



TAX FRESH

ISSUE NO.: 3 / OCTOBER 2018

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THE TAX REGIME APPLYING TO OTHER INCOMES OF EXECUTIVE OFFICER DURING FREE PERFORMANCE OF HIS DUTIES

THE ANTICIPATED AMENDMENT TO THE ACT NO. 235/2004 COLL., ON VALUE ADDED TAX, AS OF 1 JANUARY 2019



Dear Business Friends,

This issue of the Newsletter gives you information on the anticipated amendment to the Act No. 235/2004 Coll., on value added tax, as of 1 January 2019. As the Parliament has not passed this amendment yet, consider this text only informative, please; in our opinion, there might be some changes.

Further herein we deal, besides others, with an issue of Executive Officer's allowances during free performance of his duties and with an issue of valuation of accruals accounts in a foreign currency.

Our employees are still available to you at any time.

Yours faithfully,

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Lease Contract Assignment in Terms of Technical Improvement

Representatives of the financial administration and of the Chamber of Tax Advisers handled the issue of the lease contract assignment in terms of technical improvement. This concerns a situation where **the lessee has performed some technical improvement (e.g. construction improvement) of the leased premises with the real estate owner's consent, and after some time the premises are leased by another lessee** (a new lessee) without the lease contract being terminated as it is assigned onto the new lessee. The purpose of the Coordination Committee was to determine whether or not the lease contract assignment gives rise to non-monetary income, pursuant to Section 23 (6), of the real estate owner, i.e. the lessor.

The approved conclusion was that **the lease contract assignment does not terminate the lease, so the lessor receives no non-monetary income.** If the new lessee has compensated for the costs of the technical improvement paid by the original lessee, **the new lessee can book such expenses as costs in the form of tax depreciations of other assets (technical improvement).** If it does not concern compensation for costs expended on technical improvement but rather payoff, the new lessee shall accrue that expense in compliance with accounting regulations.

The tax regime applying to other incomes of Executive Officer during free performance of his duties

Within the Coordination Committee of 2018, representatives of the financial administration and the Chamber of Tax Advisers handled the issue of the tax regime applying to **travel allowances and other income of Executive Officer where this post is performed free of charge** (i.e. where Executive Officer has not concluded a contract on performance of the Executive Officer duties or where the performance of those duties is arranged as free of charge in the contract). This, for example, concerns costs of accommodation, transport, training, travel allowances, or arranging for information and telecommunication technologies.

On the basis of this Coordination Committee it was confirmed in writing that **even if Executive Officer performs his duties free of charge, he shall be considered an employee for tax purposes, and therefore such costs of his shall be assessed in the same manner as in case of other employees.** This means that as regards the income tax, Executive Officer shall exercise tax exemption (e.g. board, training, a bonus for holiday, sports and cultural activities), or such performance shall not be included in the subject of tax at all (travel allowances).

In order to maintain the tax deductibility of the costs of the paying company and the indisputable nature of the rightfulness of the income provided to Executive Officer, we recommend embodying all the Executive Officer's claims above in the contract on performance of his duties.

Accruals and Foreign Currency

The National Accounting Council issued the Interpretation, which handles the issue of the exchange rate recalculation of accruals accounts (Class 38x). In compliance with the Accounting Act, the balances of receivables and liabilities which are primarily expressed in a foreign currency, shall be converted to Czech Crowns using the Czech National Bank exchange rate as of the Balance Sheet date. Accounting entities pay some expenses or, in contrary, receive income in a foreign currency, while those cash flows do not correspond to the respective accounting period to which they belong materially. Such accounting cases shall be always booked in accruals accounts.

The question was **whether or not the accruals accounts balances expressed in a foreign currency shall be converted by using the above exchange rate as at Balance Sheet date.** Accounting experts agree that as regards Accrued Expenses (account 383) and Accrued Revenues (account 385), it concerns a foreign currency liability/receivable and the balance of that account should be revaluated as at the Balance Sheet date. In contrary, Prepaid Expenses (account 381) and Deferred Revenues (account 384) shall not be converted as at the Balance Sheet date as the cash flow has already been realized and those accounts do not have a character of a foreign currency receivable/ liability.

2019 VAT Amendment

At present an amendment to tax laws for 2019 is prepared to be debated by the Chamber of Deputies. We have prepared for you a summary of selected changes that the VAT amendment proposes to be debated. It cannot be anticipated, however, with what effect date and in what final version the amendment will be passed in the end.

Changes in the Definition of Subsidy

The amendment bill contains a brand new definition of price subsidy. This change may affect anyone who receives subsidies from various resources, including subsidies concerning economic results. The current version of the VAT Act does not include in the tax base subsidies concerning the economic result, subsidies for acquisition of fixed assets or subsidies where the recipient does not have an obligation to provide a discount in connection to a unit price of the performance (i.e. it is not a price subsidy).

The proposed amendment **changes the definition of the price subsidy, which shall be understood an amount of money from public resources provided in direct relation to the performance having a direct influence on the price of the performance.** It actually means that if the subsidy terms imply that the price for the customer will be different as a result of receiving the subsidy, the subsidy shall be subject to payment of VAT as a payment for the respective performance.

Single-Purpose and Multi-Purpose Vouchers

New regulation of single-purpose and multi-purpose vouchers is to be implemented in the VAT Act, Sections 15 to 15b. **A single-purpose voucher is the one where information on the tax rate (or the VAT exemption) and the place of performance are known at the moment of its issuance.** As regards single-purpose vouchers, **VAT must be paid at the moment of their issuance**, just as when an advance for such delivery is received. As regards multi-purpose vouchers where the information on the tax rate and the place of performance is not known, VAT must be paid at the moment the voucher is used.

Obligation to Make Efforts to Deliver Tax Document

The VAT amendment, Section 28, intends to impose a new obligation on suppliers. Besides the obligation to issue a tax document (an invoice), **they will also be obliged to make reasonable efforts to make sure that the tax document is available to the performance recipient.**

Correction of VAT as Regards Receivables from Debtors whose Insolvency Is Handled by Reorganisation

Although the situation where insolvency of a debtor is handled by reorganisation is governed by the same legal regulation as the situation where insolvency is handled by bankruptcy, according to the current Financial Administration Information it is not possible to proceed in compliance with Section 44 of the VAT Act, but according to Section 42 of the VAT Act in case of correction of the VAT as regards receivables included in the reorganisation plan. Section 44 of the VAT Act includes a possibility to correct the tax amount as regards receivables registered in the insolvency proceedings.

If insolvency of a debtor is not handled by reorganisation but the debtor goes bankrupt, the registered receivables shall not expire. Section 44 of the VAT Act brings to creditors an opportunity to correct (get back the already paid) VAT on the entire, still existing receivable. If, however, insolvency is handled by reorganisation, the approved reorganisation plan determines what part of the receivable shall be kept by the creditor and what part shall expire. **As a result of the expiry of a part of the receivable the tax base is decreased and VAT shall be corrected** according to the rules defined in Section 42 of the VAT Act. **The creditor must issue a correcting document within 15 days following the date that it discovered the facts decisive for the correction** (the reorganisation plan approval).

On the other hand, the debtor shall correct the VAT deduction in the tax period in which it learned about those facts.

Services Connected to Export and Import

The proposal of the amendment reacts to a recent judgement of the European Court of Justice. According to the amended Section 69 of the VAT Act, **it is only possible to exempt from VAT services directly connected to export of goods where the services are provided directly to a person performing export of goods exempt from tax** (exporters) and sub-supplies of the service cannot be exempt for that reason.

According to the judgement, however, as regards import, a service related to the import of goods shall be exempt if the value of the service is included in the tax base during the import. Thus, in case of import, exemption may be applied also to services provided by a subcontractor.

Correction of Deduction as Regards Repairs of Real Estate Exceeding CZK 200 Thousand

The amendment implements **a new obligation to correct VAT deduction used in the past concerning a major repair of real estate if the real estate is sold without VAT within 10 years following the repair completion.** A major repair shall be understood such repair where the value of repair-related performance without VAT exceeds CZK 200 thousand. Thus, after the amendment effect date it will be necessary to accurately record and archive the value of the individual repairs carried out on real estate in the payer's assets.

Actual Owners Records

This is to remind you that **legal entities registered in the Commercial Register are obliged to enter their actual owner** in the Actual Owners Records by 1 January 2019. The records are kept by courts maintaining the Commercial Register and entries are made either by the respective court or by a notary. The Actual Owners Records are completely non-public and may only be used by specified bodies. Every entry is subject to a court fee of CZK 1,000, but entities entered in the public register by 1 January 2018 are exempt from payment of that fee until 31 December 2018.



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