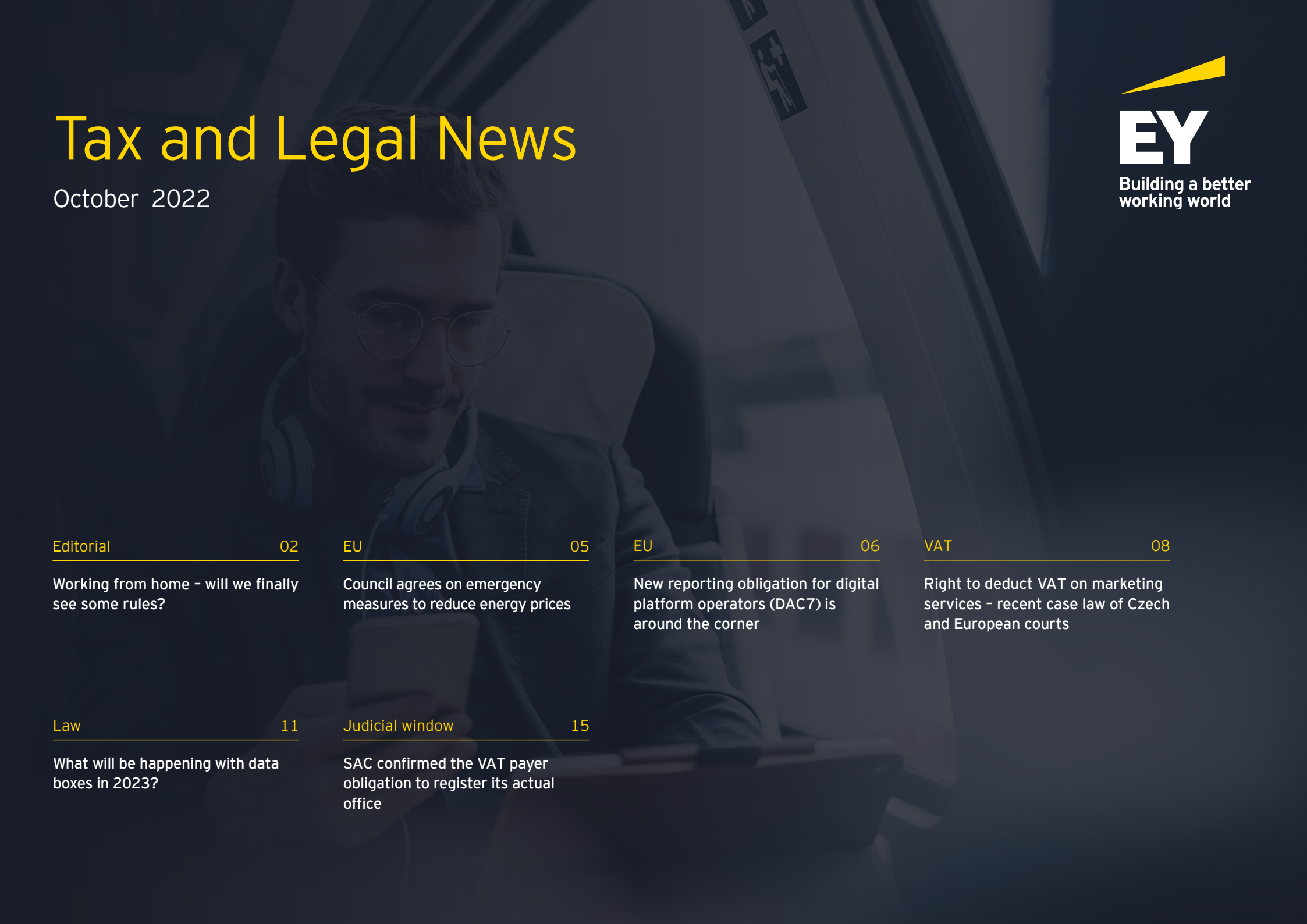
Tax and Legal News

October 2022



Martina Kneiflová
martina.kneiflova@cz.ey.com
731 627 041

Working from home – will we finally see some rules?

For two and a half years now, working from home has been completely normal. But the Labour Code still pretends as if working away from the employer's workplace doesn't exist, and addresses only a few exceptions for teleworkers who work remotely and schedule their own hours. However, these situations are rather rare in practice. So how to meet all the requirements that the Labour Code imposes on employers with regard to the employees working from a home office while the Labor Code generally does not anticipate work from home?

Some modification of the rules by agreement between the employer and the employees provides contractual freedom. However, in an environment of strict statutory protection for employees, this is still a rather precarious route for employers who want to get things right.

While the amendment to the Labour Code and other regulations, which is meant to remedy the situation and regulate telework, has finally reached the comment procedure stage, it still has a long legislative road ahead of it on which many things can happen. At the very least, however, the proposal is a good indication of how the authorities view "telework", a Czech legislative synonym for home office. And they're looking quite strictly, including in relation to the provision and taxation of homeworking allowances.

For example, a telework agreement between an employee and employer must be effected in writing. If such an agreement doesn't exist, the employer risks not only a fine from the Labour Inspectorate, but also taxation and insurance of the allowances provided to such a teleworker.

The amendment pays a lot of attention to allowances. The proposed rules explicitly regulate the employer's obligation to reimburse the employee for costs related to the performance of telework that the employee incurs while performing the work. For these purposes, a lump sum of the average costs of gas, electricity, solid fuels, heat, water and municipal waste collection is to be introduced at CZK 2.80 per hour (commenced) of work. Such a lump sum should not be subject to personal income tax or to social and health insurance premiums.

The amendment directly provides that employers in the non-state sector may offer higher lump-sum allowances, but importantly, lump-sum allowance in excess of CZK 2.80 per hour will be subject to tax and insurance. For the employee, this means a tax-free allowance of CZK 22.40

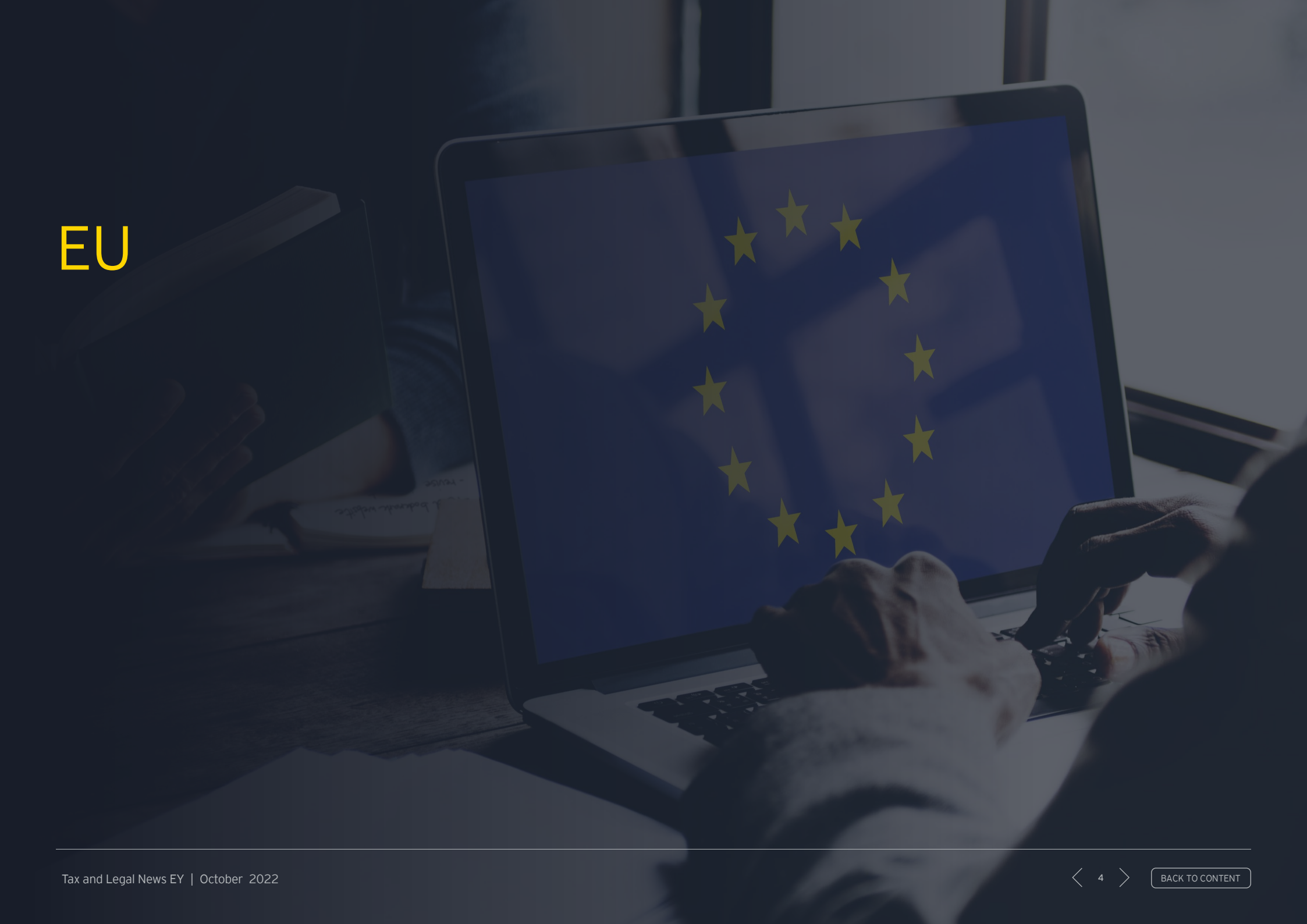
per day of working from home, i.e. approximately CZK 450 per month if the employee only works remotely. If some companies already reimburse employees for this type of expense on a flat-rate basis, they may now be getting a little nervous, especially where their flat-rate reimbursement exceeds the proposed limit (sometimes by several times). With the new regulation, the risk of additional assessments will increase even further, not to mention the fact that the flat-rate costs of CZK 2.80 are proposed taking into account the current high energy prices.

According to the draft amendment, the lump-sum allowance may be supplemented by the reimbursement of other types of substantiated costs not included in the lump sum and incurred by the employee in connection with remote work. While such reimbursed costs are not subject to tax and insurance premiums, the employee must prove not only the amount but also the connection with the performance of the telework. This will be somewhat problematic in many cases (not to mention the associated administrative nightmare for employers). For example, the lump-sum cost of an internet connection that an employee pays each month regardless of how often or if at all they work from home hardly qualifies for such reimbursement, unless, for example, they have another lump sum to watch Netflix and another lump sum for other family members.

We'll see how the amendment turns out; the part that doesn't concern telework is an implementation of EU directives we can't just sweep under the rug. But the truth is we deserve at least the basic parameters for a home office. While the proposed changes will not please everyone, it is hoped they'll at least provide a safe harbour for most employers.

If some companies already reimburse employees for this type of expense on a flat-rate basis, they may now be getting a little nervous, especially if their flat-rate reimbursement exceeds the proposed limit (sometimes by several times).

EU



Karel Hronek
karel.hronek@cz.ey.com
+420 731 627 065

Council agrees on emergency measures to reduce energy prices

Several weeks ago the European Commission published a draft regulation as an intervention to address high energy prices. On 30 September, political agreement was reached on the final form of these measures.

In addition to inter alia a commitment to savings in electricity consumption and a (temporary) revenue cap for selected electricity producers, the regulation also introduces a "temporary solidarity contribution" targeting "surplus" profits from selected activities in the crude petroleum, natural gas, coal and refinery sectors.[1]

Simply put, these surplus profits should correspond to the part of the tax base for 2022 and/or 2023 exceeding by more than 20% the average of the tax bases of the last four tax years (2018 to 2021).

The solidarity contribution rate should be at least 33%, with the solidarity contribution applied in addition to existing taxes and levied by individual Member States.

It will be interesting to see how exactly will these measures be implemented in the Czech Republic and how these measures will be "written into" the windfall profits tax proposal which according to our information should be presented by the Ministry of Finance on 6 October (after the deadline of this issue).

If you have any questions about the above topic, please contact the author of the article or your usual EY team.

In addition to a commitment to savings in electricity consumption and a (temporary) revenue cap for selected electricity producers, the regulation also introduces a "temporary solidarity contribution" targeting "surplus" profits from selected activities in the crude oil, natural gas, coal and refinery sectors.

1 For a definition see Article 2(17) st12999-en22.pdf (europa.eu)

Karel Hronek
karel.hronek@cz.ey.com
+420 731 627 065

New reporting obligation for digital platform operators (DAC7) is around the corner

We keep you informed on the new reporting obligation for digital platform operators. Czech implementation of this new obligation has just been approved by the Chamber of Deputies (HERE).

The main objective is to extend the automatic exchange of information framework to include a new range of information reported by digital platform operators. Simply put, a platform is defined as a software that allows a seller to connect with another user to carry out defined reportable activities in return for consideration. These activities will generally be 4 strands of activities:

- Provision of immovable property, by all means of transferring the property for use by another, e.g. by renting, leasing or providing accommodation, where immovable property includes e.g. housing units, houses, agricultural land, parking spaces.
- the provision of a means of transport, e.g. cars, motorcycles, bicycles or scooters.
- personal service, which means an activity of an individual based on time or a task at the request of the user of the platform (e.g., the activity of cleaning, performing craft work, etc.).
- Sale of goods, which in practice may be e.g. various web-based marketplaces or e-shops that intermediate the sale of goods from other sellers.

The rules contain lots of exemptions from reporting platform operators or reportable sellers. As with other reporting obligations, the amended Act also introduces additional registration or notification obligations in this context, detailed due diligence procedures to identify and review sellers, and penalties for breaches of related obligations, for example.

Selected platform operators will be required to report information to the tax authorities once a year (always by 31 January) regarding the income generated by selected users of these platforms (sellers).

The year 2023 will be the first reporting period (i.e. in 2024).

If you have any questions about the above topic, please contact the author of the article or your usual EY team.

The main objective of DAC7 is to extend the automatic exchange of information framework to include a new range of information reported by digital platform operators.

VAT

David Kužela
david.kuzela@cz.ey.com
+420 731 627 085

Jevgenija Bajzíková
jevgenija.bajzikova@cz.ey.com
731 627 061

Right to deduct VAT on marketing services – recent case law of Czech and European courts

Almost all companies spend money on advertising and it's a popular area of interest for the tax authorities. Do you have sufficient evidence of received advertising services? And do you need advertising to translate into increased sales? When looking at the list of recent Supreme Administrative Court (SAC) judgments on value added tax, it's interesting that a large number of them relate to proving advertising services. Although judgments unfavourable for taxpayers predominate, there are some favourable decisions. Below we summarise interesting points from selected judgments.

- Generally speaking, the advertising services market is considered to be risky in terms of tax fraud and companies have to take extra care when negotiating the contract itself and collecting evidence afterwards. If a company unwittingly engages in a chain of tax fraud, it must be able to defend that it acted with due care and took all the control measures that could reasonably be required of it (i.e. it neither knew nor could have known that it was involved in the fraud).

- If a lump-sum price has been agreed for several advertising events a part of which the taxpayer fails to prove, the tax administrator may deny the right to deduct VAT on the entire amount. The SAC supported a similar approach, arguing that it is not possible unambiguously to determine to what extent any part of the advertising services was reflected in the total price.

- When online advertising services (e.g. Google AdWords advertising) are purchased, the Czech tax office can (and does) make a request to the Irish tax authorities to find out what services have been declared by Google Ireland Ltd. to the customer in question. If this customer is not the final recipient of the services, but one of its (sub)suppliers, proving it can be significantly more complicated.

- If the advertising is provided in a chain of several subcontractors, the tax office can determine how much the price in the chain has been increased and expects the company to provide an economic justification. In cases where there are multiple price increases combined with a lack of VAT in the chain, the SAC rarely rules in favour of the recipient of the advertising service. However, some positive arguments can be found in the judgments of the Court of Justice of the EU (CJEU), which, among other things, sided with a Hungarian VAT payer whose advertising on racing cars was considered by the tax authorities to be too expensive and aimed at an inappropriate target group.

- The burden of proof is on the taxpayer. Producing a contract with the supplier, an order or invoices does not usually suffice for the tax administrator. The actual provision of advertising services must be supported by other documents, such as keyword performance reports, screenshots of online advertising, photo documentation, reports, proof of payment. In the case of recurring advertising on a larger scale (where it is not realistic to prove each individual advertisement), it is appropriate to document random verification of the provision of the advertisement – situations where the customer trusts the supplier implicitly and does not verify the actual provision of services are often considered by the SAC to be untrustworthy. It can also be tricky to rely on witness testimony, whose value may diminish with the passage of time.

- A company must be able to demonstrate acceptance of advertising services after several years have elapsed. The minimum retention period for evidence is 3 years. However, the VAT Act requires the retention of tax documents for 10 years.

- If a contracted promotional event (festival, broadcast spot, tournament, etc.) is for some reason moved to another date or replaced by another event, the taxpayer should be able to provide written documentation for such changes (contract amendment, e-mail communication). Although generally not mandatory, the use of written contracts/supplements and electronic communication reduces the risk of not proving the facts claimed.

- The Tax Administration can perform sophisticated reviews of the client's documents and detect inconsistencies in reports, e.g. the same number of clicks for different months, the same screenshot for different months, inconsistent number of spots and radio airtimes.

- Barter transactions (non-monetary exchange), which in practice often involve promotion in exchange for consideration in the form of reciprocal advertising services or other forms, can also be very dangerous from a VAT perspective unless they are properly contractually supported. In practice, this type of collaboration is common, for example, when working with "influencers". The SAC confirms that the obligation to pay VAT arises from the provision of barter, but that any entitlement to deduct VAT (if the counterparty is a VAT payer) is conditional on receipt of a tax document and limited by the standard time limits.

- On a more positive note, the CJEU confirmed that the European VAT Directive does not require that the inputs received lead to an undisputed increase in taxable turnover, and that the Tax Administration may not make the right to deduct input VAT conditional on this.

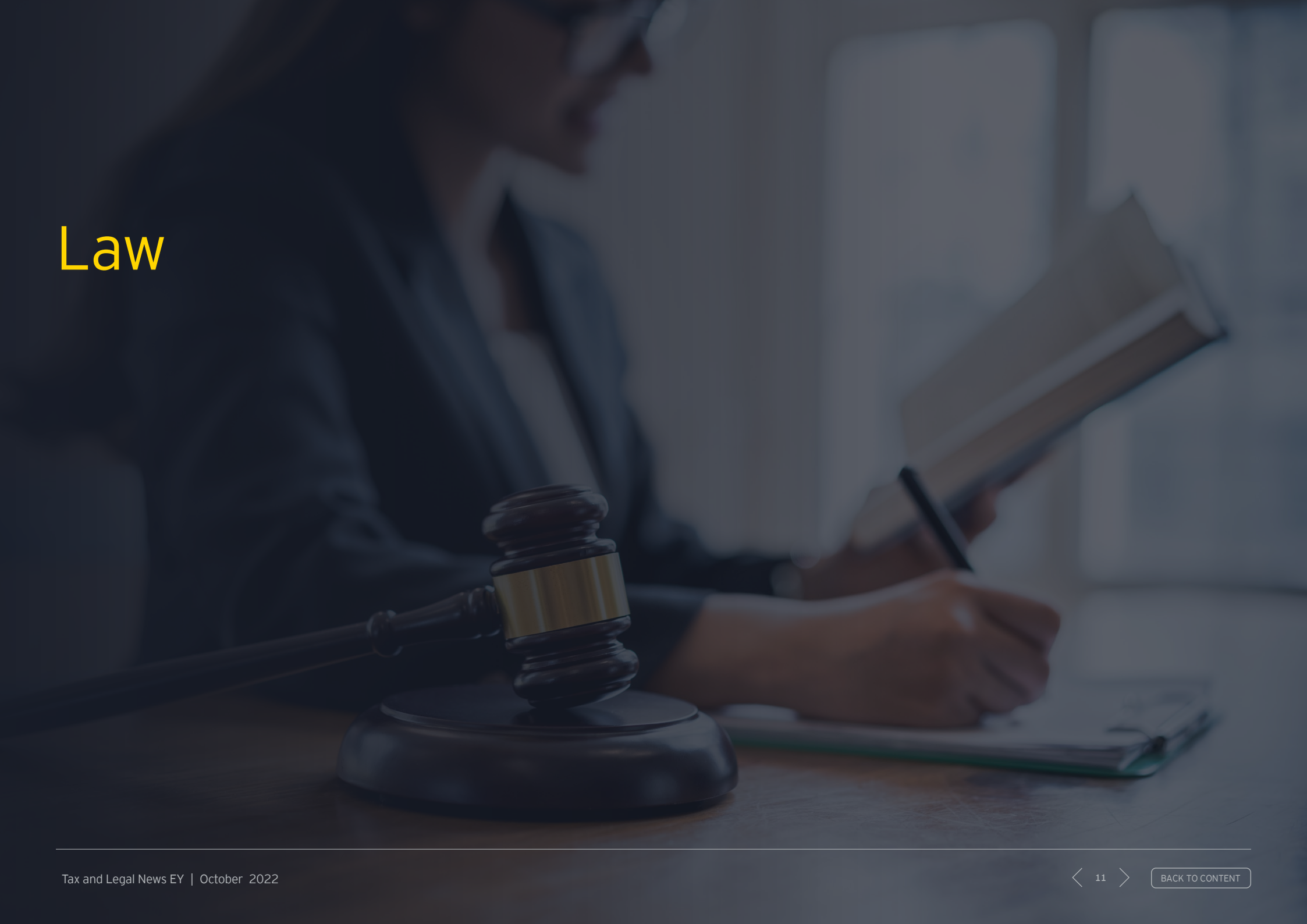
Based on the above examples, we can summarize that successfully bearing the burden of proof may not be easy, especially with a longer time lag. We therefore recommend not to underestimate this area and to set up a balanced system of ongoing documentation and archiving so the company doesn't find itself in need of proof in the event of future enquiries by the tax authorities.

EY offers its clients, among other things, a tax audit simulation focusing on areas that are often subject to real audits. Costs incurred for advertising services are just one of them and we will be happy to help you with the review or timely preparation of supporting documentation.

If you have any questions about the above topic, please contact the authors of the article or your usual EY team.

In the case of recurring advertising on a larger scale (where it is not realistic to prove each individual advertisement), it is appropriate to document random verification of the provision of the advertisement – situations where the customer trusts the supplier implicitly and does not verify the actual provision of services are often considered by the SAC to be untrustworthy.

Law



Ondřej Havránek
Ondrej.Havranek@cz.eylaw.com
+420 703 891 387

David Hlaváček
david.hlavacek@cz.eylaw.com
+420 705 620 166

What will be happening with data boxes in 2023?

On 1 January 2023, an amendment to Act No. 300/2008 Coll., on electronic acts and authorised document conversion will come into force. Among other things, it introduces several interesting innovations regarding the use of data boxes and, in particular, the range of persons for whom data boxes will be compulsorily established. What is the content of the amendment and what will change from the beginning of the year for users of data boxes as well as other categories of persons who currently do not have to use a data box?

One of the main objectives pursued by the legislator is to expand the range of persons using the data box for electronic communication. The aim is to achieve easier and more economical communication between the widest possible range of natural and legal persons with public administration authorities and to contribute more to the desired digitisation of public administration. From 1 January 2023, a data box will be automatically set up for a significant number of legal and natural persons (including non-business persons), without any request from these persons to set up a data box.

Legal persons

First of all, after 1 January 2023, a data box will be compulsorily and automatically established for all legal persons registered in a register of persons, i.e. in (i) the Register of Associations; (ii) the Register of Foundations; (iii) the Register of Institutions; (iv) the Register of Unit Owners' Associations; (v) the Commercial Register; and (vi) the Register of Benefit Corporations.

The aforementioned legal persons will not be able to deactivate (or make inaccessible) their data box and will thus be obliged to comply with all the obligations set out in the legislation (e.g. to file tax returns exclusively electronically).

According to the transitional provisions of the amendment, the Ministry of the Interior, which administers the data box agenda, is granted a deadline of 31 March 2023 to automatically set up all compulsorily established data boxes.

Natural persons – entrepreneurs

Another group of persons for whom a data mailbox will be compulsorily and automatically established after 1 January 2023 comprises natural persons engaged in business. Like legal persons, natural persons in business will not be able to deactivate their data box and will thus have to comply with all related obligations.

As with legal persons, the Ministry of the Interior should set up data boxes by 31 March 2023.

Natural persons – non-entrepreneurs

In addition to the above-mentioned persons, it should also be noted that after 1 January 2023, a data box will also be set up automatically and free of charge for every sane, non-business natural person (i.e. even if the person in question is not an entrepreneur) registered in the basic register of inhabitants of the Czech Republic after such a person has used, through one of the providers of the National Identity Authority, a "qualified means" of electronic communication, i.e. a means that serves to prove identity in a "virtual" environment. Such means of electronic identification are:

- ID card with activated electronic chip issued after 1 July 2018;
- banking identity;
- MojeID [MyID];
- eGovernment mobile key;
- NIA ID national identification resource based on the National Electronic Identification Point portal; or
- another means of identification provided by another EU Member State under the eIDAS Regulation.

For a data box to be automatically set up for a non-entrepreneurial natural person after 1 January 2023, the mere use of internet banking or any other use of a banking identity (login to various portals, etc.) will suffice. Although the person concerned will be notified of the automatic establishment of a data box before using the means of electronic identification, we nevertheless consider it appropriate to highlight this "involuntary" establishment of a data box, as a lot of people leave such notifications unread.

In the event that a person does not want to keep the data box active, or wants to deactivate the data box after its establishment, the amendment to the Act allows the automatically established data box to be made inaccessible at the request of the authorised person, thus preventing the delivery of documents to the data box by both public authorities and private entities.

In the case of natural persons who are not entrepreneurs, unlike with entrepreneurs, there is no strict obligation to use the data box, but action (request for deactivation) will be required to ensure that data messages are not delivered to the box.

Basic obligations associated with a data box

In view of the expanding range of persons who will use data boxes from 2023, we think it a good idea to briefly summarise the basic obligations associated with data box operation.

First of all, it should be noted that some public authorities require persons who have a data box to communicate with them exclusively electronically. An example may be the tax authorities, in relation to which, according to Section 72(6) of the Tax Code, a tax subject who has a data box established by law is obliged to make a form submission only electronically. If a tax return is filed in paper form and this is not rectified at the request of the tax office, then such filing in violation of the law could be sanctioned by the imposition of a fine.

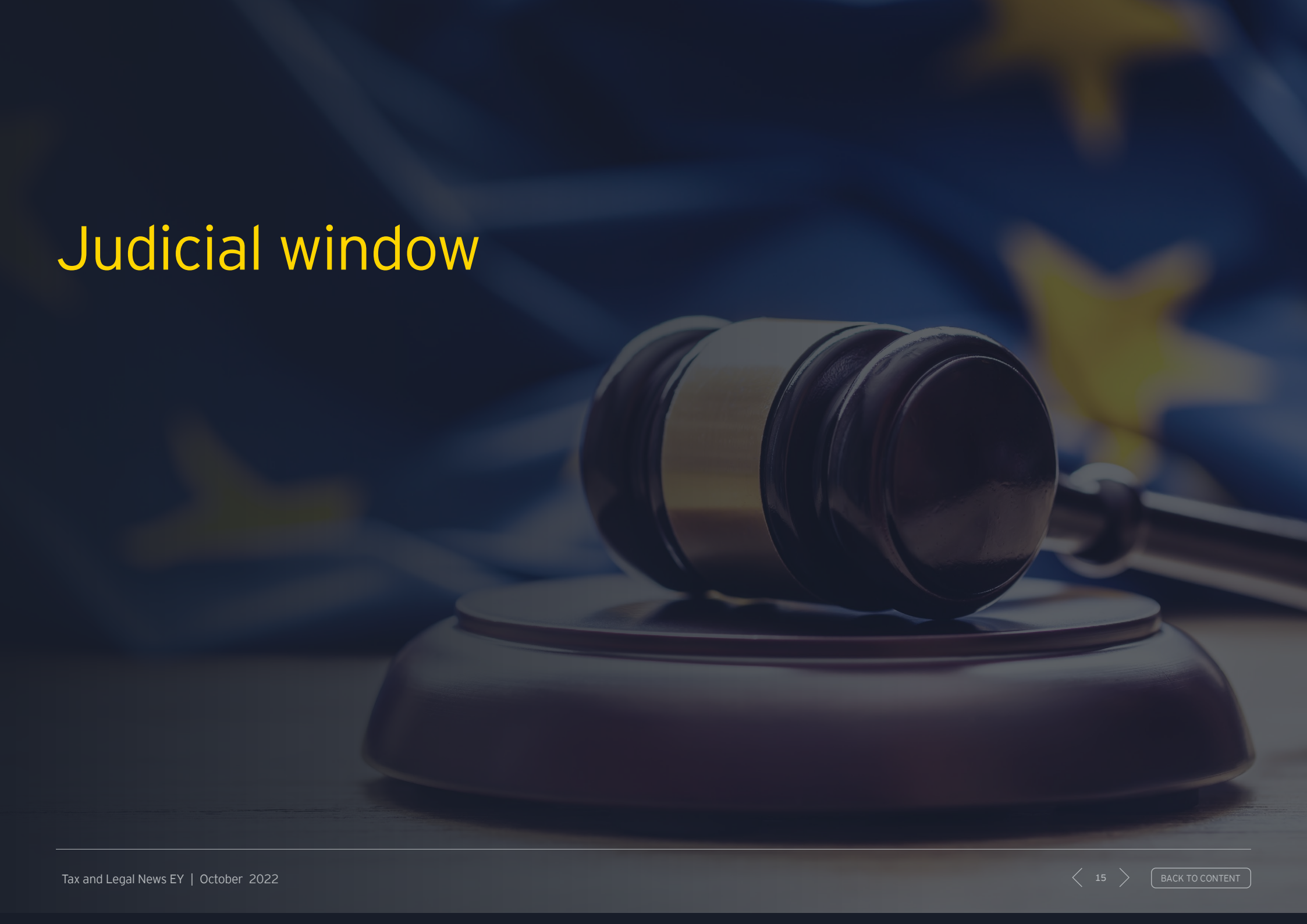
We should also point out the so-called fiction of delivery, which from 2022 also applies to all data messages, i.e. also to postal data messages sent between private persons. Therefore, if a private individual sends a data message to another private individual by post, then this data message will be delivered at the moment the addressee logs into his or her data box. If the addressee does not log into the data box by the 10th day after sending, the data message will be deemed to have been delivered on the 10th day after sending.

At the same time, it should be noted that in 2022, the receipt of postal data messages (i.e. messages between private entities) became mandatory, while only non-business individuals can deactivate the receipt of private messages via a data box. Therefore, it is also newly stipulated for postal data messages that if the authorised person does not log in to the data box, the message is considered delivered after 10 days.

For more detailed information, please contact the authors of the article or other members of EY Law or the EY team with whom you work.

The new regulation of data boxes brings a number of interesting innovations from 2023, e.g. automatic establishment of a data box even for non-business entities or a fiction of delivery for private data messages.

Judicial window



David Kužela
david.kuzela@cz.ey.com
+420 731 627 085

Lenka Doležalová
lenka.dolezalova@cz.ey.com
+420 730 813 639

SAC confirmed the VAT payer obligation to register its actual office

A tax administrator declared as unreliable a VAT payer who was registered at a virtual address and refused to disclose its real address. The SAC rejected the taxpayer's arguments that it was properly complying with its tax obligations or that key decisions could be made by its sole executive virtually anywhere (more in Czech HERE).

A one-member company with a foreign executive, whose business activities include, among other things, catering and the sale of fermented alcohol, listed its registered office address in the Commercial Register. However, it did not have any actual premises there – it was a so-called virtual registered office, which the tax administrator verified on the spot.

According to the VAT Act, the registered office of a taxable person is the place where the principal decisions concerning the management of the taxable person are taken or where its management meets. For natural persons, the law specifically provides that the registered office means their place of residence (if they have no other place of management).

Approach of the tax authorities and courts

In this case, the company did not indicate its actual office even when requested by the Tax Office. It was therefore declared an unreliable VAT payer, as according to the tax administrator it had committed a serious breach of tax administration obligations.

The SAC upheld this conclusion. The Court rejected the company's arguments that it properly fulfils its tax obligations or that it doesn't have a real registered office at all, or that it can have it anywhere, since the sole executive/partner resides outside the Czech Republic and can carry out strategic economic considerations in various places (a pub, a bench, a park, etc.). The SAC concluded that the real registered office of the company is the place where its managing director/associate resides.

The Court also found that the error was not the use of the virtual address as the formal registered office, but the fact that in the tax proceedings this place was declared – contrary to reality – as the real registered office.

Practical implications

The possibility of declaring VAT payers who do not register their actual office as unreliable gives the tax authorities a relatively powerful tool against companies with virtual addresses. It will be interesting to see whether the tax authorities start to use it more and how they deal with the possible verification of addresses abroad.

However, this area should not be underestimated by other taxpayers who have their actual place of management elsewhere than their registered office. If this effective registered office is abroad, we advise considering other possible implications, e.g. from an income tax perspective.

If you have any questions about the above topic, please contact the authors of the article or your usual EY team

The possibility of declaring VAT payers who do not register their actual office as unreliable gives the tax authorities a relatively powerful tool against companies with virtual addresses.

For further information please contact either your usual partner or manager.

Corporate taxation

Libor Frýzek	+420 731 627 004
Ondřej Janeček	+420 731 627 019
René Kulínský	+420 731 627 006
Lucie Říhová	+420 731 627 058
Jana Wintrová	+420 731 627 020

VAT and customs

David Kuželа	+420 731 627 085
Stanislav Kryl	+420 731 627 021

Personal taxation

Martina Kneiflová	+420 731 627 041

Law

Ondřej Havránek	+420 703 891 387

EY
+420 225 335 111
ey@cz.ey.com
www.ey.com/cz

Subscription
If you would like one of your colleagues or acquaintances to receive our Tax and Legal News by e-mail, please forward this e-mail to him and he can subscribe here.

Unsubscribe
If you do not wish to receive EY Tax and Legal News, please contact Elišku Rozsívalovou: eliska.rozsivalova@cz.ey.com.

EY | Building a better working world

EY exists to build a better working world, helping to create long-term value for clients, people and society and build trust in the capital markets.

Enabled by data and technology, diverse EY teams in over 150 countries provide trust through assurance and help clients grow, transform and operate.

Working across assurance, consulting, law, strategy, tax and transactions, EY teams ask better questions to find new answers for the complex issues facing our world today.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

ED None

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, or other professional advice. Please refer to your advisors for specific advice.

ey.com

Did you know:

- The Ministry of Labour and Social Affairs has submitted the long-awaited Labour Code amendment?
- The Government has approved support for large electricity and gas consumers affected by high energy prices?
- New European Travel Information and Authorisation System (ETIAS) obligations are on the way?
- The lower excise duty rate on diesel is being extended?
- According to the SAC, the tax administrator cannot simply ignore an erroneously filed control report for an incorrect period?