LTA
LEGAL TAX AUDIT

NEWSLETTER
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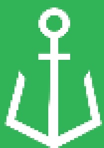

YOUR SAFE HARBOUR

AMENDMENT TO INCOME TAX ACT

Act No. 360/2025 Sb., the accompanying act to the Act on Single Monthly Employer Reporting, has been adopted in the version amended by the Senate and published in the Collection of Laws. During the legislative process, lawmakers added numerous changes unrelated to single monthly employer reporting. Below we highlight the most important amendments to the Income Tax Act.

Employee benefits

Under the current Income Tax Act, certain employee benefits can be exempt from income tax (and therefore also from health and social security insurance payments) regardless of whether they are provided as part of an employee's salary or in addition to the salary. However, tax authorities have long argued for a more restrictive approach, under which only benefits which are not paid as remuneration for work can be exempted. This approach has no actual base the current Income Tax Act as the Supreme Administrative Court confirmed in the past. In practice, employers make agreements with employees that part of their salary will be paid in the form of non-cash benefits that meet conditions for exemption (such as vouchers for health, cultural and sports services). No tax or health or social security insurance have been paid on these benefits to date.

The aim of the amendment is to express the tax authorities' interpretation directly in the Income Tax Act. From 2026, only benefits that are not considered to be part of an employee's salary or salary compensation will be exempt from income tax. In other words, if a non-cash benefit is provided as remuneration for work, it will be subject to tax and insurance payments. The scope of exempted benefits and limits for exemption remain unchanged.

We recommend reviewing your internal policies and employment contracts by the end of 2025. Arrangements under which non-cash benefits are provided should be revised and, if necessary, amended to ensure that from January 2026, it is clear whether they meet conditions for exemption. We will be happy to assist you in the review of your benefit-related documents.

Personal income from sale of securities and shares

With effect from 1 January 2026, the CZK 40 million limit for exemption of personal income received from the sale of securities and shares will be removed. The CZK 40 million limit will only remain in place for the exemption of income from the sale of crypto assets.

No transitional provisions were adopted for the removal of the exemption limit. This means that the CZK 40 million limit will still apply to income received up to 31 December 2025.

End of withholding tax on certain personal income

The amendment removes withholding tax on personal income in two areas, with different effective dates.

The first area covers minor earnings. In 2025, minor earnings are defined as income from work performance agreements (DPP) up to CZK 11,500 per month and income from other forms of employment arrangements up to CZK 4,500 per month. From 1 January 2027, these kinds of income are to be taxed by advance tax, the difference being that its recipients will not be obliged to file tax returns. They may file tax returns voluntarily (e. g., if they wish to claim tax

tax credits). Earnings below said limits will not be considered a breach of the conditions applicable to earners who pay the flat-rate tax *(paušální daň)*, and will not require entrepreneurs who pay the flat-rate tax to file an income tax return.

The second area where withholding tax is being replaced by advance tax is the income of members of corporate bodies (such as managing directors of limited liability companies) who are not Czech tax residents. Their income will, with effect from 1 January 2026, be subject to progressive taxation in the same way as income of Czech residents. If their income in a given tax year exceeds 36 times the average salary, they will be required to file tax returns in the Czech Republic (previously, the filing of a tax return was voluntary).

Qualified employee stock options

The amendment added a third method of taxation of qualified employee stock options to the existing two. This addition is aimed at startups and other entities that meet the definition of "qualified employers".

The key change is that the income generated from exercising qualified employee stock options granted by a qualified employer to a qualified employee will not be taxed as employment income, but as other income. This means, among other things, that no social security and health insurance payments will be payable on this income. Moreover, when a share in a company is acquired as a result of exercising the stock option, the income will only be taxable in the tax year in which the share is sold or in the tax year following 15 years after the option was exercised, whichever occurs first. Income from the sale of shares acquired through exercising a qualified option will not be exempt from tax even if the time test for exemption of income from securities sale is met.

A qualified option is defined as a written, free-of-charge, non-transferable promise to acquire a share in a company. The employer must notify the tax office of the option. The employee can first acquire a share in the company through an option after three years from the date the option was granted, unless certain changes to the share capital of the employer or the controlling entity occur earlier, or unless the employer or the controlling entity enter a public stock market. The employer must inform the employee of the market value of the share at the time the option is granted and at the time the option is exercised.

A qualified employer is defined as follows: annual turnover under CZK 2.5 billion and total assets under CZK 2 billion, which limits apply even when assessed at a group level and on a consolidated basis. Neither the employer nor any other group member may operate in certain industries, such as banking, insurance or advisory.

A qualified employee is an employee who:

- has worked for the employer for at least 12 months between the moment the qualified option is granted and the moment the option is exercised or otherwise settled,
- the total of the employee's qualified share at the moment the option is granted does not exceed 5% of the share capital of the qualified employer and the controlling entity,
- the employee's monthly salary between the granting of the option and the exercising of the option is at least 1.2 times the minimum salary applicable at the moment the qualified option is granted.

AMENDMENT TO INCOME TAX ACT

Preservation of preferential tax treatment of low-emission vehicles

From 1 January 2026, the Income Tax Act will include its own definition of low-emission vehicles. For income tax purposes, a low-emission vehicle means a road motor vehicle in category M1, M2 or N1 that does not exceed a CO_2 emission limit of 50 g/km and is not a zero-emission vehicle.

This separate definition removes the reliance on an EU directive, the terminological change of which could lead to low-emission vehicles losing their tax advantages in 2026. Including the definition of low-emission vehicles directly in the Income Tax Act does not have any impact on the tax treatment of such vehicles provided to employees. If an employee uses the employer's low-emission vehicle for private purposes, 0.5% of the vehicle's acquisition price continues to be deemed the employee's income and taxed.

Changes to research and development tax deductions

The primary change to the R&D tax deduction legislation is the increase in the deduction rate. Companies will be able to deduct 150% of their R&D expenditure, capped at CZK 50 million per tax year. Expenses exceeding this threshold may be deducted at 100% without any cap. Additionally, the time limit for claiming R&D deductions is extended from 3 to 5 years.

The legislation also introduces a new "deduction group" concept, which comprises the controlling entity and the entities it controls, whether alone or jointly with others. Where a company belongs to a deduction group, the CZK 50 million cap applies collectively to all group members.

Project documentation requirements are also changing. Going forward, there will be no need to specify the qualifications or employment status of the personnel working on the R&D project.

These changes are scheduled to take effect on 1 January 2026 and will only apply to newly started R&D projects.

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TOP-UP TAX ACT AMENDMENT

The amendment to the Top-Up Tax Act for Large Multinational and Domestic Groups took effect on 3 September 2025. However, the amended provisions apply retroactively from the original effective date of the law, meaning they cover reporting periods beginning on or after 31 December 2023.

The most important change is that deadlines for filing information returns and tax returns have been extended. Additionally, the deadlines for allocated and Czech top-up taxes have been harmonized.

Information returns for both top-up taxes must be filed within 15 months after the end of the reporting period; however, for the first reporting period, the deadline is extended to 18 months. This means that the first information returns will be filed with the tax authorities by 30 June 2026 for the 2024 reporting period (if the tax year corresponds to the calendar year).

For tax returns, the deadline for both top-up taxes has been extended to 22 months from the end of the reporting period. This means that for 2024, the deadline expires on 31 October 2026. It is worth noting that the self-assessment principle also applies here, meaning that if a taxpayer fails to file a tax return within the statutory deadline, the tax is deemed to be declared at CZK 0.

Beyond these deadline changes, the amendment refines numerous definitions and interpretations to better align the law with the OECD Model Rules. Examples include an updated definition of the "reporting period," currency conversion rules and modifications to safe harbour provisions.

Implementation of the DAC 9 Directive into Czech law will be highly significant, enabling the filing of one consolidated information return across the EU. The Directive provides for automatic exchange of these returns between EU member states. Consequently, the Czech tax administration would accept an information return filed by the ultimate parent entity for domestic top-up tax purposes, provided it contains all information required under Czech law.

As we previously reported in [our newsletter 3/2025], preparing the Country-by-Country Report for 2024 will be a critically important step. The Country-by-Country Report will be a key document during the first three reporting periods. Companies that have not yet met basic CbCR obligations—such as filing the required notification—should do so immediately. Non-compliance with CbCR requirements could adversely affect top-up tax obligations.

If your company belongs to a multinational or domestic group with revenue of at least EUR 750 million in two of the last four reporting periods, and you have not yet contacted the ultimate parent entity regarding this matter, we strongly recommend you do it immediately. In practice, intra-group communication on these matters is typically lengthy and complex.

If you require assistance with top-up taxes, we will be pleased to help.

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TAX INCENTIVES FOR COOPERATIVE HOUSING

Act No. 176/2025 Sb. was published in the Collection of Laws on 16 June 2025, amending the Income Tax Act regarding deduction of mortgage interest from personal income tax base. The amendment extends the possibility of deducting mortgage interest from the personal income tax base to housing cooperative members for amounts corresponding to interest paid on housing cooperative loans that taxpayers (cooperative members) pay as part of their annuity payments.

The deduction is possible if:

- the loan comes from a building savings account, mortgage, or another loan provided by a bank or a building society;
- is used exclusively for qualifying housing purposes as defined by law (e.g., purchasing, constructing, or renovating residential buildings);
- the taxpayer (an individual) is a housing cooperative member and their payment to the cooperative to cover the interest owed by the cooperative corresponds to the taxpayer’s share in the cooperative.

Interest deductions on cooperative loans are now subject to similar conditions as apply to personal mortgages. The key requirement is that the apartment must be used as the taxpayer's or their family's permanent residence. The deduction cap is CZK 150,000 which is the same limit that applies to mortgage loans granted directly to individuals.

According to its sponsors, the amendment aims to improve access to cooperative housing and place cooperative members on equal footing with mortgages holders.

AMENDMENT TO RESERVES ACT

From 1 January 2026, the Reserves Act amendment will permit a one-time 100% tax-deductible provision for receivables with a book value not exceeding CZK 50,000 (an increase from the current CZK 30,000 threshold). All other conditions for claiming this provision remain the same, namely:

- The claim is not statute-barred.
- The debtor and creditor are not related parties.
- At least 12 months have passed since the receivable's due date.
- The total value of receivables owed by the same debtor for which provisions are being created does not exceed CZK 50,000 (previously CZK 30,000) per tax year.
- These receivables must be tracked in separate records by the taxpayer.

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SINGLE MONTHLY EMPLOYER REPORT

Act No. 323/2025 Sb., on Single Monthly Employer Report, has been published in the Collection of Laws. A government decree that will regulate the implementation of the single monthly employer report is expected to be issued at the turn of October and November 2025. The effective date of both the Act and the decree is set for 1 January 2026, however, the new obligations will not apply until 1 April 2026.

Single monthly employer reporting should provide significant administrative relief for employers by streamlining and simplifying processes, with clear potential to improve HR and payroll efficiency. That said, the initial implementation will likely be challenging: employers must adapt their software systems, while payroll staff will need to capture additional data points beyond what is currently required.

The electronic single monthly employer reporting will consolidate most employer obligations to government authorities – covering social insurance, employee registration, statistical reporting, and employment income tax. Health insurance is not yet included; it will be integrated in 2027. For now, employer reporting to health insurance companies remains unchanged.

The report will consist of three sections:

- summary section – basic employer details (ID number, name, registered office), reporting period, and consolidated financial data
- insurance section – social insurance payment data
- employee section – individual employee data and their employment status. This section will also include information on temporary work incapacity, parental leave, etc.

For January-March 2026, employers will have until 30 June 2026 to file their single monthly employer reports (one report per month). From April 2026 onward, single monthly employer reports will be filed monthly, with no individual deadline extensions possible.

Single monthly employer reports will be sent to the Ministry of Labour and Social Affairs which will share them with other authorities – Czech Social Security Administration, local Social Security Administration office, Health Assessment Institute, Czech Labour Office, competent tax office, Ministry of Finance, Czech Statistical Office, Ministry of Justice, and Ministry of Education, Youth and Sports.

The Act applies to all employers—not only companies and state institutions, but also individuals who only have DPP employees. It also covers foreign companies that pay employment income tax on behalf of their employees in the Czech Republic.

For clarity, we present a timeline of when the new rules take effect:

- From 1 April 2026, employers will be required to submit single monthly employer reports and register employees.
- Insurance payment reports are not required for January-March 2026, though contributions must still be paid within the statutory deadlines.
- By 30 June 2026, employers will file the outstanding monthly reports for January to March 2026.
- For April-June 2026, the existing 8-day registration deadline (from the employment starting date) will continue to apply to Czech employees (foreign employee registration rules are still being finalized).

SINGLE MONTHLY EMPLOYER REPORT

- In order to curb undeclared employment, from 1 July 2026, employers will have to register all employees (at least partially) before their starting date. Full registration must be completed no later than 8 days after the employee's starting date.

What are the next steps?

- Review existing payroll and HR processes, internal data flows and cross-department communication.
- Determine how employee data will be collected and validated.
- Configure internal processes and software so that you are prepared to communicate and transmit data to government authorities in time (the system will be centrally managed, meaning even a formally insignificant error can cause the submitted report to be invalid).

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INTRASTAT – TERMINATION OF INSTATDESK APPLICATION

Persons registered as VAT payers or as persons identified for VAT in the Czech Republic who import/export goods within the EU with a total value exceeding CZK 15 million a year are required to submit Intrastat reports.

Intrastat reports can be submitted using either the InstatEvo web application or the InstatDesk desktop application.

InstatEvo replaced the InstatOnline web application in July 2025 and will replace the InstatDesk desktop application from January 2026 onward. January 2026 reports must be therefore submitted via InstatEvo as InstatDesk will no longer be available.

Templates and exchange rates used in InstatDesk cannot currently be imported to InstatEvo, though the Customs Administration indicates this feature will be developed. Historical InstatDesk data will not transfer to the new platform. Therefore, keep InstatDesk installed even after migrating to InstatEvo. While InstatDesk will not receive updates or accept 2026 submissions, you are going to need it to make corrections to 2025 data. InstatDesk can be uninstalled after the 2025 correction deadline of 17 July 2026.

InstatEvo uses the same login credentials as InstatDesk. For guidance on the new interface, refer to the user manual on the Customs Administration website.

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VAT IMPLICATIONS OF TRANSFER PRICING ADJUSTMENTS

In early September 2025, the Court of Justice of the European Union (CJEU) issued its judgment in case C-726/23 (SC Arcomet Towercranes SRL), offering new insights into VAT treatment of transfer pricing adjustment invoices between related parties. This ruling has broader implications for management services VAT deductions (commonly provided between parent companies and subsidiaries), where proving the provision of actual services is essential for claiming input VAT deduction.

SC Arcomet Towercranes SRL case

Given the case's specific circumstances, a brief overview of the facts is helpful as context.

A 2010 transfer pricing study between Arcomet Belgium and its subsidiaries established that subsidiaries should maintain operating margins between –0.71% and 2.74% to comply with arm's length principles. To ensure compliance, a 2012 agreement between the parent and its subsidiary provided for annual adjustment invoices: Arcomet Belgium would invoice if subsidiary profits exceeded 2.74%, while Arcomet Romania would invoice if losses exceeded –0.71%.

The agreement obligated Arcomet Belgium to provide various management and commercial services to its subsidiary, including negotiating framework contracts with external suppliers and banks, centralized fleet management, and quality and safety oversight. Arcomet Belgium also assumed the principal economic risks of Arcomet Romania's business. Conversely, Arcomet Romania was responsible for purchasing and owning all operating assets, and for selling, leasing, and servicing those products.

Given that Arcomet Romania achieved higher profits than the established range in the years 2011 to 2013, it received invoices from the parent company for services provided under this agreement, to which it applied the reverse charge mechanism.

During a tax audit, Arcomet Romania was assessed additional VAT due to unlawful input VAT deductions on these services for which the reverse charge was applied.

During subsequent court proceedings, the following questions were referred to the CJEU:

- whether the invoiced amount is subject to output VAT, and
- whether tax authorities may require supporting documentation (such as activity reports, work sheets, etc.) beyond the invoice itself, to evidence that the purchased services were used for taxable purposes.

The CJEU noted that according to established case law, services are subject to VAT only where a legal relationship exists between the provider and the recipient involving reciprocal performance, with the provider's remuneration constituting genuine consideration for a specific service supplied to the recipient. This requires a direct link between the service provided and the consideration received.

The CJEU considered both conditions to be met in this case, as the parent company contractually undertook to provide certain commercial services to its subsidiary, which in turn undertook to pay for these services at the end of each year an amount that, although variable, is neither random nor uncertain, because the conditions are set out in the agreement. Therefore, according to the CJEU, these services are subject to output VAT.

According to the CJEU, it cannot be argued against these conclusions that the remuneration due to the parent company is intended, in accordance with

OECD guidance, merely to adjust the subsidiary's operating margin to comply with the arm's length principle, without any specific activity necessarily being provided as consideration.

However, according to the CJEU, proving that these services were actually provided by the parent company and actually used by the subsidiary for its own taxable supplies is nevertheless essential to establish the right to deduct input VAT. The tax authorities may therefore require submission of documents other than the invoice to prove these facts, if the submission of such evidence is necessary and proportionate for these purposes. However, the CJEU held that taxpayers need not prove the services were necessary or appropriate for their taxable activities—only that they were actually provided and used.

Practical implications

Given the specific circumstances of the case, the CJEU's conclusions cannot be generalized. It is important that in this case, it was possible to link the adjustment of the subsidiary's profitability to a specific service to which the parent company had contractually committed and to which it related the profitability adjustment of the subsidiary.

Unfortunately, the Court of Justice did not address the more general debate on transfer pricing mentioned in the Advocate General's Opinion. The Advocate General repeatedly noted that the recommendation to exclude transfer pricing adjustments from VAT was not adopted by the VAT Committee, which is an advisory committee established at the European Commission. The CJEU's view on this question therefore remains unclear. The Court also did not address the Advocate General's assertion that it should not be forgotten that adjustments relating to the provision of services or supply of goods represent a change in the price of the invoiced service or invoiced goods.

The ruling's impact on tax practice remains limited for now. For broader guidance on transfer pricing adjustments and VAT, we must await the CJEU's decision in the pending case C-603/24 Stellantis Portugal.

Given these uncertainties and the pending CJEU case, we recommend caution with respect to: risk identification, proper structuring of transfer pricing adjustment invoices, and VAT-related procedures. Additionally, in light of the CJEU's findings in this case and in Weatherford Atlas Gip (C-527/23), we advise maintaining robust documentation which proves that management services have indeed been provided.

Please contact us if you need any assistance in these matters.

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CASE LAW: IS THERE STILL AN OBLIGATION TO REGISTER THE BENEFICIAL OWNER?

In its decision no. 27 Cdo 1368/2024 of 25 August 2025, the Supreme Court addressed the question whether companies can be sanctioned for inaccurate entries in the register of beneficial owners.

The Municipal Court in Prague ruled that there was an inaccuracy in the register of beneficial owners, consisting in the fact that an entity had no data recorded in the register of beneficial owners. The entity had no registered beneficial owner and failed to register one even within the deadline additionally granted by the court. The Municipal Court concluded that that qualified as an irregularity as it is defined in the Beneficial Ownership Register Act.

The Czech legal framework embodied in the Beneficial Ownership Register Act was adopted pursuant to EU directives, specifically EU Directive 2015/849 (the Anti-Money Laundering Directive). The AML Directive was later amended to require Member States to ensure that beneficial ownership information is available to the public.

The Court of Justice of the European Union, in its judgment of 22 November 2022, in joined cases C-37/20 and C-601/20 – WM and Sovim – held that the part of the AML Directive imposing an obligation on Member States to ensure public access to the beneficial owner information is invalid.

In the opinion of the Municipal Court in Prague, this judgment only affected EU law, while the Czech Beneficial Ownership Register Act remained fully valid, and therefore was applied by the court in its decision. Moreover, the Municipal Court stated that there is no unjustified interference with the right to private life and the right to protection of privacy under Articles 7 and 8 of the Charter of Fundamental Rights of the EU, because a reporting entity may, under statutory conditions, request that the registered data be inaccessible.

The High Court in Prague upheld the decision of the Municipal Court in Prague, whereupon the entity filed an appeal to the Supreme Court and raised a question not yet resolved before: whether a case where an entity fails to register its beneficial owner can be considered an irregularity as defined in the Act on the Register of Beneficial Owners, if the entity claims violation of the right to private life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the EU, as established in the WM and Sovim judgment.

The Supreme Court infers that the Charter of Fundamental Rights of the EU has the same force as primary EU law, and at the same time, primary EU law is directly and preferentially applicable provided that a clear and unconditional rule can be identified. According to the Supreme Court, the rules under Articles 7 and 8 of the Charter of Fundamental Rights of the EU are such rules.

The Supreme Court states that the Czech legislator has placed reporting entities in a difficult position, because on the one hand, due to its inaction, the Act on the Register of Beneficial Owners has not been amended and the legal obligation to register a beneficial owner still remains, while on the other hand, this consequently results in a violation of the beneficial owner's rights under Articles 7 and 8 of the Charter of Fundamental Rights of the EU.

This situation caused by the legislator's inaction cannot be held against reporting entities and beneficial owners. Member states are obliged to

CASE LAW: IS THERE STILL AN OBLIGATION TO REGISTER THE BENEFICIAL OWNER?

respect the rights granted under Articles 7 and 8 of the Charter of Fundamental Rights of the EU, and therefore sanctions cannot be imposed on entities for not registering their beneficial owners as required by the Beneficial Ownership Register Act. Accordingly, it cannot be considered an irregularity as defined under the Beneficial Ownership Register Act, if the beneficial owner information is not registered, because registration would violate the beneficial owner's rights under the Charter of Fundamental Rights of the EU.

This situation caused by the legislator's inaction cannot be held against reporting entities and beneficial owners. Member states are obliged to respect the rights granted under Articles 7 and 8 of the Charter of Fundamental Rights of the EU, and therefore sanctions cannot be imposed on entities for not registering their beneficial owners as required by the Beneficial Ownership Register Act. Accordingly, it cannot be considered an irregularity as defined under the Beneficial Ownership Register Act, if the beneficial owner information is not registered, because registration would violate the beneficial owner's rights under the Charter of Fundamental Rights of the EU.

The Supreme Court therefore reversed the decision of the Municipal Court in Prague and decided that the proceedings are discontinued.

Is it therefore OK not to register a beneficial owner? Not entirely. Companies must also consider other consequences that the failure to register a beneficial owner in the register of beneficial owners might have under the Beneficial Ownership Register Act, namely the inability to distribute shares in profit, equity, or liquidation balance to unregistered beneficial owners. Furthermore, unregistered beneficial owners may not exercise voting rights at the general meeting or make decisions as sole shareholders. These restrictions are often more severe for a company than a fine imposed by the authorities.

What should companies do? While the Supreme Court has curbed the authorities' power to enforce beneficial owner registration through fines, companies should exercise caution. The Court did not provide any guidance on the other consequences of non-registration, so we recommend that until legislative amendments are made to the Beneficial Ownership Register Act, companies should assume said consequences remain in effect. It is therefore advisable to continue registering beneficial owners in the register.

If you have any questions or would like more details, please let us know.

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CASE LAW: THE EXCESSIVE CONTRACTUAL PENALTY ARGUMENT

In its judgment of 22 May 2025, case no. 23 Cdo 767/2024, the Supreme Court once again addressed contractual penalties, specifically the courts' discretion in moderating excessive penalties. The Supreme Court's case law on moderation of contractual penalties is extensive and well-established. However, the Supreme Court has now provided guidance on a topic that has not been addressed before, namely the latest point at which a party may argue that a contractual penalty is excessive in order for the court to be able to moderate it.

The facts were as follows – a road user and a road owner entered into an agreement under which the user could use the road and was obliged to pay the owner for the right of use. The payment was agreed at CZK 3,000 per year. The user's obligation to pay was secured by a contractual penalty of CZK 500 for each day of delay. The user fell into arrears with the payment and has not paid for 382 days. That gave rise to a claim on the part of the road owner of CZK 194,000 (CZK 3,000 outstanding payment for the right of use and CZK 191,000 contractual penalty), which he decided to pursue in court.

The road user's defence before the first instance court was based on an argument that the road in question was a publicly accessible road and therefore the road owner did not have a right to be paid. The first instance court rejected the argument and ruled that the road user was obliged to pay the entire outstanding amount, i.e., CZK 194,000.

In the appellate proceedings, the road user argued that the contractual penalty of CZK 191,000 was excessive and proposed its moderation. The appellate court accepted this argument and reduced the contractual penalty to approximately CZK 5,000.

The road owner filed an appeal against the appellate court's decision to the Supreme Court. In its judgment, the Supreme Court referred to its existing case law on contractual penalties, which says that it is necessary to examine the proportionality of the contractual penalty both with regard to the purpose of the penalty and the circumstances of the case. For examining the proportionality of a contractual penalty, both the circumstances under which the contractual penalty was agreed and the circumstances that arose at the breach of the secured obligation, or later, if applicable, are essential.

A party to a dispute who challenges the proportionality of a contractual penalty and proposes its moderation by the court must assert and prove all facts on which the claimed excessiveness of the penalty is based. The mere existence of a contractual penalty, the value of the secured obligation, and the amount of the contractual penalty are not sufficient to decide whether a contractual penalty is excessive or not. Facts must be asserted and evidence must be produced before the court of first instance, not in the appellate proceedings.

Although the Supreme Court confirmed that it is in general possible to argue that a contractual penalty is excessive even in the appellate proceedings, it found that in the given case, the road user proceeded incorrectly, as he should have asserted it already before the first instance court. Only then could he support his argument with the facts and evidence necessary to reach a conclusion that the penalty was excessive. Raising the issue of disproportionality only in the appellate proceedings caused that the claimant was not able to assert facts and propose evidence supporting his argument.

CASE LAW: THE EXCESSIVE CONTRACTUAL PENALTY ARGUMENT

The decision of the Supreme Court means that if one of the parties to a dispute wishes to achieve a moderation of a contractual penalty by court, it must:

- claim excessiveness of the contractual penalty (i.e., propose moderation of the contractual penalty by court) before the first instance court (more specifically, before the procedural deadline to assert new facts in the proceedings); and
- claim and prove what the excessiveness of the contractual penalty consists in.

The scope in which the party must assert and prove excessiveness of the penalty has been repeatedly addressed by the Supreme Court, e.g., in its judgment 31 Cdo 2273/2022 of 11 January 2023 or no. 23 Cdo 1398/2022 of 3 May 2023.

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CASE LAW: REPRESENTATIONS AND WARRANTIES IN SHARE PURCHASE AGREEMENT

Representations and warranties in share purchase agreements are hardly a novelty – they have been standard practice for years. What is new, however, is their increasing appearance before courts. Representation and warranties are becoming the subject of disputes between sellers and buyers with growing frequency. A recent example is the Prague High Court's ruling in case 7 Cmo 21/2024.

Case Background

A seller transferred his share in a company to two buyers. The SPA included several seller representations and warranties, the key ones being that (i) the company operates in compliance with applicable laws, and (ii) the company has not entered into any credit or loan agreements as either lender or borrower, nor provided any guarantees, etc. The seller also agreed to pay a contractual penalty if any representation proved false. These were fairly standard provisions that did not substantially deviate from typical transactional practice (except perhaps for the contractual penalty).

It later turned out that the company had entered into a loan agreement and had also failed to meet its obligations to the Labour Office. One buyer therefore sought a contractual penalty of CZK 400,000. Both the first instance court and the appellate court dismissed the claim. The appellate court held that if the representations and warranties are phrased as they were in the SPA, they do not pertain to the actual object of the transfer – the share in the company itself – but rather to the company as an entity, which makes the representations and warranties vague and therefore invalid. Therefore, no obligation to pay the contractual penalty could have arisen on the part of the seller.

Criticism

We believe the court's strict, formalistic approach is inappropriate. Representations and warranties serve primarily to protect buyers from hidden liabilities or risks that emerge only after closing. By insisting on a rigid interpretation that such provisions do not relate to the share being transferred, the court substantially weakens their practical use. Critics argue the court could have taken a more flexible approach, seeking an interpretation that would uphold the provisions – perhaps by characterizing them as compensatory provisions for withdrawal from a contract or as other unnamed arrangements securing an obligation – rather than invalidating them entirely.

What are the implications?

This ruling could have major implications for existing transactional practice, though not yet confirmed by a decision of the Supreme Court, which means that the case law in this area will likely be evolving. In the meantime, there is no reason to dispense with representations and warranties in contracts – they continue to serve an important purpose. However, careful drafting is essential to ensure that they can withstand judicial review.

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MANDATORY EMPLOYER CONTRIBUTIONS TO RETIREMENT SAVINGS PRODUCTS

Effective 1 January 2026, a new Act No. 324/2025 Sb., on mandatory contributions to retirement savings products, will come into force. Thanks to this law, certain employees performing high-risk work will gain the right to monthly employer contributions to commercial retirement savings products, namely supplementary pension insurance and pension savings plans.

Effective from 1 January 2025, special treatment applies only to employees performing work classified in the highest risk category 4 (as the category is defined in the Public Health Protection Act). However, these employees are not entitled to contributions to retirement savings products – instead, after completing a certain number of shifts in high-risk work, their retirement age is reduced (by 15 to 60 months) and their employers must pay increased social security payments for them.

The new law, on the other hand, introduces an obligation for employers to contribute to retirement savings products for employees performing work classified in risk category 3, but only if the work is classified as such due to one of the following factors: vibrations, cold stress, heat stress, or overall physical strain which involves strain from dynamic physical work performed by large muscle groups. This means the law will not automatically apply to all work classified in category 3.

Contributions will only be provided upon request. However, employers will have to inform all affected employees about their new rights – those already performing high-risk work will have to be informed within 15 days of the new law coming into force, and other employees before they start performing high-risk work. Once an employee exercises the right and provides the employer with the necessary details about their retirement savings product, the employer will provide contributions in each calendar month in which the employee has worked at least 3 high-risk shifts.

The contribution will amount to 4% of the assessment base calculated according to the Social Security Insurance Act. Employers will also be required to keep records of the contributions paid, which the social security administration will be authorised to inspect. Failure to comply with obligations under the new law will constitute an administrative offence, punishable, in the most serious cases, by a fine of up to CZK 2,000,000.

According to available information, the rationale behind the new law is that the government originally intended to introduce retirement age reductions not only for employees in risk category 4, but also for certain employees in category 3. When this plan fell through, the legislator decided to compensate these employees by introducing mandatory employer contributions to retirement savings products. For employees in category 4, the new law brings no changes.

If you are interested in this topic, we will be happy to provide further details.

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DID YOU KNOW?

- The government is discussing **an increase in the tax credit** for the first child (currently CZK 15,204, proposed CZK 22,320) and an increase in the basic personal tax credit (currently CZK 30,840, proposed CZK 34,600).
- Selected Czech groups and Czech companies that are part of large multinational groups **are required to publish an "income tax report",** which contains information such as current and deferred tax, revenues, assets, and number of employees. The initial publication will be for periods that began after June 22, 2024. The report must be published within 12 months of the end of the relevant accounting year.
- General Financial Directorate has published its instruction number D-72, which **expands pardons for tax-related penalties** to 100% of the amount of the penalty.
- General Financial Directorate is preparing **an update to its guidance** on the new tax depreciation method for photovoltaic power plants.
- The minimum salary **will increase** by CZK 1,600 to CZK 22,400 per month from 1 January 2026.
- A legislative error has been corrected and DPP and DPČ workers in non-risk category 2 **no longer have to undergo entry medical examinations**. However, entry medical examinations remain mandatory for risky work (risk category 2 and categories 3 and 4).

LTA NEWS

Our ranks are constantly growing! In recent months, the audit team has been strengthened by **Filip Vodenka, Ekaterina Pushkarenko** and **Milada Krásná.** We wish them all the best and look forward to working together.

Our employment law expert **Alice Mlýnková** spoke at several sessions of the regular autumn **HR Club** organized by Grafton Recruitment and Gi Group. She shared the first practical insights on the Labour Code „flexi-amendment“ and provided additional HR tips in light of the recent and upcoming legislative developments that continue to place growing demands on employers.

The Good Will Run of the Olga Havel Foundation

This year was the third time we participated in the charity race Good Will Run organized by the Olga Havel Foundation, which took place at its traditional venue of Obora Hvězda. Despite not defending the last year's second place in the corporate relay category, we enjoyed the event thoroughly and were happy to support a good cause!

LTA was founded in 2011. Its uniqueness lies in its close cooperation across all service areas thanks to which it provides its clients with comprehensive solutions taking in account legal, tax and accounting aspects

We are a member of international networks:

MGI WORLDWIDE, one of the twenty biggest networks of tax, auditing, accounting and consultancy firms. It has over 9,000 specialists all over the world.

THE LAW FIRM NETWORK, a network with a 35-year history, bringing together member law firms worldwide. It has members in more than 50 countries and a network of cooperating law firms in almost 80 more.

The Law Firm Network

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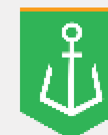

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