



## Tax&Legal Highlights

### Czech Republic

#### Free Trade Between the EU and Japan

**The Economic Partnership Agreement (EPA) concluded between the EU and Japan on 17 July 2018 will enter into force on 1 February 2019, which is surprisingly ahead of the planned date.**

Based on the agreement, it will be possible to import to the EU the majority of products originated in Japan (almost 96% of the customs tariff sub-items) without any customs duties already from 1 February 2019. Similarly, it will be possible to import as many as 86% of the kinds of products originated in the EU to Japan without any customs duties. It is expected that the agreement will bring to the EU importers savings on customs costs namely in the area of import of chemical or electric products as well as cars and their parts.

The EPA is a comprehensive trade agreement. In addition to the free trading of goods, the agreement also focuses on the harmonisation of standards such as certification for personal vehicles and agricultural products, liberalisation and simplification of mutual trading with services, and enhancing investment opportunities between the EU and Japan by enabling mutual access to public

contracts, protection of intellectual property rights, or the issue of medium sized enterprises.

The free trading of goods will be based on the preferential origin of goods, as is the case with other similar agreements. In this area, the agreement with Japan has numerous specifics related to both the evidencing of the preferential origin of goods and the wording of the rules of origin as such. Given those specific features we recommend that you pay appropriate attention to the given issue to ensure you can exploit the benefits arising from the agreement properly and in a timely manner. Incorrect application of the preferential origin may result in difficulties for EU exporters and subsequently, their Japanese customers. Analogically, an incorrect application of rules on the side of your Japanese supplier may have an adverse impact on your company importing the given goods to the EU.

Should you have any doubts in this respect, we recommend that you also focus on the tariff classification of goods as the assessment of the preferential origin of goods is mainly derived therefrom.

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### Ministers have Approved a Proposed Act in the Event of a No-deal Brexit

**The proposed act that relates to UK nationals living in the Czech Republic has been approved by the government and sent to the parliament. The government will require that the deputies approve the act in a fast-track procedure during a single reading.**

The proposed act introduces a transitional period until the end of 2020, during which the UK nationals would, in the event of a "hard Brexit" – ie, if the United Kingdom left the European Union with no deal in late March 2019 – retain their rights in the Czech Republic as EU nationals in respect of permanent residence permits, entering into marriage, applying for citizenship, supplementary pension insurance, work permits and recognising qualifications. The proposed act stipulates that UK nationals wishing to lawfully reside in the Czech Republic during the transitional period should apply with the Czech Ministry of the Interior (the Asylum and Migration Policy Department) for a certificate validating their temporary residence in the Czech Republic no later than on 29 March 2019.

The United Kingdom will leave the European Union on 29 March, following a deal with the EU, for which Prime Minister Theresa May has yet to find

sufficient support. British Members of Parliament are set to vote about the Brexit deal on 15 January.

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### **Computerisation of contact with officials**

**The Department of Asylum and Migration Policy continues to work on improving the efficiency of electronic communication.**

The Ministry of the Interior has already introduced an electronic system for requesting appointments at the Department of Asylum and Migration Policy and it currently strives for its expansion to include other tasks, such as monitoring the status of the application online and – within a few years – the electronic submission of applications, for which the Ministry of the Interior intends to obtain a grant from the European Union. It will not be possible to use appointments arranged electronically for representing a foreign national based on a power of attorney, i.e. the foreign national will have to attend in person. The number of officials responding to requests on the telephone information line and by email has unfortunately been reduced.

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### **Amendment to the Act on the Residence of Foreign Nationals**

**The amendment to the Act on the Residence of Foreign Nationals has been under discussion since June 2018. We have previously informed you about the amendment to the Act on the Residence of Foreign Nationals submitted by the government and the essential changes proposed by the amendment.**

The draft bill includes the transposition of the EU directive which simplifies the residence of foreign students and research workers on the territory of the individual member states and additionally regulates – among other things – the setting of quotas for economic migrants and obligatory adaptation-integration courses for certain foreign nationals in the Czech Republic. Now we bring you the latest news concerning the development of the legislative

process and a summary of other changes proposed in the Chamber of Deputies.

In early December 2018, the last debate regarding the draft bill took place in the Lower Chamber, and at present we are waiting for the opinion of the relevant departments that focus on the matters of residence of foreign nationals, which is related to the delay of the entry into force. The following changes to the Act have been proposed as part of the legislative process:

- It has been proposed to strike out the institute of the so-called extraordinary work visa due to the foreign national's inability to settle in the Czech Republic and obtain certain rights here, inability to bring family to the Czech Republic (albeit temporarily), work uncertainty and due to the lack of guarantee from employers that they will be able to continue employing the trained and vetted foreign worker for more than one years.
- A fee has been proposed for the obligatory participation in the adaptation-integration course. The course should become obligatory from 2021; the Ministry of the Interior will be able to grant exemptions from the obligatory participation in the course for reasons meriting special consideration.
- The yearly number of visa applications for residence over 90 days for the purpose of business and for the employee card should be spread out evenly in each calendar month based on a Government Decree, in the category of government-approved programmes and in the category of other applications. If the maximum number of applications at the respective embassy is reached, the applications submitted beyond the limit set for the relevant category will be unacceptable, even if the maximum number of applications in another category has not been attained. The applicant will therefore be able to apply for a different kind of residence permit. The quotas will not concern the institute of the intra-company employee transfer card and the blue card, but the current functional projects of economic migration within the responsibility of the Ministry of Industry and Trade will be included.
- It has also been proposed to cancel the fee for processing requests for appointment for submitting an application for long-term visa and long-term residence in person at embassies, and to cap the fees for submitting an application both at embassies and in the Czech Republic.
- In addition, there is criticism for the proposal stipulating that required documents are to be submitted only in paper form, since this circumvents the case law of the Supreme Administrative Court (cf. e.g. ruling no. 1 Azs 339/2017–52) and encumbers the proceedings at embassies with requirements that go completely against the development of modern technologies and the e-government strategy.
- Another proposal requires the applicant for an employee card collecting the residence card to prove that they are already employed by a specific employer. The objective of this proposal is to prevent situations where the foreign national arrives in the Czech Republic and then fails to start working for the employer at the job position for which the employee card should be issued. It often happens in practice that the employer is unaware that the foreign national has

arrived in the Czech Republic and the employer therefore cannot comply with the legal obligation of reporting the foreign national to the Labour Office. The foreign national subsequently uses the obtained employee card to transfer to another employer, or misuses it for other purposes (e.g. illegal work).

- The holder of an employee card should now be required to report a change of employer, work placement or employment at another job position with the same or different employer to the Ministry within 30 days before the change occurs, and no sooner than six months after the entry into force of the decision to issue an employment card. The Ministry shall inform the foreign national and the future employer within 30 days of the receipt of the announcement whether the conditions required for the change of employer, work placement or employment at another job position with the same or different employer have been met and whether the foreign national may be employed at this job position.
- The proposal also strikes out the item concerning the reported address location in the residence card. The foreign national would continue to be required to report changes in address, but the current address would be entered in information systems and travel documents. This would save administrative work related to the changes of biometric cards (including the fee).
- The obligation to keep copies of documents proving the existence of employment relation at the workplace in the Czech Republic would also concern a foreign employer that has assigned its employee to perform work in the Czech Republic, and the documents that fulfil this obligation have to be translated into Czech. The information and record-keeping obligation and the obligation to keep copies of documents proving the existence of employment relation at the workplace would thus be transferred to the foreign employer.
- The labour market test before the submission of an application for an employee card or a blue card should be shortened to 10 days.

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## **The tax package approved by the Chamber of Deputies**

**The Chamber of Deputies has approved the tax package as part of third reading today.**

The tax package has been approved in a wording reflecting several amending motions. Some of the approved changes in income taxation include:

- Change in research and development tax relief;
- Increase in the expense charge-off flat rate for sole traders (OSVČ);
- The possibility of reflecting IFRS impacts already in the 2019 taxation period (financial institutions); and

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- Change in the withholding tax limit to an amount relevant for health insurance payments.

As part of the tax package, a technical amendment to the VAT Act, including a series of amending motions, has been approved. If no additional changes are made to the wording of the amendment in the follow-up legislation process, the key changes in the VAT Act are expected to affect the following areas:

- Guidance on taxing vouchers (single-purpose and multi-purpose vouchers);
- New provisions on the date of taxable supply (ancillary supplies to leases, long-term supplies);
- Rules for delivering tax documents;
- Finance lease definition (effective from 2020);
- Lease of real estate and taxation option restriction (effective from 2021);
- Guidance on VAT deduction in respect of real estate repairs;
- VAT deduction claim upon registration;
- Determination of the place of supply on electronically-provided services; and
- Decrease in the VAT rate upon heat delivery.

The tax package is to be subsequently voted on in the Senate and signed off by President. The general effectiveness of these changes (with the exceptions noted above) will occur on the first day of the month following the month in which the amendment is published in the Collection of Laws (unless specifically stipulated otherwise).

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## ECOFIN Discusses Digital Services Tax

**One of the agenda topics discussed by the ECOFIN Council during its meeting of 3 December 2018 was the proposal on the taxation of digital services.**

Earlier this year, on 21 March 2018, the concept for the taxation of digital services was presented by the European Commission. The concept was based around two directives, that is, 1) a directive stipulating taxable presence in

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the form of a digital permanent establishment, and 2) the collection of indirect digital services tax (DST) at 3% of the income arising from certain types of digital services.

The origination of a digital permanent establishment in the territory of a particular state could occur if the number of users of a specific digital technology exceeds 100,000 thousand, if the technology generates profits of over EUR 7,000 thousand, and at the same time, the number of contracts for the provision of the given technology concluded with businesses exceeds 3,000. The areas in which DST may be applied include income arising from the sale of online advertising space, income from the sale of data attained in the course of digital activity, and income arising from the mediation of digital activities that enable interaction with other users and that facilitate their trading. The collection of the provisional tax ought to include solely companies with global annual taxable income exceeding EUR 750 million, of which the portion taxable in the EU amounts to EUR 50 million. The aim of these limits is to ensure that the provisional tax does not affect newly established and fast growing companies.

ECOFIN's discussion reflects the proposal presented by Germany and France, according to which indirect DST would be solely a temporary solution effective up to the point at which international consent is achieved (principally at the level of OECD, G7 and G20 countries). Pursuant to Germany's and France's proposal, the directive introducing DST should be approved no later than in March 2019 so that it can become effective from January 2021, unless a multinational solution is identified by then. In the event that a mutual cross-country solution is found prior to 1 January 2021, the implementation of the directive introducing DST will be discontinued and the directive will become null and void starting 2025.

The Czech Republic has been supporting the full scope international solution at the OECD level. Nevertheless, it has also expressed its willingness to continue the negotiations of the motion raised by Germany and France, if DST gets introduced solely for a limited period of time. Conversely, Ireland is one of the countries opposing the proposal of introducing DST. On the other hand, the submitted proposals on taxing income from digital services provoke a number of speculations as to how the one or the other system would work simultaneously with the currently-valid double taxation treaties and the rules stipulated by national legislations of individual states.

Moreover, the EU is not the only territory where the proposal to introduce an indirect tax on income arising from certain types of digital services has been considered. Similar proposals have been presented, for instance, by Mexico and the United Kingdom (which is soon going to cease being an EU member state). The next ECOFIN meeting is scheduled to take place on 22 January 2019.

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