HAVEN
ADVOKÁTNÍ KANCELÁŘ

LEGAL NEWS DECEMBER 2020

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

Brexit

+ Applicable Law after Brexit

The United Kingdom is no longer an EU member from 31. 1. 2020. The transitional period was valid until 31. 12. 2020 and until this time EU law was applicable. The date of 31. 12. 2020 is crucial for the application of various EU legal regulations.

Legal proceedings and decisions

The legal proceedings initiated by 31. 12. 2020 inclusive, where a party to it is a British entity, the international jurisdiction is going to be considered according to the current regulation (i. e. also under the Brussels I bis Regulation). The legal proceedings initiated on 1. 1. 2021 and later, the jurisdiction of the courts is going to be decided according to the EU instruments, in the case of proceedings concerning these instruments (incl. family law) – an "EU" element in the form of one of the parties will therefore suffice. In other legal proceeding the court jurisdiction is going to be decided according to the national law of the State in which the proceedings were initiated. In the case of **choice of court**, this is going to be possible from 1. 1. 2021 with British partners in accordance with the Hague Convention on Choice of Court, which the United Kingdom hastily acceded to in September 2020 due to Brexit. As regards the **recognition and enforcement of decisions**, decisions issued until 31. 12. 2020 inclusive, will be recognizable and enforceable under European law.

Legal relationships

In the **contractual** obligations it will be possible after Brexit to apply the Rome I. Regulation, because this regulation is universally applicable (the law designated under Article 2 of the Rome I. Regulation is applicable whether or not it is the law of one of the EU Member States). In the **non-contractual obligations** (especially when claiming damages), the Rome I. Regulation is applicable only when the circumstances lead to damage, which occurred before the end of the transitional period. **Alimony** is after 1. 1. 2021 under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. As regards the **insolvency**, the EU regulation of insolvency proceedings is applicable in the cases initiated until 31. 12. 2020 inclusive. After this date, the regulation of the international law of the private state whose court is conducting the proceedings, will be applied.

Taxes and customs

As regards the **taxes**, the British tax residents, who have from their sources in the Czech Republic more than 90 % of their international

incomes, will apply in the Czech tax return only the basic discount for the taxpayer and will not be able to reduce the tax base for donations for charitable purposes and apply the discount for a dependent child or the other spouse. In the case of legal entities, the profit shares paid from the Czech Republic to the United Kingdom become subject to withholding tax. The Double Taxation Convention between UK and CR is still valid. The benefits of European rules will usually not be possible to reap. When Czech tax resident making a payment to a resident from the United Kingdom, the Czech resident will be obliged to secure the tax. Until 31. 3. 2021 is possible to apply for a VAT refund through a website of the Czech financial administration, which was paid in the UK until 31. 12. 2020. For the VAT refund which is paid in 2021, it is possible to ask the British financial administration. With regard to that the UK is from 1. 1. 2021 the UK considered as a third state, the **customs** will also cover the trade. Traders who trades with the UK must apply for a new EORI number. The Christmas Eve agreement concluded between the EU and Great Britain introduces a preferential system which allows zero rates of customs to be achieved if goods have documents proving the origin of goods is in the EU or in the United Kingdom, otherwise duties will be levied under the EU Common Customs Tariff.

Taxes

+ Tax package for the year 2021

On 1. 2. 2021 a tax package for the year 2021 is coming into force (609/2020 Coll.). The great changes are in the abolition of the super-gross wage together with the introduction of a progressive tax rate (15 % rate is applied up to 48 times the average wage, 23 % rate at the tax base above 48 times the average wage), further, to increase the taxpayer's discount by 3 000 CZK for 2021 and by another 3 000 CZK for 2022, on the abolition of the limit for tax benefits per child, introduction of a catering flat rate and changes in the depreciation of fixed assets (for example, it is an increase in the value limit for tangible assets from 40 to 80 000 CZK and an acceleration of the depreciation of investments by renewing the possibility of extraordinary depreciation) and increase of the limit for notification of income flowing abroad to 300 000 CZK per month (the annual notification will then include only revenues for the months in which the limit was exceeded). It is also introduced the publication of financial statements in the collection of documents of the Commercial Register through legal entities income tax returns. Also the VAT on rental of real estate is changed. In case of some real estate (especially accommodation spaces) newly the owner cannot decide, whether during the rent to another VAT payer will or will not apply output VAT. Regarding to real estate tax, municipalities will now be able to set different local coefficients for their individual parts, even in decimal places.

+ Import from the third state without the right to deduct VAT

The Court of Justice of the European Union (CJEU) issued in its judgment on 8. 10. 2020 in the case ref. no. C-621/19 *Weindel Logistik Service*, that, in the absence of a direct link between the service provided and the VAT due on import, there is no right to deduct VAT on import. The case was about a Slovakian company which repackaged goods of its customers so as to suit the packaging for the markets for which the goods were intended. The Weindel company repackaged the goods for its Swiss customer, sent it back to the customer and applied for the VAT reduction from the import. However, the Slovak tax administrator questioned the claim, because the goods were not in possession of the Weindel company, but possessed by the Swiss customer and also for the reason that the goods were not used in its regular economic activity. The CJEU agreed with the Slovak tax administrator. According to the Court, the Weindel company acted only as a service provider without it being clear that it acquired the imported goods or incurred the import costs. The CJEU did not find a direct link between the service provided and the VAT payable on import. In other words, if the importer imports the goods but does not own them, he is not entitled to deduct VAT on import, unless the import costs were perhaps included in the price of subsequent transactions for the importer's customers.

Arbitration

+ The bias of the arbitrator by reason of the annulment of the arbitral award

The Supreme Court of the Czech Republic (NS) its recent case-law (for example a judgment from 18. 11. 2020, ref. no. 23 Cdo 1337/2019) dealt with possible inaccuracies in the negotiation of arbitration clauses, especially for consumer contracts. According to NS, the bias of the arbitrator or the person choosing the arbitrator itself does not invalidate an arbitration clause concluded under the Civil Code (89/2012 Coll.). The fact, that the case was discussed and decided by an excluded arbitrator may be a reason for annulment of the arbitral award and also in the event that the party to the arbitration proceedings did not know about the circumstances of his exclusion and was therefore unable to apply them in the arbitration proceedings.

Do not hesitate to contact us with any particular question.

We will inform you about next legal news.

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