

KempHoogstad Tax News

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KempHoogstad
Tax Advice & Solutions

1. Certain issues and their interpretation

During the autumn talks of the working group of the Chamber of Tax Advisors between the representatives of the Chamber and representatives of the General Financial Directorate ("GFD"), an interpretation was approved which relates to some unclear issues concerning VAT:

Lease of space and parking places – VAT application

Under the VAT Act, exemption of a lease does not concern a lease of premises and spaces for parking vehicles. In practice, there are uncertainties as to whether it means a lease of premises and spaces used for parking vehicles (i.e. intended for parking under a lease agreement) or a lease of premises and spaces intended for parking vehicles under construction regulations (e.g. building approval or a building occupational permit that define the building as a garage or parking garage, etc.)

The GFD confirmed the proposed interpretation that the criterion for VAT application is the actual use of the leased premises or parking spaces and not only their construction and legal designation. The tax regime, i.e. exemption or not-exemption of such lease, will be determined by the economic purpose of each transaction (i.e. the purpose of the lease).

VAT on induced investments from the income tax point of view

In practice, investors in construction projects are obliged to invest funds on the construction or alteration of adjoining infrastructure networks or other public utilities related to their project. The induced investment is often voluntarily transferred (for example, to the municipality). Such transfer is subject to VAT if the investor had applied input VAT to the induced investment.

From the income tax point of view, the expenses on the induced investment are part of the input price of the main investment. The discussed question was whether the expenses on the paid VAT also become a part of the input price because of the voluntary transfer or whether the VAT could be considered a tax expense in some cases.

In the GFD's view, the VAT paid at the output with respect to the voluntary discharge of the induced investment is a part of the input price of the main asset, and it cannot be considered a one-time tax deductible expense.

VAT exemption applied on providing retraining

The VAT Act defines two concepts for the purposes of VAT exemption that must be fulfilled. It must be retraining and the provider of the retraining must have accreditation. The concept "retraining" does not cause any problems, because it is explained in the implementing regulation to the VAT directive. On the contrary, the concept "accreditation" is not legally defined for the purposes of VAT. In practice, it is often not clear whether the provider of the retraining is eligible to apply the VAT exemption or not with respect to the condition of "accreditation for such retraining".

The GFD confirmed the suggested interpretation that only subjects (i) that were accredited or authorised by governmental institutions or organisations which are granted this obligation or right by a legal regulation or (ii) that are "accredited institutions according to special legal regulations" fulfil the conditions for exemption of the retraining. For granting the exemption, it is not sufficient

if a person who carries out the retraining is accredited for some programme and consequently applies the exemption on all retraining. Every programme must be accredited, and after fulfilling the conditions, can be VAT exempt. This does not apply to trade schools. According to the interpretation of the Ministry of Labour and Social Affairs these are "accredited institutions according to special legal regulations" if they have specific qualifications in their educational programmes.

2. Overview of approved changes for 2016

With respect to the approaching end of 2015, we list below an overview of important amendments that were approved and will be effective from the beginning of 2016.

VAT exemption for the supply of real estate

At the end of 2014, there were approved important amendments to the VAT Act, which regulates the conditions for exemption in the case of supply of real estate. The effectiveness of the amendments was postponed until 1 January 2016.

The supply of a plot of land will be exempt if the plot of land (i) does not form a functional whole with a building fixed to the ground and (ii) is not a construction plot.

The definition of a construction plot is extensively revised in a way that a construction plot will not only be land with an issued construction permit, but also any land

- || where a building fixed to the ground should be constructed and which is or was the subject of construction work or administrative acts for the purpose of constructing the building; or
- || in which construction work in the vicinity is or was executed for the purpose of construction of the building.

Whether the plot of land forms a functional whole with a building or is a transfer of other real estate, the exemption of supply should be assessed with respect to expiration of the formerly used limit of five years from issuance of the building approval or building occupational permit under construction law. The time limit now starts from the building approval after a considerable change to the finished building or occupancy after a considerable change to the finished building. The concept "considerable change" is not defined.

There is still a possibility to apply VAT also to supplies that fulfil the conditions for exemption. The consent of the buyer is now needed if it is the payer. In such a case, the regime of reverse charge will newly apply.

It can be expected that there will be a number of questions concerning the use of the newly amended provisions in practice, for example, with respect to the undefined concept "considerable change to a building", at least up to the moment the financial administration publishes the official interpretation.

Inspection reporting duty and electronic submission of VAT returns

As we have informed you before, from 2016, VAT payers will submit inspection reports that should contain detailed information on supplies which the payer reports in the VAT return. The first

inspection report will be submitted for January 2016, or the first quarter of 2016. Payers-legal entities always submit the inspection report monthly, no matter what their tax periods for VAT purposes are. The deadline is the 25th day of the following calendar month. Payers-individuals submit the inspection reports monthly or quarterly with respect to their tax periods for VAT purposes. The deadline is the same as for submitting the VAT return. Payers not complying with the obligation will be penalised in a range of CZK 1,000 to CZK 50,000, exceptionally up to CZK 500,000. The sanctions cannot be reduced by the tax administrator.

Please note that the inspection report can be submitted **only electronically**.

Starting from 1 January 2016, all individuals will have to electronically submit their VAT returns and registration forms or applications for a change in the registration data. Individuals whose turnover did not exceed CZK 6,000,000 and who were not obliged to submit their data electronically due to opening a data box may currently submit their forms in hardcopies.

Amendment to the Accounting Act and related amendments

The amendment to the Accounting Act that we informed you of already was published in the Collection of Laws in September. It will become effective on 1 January 2016. The amendment introduces new categories of accounting units. The individual categories of accounting units or consolidation groups require different accounting obligations regarding the extent and manner of creating the final accounts or other statements. The criteria for determining a category are briefly listed in the following table:

Accounting unit	Total assets (in CZK)	Net turnover (in CZK)	Average number of employees during the accounting period
Micro Does not exceed at least two of the criteria	9,000,000	18,000,000	10
Small Is not a micro unit and does not exceed at least two of the criteria	100,000,000	200,000,000	50
Medium size Is not a micro or a small unit and does not exceed at least two of the criteria	500,000,000	1,000,000,000	250
Large Exceeds at least two of the criteria	500,000,000	1,000,000,000	250

Small and micro accounting units without mandatory audits can create their balance sheets and profit and loss statements in a simplified version (newly applicable also to joint-stock companies). Moreover, they are not obliged to create cash flow statements and a summary of changes to equity capital, nor are they obliged to publish the profit and loss statement, i.e. they publish only the balance sheet and financial statement enclosure. Some of the small and micro accounting units that are not corporations (except for housing associations and social cooperatives) can have their accounting in a simplified scope (for example, societies). Most of the micro accounting units will not be assessed according to the actual value.

Medium-size and large accounting units are obliged to create their cash flow statements and a summary of changes to equity capital. Up to now, these statements were voluntary for some of the units. The subjects of public interests (for example, banks and insurance companies) and selected accounting units (for example, organisational governmental units or territorial autonomous units) are always considered large accounting units.

The financial statements must now be **published** not only by accounting units recorded in the Commercial Register but also those registered in any register (e.g. societies). A time limit is determined for the publishing, i.e. within 12 months of the balance day. For subjects with mandatory audits, the 30-day limit from verification or approval of the financial statements is still valid.

Annual reports must be created by accounting units with mandatory audits and now also trusts. Micro, small, and medium-size accounting units do not have to state non-financial information in their reports. The criteria for the mandatory audits remain unchanged. However, according to the related amendment to the Auditors Act, the mandatory audit report will now contain the auditor's comment to the annual report, i.e. the auditor will comment on the financial statements and the annual report in one report. This will affect the subjects that were used to creating the annual reports after the auditor's report on the financial statements.

The amendment introduces again **single-entry bookkeeping**. This does not apply to individuals as it did before, but to certain range of accounting units, such as non-profit organisations, e.g. societies and churches.

The amendment executes **some partial changes**, such as a change in determining own expenses that assesses the supply of own production, omitting the foundation expenses from intangible assets or an amendment to the way of handing the subsidies for the liquidation of solar panels in the form or a reserve (and a related amendment to the Reserve Act).

Further, a related amendment to implementing accounting regulations or accounting standards is prepared.

Amendment to the Real Estate Tax Act

We informed you about the amendment to the Real Estate Tax Act effective from 2016 in our July newsletter. Please note that there are no substantial changes but only adjustments that should remove certain ambiguities or uncertainties in the act that originated with respect to incorporating the recodification of civil law into the Real Estate Tax Act.

3. Other prepared changes in legislation in 2016

Further changes to tax legislation that will be effective from 2016 can be expected at the end of 2015 and also at the beginning of 2016 because many of the proposed changes are in the process of approval, especially in the Chamber of Deputies of the Parliament. We have informed you about them in our newsletters published during the year. These include preparation of **the Act on Demonstrating the Origin of Property** and **the Act on Electronic Sales Registration**, or partial **adjustments to the Income Tax Act** (for example, restriction of tax exemption of profit shares that represent a sum reducing the tax base in a subsidiary, an increase in the tax bonus for children, and an exemption also for pensions paid for a minimum period of 10 years).

Please note that an amendment to **the Senate's legal measure on the Real Estate Acquisition Act** was passed to the Chamber of Deputies of the Parliament after being debated. Besides eliminating some practical problems during application of the amendment, it proposes, among other things, that the payer is always the buyer.

Further, **partial changes to the VAT** related to preparation of a Customs Code can be expected. One of them will be, for example, introducing the reverse charge regime to the buyer-payer if the purchase of goods has a domestic place of supply and the seller is not a local resident. Subsequently, entities not residing in the Czech Republic will not have to be registered as payers when supplying goods to a domestic entity. The registration obligation will be kept only for the supply of goods to an entity not obliged to pay tax or an entity obliged to pay tax which is not a payer.

We will inform you about changes in the legislation according to the approval process.

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