

New developments in tax legislation

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We would like to inform you about further developments in tax legislation. The collection of laws already includes a VAT Act amendment which cancels the taxation of employment benefits according to the usual price. As of 1 May 2010 a new set of rules took effect for coordinating the social security of migrating workers and their families within the EU. In addition, there is a real estate tax amendment which is in the conference proceedings. We would also like to inform you about an interesting decision of the Supreme Administration Court (SAC).

1. VAT Act amendment – employment benefits

As we have already informed you, a VAT Act amendment, which was approved in Autumn 2009 and was scheduled to take effect on 1 January 2010, introduced the usual price institute for determining the tax base between related persons.

Despite the president's veto, the Parliament succeeded in pushing forward the amendment which cancels the provision under which, as of 1 January 2010, inter-related persons, where the payer is required by law to specify the tax base at the usual price level, also include persons in an employment relationship with the payer, i.e. employees. The employment benefits taxation thus returns to the previous (lower) level and the tax base is, as was the case previously, the remuneration received.

In accordance with the transitory provisions, the amendment text can be used retroactively, from the moment this provision is implemented in the VAT Act (i.e. as of 1 January 2010).

2. New rules for coordinating social security in the EU

On 1 May 2010, the new EU rules for coordinating social security took effect.

Overlapping work in more EU states

The most significant changes took place in determining the state in which employees or entrepreneurs are supposed to pay insurance. Under the old rules workers were insured in the state of their residence if they performed in that state at least part of their activities, even if only for one day in a month. As of May 2010, workers are insured in the social security system of the state where they perform a substantial part of their activities. In relation to employees, a substantial part is defined as at least 25 % of the work hours or income. In relation to entrepreneurs, a substantial part is determined for example by the work hours or turnover of provided services and so on.

Sending workers abroad

Further changes took place in the area of sending workers to another EU state. Whereas under the rules valid until 30 April 2010 a sent worker remains automatically insured in the sending country for 12 months, under the new rules this period is extended to 24 months. Thus under the new rules it will no longer be necessary to apply for an extension to 24 months with the relevant host country offices.

Electronic certificates and exchange of information

A significant change will take place as a result of the prepared switch to the electronic exchange of data between institutions of individual countries as well as between institutions and the insureds, which should be completed in 2012. The currently printed forms E101 will be gradually cancelled. The certificates will be issued in an electronic form and will bear a new name. For example the current E101 Certificate will become the A1 Certificate.

Further changes

The new EU legislation brings further developments. For example, it introduces the so-called institute of a temporary specification of the relevant state in cases where there is a dispute between institutions of two or more member states. During this period, payments are provided according to the institution of the state where the person resides but if the person resides outside the arguing states, the person is entitled to payments specified under regulations applied by the institution to which the application was filed first.

Furthermore, each person is required to inform the relevant institution in the place of their residence about a change in the situation which is significant in terms of the relevance or a claim. In the event this information obligation is not fulfilled, the relevant institution may penalise the person according to the regulations of that country.

Transitory provisions

In situations where workers were sent to any of the member state before 1 May 2010, the current regulation will continue to apply to the transitory period of ten years. Where the new regulation is more convenient, workers may apply for an exception and proceed in accordance with the new regulation.

3. Real estate tax amendment

As the current regulation for the real estate tax is too general according to the Ministry of Finance's interpretation of taxation of the so-called surface constructions (hard surfaces, car parks and so on), the Ministry of Finance has prepared a Real Estate Tax Act amendment, which introduces, with effect as of 1 January 2011, that hard surfaces used for entrepreneurial activities will be expressly defined as subject to tax. The amendment is based on court decisions according to which surface constructions are not part of an immovable construction but part of the land, and thus may not be subject to a construction tax.

The tax rate is to be differentiated according to the type of the entrepreneurial activity: in relation to areas used for basic agricultural production and for water and forest management it amounts to CZK 1 per m² of the fixed surface area, and in relation to industrial use, construction, transportation, energies, other agricultural production and other entrepreneurial activities it amounts to CZK 5 per m² of the fixed surface area. Previously when the surface constructions were taxed as constructions for entrepreneurial activities, the rate amounted to CZK 10 per m², the currently applied rate corresponds to the land tax, which amounts to CZK 0.20 per m².

4. SAC decision on dividend financing

In its March 2010 decision, the SAC confirmed that interest on credit used to finance dividend payments can be tax deductible.

This is a case in which the tax administrator challenged the tax deductibility of financial expenses used to secure other sources designated to finance dividend payments, because according to the administrator any expenses related to a dividend payment to shareholders are not related to the anticipated income or company's business activities but are related to the distribution of profit gained through the company's activities.

Furthermore according to the SAC's interpretation the payment of a share in profit is directly linked to the company's entrepreneurial activity, because without the anticipated dividend payment shareholders would not contribute their means into the company and without their contributions the company could not perform its entrepreneurial activities. The financial costs that the company reasonably makes to finance the payment of shares in profit are thus directly related to its entrepreneurial activities. This is true under the condition that no decision is made in relation to the payment in accordance with the Commercial Code and other regulations of law which means that it is an existing obligation of the company against its shareholders.

Thus the company is not required to keep funds for the purpose of a subsequent payment of dividends and it is at the company's discretion whether it will use other than its own sources to pay dividends.

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