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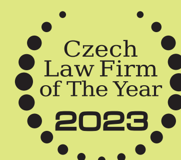

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→ Law

New obligation for entrepreneurs: Wage liability in the construction industry

A parliamentary amendment to the amendment to the Employment Act introduced a special provision on liability for wages, salaries and remuneration into the Labour Code with effect from 1 January 2024. Below we briefly explain what the new section 342a is all about.

Václav Vlk
Rödl & Partner Prague

Who is the guarantor?

A contractor who provides services through a subcontractor during the execution of the construction, alteration or maintenance of the completed construction, or during the removal of the construction. A subcontractor can also be an employment agency. In a chain of contracts with several subcontractors, the contractor at the top of the chain, known as the general contractor, is also liable together with the contractor. On the other hand, the investor (client) is not the guarantor.

Construction contractors are liable for the wages of subcontractors up to the minimum wage

To whom and for what is the contractor liable?

If a subcontractor fails to pay its employee a wage, salary or agreed remuneration on time for work performed for the contractor, the employee may, within three months of the due date, demand payment in writing from the contractor as guarantor.

The contractor as guarantor must satisfy the wage claims within ten days of receipt of the demand, up to the amount of the minimum wage. Failure to comply with this obligation may result in a fine of up to CZK 2 million being imposed by the Labour Inspectorate.

The contractor must also make deductions and payments from the wage claims to be satisfied in accordance with special legislation, including the deduction and payment of advance income tax. The employee must therefore also include in the written notification to the guarantor the relevant information for determining the amount of the deductions.

The contractor must inform the subcontractor of the amounts paid to each employee and the deductions made.

If the contractor has fulfilled its liability obligation, it is entitled to be reimbursed by the subcontractor for the performance he has provided on its behalf.

When is liability not applicable?

The contractor is not liable for wage claims if:
- the subcontractor, at the beginning of the performance of the contract, submits a certificate stating that it has no arrears in social security contributions and fines, contributions to the state employment policy and public health insurance, which are not older than 3 months, and at the same time;
- the subcontractor has not been fined more than CZK 100,000 for violation of labour law obligations in the last 12 months.

What is the recommendation for contractors as potential guarantors?

In order to avoid liability, it may be advisable for a contractor to obtain from its subcontractor in good time:
- Confirmation from the Social Security Administration and insurance companies that there are no insurance arrears (clearance certificate); and

- Confirmation that the subcontractor has not been fined for labour law violations.

In practice, it is likely to be customary for the contractor to link the payment of part of the remuneration for the work to the fulfilment of the wage claims of the subcontractor's employees.

Construction contractors using subcontractors will therefore be forced to adjust their contractual relationships with subcontractors accordingly in order to minimise the risks associated with the newly introduced liability.

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→ Law

ESG – What can we expect in 2024?

The various areas of requirements related to the ESG (Environmental, Social, Governance) agenda will continue to undergo significant change within the European Union in 2024. However, for the vast majority of companies, this will still be primarily a period of preparation. The main legal obligations related to corporate sustainability requirements will only gradually come into force in 2025, 2026 and 2027.

Pavel Koukal
Rödl & Partner Prague

ESG focus areas

The very broad ESG agenda is primarily developing primarily along two main lines, which are at different stages of the legislative process in the European Union and individual Member States, including the Czech Republic. The first and – we can say – currently the most important ESG line is the area of reporting requirements for non-financial information and sustainability reporting, which is also the most advanced in terms of legislation. However, the legislative process related to the enforcement of the second baseline, i.e. sustainability due diligence requirements for companies, is also well advanced at the EU level.

> The year 2024 will bring a number of legislative changes to the ESG agenda

Reporting non-financial information under the CSRD and ESRS

As far as the reporting of non-financial information and corporate sustainability reporting is concerned, not only the framework of the Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS), but also the first partial national regulations are already in place at the European level.

Member States, including the Czech Republic, must fully implement the requirements of the CSRD into their national legal systems by 30 June 2024 at the latest. This process has already been started in the Czech Republic through an amendment to the Accounting Act, which will take effect on 1 January 2024. The amendment expands the range of accounting entities required to prepare and disclose sustainability reports to include large accounting entities, even if they are not public interest entities, or even accounting entities with more than 500 employees.

Further changes are expected to take effect from 1 January 2025, when large entities that meet either criterion will also be required to do so.

Sustainability due diligence

The first months of 2024 are also expected to see the formal adoption and publication of the Corporate Sustainability Due Diligence Directive (CSDDD), which will introduce obligations for companies to manage risks and potential negative impacts throughout their supply chains.

This initial European regulation will create a common EU framework for sustainability due diligence requirements, which were previously only regulated at national level in some Member States, including the German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz, LkSG).

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→ Taxes

The consolidation package – who will it help, who will it hurt?

The Ministry of Finance of the Czech Republic has prepared a number of innovations for 2024, the most discussed of which is the consolidation package. It is intended to help improve the state budget. However, the impact will be felt most by people with middle and low incomes.

Martin Zeman
Rödl & Partner Prague

Lucie Dvořáková
Rödl & Partner Brno

Changes to personal income tax allowances

The consolidation package abolished or reduced certain tax concessions for individuals. Completely abolished are:
- discounts on nursery school fees,
- discounts for students.

The discount for a spouse remains at CZK 24,840, with the annual income limit for spouses remaining the same. Also, a child under the age of 3 must be maintained in a joint household (new condition).

The basic tax credit per taxpayer remains at CZK 30,840. Discounts for disabled pensioners and holders of ZTP/P disability cards and the tax credit for children are remain unchanged.

Abolition of tax deductions

The deduction for trade union dues and the deduction for the payment of continuing education credentialing exams are eliminated.

Lower threshold for progressive tax

The personal income tax rates remain unchanged at 15 and 23 per cent. The income threshold from which the progressive 23 per cent tax rate applies changes from 48 times to 36 times the average wage. For 2024, this means CZK 1,582,812 per year or CZK 131,901 per month.

Taxation of employee benefits

Employee benefits within the meaning of section 6(9)(D) of the ITA, i.e. mainly contributions for:
- the purchase of goods or services of a medical, therapeutic, hygienic or similar nature from health care institutions, the use of educational or recreational facilities or the provision of recreation or travel,
- the use of pre-school childcare facilities, including kindergartens, and physical education and sports facilities,
- cultural or sporting events,
- printed books,

exceeding half of the average wage in a calendar year (CZK 21,983 in 2024), are subject to taxation and health and social insurance contributions. The exemption for gifts in kind of a loyalty and stabilisation nature (work and life anniversaries) are also abolished.

Meal vouchers and lump-sum meal allowances

The same restrictions apply to meal vouchers as to the lump-sum meal voucher. On the employee's side, contributions of up to 70 per cent of the maximum the domestic meal allowance are exempted for business trips lasting between 5 and 12 hours, currently CZK 116.20 per shift worked (3 hours worked). In the case of a shift longer than 11 hours, the employee may be granted an additional allowance within the same calendar day. Meal allowances can now also be granted in cases where there is no fixed shift (e.g. managing directors of a limited liability company).

Introduction of a 3rd rate for the calculation of non-cash income for employee vehicles

When using zero-emission vehicles for private and business purposes, an amount of 0.25 per cent of the purchase price of the vehicle, including VAT, is included in the employee's wages as non-cash income. In addition, the rate of 0.5 per cent for low-emission vehicles and 1 per cent for a road motor vehicle that is neither low-emission nor zero-emission remains. The entry price of the vehicle for the calculation of the employee's income in kind is not limited to CZK 2 million.

Employee's contribution to sickness insurance

From 1 January 2024, the employee's social insurance contribution will be 7.1 per cent of the assessment base. The employer's social insurance contribution will remain at 24.8 per cent of the assessment base.

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→ Taxes

What about VAT on the transfer of technical improvements at the end of a lease?

In its ruling, the Supreme Administrative Court reviewed the VAT regime applicable to the termination of a lease and the consequent transfer of technical improvements made by the lessee to the property back to the owner for his use. The gist of the dispute was whether or not the reverse charge mechanism applied to this transaction. The SAC concluded that the reverse charge mechanism did not apply in this case and that the supply was subject to the standard rate of VAT.

Michael Pleva, Monika Páblová
Rödl & Partner Prague

In accordance with the lease agreement, the lessee revitalised part of the building of the main railway station in Prague. The changes made were accounted for as technical improvements of the leased property, which was depreciated with the consent of the lessor. At the end of the lease, the lessee invoiced the lessor for part of the cost of the technical improvements in the amount of the tax depreciation. The company argued that the construction and installation work had actually been carried out and that it was therefore appropriate to apply the reverse charge.

> The reverse charge mechanism does not apply to the transfer of the technical improvements at the end of the lease

The Supreme Administrative Court disagreed, stating that the transfer of the technical improvements for consideration at the end of the lease constituted a supply of services for VAT purposes. This supply could not be subject to the reverse charge mechanism under section 92e of the VAT Act, as it was not the provision of construction

and installation work, but the transfer of goods for use by another. The construction and installation work had indeed been provided, but this was already in the past, during the reconstruction of the main railway station itself. As they had already been used by the lessee, they could not have been transferred to the owner of the property.

Finally, the SAC pointed out that the reverse charge mechanism must be interpreted restrictively, as it is an exception to the general principle of VAT. It follows from the SAC's decision that, although the payment for the transfer of the technical improvements is essentially compensation for the procurement of the construction and installation work previously carried out, the supply is no longer the work itself, but the transfer of the technical improvements for use by the owner of the property. This is a supply of services for consideration and the lessee should therefore pay VAT at the standard rate.

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→ Taxes

Employee share and option plans

At the end of last year, an amendment to the Income Taxes Act introduced significant changes to the taxation of employee shares and options. As shares, stock and options are usually granted to employees on preferential terms, employees receive non-cash income from the difference between the market price and the price at which the share, stock or option is granted to the employee.

This non-cash income was immediately taxed before the end of 2023. This immediate taxation, possibly accompanied by related health and social insurance, caused problems, particularly for employees. Employees had to pay tax and insurance contributions at a time when they had not yet received any cash from such non-cash benefits and in many cases, for example in the case of start-ups, even if was not certain that they would ever receive any cash from the sale of shares. The aim of the amendment was therefore to defer the taxation of such non-cash income to a time when both employees and employers would have the means to pay the tax.

Miroslav Holoubek
Rödl & Partner Prague

The Act now provides that income is taxed upon the earliest of the events listed in the Act. These events include, without limitation, the transfer or assignment of a share or stock, the exercise of an option, the employee ceasing to work for the employer or for capital companies in the group, the employer or employee ceasing to be a tax resident of the Czech Republic or, ten years having elapsed since the acquisition of the share or option.

In addition, legislation allows the value of the income in kind at the time of taxation to be reduced by the decrease in value of the share, stock or option up to the time of taxation. This significantly reduces the employee's risk of being taxed on income that will not be realised in the future. The price the employee has to "pay" for this reduction in risk is the uncertainty of the tax rate at which the income will be taxed and the employee's obligation to notify the employer of the transfer of the share or option so acquired so that such income will be taxed by the employer.

However, from an employer' perspective, the costs are higher. Employers will have to put in place mechanisms in their systems and processes to identify the point of taxation, i.e. to monitor when the income in kind was earned and to monitor the tax residence of the employee (even for employees transferred to work for a group company), etc.

Employers will also have to deal with the issue of the valuation of shares, stocks or options at the time the income is earned, but also at the time the income is taxed. This can raise significant issues and risks, particularly in the case of unlisted shares and stock. The employer does not gain anything from a purely tax point of view, nor from the point of view of any related insurance contributions, because the tax on income in kind is not an expense for the employer and the possible payment of related insurance contributions, unlike income tax, is not deferred in any way for the time being. However, according to the Ministry of Finance, this should change in the future and the payment of insurance contributions should also be deferred until the time of taxation.

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→ Taxes

GFD information on VAT rate changes from 1 January 2024

On 1 January 2024, the Czech government's consolidation package saw the light of day, resulting in significant changes to VAT rates.

The amendment to the VAT Act introduces only one reduced VAT rate, i.e. 12%. However, in addition to this change, there have been significant shifts between rates or changes to the verbal descriptions of individual supplies falling within the reduced rates.

In practice, this leads to many ambiguities in terms of interpretation and also to practical complications, which is why the GFD has decided to publish on its website a methodological note providing basic information on the amendment to the VAT Act and the application of the tax rates.

Although the information aims to remove these interpretative ambiguities, there are still many areas on which the GFD does not comment or provide clear answers. We therefore recommend that you carefully check the VAT rates applicable to your transactions in order to avoid any potential risk of incorrectly determining your tax liability.

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→ Taxes

Increase in tax depreciation in the first year of depreciation when claiming the investment incentive allowance

On 29 November 2023, the Supreme Administrative Court issued an eagerly awaited ruling that dispelled the uncertainty regarding the obligation to claim an increase in depreciation in the first year of depreciation for companies with an investment incentive promise.

Tomáš Jirásek
Rödl & Partner Prague

More than two years have passed since the Regional Court in Brno issued a surprising ruling in Case no. sp. zn. 30 Af 33/2020. It rejected the general obligation of taxpayers to apply for an increase in tax depreciation in the first year during the period of the tax rebate option under Section 31(1)(b)-(d) of the Income Taxes Act (ITA) insofar as they entitled to a tax rebate on account of an investment incentive.

This is one of the special conditions for the application of the investment incentive deduction provided for in Section 35a(2)(a)(1) of the ITA (to apply all depreciation to the maximum extent possible under Sections 26 to 33 of the ITA). In the present case, the taxpayer did not apply the 10 per cent increase in depreciation because, in its view, the ITA does not impose such an obligation. The taxpayer argued that the maximum possible depreciation applies to the entire period of application of the investment incentive and not only to the first year of depreciation. On the contrary, the effect of the increase in depreciation in the first year would be to reduce depreciation in subsequent years. According to the taxpayer, the entire asset is expected to be depreciated within the 10-year period, which does not result in the shifting of tax depreciation beyond the period of eligibility for the credit, but only in a different distribution of depreciation over time. The tax authorities countered this argument by pointing out that depreciation of the full value of assets over 10 years would only occur in ideal situations. In support of its argument, the authority referred, inter alia, to Coordination Committee (KOOV) 195/27.11.07, in which representatives of the Chamber of Tax Advisors and the Ministry of Finance agreed on the obligation to apply higher depreciation bracket in the first year of depreciation. However, the Regional Court agreed with the taxpayer, stating that the legislator had only obliged the taxpayer to apply depreciation to the "maximum extent possible", but not in the "next tax year". It found the tax authority's arguments unfounded.

Two years later, the Supreme Administrative Court responded with judgment no. sp. zn. 7 Afs 13/2022, annulling the decision of the Regional Court and sending it back for further proceedings. The Supreme Administrative Court held that if the asset is tangible property to which the increased depreciation can be applied in the first year of depreciation, the taxpayer is obliged to make use of it under the investment incentive scheme. According to the Supreme Administrative Court, this is the only way to achieve the lowest possible basis for the application of the investment incentive deduction, which is, moreover, implied both by the Coordination Committee (KOOV) and by legal documents. The provisions of Section 35a(2)(a)(1) of the ITA must cover all conceivable situations, for exam-

ple, even if the property is acquired in the last year of the application of the deduction. Thus, it is not possible to consider only the ideal situation where the entire asset is depreciated within the 10-year period. According to the Supreme Administrative Court, an individual assessment of each situation by the tax authorities would lead to a breach of the principle of equality.

We are pleased that this has dispelled two years of uncertainty about the correct tax depreciation for recipients of investment incentives.

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→ Taxes

Methodological note on employee benefits

The consolidation package also brought significant changes to the taxation of employee benefits. The concept of taxation was revised several times during the legislative process. The General Financial Directorate has, therefore, decided to issue a methodological note containing a detailed interpretation of the relevant provisions of the Income Taxes Act concerning employee benefits from both the employee's and the employer's perspective.

Martin Zeman
Rödl & Partner Prague

Brief overview of the most important points

Chapter 1: Benefits provided to employees in the form of food or drink

The methodological note discusses cases where meals/snacks provided at the workplace are considered to be an employee benefit and where, on the other hand, meals/snacks does not constitute employee income in kind. According to the GFD, work breakfasts/lunches/dinners and small snacks provided for consumption at the workplace, where the food is provided in direct connection with the performance of work and the provision of working conditions, constitute a benefit that is not be subject to taxation on the part of the employee.

Chapter 2: Sports equipment available at the workplace and similar facilities

The second chapter deals in more detail with the issue of the employee's income in kind when sports equipment is made available to employees at the workplace. The GFD will not consider such a supply as taxable income for the employee, provided that it is provided in the context of creating appropriate working conditions (relaxation, stress relief, etc.). On the other hand, if the employees were free to use a full alternative to a commercial sports facility or service, this would be a benefit that would constitute taxable income to the employee and would count towards the annual limit under Section 6(1)(d) of the ITA.

Chapter 3: Other employee benefits

The methodological note details the conditions for organising events for employees and their family members where the employee's income is fully exempt under the new Section 6(9)(g) of the ITA:
- The event must be organised directly by the employer.
- The circle of participants must be limited – employees, family members or business partners.
- The event must be customary and reasonable in light of existing common standards of business practice (industry).

Chapter 5: Timing of income in kind in relation to so-called benefit cards

This issue has been the subject of much debate even before the consolidation package came into force. The GFD takes the view that the moment at

which income in kind arises for the employee is the moment of payment. The methodological note then describes four possible scenarios that could arise in practice. At the same time, the GFD points out that it will focus more on controlling non-standard transactions in the transfer of points to benefit cards, which could occur to a greater extent at the end of 2023.

Chapter 6: General conditions for the tax deductibility of employer costs

The chapter describes in particular the excess benefit regime under Section 6(1)(d) of the ITA and the newly introduced full tax deductibility of costs relating to employee meal allowances.

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→ Taxes

Meal allowances for international business trips in 2024

The Ministry of Finance has announced by decree the foreign meal allowances rates for 2024. Adjustments pertain to less exotic countries, specifically:

- Estonia (from EUR 40 to EUR 45 per day)
- Croatia (from EUR 40 to EUR 45 per day)
- Georgia (from EUR 40 to EUR 45 per day)
- Liechtenstein (from EUR 65 to EUR 70 per day)
- Latvia (from EUR 40 to EUR 45 per day)
- Cyprus (from EUR 40 to EUR 45 per day)
- Hungary (from EUR 40 to EUR 45 per day)
- Norway (from EUR 60 to EUR 65 per day)
- Spain (from EUR 45 to EUR 50 per day)
- Sweden (from EUR 60 to EUR 65 per day)

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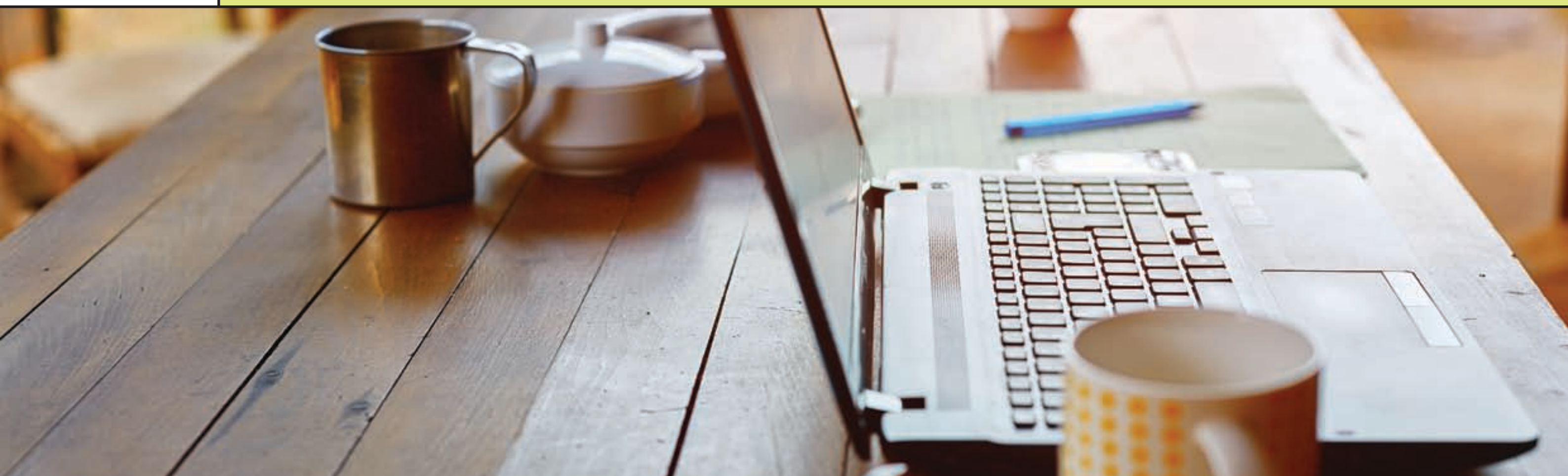

→ Taxes

News not only in international tax cooperation

As a result of efforts by countries and their tax administrations to strengthen international tax cooperation and ensure efficient tax collection and exchange of information, taxpayers may encounter the following new developments in 2024.

Kateřina Jordanovová, Veronika Dudková
Rödl & Partner Prague

A less visible change is that the tax administration now has better access to information from a foreign country concerning a group of taxpayers (so-called group request for information), which cannot be unambiguously identified. In order to prevent from being overused, one of the conditions for placing a request for such information is to provide a description of a common feature that identifies such a group of entities and at the same time justifies the presumption that a breach of the legislation has been committed by such a group of taxpayers.

It may be of particular interest to taxpayers with international operations that, as of 1 January 2024, the possibility of conducting a joint tax audit will be formally regulated. In practice, this should mean that the tax authorities will conduct simultaneous and coordinated tax audits on "both sides". The result should be the conclusion of a joint tax audit. However, this may not be fully reflected in the outcome of the audit conducted by the Czech tax authority with the Czech tax entity.

Operators of digital platforms (e.g. e-shops) should also fulfil their reporting obligation for 2023 by the end of January this year. This is a new reporting requirement. Subsequently, the submitted reports will be automatically exchanged between the tax authorities. The reporting obligation applies to platforms that facilitate the performance of selected activities for remuneration, both domestically and internationally. As part of this reporting, platform operators must provide the tax authorities with relatively detailed information on the income generated by the users of these platforms (so-called vendors). This obligation applies to activities such as the provision of immovable property, the provision of a means of transport, personal services and the sale of goods.

In order to check the compliance of the operators of reporting platforms with the obligations laid down in the Act on International Cooperation in Tax Administration, the Specialised Tax Office is now also authorised to carry out a so-called control purchase.

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→ Taxes

Are things looking up for taxpayers claiming the R&D deduction?

One of the most significant changes that come into effect at the beginning of 2024 is the addition of Section 34c(5) of the Income Taxes Act. This inconspicuous sentence provides a significant increase in legal certainty for taxpayers claiming the R&D support deduction.

Tomáš Jirásek
Rödl & Partner Prague

The taxpayer claiming the research and development (R&D) deduction must prepare project documentation containing all the information required by the Income Taxes Act.

In the past, the practice of the tax authorities was that any formal defect in the project documentation led to the rejection of the entire R&D deduction claim. This practice has been amply supported by the administrative courts in their case law, when they have held that the deduction represents such a significant advantage for taxpayers claiming it compared to other taxpayers that it is necessary to insist on compliance with all the formal conditions imposed by the law. In so doing, they have considered both the failure to specify the formal requirements of the project documentation and its lack of specificity or incompleteness as a breach of the legal obligation.

Some of this is now changing. Contrary to what might appear at first sight, the amended provision does not allow the taxpayer to add missing particulars during the tax audit. The project documentation must remain complete in the future. However, if the tax authorities require more detailed information, additional means of proof can be used. This applies in particular to the objectives and the method of evaluation of the R&D project, which, according to the administrative courts, taxpayers often describe very laconically in the project documentation. It was often not possible to determine from the description what the essence of the R&D was and what the taxpayer was aiming at with the R&D activity.

The other conditions for claiming the deduction will remain unchanged. In particular, it should be stressed that the taxpayer's activities must continue to meet the definition of research and development as defined by the law and case law (e.g. the requirement of an element of novelty).

Finally, it should be added that the amended provision only applies to tax proceedings (tax audits) initiated after 1 January 2024. However, it does not matter to which tax period the deduction relates.

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→ Economics

The Ministry of Finance submitted a draft of a new accounting law to the Legislative Council of the Government

Another important step towards the new Accounting Act is behind us. On 15 January this year, the Ministry of Finance published the draft of the Accounting Act, after considering all the comments received from 63 companies.

Ladislav Čížek
Rödl & Partner Prague

The Czech Ministry of Finance provisionally expects the new law to enter into force on 1 January 2025. After the Government's Legislative Council has reviewed the bill, it will be submitted to the Chamber of Deputies. It is likely that the final wording of the law will still differ from the submitted draft in some areas. However, the conceptual changes, which have also been subject to a comment procedure, are already apparent.

A selection of interesting and relevant news

- Accounting method for operating leasing and leases
  Similar to IFRS, the right to use an asset and the related liability (debt) will be recognised. For medium and large companies, the time factor (discounting) is also expected to be taken into account, i.e. very similar to IFRS 16.

- Provision for disposal
  When it becomes clear that an asset will have to be disposed of once its useful life expires, the costs of disposal will be included in the cost or initial measurement.

- Broadening the range of possible functional currencies
  From January 2024, it will be possible to keep accounts in CZK, EUR, GBP or USD. The bill also allows any other currency that is not hyperinflationary.

- Discounting (present value)
  Discounting of long-term receivables and payables for medium and large companies.

- Technical improvements (subsequent acquisition cost)
  The amendment on "technical improvements" has been partially modified since the version submitted for external comments. The current bill replaces the existing concept of "technical improvements" with the concept of "subsequent acquisition cost". It is no longer necessary to assess the change in the technical parameters of an asset, but its economic parameters are important, i.e. its ability to provide economic benefits to the company in the future. It is also clarified that if part of an asset is replaced as a result of subsequent expenditure, the replaced part of the asset is retired from the books.

- Subsidies
  A subsidy for the acquisition of a fixed asset will no longer reduce its cost. Instead, the asset will be recognised at its actual cost and the subsidy received will be gradually depreciated.

- Decisive day in business transformations
  The concept of the decisive day in business transformations is undergoing a change. It will no longer signify the end of the current accounting period and the beginning of a new one. Instead, for an accounting entity participating in a transformation without ceasing to exist, the decisive day marks the transition to accounting (reporting)

under the new arrangement after the transformation. The current accounting period for such an entity continues without any alterations.

However, this is not the end of the changes introduced by the new bill. For example, it also provides a new approach to penalties.

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DON'T WANT TO BE CAUGHT BY SURPRISE BY THE NEW ACCOUNTING ACT?

We offer you an introduction to the upcoming new accounting legislation through our webinars scheduled for 9 April, 16 May and 5 June 2024.

Please register at www.roedl.cz

Impressum

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