns is long gone and the deadline for paying the second instalment is fast approaching.

Petr Koubovský
Rödl & Partner Prague

Where can I find out exactly how much and when I must pay?

Information on the amount of real estate tax for 2023 can be obtained from the following sources:

- Deposit slip sent by the Czech Tax Authority; these should have been delivered in the first half of May 2023;
- Data sent to your email inbox (if you have requested it by 15 March 2023 at the latest) (see www.financnisprava.cz/email for more details);
- MOJE daně (MY Taxes) portal (see www.moje-dane.cz for more details);
- Data Information Box Plus (DIS+)

(for more information see www.financnisprava.cz/cs/dane/dane/dan-z-nemovitych-veci/informace-stanoviska-a-sdeleni/2023/kde-najdu-udaje-pro-placeni-dane-dnv);

- Information on the real estate tax due sent to the taxpayer's data box.

The information is delivered to the data box of a natural person or to the data box of a natural person running a business. In addition, information on the payment of the real estate tax is also delivered to the representatives of taxpayers who have a data box of a natural person and to legal persons in their data box.

How do I pay my real estate tax?

- concentrated direct debits to households (SIPO), if the taxpayer submits the form referred to as the notice of payment of real estate tax through "SIPO" no later than by 31 January 2023;
- in cash at the cash desk of the local tax authority;
- bank transfer;
- QR code;
- money order (as of 1 January 2023, the so-called tax money order issued by Česká pošta s. p. will no longer be available).

Real estate tax is due 30 May or 30 November 2023. However, if the amount is CZK 5,000 or less, it is due in one lump sum on 31 May of the year in question.

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→ Taxes

The Recovery Package also amends the Road Tax Act

The January deadline for filing real estate tax returns is long gone and the deadline for Notwithstanding the significant changes to the Road Tax Act in 2022, the Recovery Package brings further changes, mainly to clarify or modify the changes brought to the law by the previous amendment. Only heavy goods vehicles (categories N2 and N3) and their trailers (categories O3 and O4) will remain subject to the tax.

Martina Šotníková, Tereza Kalinová
Rödl & Partner Prague

Change of taxpayer during the month

The Recovery Package changes the procedure for determining the taxable person when there is a change of operator, for example when a vehicle is sold. Currently, both the seller and the buyer are taxable in the month of the change of operator. Under the amended version of the Act, only the new taxpayer will be the taxpayer if there is a change of taxpayer during the calendar month. If there is more than one change of taxpayer during a calendar month, the vehicle will only be taxable to the last taxpayer who acquired the vehicle.

Conversion of a vehicle during the reporting period

The Recovery Package also addresses vehicle conversions (for example, a change in the maximum permissible weight in tonnes, a change in the number of axles or a change in the type of bodywork). If a vehicle is converted during the year, the taxpayer will base the amount of tax for each calendar month on the data valid on the first day of that calendar month, or on the data of the first registration if this was carried out after the first day of that calendar month.

Where a vehicle is modified in such a way as to affect whether it is taxable or not, the vehicle will be deemed to be taxable in the month in question, even if it only becomes taxable on one day in that month.

If the conversion affects the ability to claim the exemption for the taxable vehicle, the exemption for the taxable vehicle may be claimed for the calendar month in which the conditions were met on each day.

Decommissioned vehicles

Increasingly more vehicles are no longer subject to road tax. If the owner of a vehicle submits an application to decommission the vehicle under the Act on the Conditions of Operation of Vehicles on Roads and the application is approved, the vehicle will not be subject to road tax. Although this procedure is already applied in practice, it has no legal basis. The inclusion of the provision on the exclusion of a decommissioned vehicle from the tax base directly in the Act thus clarifies the legal regulation.

Data relevant for the amount of tax

As of 1 January 2024 the long form of the technical certificate will no longer be issued, and the wording of the Act will be amended to make it clear that the primary source of data for determining the facts relevant for determining of the amount of tax is the vehicle register.

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→ Taxes

SAC's opinion on managing director's costs in the context of management services

We already highlighted this landmark decision by the Supreme Administrative Court in the September issue of our Newsletter. Below is a follow-up.

Petr Tomeš
Rödl & Partner Prague

During a tax audit, the tax authority questioned the non-deductibility of the costs for management services provided by the parent company. The reason for this was insufficient evidence of the actual provision of the services by the tax entity. The international exchange of information between the tax authorities, and the parent company's statement on the provision of services did not help. The statement was ultimately counterproductive as it contained information that the services were provided, among other things, by a managing director of the tax entity who was also employed by the parent company. The managing director did not receive any direct remuneration for his role as managing director of the tax entity. According to the tax authority, such expenses cannot be tax deductible because the work of a managing director cannot, by its nature, be part of management services. The Supreme Administrative Court upheld the decision.

The conclusion was clear from the onset, but now it has finally been officially confirmed by the Supreme Administrative Court. We have discussed this issue with the General Financial Directorate since our last newsletter and they agree with the Supreme Administrative Court. Therefore, as a result of this ruling, we can expect increased tax audits by the tax authorities in terms of management services and potential management costs.

The conclusion stands that the work of the managing director cannot be considered as a service provided by the parent company. If, however, the costs of a managing director of a Czech subsidiary are borne by the parent company, such costs may be charged back to the subsidiary, but only at the level of the costs themselves without any profit mark-up (which is usually applied in the context of management services). This is a different transaction by nature and such costs are tax deductible by the subsidiary. The tax authorities have confirmed this conclusion.

If you have international managing directors whose remuneration is paid through another group company, you should carefully consider the invoicing arrangements. Even in the case of direct invoicing, care should be taken to ensure that there is sufficient evidence available to prove the managing director's expenses and the extent of his work for the company.

Our transfer pricing experts are ready to assist you in making the correct invoicing arrangements and preparing the documentation for any tax audit.

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→ Taxes

Double Tax Treaty with Russia suspended

In response to the diplomatic note sent in August 2023 by the Government of the Russian Federation, in which it stated that it will no longer apply most of the articles of the Double Taxation Treaty between the Czech Republic and Russia, the Czech Ministry of Finance issued its Communication concerning the matter in Financial Bulletin 10/2023 stating that with effect from 29 September 2023, the Czech Republic is also suspending the Double Taxation Treaty (specifically, Articles 5 to 24; in other words the entire Double Taxation Treaty).

According to the Communication, double taxation may therefore occur in transactions between the Czech Republic and Russia. In practice, this means that the Double Taxation Treaty cannot be applied to transactions with Russia and the transactions will be taxed according to the national legislation of each country. This will have an impact if, for example, a Czech company pays dividends or interest on a loan from its parent company to Russia. In such a case, it will no longer be able to apply the withholding tax rate provided for in the Double Taxation Treaty, but only the withholding tax rate provided for in the Czech Income Tax Act. Furthermore, the company cannot apply zero withholding tax when paying interest on a loan, 10% withholding tax when paying a profit share, etc. In addition, there are related issues for Czech companies, such as whether and to what extent they can claim withholding tax in Russia. On the other hand, Russian companies wishing to open a permanent establishment in the Czech Republic must follow Czech legislation only. This also applies to construction activities in the Czech Republic (every 6 months).

The question also arises as to whether the withholding tax under the Income Tax Act should be applied at a rate of 15% or 35%. The 35% tax does not apply to transactions with countries with which the Czech Republic has a double taxation treaty (among others). Nonetheless, it is questionable whether such a condition is now met by the Double Taxation Treaty. According to our information, the tax administration is preparing a statement on this point.

We will keep you posted of any further developments. If you have any transactions with Russia, we recommend that you immediately review the tax implications of the suspension of the application of the Double Taxation Treaty. We will be happy to assist you.

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→ Taxes

End of trade secrets?

It is a familiar practice in the Czech Republic that some companies forego the compulsory publication of their financial statements in the Commercial Register in order to protect their trade secrets from prying eyes of their competitors.

Štěpán Kuba
Rödl & Partner Prague

It has been a long-standing custom of Czech tax authorities to turn a blind eye to violations of this statutory duty. From time to time, mostly in response to a complaint from a competitor, the authorities used to deliver an occasional notice of requirement asking a company to remedy this state of affairs.

But our recent experience appears to indicate that the stance of the Czech financial administration to this minor infraction, whether caused by negligence or a legitimate concern for

sensitive financial data, appears to change. Lately, a company was charged a fine of CZK 10 for its failure to publish six annual financial statements.

Although the amount of the fine was not disruptive to the company's operations, it is important to note that the tax authorities did not start the process by sending the company a request to rectify the situation, but instead imposed the fine right away based on the findings of their own investigation.

Is this case going to become a new standard practice? Or was this just an exception to the general unspoken rule?

If the company comes to terms with the fine, can it be expected to suffer from some other second-hand repercussions, such as:

- Other adverse consequences – e.g. lower probability of success of its other petitions – extensions of tax return filing time limits, exemptions from tax advance duties or suspension or remission of late payment charges?
- Can the company be charged additional fines for the failure to file the missing financial statements – in the amount of up to 3 percent of the value of its assets?
- How to defend against the payment order?

If you are interested to learn more, we will gladly advise you in this or any other matter.

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→ Taxes

Tax authorities spotlight agreements to perform a work task

Recently, tax audits have been zooming in on imports of goods from Asia, advertising and marketing costs, and agreements to perform a work task. Tax authorities have become very interested in agreements to perform a work task, especially when they are implemented within a group of companies or in the context of subcontracting relationships. It is therefore essential to take the utmost care in this area to avoid the risk of cumulative tax and other compulsory levies.

Jakub Šotník
Rödl & Partner Prague

For some time now, we have seen a trend of tax audits increasingly targeting three areas. In addition to the import of goods from Asia and advertising and marketing costs, the tax authorities are particularly interested in agreements to perform a work task. This was confirmed by tax officials at a recent conference. They emphasised the importance of tax audits in connection with agreements to perform a work task. The reason is their (alleged) frequent abuse, which, according to the tax officials, costs billions in tax and compulsory insurance payments.

Representing clients in tax audits relating to agreements to perform a work task has recently been our most frequent focus. We encounter a variety of constructions and situations, whether within a group of companies or in the context of subcontracting relationships. In particular, we see the dangers associated with agreements to perform a work task in the risk of a possible cumulative assessment of individual taxes and other compulsory levies.

Where agreements to perform a work task are used within a group of companies, the aim is often to streamline the employment relationship by improving upon the employees' time flexibility, work options and needs. However, judging by the approach of the tax authorities, there runs a rather thin line between streamlining employment relationships and trying to avoid compulsory contributions on behalf of employees, which may ultimately

come as a nasty surprise to the taxpayer. It is then up to the taxpayer to prove the economic relationship between the establishment and operation of the agreements to perform a work task, which may seem relatively simple at first sight, but the opposite is often the case.

Another large group of cases that we deal with frequently are subcontracting relationships in which the agreements to perform a work task seem to play only an indirect role. In fact, taxable entities often work with entities that subcontract services to them. These services most often consist of taking over part of the business activities of a taxable entity that does not have sufficient labour capacity to complete orders for its end customers in a timely manner. To this end, a contract for work is usually concluded between the taxable entity and the subcontractor, under which the subcontractor undertakes to supply part of the products to the taxable entity so that the latter can fulfil its obligations to its end customers. The taxable entity pays the invoices issued by the subcontractor for the services thus provided, including VAT, of course.

Tax authorities are now analysing subcontracting relationships in considerable detail. The problem arises when the tax authority discovers that the subcontractor does not have any employees working for it, even though the subcontractor has a high turnover. The tax authority collects this and other information in cooperation with regional labour inspectorates, foreign police, health insurance companies, etc. The most common finding is that the subcontractor had employees under agreements to perform a work task, but no longer has them and has not registered them anywhere. For the taxable entity, a marathon of proof begins, as the tax authority will question the taxable entity's right to deduct VAT from the invoices issued by the subcontractor. The authorities argue that it has not been proven that the subcontractor, as the taxpayer, has actually provided the services declared, as it has not been proven to have any employees. The tax authorities come to a similar conclusion when it comes to income tax. Not to mention the penalties involved.

Moreover, if the tax authorities find that the subcontractor's production was typically carried out on the premises of the taxable entity, on the taxable entity's machinery, that its workers were distributed during production among the taxable entity's regular employees, that they followed the instructions of the taxable entity's employees, that their working hours were recorded, and that the amount of the subcontractor's remuneration was derived from the working hours of its employees, the negative impact on the taxable entity may be much more significant.

In such cases, the tax authorities try to reclassify the subcontracted supplies as so-called disguised employment. This means that the tax authorities identify the taxable entity as a so-called economic employer of the subcontractor's workers. As a result, in addition to the impacts mentioned above, the taxable entity may be liable to pay employment tax on the workers.

So please be careful about your subcontractor relationships to avoid falling into a tax trap. If you are unsure about the structure of your subcontracting relationships, we are happy to help. We have extensive experience in this area and can help you assess the risk of these relationships.

To learn more, we invite you to attend our webinar on 12 December 2023 on Hidden Agency Employment. More information available on our website.

My colleague Kateřina Jordanovová and I look forward to meeting you.

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→ Taxes

Rödl & Partner scores another win at the Supreme Administrative Court

Rödl & Partner's team successfully represented a client in a dispute with the tax authorities over an unlawful tax audit.

During the tax audit, the lawyer argued that the tax authority was conducting VAT tax audits of the client after the expiry of the statutory deadline for the tax authority to conduct the tax audit. The lawyer pointed out that the tax authority had in fact started the tax audit long before it was formally initiated, i.e. before the report on the initiation of the tax audit was drawn up. As a result, the time limit for conducting the tax audit did not begin to run from the formal commencement of the tax audit, but from its material commencement. And what was the reason for the earlier start of the tax audit?

The earlier start of the tax audit was caused by international requests, whereby the tax authority made enquiries of the foreign tax administrator before formally starting the tax audit. As the Supreme Administrative Court stated, "The subject of the enquiries, however, were precisely defined tax periods and specific taxable supplies ... The enquiries were directed at the circumstances of the supply of the goods (for example, where the loading took place, who took over the goods), including whether the company had declared the taxable supplies, whether it had storage facilities, employees, etc."

According to the Supreme Administrative Court, the examination of specific taxable transactions can only be carried out within the framework of an initiated tax audit. If the formal initiation of the tax audit took place later, the international request constituted the material initiation of the tax audit.

Please pay attention to tax audits, as the existing case law of the Supreme Administrative Court has concluded in many cases that tax audits can be initiated by various actions of the tax authority and not by the formal initiation of the tax audit itself.

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→ Taxes

Supreme Administrative Court declares unjustifed tax authority's claim for compensation of costs by the parent company

The Supreme Administrative Court has confirmed that not every loss incurred by a subsidiary as a result of a parent company's decision has to be compensated by the parent company.

Martin Koldinský
Rödl & Partner Prague

On 31 August 2023, the Supreme Administrative Court (SAC) issued a landmark judgment (10 Afs 162/2021-50) dealing with the application of the arm's length principle in a case where a foreign parent company decided to terminate the production of a Czech subsidiary due to its unprofitability and to liquidate the related inventories.

The tax authority carried out a tax audit and concluded that the costs reported by the

Czech company for the liquidation of inventories should have been compensated by the German parent company which decided to cease production and liquidate the inventories, and therefore excluded these costs from the tax deductible costs.

After appeals and court proceedings, this case reached the Supreme Administrative Court (SAC), which confirmed that related parties must subject their relations to the arm's length principle and behave in a market-oriented manner, and that the arm's length principle applies even to transactions where the transfer price is not immediately apparent. At the same time, however, the SAC held that in the present case, no non-standard conditions could be identified in the parent company's decision to liquidate the stock, which as part of the day-to-day management of the Czech company's business. Therefore, the SAC rejected that the parent company's decision constituted a hypothetical service to be compensated by the parent company and further stated that it was a feature of the related parties relationship between a parent and a subsidiary that, for example, the parent company decides on the production direction of its subsidiary.

The SAC also noted that another situation is deciding with whom and on what conditions the subsidiary should trade.

The SAC further stated that there was no evidence that the decision had caused the taxpayer to incur a loss that it would not otherwise have incurred and that there was no evidence that there was an unjustified reduction in the tax base.

I think these are very important conclusions, because we often see in tax audits that the tax authority tries to claim compensation for various costs incurred by Czech subsidiaries in the light of recent case law, characterising these costs as related to the parent company's decision or the provision of alleged services by the Czech company.

Very often, however, the tax authorities are unable to prove that such a transaction or damage has occurred. It is precisely proof by means of evidence that is crucial in tax audits, as the Supreme Administrative Court has reaffirmed in this decision, which is why it is essential to carefully and objectively weigh the circumstances of each case.

It is also interesting to note that, according to the Supreme Administrative Court, the possible reimbursement of losses due to the liquidation of stocks is a matter of contractual agreement. Anyone with practical experience of group transactions knows that the standard of documentation is often significantly lower than in the case of contracts between unrelated entities. It is the contractual arrangement that can play a significant role in proving this in a tax audit – so do not underestimate intra-group contracts and their consistency with actual conduct.

Finally, I would recommend careful documentation of all related-party relations. This means not only careful drafting of contracts – contracts between related parties can be short and to the point – but above all ongoing documentation of all relevant economic facts. Without evidence, it is impossible to prove to the tax authorities that you have set everything up correctly, i.e. in accordance with the arm's length principle.

If you would like to check whether your documentation is sufficient for a possible tax audit, or if you would like assistance in preparing such documentation, please do not hesitate to contact us.

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→ Economics

Recovery Package from the Accounting Perspective

The Recovery Package may appear to be all about taxes. But looking beyond the veil, many of the changes it brings about will have a direct impact on accounting methods and policies too.

Ladislav Čížek
Rödl & Partner Prague

The first change that is worth noting is the introduction of the concept of functional currency, which is expected to come into force as early as from 1 January 2024. Initially, the switch to the functional currency concept was contemplated in the upcoming amending bill to the Accounting Act, which is to come into effect on 1 January 2025. This is why incorporating the concept in the Recovery Package came as a something of surprise. But what no one expected, apart from the Spanish inquisition, was that the concept proposed by the Recovery Package would differ from that of the Accounting Act.

The new amending bill to the Accounting Act concedes that accounting entities will be able to use as their functional currency any currency that is not exposed to a hyperinflationary pressure. The Recovery Package allows only for EUR, USD and GBP currencies. The functional currency must represent the principal economic environment in which the accounting entity operates. This means that even if such a currency were to be the Polish Zloty, the Recovery Package will not permit it for financial reporting purposes and the accounting entity will be compelled to report its transactions in Czech Korunas.

Another interesting difference is the change in the limits used to classify accounting entities, to stipulate the statutory audit duty and so forth. The Recovery Package converts the thresholds by a rate of exchange ruling at the last day of the prior accounting period. It also does not draw a distinction between financial position indicators (net balance of assets) and financial performance indicators (turnover). The bill to the Accounting Act uses different exchange rates for the two types of indicators. Obviously, the two divergent approaches may in practice produce differences in the range of millions of Czech Korunas.

To look on the bright side of life, nothing will prevent companies from using the functional currency concept in their accounting in the near future. And unlike the upcoming Accounting Act, the Recovery Package lays down transparent policies for currency conversion and addresses several practical issues (in relation to taxation), such as:

- Which currency is to be used to prepare the tax return;
- How to adjust for entries posted in prior periods (debt, liabilities) etc.

Another welcome news – which was also initially contemplated in the bill to the Accounting Act – is the change in the definition of net turnover. The Recovery Package will include in the net turnover only the revenue from the sale of products, goods and services, i.e. the revenue from the core business of the accounting entity.

Last but not least, in addition to introducing the concept of functional currency and redefining net turnover, the Recovery Package also implements the much discussed topic of ESG[1]. For more information, please read one of our upcoming newsletters or the November issue of COMPLIANCE & ESG NEWS.

If you are thinking about availing yourself of the options offered by the Recovery Package after 1 January 2024 (such as switching to functional currency reporting), please contact our auditors and tax advisors, who will gladly assist you with their practical implementation.

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[1] Environmental, Social and corporate Governance

WE ARE HERE.
YOU DO NOT HAVE
TO SEARCH.

Impressum

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