



Forvis Mazars Tax View

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Dear Readers,

After the summer months, we are pleased to welcome you back with a new edition of our tax newsletter.

Our opening article focuses on recent case law of the Supreme Administrative Court concerning the tax deductibility of interest on acquisition financing in connection with mergers. We also look at the new sales records system and how businesses can prepare for its expected introduction in 2027. The related draft legislation also affects the area of income taxes, so we take a separate look at the proposed changes to employee benefits.

In the area of VAT, we present new guidance from the General Financial Directorate, which clarifies the rules for determining the VAT base for donated goods and the supporting evidence required to substantiate their actual value.

Our final article focuses on the planned revision of the EU rules on the posting of employees and the related changes in the area of social security coordination.

We hope that you will find useful information for your business in this new edition.

On behalf of the entire Forvis Mazars team, I wish you an enjoyable read and a pleasant start to the autumn.



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The Supreme Administrative Court's Current View on the Tax Deductibility of Interest in a Downstream Merger

The Supreme Administrative Court has, on numerous occasions in the past, has ruled on the tax deductibility of interest on acquisition financing in so-called “upstream mergers,” in which the parent company becomes the successor company to the dissolving subsidiary. In light of the latest case law from the Supreme Administrative Court, it has also decided on the deductibility of interest in a “downstream” merger, in which the parent company is the dissolving entity to the successor subsidiary.

Current practice regarding the tax deductibility of interest on acquisition financing is based primarily on Section 25(1)(zk) and Section 24(1) of the Income Tax Act. Under certain conditions, Section 25(1)(zk) excludes the tax deductibility of interest on loans and borrowings used to acquire a share in a subsidiary. In the case of an upstream merger, the prevailing practice is that interest becomes tax-deductible as of the effective date of the transformation, after which the loan is no longer used to acquire the interest in the subsidiary but, from an economic perspective, is used to acquire the assets of the dissolved subsidiary.

In the case of a downstream merger, the situation is different, as once the intended transformation is completed, this debt financing originally arranged for the purchase of a share in the subsidiary will effectively be assumed by the successor subsidiary. Unlike in an upstream merger, the assessment of the tax deductibility of interest after the corporate transformation has been completed is therefore not straightforward.

When assessing the tax deductibility of interest in connection with corporate transformation, the tax authority also evaluates the economic rationale for the transformation itself, specifically in relation to the

doctrine of abuse of law. The Supreme Administrative Court recently decided in Case No. 8 Afs 246/2022-61 dated June 25, 2024, in which the dispute concerned the tax deductibility of interest on debt financing used to acquire an operating company; the tax authority argued that there was an abuse of rights, specifically a situation where the primary purpose of the taxpayer's actions was to obtain a tax advantage in the form of tax deductibility of interest.

The core of the dispute was a situation in which an investment group establishes a completely new company to acquire a target operating company, and that new company subsequently obtains a loan from a bank to finance the acquisition of the target company. The target company is then merged into the newly formed company (through an upstream or downstream merger). From the tax authority's perspective, the main issue is that, for example, a highly profitable target company is now burdened with interest on the acquisition loan, which may be tax-deductible, thereby reducing the company's taxable profits or even causing it to report a tax loss. However, if the two companies had not merged, this interest would have been clearly non-deductible at the level of the newly formed company.

The Supreme Administrative Court's Current View on the Tax Deductibility of Interest in a Downstream Merger

However, the Supreme Administrative Court rejected the tax authority's argument regarding abuse of rights. A significant factor was that the financing bank had made the granting of the loan conditional upon the establishment of a new company and the subsequent transfer of part of the loan burden to the operating company. At the same time, the taxpayer credibly explained the economic rationale behind the bank's requirement, particularly from the perspective of the bank's position as a creditor. From the Supreme Administrative Court's perspective, therefore, there was no abuse of rights in an effort to obtain a tax advantage; rather, the primary objective was to fulfill the financing bank's conditions.

The Supreme Administrative Court addressed a similar situation in its judgment 5 Afs 164/2024-69 dated May 26, 2026. The subject of the dispute was also the tax deductibility of interest on financing for a downstream merger, where the financing was not provided by an independent external party but was instead arranged entirely within the group of related parties. The taxpayer justified the method in which the merger was carried out and financed by obtaining a business plan, according to which it would manage its future business activities. However, this also resulted in high indebtedness of the successor company, which, in the Supreme Administrative Court's view, could not be economically justified by the purported acquisition of the business plan. The Supreme Administrative Court did not find convincing the statement that the business plan

represented adequate economic consideration for the debt incurred. The Supreme Administrative Court therefore confirmed the tax administrator's conclusions, which deemed the interest non-deductible for tax purposes, as the general test for the deductibility of expenses under Section 24(1) of the Income Tax Act had not been met.

From the aforementioned Supreme Administrative Court judgments and the tax authority's approach follows that the tax deductibility of interest in an upstream or downstream merger cannot be viewed solely through the conditions of Section 25(1)(zk) of the Income Tax Act, but must be viewed within the broader context of the general deductibility test under Section 24(1) of the Income Tax Act; it is also necessary to assess the entire process in light of the principle against the abuse of rights, which is laid down in Section 8(4) of the Tax Code. Recent case law of the Supreme Administrative Court indicates that, when assessing the tax deductibility of interest related to acquisition financing and subsequent transformation, one cannot rely solely on the formal fulfillment of the conditions set forth in Section 25(1)(zk) of the Income Tax Act. It is also necessary to assess the actual economic connection between interest expenses and taxable income pursuant to Section 24(1) of the Income Tax Act and, in relevant cases, the economic rationality of the entire transaction from the perspective of the doctrine of abuse of rights. Each case must therefore be assessed individually, taking into account its specific economic and legal circumstances.



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EET 2.0 Is Approaching. How Should You Prepare?

Several years after the abolition of the original electronic sales records system, this topic is returning in the form of a project referred to as EET 2.0. The Government has prepared a modernised version of sales records which, according to its proponents, should help reduce the grey economy, support a fair business environment and, at the same time, reduce the administrative burden compared with the original system.

The draft law was approved by the Government in May 2026 and passed through the Chamber of Deputies in July 2026. On 19 August 2026, the Senate discussed the draft and returned it to the Chamber of Deputies with proposed amendments. The legislative process has therefore not yet been completed, and the final wording of the rules may still change. The new regulation is expected to take effect on 1 January 2027.

Unlike the original system, EET 2.0 is intended to focus primarily on so-called contact payments, i.e. in particular cash payments, card payments or QR payments made during personal contact between the seller and the customer; however, the precise definition is more complex. By contrast, standard bank transfers, invoice payments or other payments made remotely should not be subject to reporting. The Senate is now proposing to exclude cashless payments from the sales records system entirely.

The Ministry of Finance emphasises that the new system should be technically simpler than the original EET. The proposed solution is designed for a single online reporting regime, the use of existing cash register equipment and a free web application provided by the Financial Administration, intended mainly for small businesses. The system is to be administered through the 'MOJE daně' portal and the DIS+ Tax Information Box. The technical parameters of the new system have already been published.

Although the law has not yet been passed, we recommend that businesses monitor further developments in the legislative process and already assess whether their method of accepting payments will fall within the future sales records system. If so, the first step will be to identify the reporting units that are subject to the registration obligation. Please note that the draft law currently also provides for the registration of reporting units that do not accept contact payments. The intention of the Financial Administration is to obtain information on all sales channels of given business.

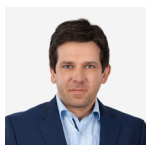
Offences against the reporting obligation will be subject to penalties of up to CZK 500,000, which may also be imposed repeatedly. A mere failure to comply with the registration obligation for all reporting units will also be sanctionable, even if the reporting obligation is otherwise duly fulfilled.



EET 2.0 Is Approaching. How Should You Prepare?

Given that some aspects of the new legislation are not yet entirely clear and may allow for different interpretations, both businesses and the professional public are awaiting methodological guidance from the Financial Administration once the law has been approved.

In this context, we would be pleased to help you assess whether and to what extent the new rules may apply to you, identify any registration and reporting obligations, and discuss the next practical steps.



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Changes to Employee Benefits Effective as of January 1, 2027

At its 25th meeting on July 15, 2026, the Chamber of Deputies approved, in its third reading, the government's draft Act on sales records, which also includes an amendment to Act No. 586/1992 Coll., the Income Taxes Act (hereinafter referred to as the "amendment"). In addition to the obligations related to sales records, this amendment also regulates employee benefits and revises tax credits.

The area of employee benefits is subject to frequent changes. The most recent comprehensive revision of employee benefits was part of the so-called consolidation package, which took effect in 2024. In 2024, the scope of non-monetary benefits remained unchanged; however, the amount of income from these benefits that can be exempted on the employee's side was limited. The exemption limit was set at half of the average wage.

Another change to employee benefits took effect in 2025. This change divided benefits into so-called leisure and health benefits, with a separate exemption limit set for each category. For leisure benefits, the limit of half the average wage continued

to apply, while health benefits—independently of leisure benefits, were exempt at the employee level up to a total amount equal to the average wage.

Changes to employee benefits, which are scheduled to take effect on January 1, 2027, will return the conditions for leisure benefits to the state they were before the consolidation package in 2024. The exemption limit on the employee's side, which remains at half the average wage, is being eliminated, except for non-monetary benefits provided for travel and recreation, for which an exemption limit of up to CZK 20,000 in total per tax period will apply.

Changes to Employee Benefits Effective as of January 1, 2027

From a legislative perspective, an employee's participation in a social event organized by the employer will be reclassified as a leisure benefit; however, there is no substantive change, as this benefit was already fully exempt on the employee's side under the current version of the Act. Similarly, the amendment does not introduce any substantive change to the category of health benefits, and the exemption limit up to the amount of the average wage will remain in effect.

Effective from January 1, 2027, a new category of tax-exempt benefits will also be introduced, under which non-monetary benefits provided by an employer to an employee or a family member for personal assistance, nursing care, emergency care, respite care, early intervention, or services provided by a day service center or day care facility will be exempt.

The amendment does not fundamentally change the conditions for the tax deductibility of expenses incurred by employers for benefits provided to employees. It will still be the case that expenses

incurred for employee benefits that are tax-exempt for the employee will not be tax-deductible for the employer. Expenses for employee benefits provided over the exemption limit—which now primarily includes health benefits and non-monetary benefits for travel and recreation—will be tax-deductible for employers only if the employee's entitlement to these benefits is stipulated in a collective labour agreement, the employer's internal regulations, or an employment contract or other agreement.

The condition that these benefits are provided by the employer to the employee in a non-monetary form also remains in effect. It is essential that the employer purchases these goods and services in the form of benefits in its own name and provide them directly to the employee. If an employee were to pay for the benefit themselves first and the employer subsequently reimbursed them for that amount, this would not constitute a non-monetary benefit, and the exemption under Section 6(9)(d) of the Income Tax Act would not apply to such a benefit.

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Invitation: Business Breakfast

The Future of Finance: In-House, Outsourcing, or AI?

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The General Financial Directorate Specifies the Method for Determining the VAT Base for Donated Goods

The General Financial Directorate (the ‘GFD’) issued updated Information on the application of VAT to the free-of-charge supply of goods (the ‘Information’), effective from July 1, 2026. It replaces the previous guidance from 2023. The new Information does not change the VAT rules themselves but explains in more detail how to determine the VAT base when goods are donated and sets out clearer requirements for supporting evidence. The Information is especially relevant for companies that regularly donate unsellable stock, seasonal collections or goods with limited commercial use.

A free-of-charge supply of goods for which input VAT was deducted on acquisition is generally subject to output VAT. The goods must not have been acquired with the intention of donating them. In that case, no right to deduct input VAT arises and the later donation is outside the scope of VAT. If the donation of goods is a taxable transaction, the key question is how to determine the VAT base correctly.

For purchased goods, the VAT base is determined based on the purchase price, adjusted to reflect the actual condition of the goods at the time of donation. In simple terms, the real market value of the goods on the date of donation may be used. For goods acquired in another way, the VAT base is the price of comparable goods at the time of donation. If this price cannot be determined, the total costs incurred to acquire the goods as at the date of donation are used.

From a VAT perspective, the purpose of the donation is not decisive. What matters is the objective value of the donated goods. A charitable, social or other public-benefit purpose therefore does not, by itself, allow the VAT base to be reduced below the level determined under the rules described above.

The Information explains in more detail how to determine the VAT base, especially for goods that have lost their normal commercial use and whose actual value for the taxpayer may be very low or almost zero. The Information expressly states that, in certain cases, the value of goods may be practically zero even if the goods have kept their original qualities and show no signs of wear or damage. As an example, the Information refers to unsellable textile products withdrawn from sale because of a long-term policy of seasonal collections. However, the key condition is that the taxpayer must be able to objectively prove the circumstances that led to the loss of the goods’ commercial value.

The General Financial Directorate Specifies the Method for Determining the VAT Base for Donated Goods

If the goods can no longer be sold only because of the company's internal business policy, such as seasonal sales policy, the taxpayer must prove that this is a long-term and consistently applied business strategy. At the same time, the taxpayer must show that sufficient efforts were made to sell the goods, for example through gradual discounts. All these facts should be properly documented. An essential condition is that the goods are no longer offered on the market and will not be offered on the market in the future.

If the donation of goods is relevant to your company, we would be happy to review with you the correct VAT treatment, the method for determining the VAT base and the scope of documentation needed to support the chosen approach.



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Stricter EU Rules Ahead for Posted Workers

The European Union is moving closer to completing the long-awaited revision of the rules on the coordination of social security systems. In July, the European Parliament approved amendments to Regulations (EC) No 883/2004 and 987/2009, which concern, among other areas, the posting of employees to other Member States. The new rules will introduce stricter conditions and additional administrative obligations for employers, as well as greater scrutiny of A1 certificates. The revision also covers other areas of social security coordination; in this article, however, we focus on the changes relating to posted workers.

Stricter Conditions for Posting

The basic principle remains unchanged. Subject to certain conditions, an employee temporarily posted to another Member State may continue to be covered by the social security system of the home Member State, provided that the anticipated duration of the posting does not exceed 24 months. The rules on replacing posted workers are also being clarified – where a posted employee is replaced by another person, the total duration of work performed by all employees posted in this way in the Member State concerned may not exceed 24 months.

Under the new rules, an employee who is to be posted abroad will have to have been subject to the social security system of the Member State in which the employer is established for at least **three months**.

A two-month break following the maximum posting period is already applied in practice under the existing interpretative rules. The amendment will now expressly incorporate this requirement into the legislation: once the 24-month period has been reached, a new posting of the same person to the same Member State will generally only be possible after a break of at least two months.

Stricter EU Rules Ahead for Posted Workers

A1 Certificates Will Need to Be Addressed Before Departure

One of the key changes for employers is the tightening of the rules concerning A1 certificates. Cross-border work will have to be notified to the competent institution in advance, and an application for an A1 certificate will have to be submitted before the posting begins.

If an A1 certificate cannot be issued immediately, the competent institution will automatically issue an acknowledgement of receipt of the application.

Exceptions will apply to certain defined business trips, such as business meetings, conferences and training, but not to the provision of services or delivery of goods. A further exception will apply to very short activities lasting no more than three consecutive working days within a 30-day period, although this exception will not apply to the construction sector.

For employers, this means ensuring that the actual work performed is consistent with the information provided in the application and maintaining accurate records of business trips and other short-term activities abroad. In practice, it will therefore be necessary to distinguish correctly between business trips, short-term activities and postings, and to comply with the relevant obligations in a timely manner.

Greater Emphasis on Compliance and Controls

The new rules also strengthen cooperation between the institutions of individual Member States and their ability to verify issued documents. Where doubts arise regarding the validity of an A1 certificate or the information on the basis of which it was issued, a formal review procedure may be initiated. If an error or fraud is identified, the certificate may be corrected or withdrawn, including with retroactive effect.

For employers, simply obtaining an A1 certificate will therefore not be sufficient. The declared circumstances must correspond to where and under what conditions the employee actually works. Proper record-keeping of cross-border work activities will consequently become even more important.

Cross-border cooperation between institutions is also being supported by the ongoing digitalization of social security coordination and the electronic exchange of information through EESSI. In parallel, the ESSPASS project continues to develop, focusing, among other things, on the electronic issuance and cross-border verification of A1 certificates.





Stricter EU Rules Ahead for Posted Workers

Preparing for the New Rules

The legislative process has not yet been completed, and the new rules concerning posted workers will only start to apply after a two-year transitional period. Employers therefore still have time to review their internal policies for business travel and employee postings, their processes for obtaining A1 certificates, and their systems for recording work performed abroad.

Assessing individual cases correctly can be particularly challenging in the case of short-term and recurring cross-border activities. We will be happy to review your current arrangements, assess specific cases and help you prepare your internal processes for the new rules.

If you have any questions regarding the posting of employees or the coordination of social security systems, please do not hesitate to contact us.



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O Forvis Mazars

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