



# TAX FRESH

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## INSIDE THIS ISSUE:

 TAX NEWS IN 2018



Dear Business Friends,

In this year's first issue of our newsletter we would like to wish you every success in 2018 and thank you for your cooperation. We will be more than happy if we can help you with your taxes, accounting and audits also this year! We would like to inform you of the most important legislative changes that will occur in tax legislation and accountancy in 2018.

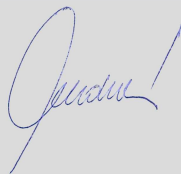
Our employees are still available to you at any time.

Yours faithfully,

Šárka Adámková  
Tax partner

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Tax partner

  
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### **Technical Improvement in case of Lease Contract Assignment**

In the last issue of our bulletin we informed you on amendment to Section 28(7) of the Income Taxes Act, according to which, in addition to the owner or lessee (incl. the financial lease lessee), also a different person is newly entitled to depreciate a technical improvement of leased property that was activated after 1 July 2017.

There was no doubt that this change would affect sublessees. However, a doubt was cast on a situation whether the amendment can also be applied by a person on whom the lease contract is assigned to when the original lessee (assignor) requires compensation for the part of the technical improvement he/she performed and that was not depreciated. The intention of the Ministry of Finance of the Czech Republic was to allow the new lessee (assignee) to depreciate such compensation as the technical improvement.

The General Financial Directorate, however, adopted a negative stance on that interpretation; according to them, an assignee cannot apply such tax depreciation. They presented this opinion of theirs in the Statement on the Possibility to Apply the Provision of Section 28(7) of the Income Taxes Act when Assigning the Lease Contract, which was published at the website of the Financial Administration on 6 November.

Thus, the application of the new rules will be subject to other dealings with the Financial Administration at the beginning of 2018.

### **Real Estate Transfer Tax Base vs. VAT**

As a follow-up to the previous case law of the Supreme Administrative Court ("SAC") concerning the issue of not including VAT in the real estate transfer tax base (see our previous bulletin Tax Fresh, issue no. 4), the Financial Administration published a new piece of information on this topic at their website. In that information the Financial Administration extended the conclusions arising out of the case law of the SAC, where the real estate transfer tax base shall not include VAT if the particular transfer of the property was subject to VAT and if the real estate transfer tax was determined on the basis of an agreed price. Comparing to the case law of the court, the information clearly implies that the more favorable tax regime, i.e. not including VAT in the real estate transfer tax base, can be applied even if the real estate transfer tax is declared and paid by the acquirer.

If the property was acquired (it usually concerns the date of legal effect of the entry in the land register) any time after 1 January 2014 (thus also after 1 November 2016 when the law governing the real estate transfer tax was amended in a considerable manner) **and the tax procedure has already been completed**, while the tax was assessed on the tax base including VAT, the payer can, **provided the period for the tax assessment has not expired yet (i.e. 3 years following the day on which the period for filing a regular real estate transfer tax return expired)**, file a supplementary tax return and ask for returning of a potential tax overpayment.

### **Identification of Supplier as a Condition for a Tax Deductibility**

The Supreme Administrative Court ("SAC") came back in its recent decision to the issue of an expense invoiced by an entity different than the one who really provided the performance invoiced. The SAC had already concluded before that for the income tax purposes or for the tax deductibility of cost (expense) invoiced, it was not necessary to prove that the performance invoiced was provided by the supplier specified in the invoice.

In its current decision the SAC added that for tax deductibility of expenses applied by the purchaser the mere proving of the realization of declared performance was not sufficient, and it must also be determined who the real provider of the performance invoiced was. If the entities of the particular transaction are not clearly identified, it is not possible to consider the expense as tax deductible by the purchaser of the performance.

### **Research and Development Project**

On the basis of current case law of Czech courts concerning a deductible item for support of research and development the General Financial Directorate ("GFD") issued information on its website concerning the requirements for a research and development project, which is a necessary precondition for application of the deductible item from the income tax base. In that information the GFD summarized the case law conclusions related to the requirements for that project as well as potential impacts of a failure to meet the statutory conditions for the project.

It is worth mentioning that the GFD also puts emphasis on keeping a continuous documentation or the recording of the progress of the project solution although there is no obligation to keep such records / documentation in the Income Taxes Act.

### **Ceiling of Social Security Insurance Premium in 2018**

On the basis of a Decree issued by the Ministry of Labour and Social Affairs the maximum annual assessment basis for the social security insurance premium for 2018 was determined. This basis has increased slightly again and shall amount to CZK 1,438,992. The insurance premium rates remain the same, thus they amount to 25% for the employer and 6.5% for the employee. The higher ceiling must be taken into consideration even when calculating the solidary tax increase.

It must be added that the information included in the Decree will also influence the minimum amount of advances for social security insurance and health insurance paid by self-employed persons as well as the monthly income establishing the employee's participation in sickness insurance.

### **International Taxation**

The 2017 amendment to the Income Taxes Act also extended the possibility of taxation of foreign entities under situations where two tax non-residents assign to each other properties or business enterprises situated in the Czech Republic for free of charge. Newly, this situation is considered a source of income in the territory of the Czech Republic with the possibility of taxation in the Czech Republic. Following the original rules, such assignments were only taxed if the seller was a Czech resident.

Another practical novelty is the introduction of a new editing duty for a permanent establishment. Beginning from 1 January 2018, it will be possible to ask the locally relevant tax authority for binding ruling whether or not the Czech permanent establishment calculate its tax base in compliance with the Czech tax provisions.

### **Miscellaneous**

The Act No. 435/2004 Coll., on employment, is amended with effect from 1 October 2017, namely its part related to fulfilment of the compulsory share of employed persons with a reduced ability to work. The new rules especially govern the situation where the compulsory share is met in the form of purchasing products or services from suppliers who employ at least 50% of employees with a reduced ability to work. The amendment especially concerns new electronic records of such performance or cancellation of the duty to report to the Labour Office.

Penalties for the breach of provision of Act No. 254/2004 Coll., reducing cash payments, have been increased with effect from 1 July 2017 so that a penalty of up to CZK 5 million can be imposed now on legal entities and natural persons doing business. The cash payment limit of CZK 270,000 remains unchanged.





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