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ADVOKÁTNÍ KANCELÁŘ

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

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We would like to introduce you to a few new legislative and case law developments during May 2022 and the preceding months of 2022. We will keep you informed of further changes in the coming months.

Tax law

+ Partial abolition of the road tax and benefits for low-emission vehicles

The Senate has approved a government bill that provides for the abolition of road tax for cars, buses and trucks and trailers up to 12 tonnes and the abolition of the mandatory blending of bio-components into fuels, effective for the 2022 tax period. The obligation to pay advance payments of road tax during 2022 for all types of vehicles has already been abolished by the Minister of Finance. The government is taking this step in response to the high fuel prices due to the emergency situation caused by the Russian aggression against Ukraine. The government's package also includes tax measures to promote electro-mobility - if an employee uses a low-emission company vehicle not only for work but also for private purposes, the amount of the employee's income will be reduced, which is based on the entry price of the vehicle used (today 1% of the entry price for each calendar month). Now, in the case of otherwise more expensive low-emission vehicles, the employee will be taxed on income of only 0.5% of the entry price. This will make it more profitable for employees to use the low emission vehicle for private purposes. At the same time, the amendment to the Income Tax Act will reduce the depreciation period for electric vehicle charging stations from 10 to 5 years (wallboxes and stand-alone charging stations). It will thus be possible to claim the cost of purchasing EV chargers as a tax expense more quickly.

+ Reduction of excise duty on diesel and petrol

The President of the Republic signed a law amending the Excise Tax Act, which is to reduce the excise tax on diesel and unleaded petrol from 1,5 CZK per litre for the period from 1 June to 30 September 2022 in response to the energy crisis. The tax rate on a litre of petrol would thus fall to 11,34 CZK and on diesel to 8,45 CZK. However, the reduction will apply only to diesel and petrol put into free tax circulation during the period of the law's effectiveness. The Ministry of Finance plans to control prices at fuel distributors to ensure that the reduced tax is reflected in final prices. Some excise duty refunds on diesel fuel consumed in agricultural primary production (so-called green diesel) will also be temporarily reduced, based on the EU minimum rates set by the Energy Taxation Directive. The amount of the refund is to be temporarily reduced from 8,50 CZK to 7,30 CZK per litre.

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+ Tax deductibility of donations to Ukraine

The President of the Republic has signed a law amending the Income Tax Act to allow donations made to Ukraine to support its defence efforts or to non-profit organisations there to be deducted from the tax base. The condition is that the taxpayer's taxable income from sources within the Czech Republic must account for at least 90% of its total taxable income. In addition, this year it will be possible to deduct donations for statutory purposes up to 30% of the income tax base. The law also exempts the income of Ukrainian employees from income tax if their employer provides them with accommodation in the Czech Republic due to the war conflict in Ukraine.

+ Interest on withheld excess deductions

The Supreme Administrative Court (SAC), in its judgment of 1 April 2022, No.1 Afs 80/2021-49, supplemented its decision-making practice on withheld excessive deductions by declaring illegal the practice of reducing the interest rate on the long-term withheld VAT deduction. The current legislation provides for interest on the deduction at the Czech National Bank (CNB) repo rate increased by 2 percentage points. Previously, the repo rate was increased by only one percentage point, and between 2015 and 2017, the SAC imported interest at the repo rate increased by 14 percentage points without explicit support in the law. The tax administration started to award interest on the withheld deduction first at the rate imported by case law, then at the rate set by law. The SAC has now concluded that it is not possible to start applying the new legislation to the interest on the withheld deduction during the course of the deduction without explicit support in the law. According to the SAC, the withheld deduction must therefore continue to bear interest at the original interest rate throughout the period. This does not change the fact that the initial legislation was partly contrary to EU law. The taxpayer is therefore entitled to interest calculated on the basis of the CNB repo rate plus 14 percentage points for the entire period of interest, as the SAC has already concluded in its earlier case-law, even in the period after 1 July 2017.

+ Impact of the tax administrator's search activity on the time limit for tax assessment

In its judgment of 15 March 2022, No.7 Afs 39/2020-39, the Supreme Administrative Court (SAC) held that if the tax administrator's search activity actually fulfils the features of a tax inspection (consisting in particular in the evidence provided), this has an impact on the running of the limitation period for tax assessment. Therefore, the Supreme Administrative Court upheld the taxpayer's appeal on the ground that the tax assessment was made after the expiry of the time limit for assessment. According to the Supreme Administrative Court, the procedure of the tax administrator preceding the drawing up of the report on the initiation of the tax inspection was not a search activity, as declared by the tax administrator, but a tax inspection. Thus, according to the SAC, the time limit for the tax assessment started again from the date of the commencement of the inspection activity in connection with the definition of

its subject matter and scope, not from the date of the formal commencement of the tax inspection. As a result, the tax was assessed after the expiry of the time-limit for assessment.

+ Assessment of tax on transactions between unrelated parties

In its judgment of 27 April 2022, No.7 Afs 398/2019-49, the Supreme Administrative Court (SAC) allowed the tax authorities to assess tax on the basis of overall profitability, i.e. not only on transactions with related parties, but also on transactions with unrelated parties. In the case at hand, the SAC concluded that transactions with an unrelated party may also be considered as controlled transactions if they were influenced by the related party. If the conclusions of the judgment hold up in the light of future case law, increased tax assessment activity by the tax administration can be expected for taxpayers operating within a group of connected persons.

Criminal law

+ Amendments to the Criminal Code and the Victims of Crime Act

The President of the Republic signed a law amending the Criminal Code (transposing the so-called non-cash directive). It introduces a new criminal offence - participation in a non-state armed group aimed at operating in an armed conflict, for which a prison sentence of up to 5 years may be imposed. The offender will not be required to be a formal member of such a group in order to incur criminal liability. It will be sufficient if the offender travels to the country in question with the intention of engaging in the group's combat activities.

The amendment to the Victims of Crime Act then introduces the binding of the Ministry of Justice on the court's decision on the amount of the victim's entitlement to financial assistance from the state. The victim will thus not have to prove the claim. The law also extends the deadline for child victims of sexual crimes to apply for financial assistance.

Private law

+ Distance conclusion of employment contracts

In its judgment of 27 April 2022, Case No. 21 Cdo 2061/2021, the Supreme Court (SC) addressed the question of whether an agreement between an employee and an employer acting remotely may be reached if the statutory conditions for the service of documents regulated by the provisions of Sections 334 to 337 of the Labour Code were not observed when serving documents containing the offer of agreement and its acceptance. In the present case, the parties were negotiating a settlement agreement and communicated by e-mail. The SC stated that in a situation where the Labour Code lacks comprehensive regulation of legal negotiations, the rules contained in the Civil Code apply to the procedure for concluding employment contracts (agreements). The SC concluded that the scan of the draft settlement agreement, which had already

been signed by two members of the employer's statutory body and which already contained all the agreed elements (by e-mail correspondence between the parties' representatives), was sent by the employer to the employee and the seriousness of the will thus expressed was not called into question, and if the employee informed the employer that he accepted the offer without reservation, the settlement agreement was validly concluded.

+ Statute of limitations for the return of premiums paid to an insurance company under an invalid contract

In its landmark ruling of 24 May 2022, Case No. III ÚS 2127/21, the Constitutional Court (CC) held that the start of the subjective limitation period for the recovery of unjust enrichment as original premium payments made on the basis of an invalid contract cannot be determined without further reference to the time of conclusion of the contract and the premium payments. Those are in themselves objective circumstances which do not testify to the beneficiary's subjective knowledge of the unjust enrichment. If it is clear from the individual circumstances of the case that the creditor was not aware of the existence of unjust enrichment on the part of the debtor at the time of the premium payments on the ground that the contract was void, there is a high probability that the courts will not take or justify any other steps to establish the beneficiary's subjective knowledge of the unjust enrichment, why it was not necessary or possible to do so, the decision that the subjective limitation period has expired in vain is unconstitutionally formalistic if it is based solely on reference to case-law according to which knowledge of the existence of unjust enrichment and the liability of the subject of the right in respect of it must mean knowledge of the circumstances from which the unjust enrichment can be inferred.

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