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Recent Developments in International Taxation

Czech Republic

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The developments described below cover the period from June 2020 to June 2022.

In comparison with the previous two years, legislative developments in international taxation in the Czech Republic have been rather limited. The most significant development was that Czech tax authorities focused more on various aspects related to international taxation. There have been many developments at the level of the Organisation for Economic Co-operation and Development (OECD) and European Union; however, it is likely that some time will be taken before any specific legislation is implemented into Czech law.

Recent Czech case law

Recent decisions of Czech courts show that Czech tax authorities have been (and quite successfully so) focusing more on various areas related to international taxation, most notably, abuse of law, transfer pricing and beneficial ownership.

Although the reasoning in the decisions by courts and tax authorities is often not as comprehensible as we would hope, the aforementioned concepts are mostly interpreted in line with OECD commentaries/guidelines and the Court of Justice of the European Union (CJEU) case law.

OECD multilateral instrument

The Czech Republic is one of the signatories to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the 'MLI') and the Czech Republic decided to adopt the MLI at the minimum standard required.

The MLI implements some of the measures recommended by the OECD Base Erosion and Profit Shifting project, aimed at amending the existing network of bilateral double taxation treaties through a single multilateral convention.

The MLI entered into force in relation to the Czech Republic on 1 September 2020.

For a particular double taxation treaty to be amended by the MLI, both countries party to that treaty have to ratify the MLI and wish that treaty to be amended. This is slowly happening as the MLI is also entering into force in other countries that have an existing double taxation treaty with the Czech Republic.

DAC 6

The Czech Republic has implemented the Council Directive (EU) 2018/822 of 25 May 2018 ('DAC 6'), concerning the reporting obligation of selected cross-border arrangements.

The purpose of DAC 6 is the mandatory reporting of cross-border arrangements, which fulfil certain 'hallmarks'. The Czech Republic has implemented DAC 6 at the minimum standard required, mostly just copying the directive without extending the reporting obligations or its scope (unlike some other countries).

In practice, DAC 6 reporting in the Czech Republic seems to be relatively rare, especially in comparison with countries like Germany, the Netherlands, Luxembourg and Poland.

Draft Bill: DAC 7

The Czech Parliament has yet to pass the Czech implementation of Council Directive (EU) 2021/514 of 22 March 2021 ('DAC 7'), concerning reporting obligations for digital platform operators.

The purpose of DAC 7 is for digital platform operators to report income earned by sellers using the digital platform regarding the following activities: rental of real estate properties, personal services, sale of goods and rental of any mode of transport.

DAC 7 should be implemented into Czech law as of 1 January 2023.

Changes in the preferential tax treatment of eurobonds

Bonds issued by Czech tax residents or the Czech state outside the Czech Republic (generally referred to as eurobonds) have historically enjoyed wide tax exemption from Czech taxation to increase their competitiveness on international capital markets.

As of 2022, there have been some changes in the taxation of income arising from eurobonds, and this tax exemption is limited by very specific cases.

The technical tax treatment for most investors into eurobonds should not change. However, the issuer of eurobonds will have to ascertain the identity of the bondholders and collect evidence to substantiate the application of the Czech tax exemption in the case of a tax audit.

For investors to enjoy the Czech tax exemption, they are likely to need to regularly provide tax residency certificates and declarations of beneficial ownership to clearing systems or agent banks.

Reporting of tax-exempt income paid to non-Czech tax residents

Czech-sourced income, which is generally subject to Czech withholding tax but exempt from Czech taxation (eg, due to a double taxation treaty or Czech tax law exemption), payable to non-Czech tax residents is subject to a reporting duty by the Czech payer of the income.

Payments under CZK 300,000 per month (increased from CZK 100,000 as of 2021) per single recipient are exempt from this reporting duty.

This measure began to apply as of 1 April 2019, and the administration can be quite burdensome for certain taxpayers.

Abolition of real estate acquisition tax

In September 2020, a bill abolished real estate acquisition tax amounting to four per cent of the total purchase price for Czech real estate property. Additionally, the bill had a retroactive effect, abolishing the tax as of December 2019. The tax applied only to asset deals (direct acquisition of a property) and did not apply to share deals (acquisition of a special purpose vehicle company that owns the property).

This change makes the acquisition of Czech real estate property by investors through an asset deal more attractive. However, in an asset deal, the capital gain realised by the seller from the sale of the property is still subject to income tax (19 per cent for corporates). As such, investors still usually acquire a Czech commercial real estate property through a share deal. In a share deal, the resulting capital gain on the shares realised by the seller is usually exempt from Czech taxation and is more tax efficient overall compared with an asset deal.

Various OECD and EU developments to watch

There have been various new developments at the level of the OECD and EU that have reached some political consensus, but still have some way to go before they are implemented in practice.

The Czech Republic usually follows the main trends, but otherwise is not very (pro)active. Most measures are usually implemented at the minimum standard required, for example, the MLI, Anti-Tax Avoidance Directive (ATAD) and DAC 6.

Currently, there seem to be three notable developments, which might significantly impact international taxation in the future:

1. EU ATAD 3 Directive;
    - (i) aimed at preventing the misuse of shell entities by implementing substance requirements;
    - (ii) possibly effective as of 2024;
2. OECD Two-Pillar Solution to address tax challenges arising from the digitalisation of the economy;
    - (i) Pillar One: reallocation of taxing rights in respect to certain large enterprises to jurisdictions in which goods or services are supplied or consumers are located; possible entry into force in 2024;
    - (ii) Pillar Two: introduction of a 15 per cent global minimum corporate tax rate; possibly effective as of 2024;
3. EU Debt-Equity Bias Reduction Allowance (DEBRA) Directive
    - (i) introduction of a tax deductible deemed interest cost on equity to neutralise the preference of debt over equity; and
    - (ii) possibly effective as of 2024.