KempHoogstad Tax News
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We have prepared an overview of the most interesting changes planned for next year in Czech tax law and related legal legislation. Unfortunately, the most important laws are still being prepared, and their exact wording, which will come into effect on 1 January 2013, is still not known. We comment below on these laws that are still in the process of being approved. We will inform you about the final wording.

1. Approval of the technical amendment to the VAT Act

The lower chamber of Parliament has approved the technical amendment to the VAT Act. If the amendment passes at all levels of the legislative process, the most important changes will include:

(i) Transfers of real estate: the period for which a transfer of real estate is a taxable supply is prolonged to five years after the final inspection of the real estate (instead of the current three years). However, even after this period, the payer can decide to utilise the tax and claim the deduction applied during the acquisition.

(ii) New guarantee for purchasers:

- The Ministry of Finance should keep a publicly available list of all VAT payers together with their account numbers. If a purchaser sends a payment to an account which is (i) not contained on such list or (ii) held abroad, the purchaser becomes a guarantor of the VAT stated in the tax document.
- In addition, there will be a list of so-called unreliable payers who seriously violate their tax obligations. If a purchaser sends a payment to a company which is on this "black list", the purchaser becomes a guarantor of the VAT stated in the tax document. The kinds of serious violation that will cause payers to be put on the black list have not yet been specified by the relevant authorities.
- No payment to a business partner should be completed without first checking whether (i) the bank account is on the list of payers and (ii) the business partner is not on the black list.

(iii) More rigorous requirements for verifying the true content of tax documents. The recipient of the document should be able to verify the relation between the supply and the document (real receipt or provision of the supply stated in the document). There should be a so-called audit trace in the sequence of individual documents (i.e. order, delivery note and invoice) or steps. Certain kinds of documents will need to have exact wording according to law (e. g. "Issued by the customer" on a self-billing document).

(iv) Claiming taxes charged on receivables related to the debtors in insolvency proceedings will be possible only if the debtors declare bankruptcy (currently also if the debtors are undergoing reorganization).

(v) New concept of an entity identified for VAT: such entities will be liable for tax only if they trade with other member states. If they purchase goods or services from abroad, they will need to file for and pay Czech VAT. If they provide goods or services abroad, they will need to fill in the aggregate statement for VAT. They will provide the supplies within the Czech Republic without tax (similarly to non-payers).

(vi) Considering the frequent changes in the tax rates and situations where a received deposit payment and provided supply have different tax rates, the law specifically stipulates the manner of settling the deposits during the final supply. The system remains the same, but no longer will be defined only by transitory provisions. This increases the legal certainty of payers.

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An important consideration is the VAT rate effective as of 1 January 2013, which is not yet known. It is covered by a separate proposal. The tax rate is still on the agenda in Parliament, and the most probable scenarios are as follows: (i) the current 14 and 20 per cent will remain, (ii) both rates will increase by one percentage point to 15 and 21 per cent, or (iii) there will be one single rate 17.5 per cent. If there are no more changes, the currently approved single rate of 17.5% will apply.

2. Changes proposed in the budget packet

Since the process of approval has been prolonged, the proposal is in the second reading again and the suggested amendments can change the individual provisions significantly. The final wording of the tax laws should be published in November or December. The currently proposed provisions are:

(i) Income Tax

Individuals who pursue business under special provisions (for example attorneys, auditors) and lessors who claim a percentage of their income as deductible expenses can claim the expenses only with a tax base of up to CZK 2 million. Income above this limit will be fully taxed. Payers who claim a percentage of their income as deductible expenses can no longer use tax relief for spouses and children.

All kinds of income from countries that do not have a valid double income tax treaty with the Czech Republic will be taxed with a withholding tax of 35%. This concerns in particular tax havens. A 15% or less tax rate will apply to all other countries with a valid tax treaty, provided this is stipulated in the relevant tax treaty.

(ii) Employees

A double tax burden for employees with annual income higher than 48 times the average wage (in 2012 the limit was CZK 1,206,576) has been proposed for the years 2013 to 2015. Currently, income above the limit is not subject to health insurance contributions and income tax remains at the standard 15% rate.

The first negative impact is a so-called solidary tax increase of 7 per cent. The income above the limit would be taxed with the rate of 22%. The second impact is the fact that the mentioned income above the limit would be subject to health insurance contributions. The difference between contributions from incomes above CZK 1.2 million in 2012 and 2013 would be a total of 20.5 per cent.[1] Employees liable for a solidary tax increase must submit the income tax return by themselves and cannot use the employers‘ accounting services for annual tax settlement. In the upcoming three years, retired people cannot claim the basic tax relief per tax payer of CZK 2,070 per month.

(ii) Real Estate Transfer Tax

According to the proposal, the tax paid from valued real estate transfers increases from the current 3 per cent to 4 per cent.

3. Measures to tackle late payments

Following the EU directive, the government prepared some measures to tackle late payments for supplies. The measures should be included in the Commercial Code next spring.

The common due date for payments should not exceed 30 days starting from (i) the date of supply of goods/services or (ii) the date of receiving the invoice, whichever occurs first. The period can be prolonged by a contract

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only if it is not distinctively disadvantageous for the creditor. If the consumer is a public authority, the agreed due date cannot be longer than 60 days.Consequently, the standard interest on late payments defined by the Commercial Code is increased by one per cent, reaching the REPO rate set by the Czech National Bank plus eight per cent (the present rate is 0.25%, and the interest rate would be 8.25% p. a.).

4. Accounting

(i) Amendment to the Accounting Guidelines for Entrepreneurs

An amendment to guidelines no. 500/2002 Coll., which govern the accounting procedures for entrepreneurs, will come into force on 1 January 2013. One of the most important changes is the obligation to record any extraordinary and substantial adjustment related to the closed accounting period to equity and not expenses for the current period. The changes that materially relate to the previous years will not influence the profit or loss of the current year.

(ii) Estimated value of bonuses for employees

You may have noticed last year that, based on a decision of the Supreme Administrative Court, there was a change in the interpretation of the accounting record of bonuses for employees. As opposed to the common practice, the Supreme Court made a decision that bonuses for employees should be recorded to the accounting in the year the bonuses are claimed and not as estimated value in the year they actually occur. The recorded estimated value would not be considered a tax deductible expense.

This year, the Supreme Administrative Court again dealt with this topic and modified its previous interpretation. According to this, the estimated value of bonuses can be recorded to the accounting (and considered tax deductible expense) in the given year if the employees are entitled to it (e.g. the bonuses are stipulated as a share of the sales, profit or other indicator) according to the internal rules of the company (for example, a collective contract or other document), and in the following year, the amount of the bonuses is not stipulated, but only technically calculated.

News at KempHoogstad

In closing, we would like to share some news from KempHoogstad.

(i) New services – methodology of accounting

Following requests from our clients, we expanded our portfolio of services with advisory services related to the methodology of accounting. We cooperate with accounting specialists with long-term experience. Please do not hesitate to contact us should you have any questions regarding methodology of accounting, review of your auditor‘s opinion, or help with a complex accounting entry.

(ii) KempHoogstad’s contribution to new publications

Members of our team have participated in writing two new international legal publications. We contributed to the tax part concerning mergers and acquisitions in the Czech Republic. The books are:

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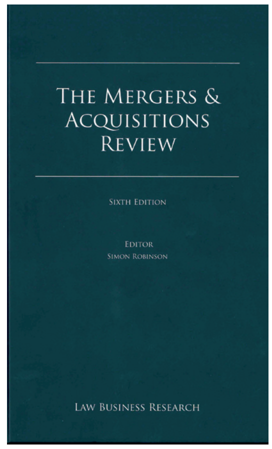
Mergers & Acquisitions – Jurisdictional comparisons from the series The European Lawyer Reference (published by Thomson Reuters), regarding especially mergers, acquisitions and takeovers of public companies.

(see http://www.sweetandmaxwell.co.uk/Catalogue/ProductDetails.aspx?recordid=4870)



The Mergers & Acquisitions Review published by Law Business Research

(see http://www.thelawreviews.co.uk/titles/703/the-mergers-acquisitions-review/),overview of general legal and tax environment suitable for completing M&A in the Czech Republic.

We consider our participation in the projects as a form of gratitude for our expertise and continuous work. We greatly value our cooperation with the two prestigious publishers.

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