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The information contained in this bulletin is presented to the best of our knowledge and belief at the time of going to press. However, specific information related to the topics listed in this bulletin should be consulted before any decisions are made.

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News in Legislation

Amendment to the Income Tax Act, Road Tax Act and Air Protection Act

Act No. 142/2022 Coll., amending Act No. 586/1992 Coll., on Income Taxes, as amended, Act No. 16/1993 Coll., on Road Tax, as amended, and Act No. 201/2012 Coll., on Air Protection, as amended (hereinafter referred to as the "**Amendment Act**"), will enter into force on 1 July 2022.

The explanatory memorandum to the Amendment Act cites the introduction of support for low-emission mobility in the Income Tax Act as the main reason for its adoption. Another important reason for the adoption of the Amendment Act was also the reduction of the road tax, which the promoters hope will simplify and clarify the tax system. This step is expected to be particularly beneficial at a time when, as a result of the impact of the Russian aggression in Ukraine, the costs of transport for both business and non-business entities are increasing significantly, especially due to the extreme increase in fuel prices.

The Amendment Act will introduce a different method of taxation of low-emission vehicles provided by the employer to employees for business and private purposes. From 1 July 2022, if an employer provides a low-emission motor vehicle free of charge to an employee, the employee's income will no longer be deemed to be 1% of the entry price of the vehicle, but only 0.5% of the entry price for each calendar month and every calendar month that the vehicle is provided.

Another significant change introduced by the Amendment Act is a significant reduction of the road tax, which will continue to apply only to road vehicles of categories N2 and N3 and their trailers of category O3 or O4, if they are registered in the Register of Road Vehicles in the Czech Republic. On the other hand, most business entities that use cars, buses or trucks with the newly proposed zero tax rate for business purposes will be exempted from the obligation to pay tax on these vehicles and from the obligation to file a tax return.

News in Case Law

Omission of the parties' intention to settle the dispute amicably

(Ruling of the Constitutional Court File No. III.ÚS 406/22, of 26th April 2022)

The plaintiff, in its capacity as defendant in the proceedings before the court of first instance, was affected by a judgment for recognition, against which it appealed to the Regional Court in Pilsen ("**Regional Court**") on the grounds that the statutory prerequisites for a judgment for recognition had not been met. The Regional Court, however, upheld the judgment of the District Court, since, in its view, the qualified prerequisites for a judgment of recognition had been fulfilled.

The complainant appealed against this decision to the Supreme Court, in which he criticised the Regional Court for not taking into account the parties' proposals for approval of the settlement, which were submitted during the appeal proceedings. Although

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the applicant's submission containing the proposal for conciliation was lost during the proceedings, the applicant took the view that the mutual will to conciliate was apparent from its submission, which was contained in the court file.

However, since the Supreme Court rejected the appeal as inadmissible, the complainant filed a constitutional complaint containing similar arguments. The Constitutional Court agreed with the applicant that the Regional Court's procedure violated the constitutionally guaranteed right to a fair trial, stating in its ruling that *„the right of access to the court implies a duty on the part of the court to allow the parties to present effective objections and arguments, and a duty on the part of the court to deal convincingly with those objections and arguments which are capable of influencing the decision in its reasoning.“*

The Constitutional Court considered it essential in the case under review that *"the Regional Court was at the time of its decision, on the basis of the complainant's submission, demonstrably informed of the parties' intention to settle the dispute amicably, which should have been reflected in its subsequent procedural procedure (after verifying with the applicant that it was indeed a consensual expression of will)." "In failing to do so, he not only acted in manifest contravention of the legal requirement to seek conciliation between the parties, but by ignoring the procedural acts of the parties which manifested the disposition of the subject-matter of the proceedings, he also committed a constitutionally impermissible arbitrariness, which resulted in a decision which is in fact burdened with the constitutionally qualified defect of unreviewability."*

Exception to the obligation to lodge a protest on grounds of subjective circumstance

(Order of the Supreme Court File No. 27 Cdo 3364/2020, of 23rd March 2022)

In the present proceedings, the petitioner sought the annulment of the resolution of the general meeting by which he was dismissed from the position of the company's managing director. The appellant claimed that the resolution was adopted in breach of good morals and the law, since the resolution adopted did not correspond to the content of the invitation and, at the same time, he had been misled by the other shareholder as to the process of increasing the share capital and assuming the deposit obligation, as a result of which he only found out at the general meeting that his shareholding was already only 5 % (instead of 50 %). However, the appellant did not lodge a protest against the contested resolution of the general meeting. Both the Court of First Instance and the Court of Appeal dismissed the application on the ground that the appellant was not entitled to invoke the annulment of the contested resolution since no protest had been lodged against it. The appellant subsequently appealed against the decision of the Court of Appeal.

In its order, the Supreme Court first addressed the issue of the executive's duty to protest, stating:

„Although the absence of a protest is not in itself a reason for rejecting a motion by the managing director of a limited liability company to invalidate a resolution of a general meeting (the managing director, unlike a shareholder, retains active factual legitimacy), the fact that the managing director did not warn in advance of the circumstances constituting grounds for invalidating the resolution of the general meeting, although he could have done so, and without further filing a motion pursuant to Section 191 of the Civil Code, may (depending on the circumstances of the particular case) be considered a breach of due care.“

The Supreme Court assessed the meaning and purpose of the legal regulation of the protest and stated that a shareholder who holds the position of managing director has the right to file a petition pursuant to Section 191 of Act No. 90/2012 Coll, on Commercial Companies and Cooperatives (Act on Commercial Corporations), as amended (hereinafter referred to as the "Act on Commercial Corporations") "*only on grounds that have been raised by way of protest (Section 192(2) and (3) of the Act on Commercial Corporations), or for which one of the exceptions provided for in the latter provision applies, regardless of which resolution of the general meeting (and on what grounds) is being challenged*."

Although in this legal opinion the Supreme Court virtually accepted the reasoning of the Court of Appeals, it ultimately decided otherwise, concluding that the subjective circumstance exception to the duty to protest was satisfied in this case.

„Therefore, a teleological interpretation of Section 192(2) of the CCC leads to the conclusion that the grounds for invalidating a resolution of the General Meeting cannot be established at the General Meeting not only if it is not objectively possible (without incurring unreasonable costs or making unreasonable efforts), but also in certain circumstances if subjective circumstances prevent a protest on these grounds (even subjective circumstances may constitute a serious reason for which a shareholder could not lodge a protest). Such a circumstance may exceptionally be a totally unexpected development at a general meeting (which may last for a very short period of time), which so catches the shareholder by surprise that he is unable to even lodge a protest.“

The Supreme Court concluded that if the appellant's factual allegations were proven in the proceedings, it could not be ruled out that the appellant was "*so taken aback by the development of the situation that he was unable even to protest, and that the exception to the duty to protest should be considered satisfied.*"

As the Court of Appeal did not consider whether the exception to the duty to protest was not met, the legal conclusion on the lack of standing due to the absence of a protest was incomplete and therefore incorrect.

On the merits of a substantive approach to the service of documents

(Ruling of the Constitutional Court File No. IV.ÚS 3026/20, of 26th April 2022)

In this ruling, the Constitutional Court preferred a substantive approach to the assessment of the proper service of documents according to the regulation set out in Act No. 99/1963 Coll., the

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Code of Civil Procedure, as amended (hereinafter referred to as "the Code of Civil Procedure"). In the present case, there was a dispute as to the start of the time-limit for lodging an appeal, which should have run from the date of service of the judgment on the applicant. In its decision, the Regional Court, in its capacity as Court of Appeal, refused to regard as proper service of the judgment the receipt of a plain copy of the judgment by the plaintiff's authorised legal adviser, since that copy was not, in the view of the Court of Appeal, a copy of the written judgment, the receipt of which could be regarded as having the effect of service. Similarly, the receipt of that copy was evidenced in the proceedings by an official record of the delivery of a photocopy of the judgment and not by a receipt within the meaning of Article 50e(2) and 50f of the Civil Procedure Code.

In its ruling, the Constitutional Court reproached the Court of Appeal for taking too formalistic an approach to the requirements for proper service of the judgment. The Constitutional Court stated that "*[t]he legal rules of service are not an end in themselves, but serve to protect the procedural rights of the party to the proceedings, who must be certain of the content of the decision to be served when exercising his rights and obligations, including those of a procedural nature. In assessing whether service has been properly effected, a substantive approach is to be applied, for which it is essential that the addressee has been able to acquaint himself with the contents of the document served, thereby preserving his fundamental right to judicial protection under Article 36(1) of the Charter..*“

In its ruling, the Constitutional Court also pointed out that an incorrect assessment of the time of service does not only affect the rights of the party bringing the appeal, "*but also of another party to the proceedings who may be affected by the decision on the appeal“.*

Please send your comments to: **Jitka.Hendrychova@weinholdlegal.com** or by fax to +420 225 385 444 to Jitka Hendrychová, or contact the person you are usually in touch with. To unsubscribe from publications office@weinholdlegal.com.