++ HAVEN
ADVOKÁTNÍ KANCELÁŘ

LEGAL NEWS NOVEMBER 2020

Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during November 2020 and previous months. We will inform you about next changes soon.

Personal Data

+ Methodology of general impact assessment on personal data protection

The Office for Personal Data Protection (ÚOOÚ) issued on 11. 11. 2020 the methodology of the obligation of data controllers to carry out a personal data protection impact assessment in the event of their unauthorized modification, destruction, or inaccessibility (DPIA). DPIA is necessary to perform before the collection of personal data and in case of already existing collection of personal data at the latest at the first change of risk. It should be noted that the methodology is not obligatory. Its respect is recommended, and the data controllers can choose a different way of DPIA. The general regulation on the protection of personal data divides this process into 4 phases. In the first phase the data controller should collect information about him/her collected personal data, in the second phase the data controller should analyzes the necessity of carrying out its own impact assessment (DPIA). If the data controller finds out that the data has an exception from DPIA (e. g. data of employees with permanent residence in the Czech Republic; the list of exceptions of the ÚOOÚ), he/she may waive further assessment. If the data are not covered by the exception, a self-assessment of the risk of the processing needs to be carried out. In the third phase, the data collector carries out its own impact assessment (the data collector prepares a description of the intended processing operations, assess the necessity and adequacy of processing operations in terms of processing purposes, assess the risks and propose a way to address them). The Data Protection Officer will then comment on the resulting DPIA. If the data collector processes extensively critical personal data, the protection of which is subject to more stringent requirements, the data collector should obtain the opinion of representatives of data subjects and independent experts for the final assessment of the influence. If the risk level would not be reduced below 48, the DPIA must also be consulted with the ÚOOÚ itself. At the end of the impact assessment is attached a clause on the approval of the DPIA by the responsible person (usually the statutory representative of the administrator). Impact assessments need to be systematically monitored and updated, given that many threats may change over time or may increase. The full text of the methodology can be found at this link (in Czech).

Jeseniova 1151/55, 130 00 Praha 3
+420 212 246 725
info@ak-haven.cz

Mgr. Andreya Voglová, advokátka
reg. č. ČAK: 16780
dat. schránka: u6dhvye

Mgr. Robert Novotný, advokát
reg. č. ČAK: 17674
dat. schránka: r7smyik

www.ak-haven.cz

Taxes

+ Changes in the Quick fixes' rules

On 1. 9. 2020 an amendment of the VAT Law has come into effect which changes so-called Quick fixes (i. e. rules for the movement of goods between EU Member States). In the VAT area, the amendment will be reflected in 4 main areas. Unlike the current rules for trading with goods through consignment warehouses, the amendment newly explicitly modifies some situation, that commonly occur in business, but which have not yet been regulated by law (in particular goods return etc.). Companies using the regime of consignment warehouses therefore will need to change their systems in the way of being in accordance with the new legislation. The amendment also introduces the automatic assignment of transport within the chain trade to the first delivery. If the transport is secured by third person who gives its VAT number to the state of supplier, the transport will be assigned to the second supply and the first supply will be considered as a local taxable supply. The amendment also introduces an obligation of the customers to give its VAT number to the supplier, in order for the supplier to be able to apply the tax exemption, otherwise the supplier would have to tax the supply. Any exempt delivery of the goods will have to be reported by the supplier in the summary report. It also brings a clear list of documents proving the transport of goods to another EU Member State

+ Exercising the right to deduct for expenses from which a third party has benefits

The Court of Justice of the European Union (CJEU) affirmatively answered a question in its judgment on 1. 10. 2020 in the case *Vos Aannemingen* (C-405/19), whether it is possible to fully exercise the right to deduct for expenses from which a third party has benefits, if the benefit of such expenditure is considered incidental. In the case a Belgium company was selling flats in its own built real estates on the land of third parties. The owners of these lands then sold shares in these lands through its brokers. The company covered all related costs, the income of the landowners considered to be additional income and therefore exercised its full right to deduct VAT. However, the tax administrator considered that the company could only claim the right to the extent related to the sale of flats and houses, but not to land. The CJEU has accepted the possibility of claiming a deduction even if the taxable person's economic activity benefits a third party and, since the benefit to the third party was regarded as additional, that cannot limit the scope of the company's right to deduct.

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Environmental Law

+ New waste law

The Chamber of Deputies has adopted on 1. 12. 2020 a Waste Act, proposal was returned to the Chamber by the Senate. The act is coming into effect in January 2021. The new act postpones the end of landfilling to 2030, increases fees for landfilling waste and introduces two new fees for municipal waste (for the municipal waste management system; for disposing of municipal waste from real estate). However, municipalities will not be able to introduce both fees at the same time, but only one of the two quoted fees for a given fee period. The act also introduces tools that should motivate municipalities to meet the requirements for sorting municipal waste (e. g. the so-called sorting discount). However, municipalities will be able to offer their residents also different ways of sorting. The act also introduces the obligation of authorized packaging companies to perform so-called eco-modulation (i. e. to financially consider the reusability of packaging and to favor it over non-recyclable packaging).

Civil Law

+ Billing of services

The Supreme Court of the Czech Republic dealt with the billing of services related to renting an apartment in the case under ref. no. 26 Cdo 4074/2019. The Supreme Court concluded that it is not the duty of the tenant of the apartment to ask the landlord for a bill. Regardless of this, however, the landlord is obliged to make the billing and inform the tenant within the legal period, even if the tenant requests them earlier. If the landlord violates this obligation, the tenant must pay a fine. The right to a fine arises for the tenant after the expiration of the specified period and the arrears resulting from the later submitted statement do not affect this. The tenant can demand a fine from the landlord without causing him any damage. However, if the tenant suffered damage, the amount of damage will be below the limit below which the fine cannot be reduced. In this context, the Supreme Court adds that the statement must have all the requisites and the mere information on the existence of arrears is legally irrelevant.

Do not hesitate to contact us with any particular question.

We will inform you about next legal news.

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