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Czech Law Firm of The Year 2024

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Content:

→ Law

Do Representations and Warranties in Share Purchase Agreements Protect the Purchaser?

The High Court in Prague has created significant uncertainty in M&A practice this year. In its judgment of 27 March 2025, case number 7 Cmo 21/2024, the court held that certain representations and warranties in Share Purchase Agreements (SPAs) cannot be enforced at all due to their indefiniteness. The court thus denied legal effect to most representations and warranties, despite these provisions being a long-established component of SPAs.

Hans-Ulrich Theobald, Lukáš Jirásek
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The function of representations and warranties

Representations and warranties traditionally comprise a series of statements about certain facts or the absence of certain defects, coupled with guarantees of their accuracy and, where applicable, their continued validity. These provisions carry the seller's promise that if breached, the purchaser will be compensated in the agreed manner, such as through a post-closing purchase price reduction or damages.

These provisions provide the purchaser with greater certainty that the transaction will not prove disadvantageous after completion for reasons unknown at the time of contracting, or whose absence the purchaser relied upon. They therefore serve as a standard tool for reducing transaction risk for purchasers.

The case and the court's reasoning

In this case, the Share Purchase Agreement under which the purchaser acquired a company share contained representations that the company had not entered into loan agreements and had not violated legal regulations in conducting its business. The purchaser claimed both representations were untrue and sought payment of a contractual penalty from the seller.

The court refused to enforce these representations, reasoning (among other grounds) that they did not relate to the asset being transferred (the company share) or to the company's business enterprise, but rather to the company itself. Since warranty rights can, according to the court, relate only to the subject matter of the performance, these representations were indefinite and therefore legally non-existent.

Why we reject the court's conclusion

If this reasoning prevails, most commonly used representations and warranties would fail to protect purchasers at all. Compensation for their breach would become unenforceable. This would be highly problematic for M&A practice, given that representations and warranties are a core and indispensable element of SPAs.

We consider the High Court in Prague's conclusion incorrect in light of Supreme Court jurisprudence. The Supreme Court has consistently held that when addressing warranty rights in share acquisitions, courts should adopt a broad interpretation under which the subject of the transfer encompasses not only the share itself but also the company and its business enterprise.

Court decisions in the Czech Republic do not constitute binding precedent and are therefore not generally binding on other courts. In practice, however, lower courts typically follow the reasoning of higher courts given its persuasive authority. Particular care must therefore be devoted to drafting representations and warranties to provide courts with compelling arguments against adopting the High Court in Prague's approach and instead adhering to the functional and well-established practice.

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→ Law

Restitution of Benefits versus Damages for Breach of Non-Compete Obligations

When is it advantageous to claim damages, and when will such a claim be dismissed instead? The Supreme Court has addressed these questions in its latest decision on remedies for breach of non-compete obligations.

Petra Budíková, Matěj Žáček
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In its judgment of 8 July 2025, case number 27 Cdo 1331/2024, the Supreme Court of the Czech Republic ruled on claims arising from breach of non-compete obligations. These obligations are governed by both Section 5 of the Business Corporations Act and Section 432 of the Civil Code. Both provisions establish that if someone breaches the non-compete obligation, they must restore any benefit obtained (such as remuneration) or transfer any rights acquired through the breach. The breaching party bears this obligation. If a benefit or rights have been transferred to a third party, the company may claim them from the acquirer as well, unless the acquirer acted in good faith. Claims must be brought within three months of learning about the breach, and no later than one year.

The Civil Code also allows companies to seek an order requiring the breaching party to refrain from the competitive conduct. Additionally, the Civil Code permits claims for damages from the breaching party. However, this damages remedy is limited to cases where the breaching party knew or should have known that the competitive conduct was causing harm to the business. The same limitation applies to any person who benefited from the conduct.

The question arose whether the Civil Code provisions also apply to members of elected bodies of business corporations, who are primarily governed by the Business Corporations Act.

The Supreme Court first addressed this issue in its judgment of 24 June 2025, case number 27 Cdo 127/2024. The Court held that the Civil Code does apply to members of elected bodies, but only to the extent that the Business Corporations Act does not provide special regulation. The injured company must choose which remedy to pursue but is not limited to claims under the Business Corporations Act alone. If the company claims damages under the Civil Code, it is not bound by the short preclusive periods.

In the judgment mentioned in our introduction, the Supreme Court refined this interpretation. Where the company can obtain the required relief through restitution of benefits or transfer of rights under the Business Corporations Act, it cannot claim damages under the Civil Code. In such cases, the company must comply with the aforementioned time limits.

The critical question, therefore, is whether to claim damages or seek restitution of benefits and transfer of rights. While incorrect legal characterization does not automatically result in dismissal, proper legal assessment is essential for determining the applicable time limit. Failure to comply with the preclusive period will result in the claim being unsuccessful.

If you are dealing with a breach of non-compete obligations, please contact us. We will help you identify the most suitable approach to resolve the situation quickly and correctly, and advise you on what claims you can or cannot pursue.

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→ Taxes

VAT and Transfer Pricing Through the Lens of the EU Court of Justice (Part One)

On one hand, the precise discipline of Value Added Tax; on the other, the least precise tax discipline of transfer pricing. At first glance, these are polar opposites with nothing in common. Nevertheless, the Court of Justice of the European Union (CJEU) demonstrates in its judgments C-808/23 and C-726/23 that these seemingly distant disciplines share more common ground than one might expect. How do VAT rules apply in relation to transfer pricing? What practical conclusions follow from these judgments? We address these questions and more in our two-part series.

Petr Tomeš, Michael Pleva, Sabina Levá
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Management services provided within a group

In the first judgment, the CJEU examined a situation where a holding company provided other group companies with a broad spectrum of management services, from company management and financing to property management, IT consulting, and HR services.

The tax authority sought to apply an "arm's length price" to these transactions, particularly because some companies did not have full rights to deduct VAT.

The Court concluded, however, that this did not constitute a single composite supply but rather several independent services that can be provided separately. The division of these activities into individual supplies, as the Court indicated, raises practical questions regarding their comparability with similar services provided on the market. The comparability-based method that the CJEU prefers requires a high degree of similarity between transactions. Services provided by a parent company to subsidiaries – particularly in areas such as strategic management – are difficult to compare with standard services offered by independent providers on the market, given their specific nature and scope.

In this situation, therefore, dividing a complex package of services into individual types does not significantly affect the choice of method for determining service prices, whether from a VAT or transfer pricing methodology perspective. The key aspect remains correctly identifying activities provided in the interest of subsidiaries versus those provided in the interest of the parent company. The second category involves so-called shareholder costs, expenses that cannot be passed on to subsidiaries as service charges because subsidiaries derive no benefit from these activities and therefore have no right to deduct VAT.

For this reason, each case must be assessed individually to determine correctly whether the costs genuinely relate to service provision or merely represent shareholder costs associated with holding and controlling an interest in a subsidiary.

In practice, this distinction is very difficult to draw. Our specialists in VAT and transfer pricing are prepared to assist you with this challenge and with preparing the necessary supporting documentation.

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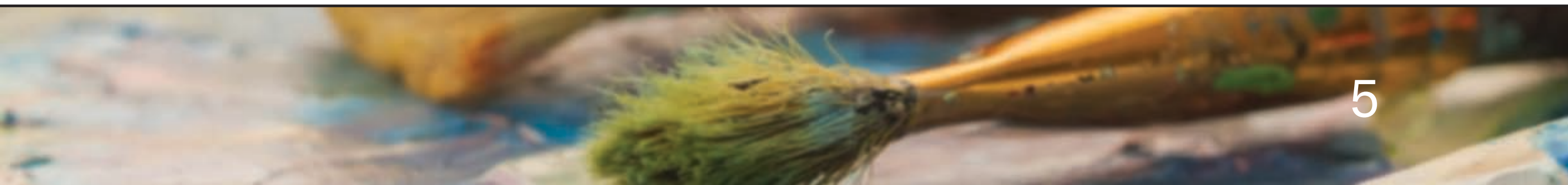

→ Taxes

Repeal of the Value Cap for Tax Exemption on Sales of Securities and Equity Interests

An amendment to the Income Taxes Act takes effect on 1 January 2026, bringing a significant change for investors and shareholders in business corporations. The CZK 40 million value cap, introduced by the 2025 consolidation package, will be repealed for individuals' income from selling securities and equity interests (not represented by securities).

Starting in 2026, we're back to the original, simpler rules:

- Securities – income from the sale is exempt if you've held the security for more than 3 years
- Equity interests in business corporations – income from the sale is exempt if you've held the interest for more than 5 years

The size of your gain doesn't matter, as the exemption applies regardless of the amount. What this means in practice: the CZK 40 million cap only matters for 2025, whether you're an investor selling securities or an individual transferring equity interests in a business corporation.

If you're planning a sale, timing matters. In 2025, a large gain may still be taxable. But from 2026 onwards, it'll be exempt as long as you meet the holding period requirement.

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→ Taxes

Changes to Employee Benefits Treatment from 2026

In our June newsletter we outlined proposed changes to employee benefits. Those changes are now law, taking effect in January 2026. So what's changing?

Martina Šotníková, Daniel Ďuriš
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The changes respond to recent Supreme Administrative Court rulings that confirmed something the Tax Authority disagreed with: under the current Income Taxes Act, even in-kind salary components could qualify for tax exemption as benefits.
The Tax Authority did not concur with the Court's conclusion. Starting in 2026, the definition of employee benefits becomes significantly narrower. Only non-monetary benefits that do not constitute salary, wages, remuneration, or compensation for lost income qualify for the employment income tax exemption.

This is evidently a highly debated topic – the Tax Authority has now issued specific Guidance on Section 6(9)(d).

According to the Guidance, employee benefits go beyond regular pay. They are not tied to work performance, and the rules governing them typically appear in collective agreements or company policies. Examples include Cafeteria plans, Multisport cards, or other non-monetary benefits or benefits related to health and wellness, recreation, or personal and work anniversaries.

Employee benefits have undergone considerable legislative changes in recent times. For 2025, the total cap stands at CZK 69,835, including two-thirds being available for health benefits, with the remaining third for sports, cultural, and similar benefits. For 2026, this cap changes because it is no longer a fixed amount. Instead, it is pegged to the average wage.

Employee benefits remain an important motivational tool. Our specialists can help you structure your benefits program to maintain maximum motivational impact while ensuring compliance with the new rules.

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→ Taxes

New Rules for the Research and Development Tax Deduction from 1 January 2026

On 10 September 2025, the Chamber of Deputies approved an amendment to the Income Taxes Act that fundamentally changes the rules for the research and development (R&D) tax deduction. The President has already signed the legislation. Below we provide an overview of the main changes.

Tomáš Jirásek
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Extended carry-forward period for the deduction

Taxpayers will now be able to claim the deduction in up to five immediately following tax periods instead of the previous three tax periods.

Period in which the deduction may be claimed

Under the current Income Taxes Act provisions, taxpayers had to claim the deduction in the period when the entitlement arose, provided they reported taxable profit in that period. This meant that using other tax benefits first, such as tax credits or foreign tax credits, would forfeit the right to claim the R&D deduction in later years. The amendment changes this. Taxpayers will be able to choose in which of a total of six periods to claim the deduction. This flexibility does not apply to taxpayers with an investment incentive commitment.

Amount of the deduction

The current provisions allow taxpayers to deduct 100 percent of R&D expenditure that does not exceed the previous period's expenditure, plus 110 percent of any expenditure exceeding the previous comparable period. The amendment increases this significantly. Taxpayers will be able to claim 150 percent of incurred expenditure up to a cap of CZK 50 million per tax period or period for which a tax return is filed. Expenditure exceeding this amount may be claimed at 100 percent. The cap will be assessed collectively for all members of the newly introduced "deduction group" [TN: "Deduction group" (odpočtový celek) is a new concept introduced by this amendment, referring to a group of related companies that must aggregate their R&D expenditure for purposes of the CZK 50 million enhanced deduction cap] for periods ending in the same calendar year. For taxpayers who are not part of a deduction group, if the tax period is shorter than 12 months, the cap will be reduced proportionately on a daily basis.

Deduction group

Under the current rules, each taxpayer claiming the R&D tax deduction operates independently. The amendment introduces a new concept: the deduction group. Taxpayers will need to determine whether they belong to such a group. This construct was introduced to prevent related companies from circumventing the CZK 50 million cap by shifting R&D activities among themselves. In simplified terms, a deduction group comprises a controlling person (an entity that maintains accounts and is not controlled by another person) and controlled persons (entities that maintain accounts and are controlled by the controlling person, either alone or jointly with another person under an agreement requiring unanimous consent for decision-making). Taxpayers will be required to state in their tax returns whether they are members of a deduction group and, if so, identify which one.

PROJECT DOCUMENTATION REQUIREMENTS

The amendment eliminates the requirement to state the qualifications and type of employment relationship of research personnel.

Approval of project documentation

To treat R&D expenditure incurred in a given period as eligible for the deduction, taxpayers must continue to obtain approval of the project documentation by the tax return filing deadline, regardless of whether the deduction will be claimed in that period.

Functional currency

The amendment also modifies provisions applicable to taxpayers whose functional currency is not the Czech koruna.

Transitional provisions

Deductions arising in respect of tax periods that commenced before 1 January 2026 will be governed by the Income Taxes Act provisions in force until the end of 2025. For example, the existing three-year carry-forward period will continue to apply to such deductions.

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→ Taxes

Pension Savings Products for Hazardous Occupations

Starting in 2026, employers face a new obligation: they must contribute to pension savings products for employees working in hazardous occupations. This category covers workers who need protective equipment to perform their duties and whose work falls under at least one of these hazard categories: vibrations, cold exposure, heat exposure, or strain from dynamic physical work.

Employers must make contributions once an employee completes at least three shifts of hazardous work in a month. The contribution amounts to 4% of the assessment base. Employees can direct these contributions only to:
– supplementary pension savings, and
– pension insurance with state contribution

Employers must inform employees in writing about their entitlement to this mandatory contribution before they begin hazardous work. For employees already performing hazardous work as of 1 January 2026, employers must provide this information by 16 January 2026. Employees then notify their employer that they wish to claim this entitlement.

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→ Taxes

SAC: Income from Selling Shares in Czech Real Estate Companies is Taxable in the Czech Republic

The Supreme Administrative Court (SAC) dismissed a Cypriot company's appeal and confirmed that gains from selling shares in a company whose assets consist mostly of Czech real estate are taxable in the Czech Republic. The ruling clarifies how the Income Taxes Act relates to the Czech-Cyprus tax treaty and sets out when taxpayers can claim legitimate expectations.

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The Supreme Administrative Court recently tackled a key question: Can the Czech Republic tax income that CERTONIA TRADING LIMITED, a Cypriot company, earned from selling shares in PROSEK Development, a.s., whose assets were 94% Czech real estate? CERTONIA argued that the Czech Income Taxes Act doesn't explicitly impose this tax, and that an international treaty can't create such an obligation on its own.

The Court disagreed. It emphasized that domestic law determines whether income is taxable in the Czech Republic. While a tax treaty can limit that taxation, it can't create new tax obligations. Here's the key point: the Czech-Cyprus treaty actually confirms that gains from selling shares in real estate companies can be taxed where the property is located. Since PROSEK Development's assets were overwhelmingly Czech real estate, the Court ruled that Section 22(1)(h) of the Income Taxes Act provides clear authority for the tax. The assessment stood.

CERTONIA's second argument centered on legitimate expectations. The company claimed it expected that gains like these wouldn't be taxed in the Czech Republic. The Court acknowledged that legitimate expectations can arise from administrative practice, even practice that doesn't strictly comply with the law. But here's the catch: that practice must be established, consistent, and long-standing, and must translate into concrete official action. The Court laid out four essential conditions for claiming protection:

1. A clear basis for reliance – such as an administrative decision or official statement
2. Knowledge of that basis – the taxpayer must actually know about it
3. Actual reliance – the taxpayer must have acted based on that knowledge
4. Direct connection – there must be a clear link between the reliance and the taxpayer's actions

Without meeting all four conditions, there's no protection. CERTONIA couldn't demonstrate any of them. It didn't point to any established, consistent practice by the tax authorities that it relied on, nor did it show that such practice influenced its decisions.

The Court dismissed the appeal, upholding the tax authorities' position. The ruling matters because it confirms that non-residents face Czech taxation when they sell shares in Czech companies whose value comes mainly from Czech real estate. It also clarifies that claiming legitimate expectations requires solid proof of established administrative practice and that vague assertions won't cut it.

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