KempHoogstad
Tax Advice & Solutions

Tax News May 2021

Dear clients,

Spring is in the air and the busiest season of the tax year has started. Clients planning on observing the standard deadline for filing their tax returns in hard copy form (i.e. on paper) had that deadline extended this year – they were able to leave handing in their paperwork until 3 May 2021 without incurring any penalty.

For tax returns filed in electronic form the Tax Code has introduced a separate legal deadline, which falls this year on 3 May 2021. However, any penalties for overdue electronic tax returns will be waived on condition that such tax returns are filed and the tax due is paid by 1 June 2021 at the latest. There is therefore about a month remaining for on-time filling. Other clients applying the prolonged deadline for filling the tax return have still time. However, experience leads us to discourage anyone from putting this aside – much better to start working on your tax return already.

Below we bring news for those interested in the finer details of applying tax loss, the possibility of taking advantage of the One-Stop-Shop regime for the collection of VAT within the EU, developments regarding the application of the DAC 6 directive, and finally an OECD recommendation regarding the impact of COVID-19 on transfer pricing.

We wish you beautiful spring days full of sunshine and rest.

Bohdana Pražská and the KempHoogstad Team

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Waiving the right to use a tax loss in the future

Together with the new possibility to use retroactively a tax loss (which we noted in our last newsletter), taxpayers have the possibility to waive the right to use a tax loss as a deductible item in future periods. If taxpayers use this possibility, then they will not be subject to a five-year prolonged period in respect of possible tax inspections by the tax authorities (as has been the case until now); rather, the tax period can then be closed three years after the deadline for the submission of the tax return in question (general deadline for a tax inspection).

If taxpayers decide to use this possibility, they have to do it in the form of a written document issued before the expiry of the deadline for the tax return for the tax period in which the tax loss was recorded. ("Deadline" for the submission of a tax return means either the legal deadline or the deadline determined by the tax administrator, which is based on a prolongation request filed by the taxpayer.)

According to an opinion issued by the General Financial Directorate, waiving the right to use a tax loss in the future will not be possible if the assessment of the tax loss is based on a supplementary tax return. Moreover, the General Financial Directorate has determined that a taxpayer must file a document waiving the right to use a tax loss in the future – even if he/she has used the whole tax loss retroactively.

Special "One-Stop-Shop" regime

The Financial Administration has published on its webpages comprehensive information on a special regime regarding the "One-Stop-Shop" collection of VAT. The regime is scheduled to come into effect on 1 July 2021.

This special regime can be used by online shops selling their goods in the EU, entities providing services to their customers in the EU or providers of electronic platforms. Until now, such entities, when using the standard regime, have had to register for VAT and pay VAT in those individual countries of the EU where their customers were located. Thanks to the One-Stop-Shop regime, tax entities can now register for and pay VAT only in the Czech Republic. Using this regime is not mandatory, but it will considerably simplify the VAT contributions made by tax entities. Tax entities can register for the regime via the One-Stop-Shop electronic portal from 1 April 2021.

Recommendation of the OECD regarding the impact of COVID-19 on transfer pricing

At the end of 2020, the OECD published a guidance note on the transfer pricing implications of the COVID-19 pandemic. The goal of the guidance note was to clarify how the "arm's-length" principle and the OECD Directive on transfer pricing should be applied to problems related to the COVID-19 pandemic.

The OECD recommends to companies that when they analyse the impact of the pandemic on their transfer pricing they should also look into how and to what extent the pandemic has affected them and whether (and to what extent) their businesses were affected by other factors that were unrelated to the pandemic. The important thing is to examine what functions and risks had already been assumed by individual companies within a group before the pandemic. If such risks have not changed during the pandemic, then the principle of determining transfer pricing should not be changed either, if the rationale for doing so is solely the situation caused by the pandemic. Companies within a group should record their losses during the pandemic only to the extent that corresponds to the functions that they have fulfilled and risks they have borne.

News in the area of application of the DAC 6 directive

We have informed you previously that directive no. 2018/822/EU – the so-called "DAC 6" – imposes a new duty on intermediaries and taxpayers to notify the local authorities about their cross-border arrangements. Given the fact that the notification duty may be satisfied in various ways in the various EU countries, and in view of the fact that not meeting this duty may lead to strict sanctions, we recommend that you thoroughly examine and understand your notification duty in this respect.

In January this year the Chamber of Tax Advisors and the Czech Chamber of Lawyers sent their opinion to the Ministry of Finance regarding certain controversial issues arising from this directive. The opinion mainly addresses advisors' duty of confidentiality towards their clients, which may contradict some of the obligations imposed on advisors by the directive.

The Ministry of Finance notes in its statement dated 19.3.2021 regarding the opinion submitted by the two chambers that the application of the confidentiality duty should not prevent anyone from acquiring requested information. Advisors are obliged to provide persons responsible for filing the requested information at least with the minimum information necessary for them to be able to identify the concrete cross-border scheme in relation to which the intermediary claims his/her duty of confidentiality. He/she is not requested to inform other liable persons of the details of the arrangement in question; it is sufficient if they are able to identify the arrangement subject to the notification on the basis of the information provided by him/her. A client may release his/her advisor from the duty of

confidentiality; if the advisor feels that the removal of the duty of confidentiality goes against the interests of his/her client, it is up to the advisor to discuss and agree on the matter in question with the client.

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