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TAX FRESH

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Dear business partners,

in the introduction of the new issue of the Bulletin, we take the liberty to acquaint you with the idea of the State on how electronic communication with the tax administrator should function from about the year 2020. Another factor that can be considered to be important is the Order of the GFD to the Documentation on the transfer prices, which assumes annual update of the sample of independent enterprises.

With best regards,

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TAXES SIMPLY ONLINE

The Government has passed the Amendment to Act No 280/2009 Coll., Tax Code, which should bring modernisation, higher electronisation, and mainly simplification of taxes.

The basic points of this amendment are as follows:

1. The portal known as "My Taxes - Moje daně" should be similar to Internet banking and, among other things, also make it possible for the taxpayers, for instance, to:
   - pre-fill the data that is already available to the tax administrator from previous tax proceedings into the filed tax returns,
   - preview of their history,
   - get a better overview of their tax obligations,
   - custom personal tax calendar.
2. When using this portal, the period for submission of tax returns is extended by 1 month.
3. In case of a request for refund of tax overpayment submitted electronically, the refund should be faster than applies at present.
4. Earlier refund of part of the excess tax deductions from the title of Value Added Tax in the event that the tax administrator shall verify only part of this excess tax deduction. The unverified part of the excessive tax deduction should be refunded immediately in the form of an advance payment that the taxpayer will have at disposal. To this, it is necessary to add that the Constitutional Court issued an opinion on 22 February 2018 (II. ÚS 819/18), where in principle the tax administrator is forbidden to withhold the entire excessive deduction in case of verification of only part of it.
5. Changes in tax accessories (default interest) within the framework of the tax proceedings. Default interest, i.e. Interest on late tax payments should drop from the current 16% (14% + repo rate) to 12% (10% + repo rate), interest on the deferred amount should drop to half. On the contrary, interest on long-term withholding of a tax deduction from the viewpoint of VAT should be raised from 4% (2% + repo rate) to 5% (3% + repo rate).

TRANSFER PRICES – NEW ORDER GFD D-34

Shortly before this year's summer holidays, the GFD issued the long awaited Order D-34 (Communication on the application of international standards in taxation of transactions between associated enterprises – transfer pricing), which replaces initial Order D-332 to this issue.

The orders of the GFD have the objective to strengthen the legal certainty of the taxpayers regarding the tax management procedure of the tax authority. It is thus possible to only recommend knowledge of these orders, which is a good pre-condition for successfully coping with any tax audits.

The new order analyses many principles in greater detail from the viewpoint of the Czech tax authority, which arise for the transfer pricing area from the OECD Transfer Pricing Guidelines. This concerns, for instance, the typology of the function-risk profiles of the taxpayer or the comparative analysis methods

including the, so-called, benchmark analyses. The order also specifies the circumstances, which impact the choice of the correct method for determination of the transfer prices.
One of the most interesting parts of the order is the issue of update of the existing Documentation to the transfer prices, since the order for the first time in the in the form of a written recommendation assumes that the existing sample of independent undertakings, which was used in the comparative analysis, is subject to **annual update,** thus fulfilling the conditions related to independence and the market price scale.
We are available to you for further details regarding the impacts of the new order in your company.

EXCHANGE RATE CONVERSION DURING CLEARING OF ADVANCE PAYMENTS IN FOREIGN CURRENCY

In practice, it often happens that not only the business partners from other countries, but also Czech taxpayers mutually agree on the value of performances and advance payments made in foreign currency. Even in such a case, it is however necessary for VAT purposes to enumerate the VAT in CZK on the invoice. The VAT Act up to its amendment from 1 April 2019 did not include a provision precisely defining the rules for exchange rate re-valuation of the tax base for clearing invoices in a case where an advance payment for a taxable performance was received and taxed in foreign currency. The rules for exchange rate valuation of the tax base from the settlement invoice are newly regulated in §37a VAT Act.
In the event that the advance payment received by the supplier for delivery of the goods or provision of a taxable service, it is necessary to use the exchange rate applicable to the entity performing the conversion (for the recipient of the payment) on the date of receipt of the payment on the document of receipt of the consideration during evaluation of such an advance payment for the VAT purposes.
At the moment of settlement of the advance payments and issue of the final invoice, the situation is technically simpler in the event that the advance payments received were lower than the total price of the performances and the difference should be paid by the buyer. In this situation, according to the provisions of §37a(2)(a), this back payment shall be valued at the exchange rate in force on the date of taxable performance, i.e. at the exchange rate in force on the date of delivery of the goods or provision of the service.
A technically more complicated situation occurs at the moment when the advance payment received exceeds the final price of the performance and an overpayment that must be refunded to the buyer arises. **According to the amended provisions of § 37a(2)(b), it is necessary in such a case to apply the exchange rate in force at the time of receipt of the payment (advance payment) for the given taxable performance to value the negative difference (overpayment), not the exchange rate in force on the date of delivery of the goods or provision of the service.** The Act does not solve a situation concerning the exchange rate to be applied in case of receipt of several advance payments with different exchange rates. For settlement of the overpayment, we recommend application of the exchange rate of the advance payment that is fully or partially refunded.

JUDICATURE OF THE SUPREME ADMINISTRATIVE COURT 2019 TO ADVERTISEMENT COSTS

The advertising costs were and continue to be a partial target of inspections by the tax authorities, whereas according to our experience, many undertakings are still not ready for these inspections. In 2019, several verdicts of the Supreme Administrative Court concerning the non-recognition of a specific advertising expense.

The standard requirement of the tax authority is submission of a documentary basis for the given expense – for instance, invoices, contracts, orders and bank statements.

Apart from the formal documents, the current judicature repeatedly referred to the necessity to prove that the given performance really occurred, and particularly prove the period in which it occurred, how often and at what price. In the verdicts of 2019, a further interesting aspect was solved, specifically the obligation to prove that the advertisement was provided by the real subject stated on the tax document - invoice. We know the obligation to prove this fact mainly from the judicature on VAT, but the stated verdicts favoured the obligation to prove the real supplier also in the area of income tax.

In the event that the supplier of the advertisement has no contact with the tax authority, and the tax authority did not question the documents, but doubted whether the given advertisement was realised by the given supplier. The taxpayer presented the argument that it cannot prove the facts concerning another taxpayer. The Supreme Administrative Court to the given case stated that in a situation where the documents submitted to the tax authority are questioned to such an extent that the provider of the performance is not proven (and also to whom the transaction amount for the service was paid), the taxpayer may claim the expense as tax-deductible only in a situation where the taxpayer can prove who was the real supplier.

In the verdict of May 2019, the Supreme Administrative Court further levered the aspect of the price of the contracted advertisement. In §23(7) of the Income Tax Act, affiliated entities are, apart from, capitally amalgamated entities also entities that established a legal relationship for the purpose of reducing the tax base or increasing the tax losses (otherwise affiliated persons). The tax payer was involved in the chain of persons that billed the advertising services and benefited from it in the area of reduction its own tax base. At the same time, this taxpayer could not corroborate the difference between the price recognised in his costs and the price determined by the tax authority for which reason the cost was recognised as a tax-deductible cost.

We recommend devoting great attention to the collection of advertising cost evidence since the arrears in this area are usually noticeable from the viewpoint of VAT and income tax.

NEW INFORMATION FROM THE GENERAL FINANCIAL DIRECTORATE RELATING TO THE VAT OBLIGATIONS OF NON-RESIDENTS

In July 2019, the General Financial Directorate released Information for taxable entities (undertakings engaged in gainful activity) that are non-residents of the Czech Republic in the area of VAT. **A non-resident means an entity engaged in gainful activity, which does not have its registered office in the Czech Republic, delivers goods or provides a service at a place of performance in the Czech Republic** and does not have a business outlet in the Czech Republic or has a business outlet in the Czech Republic, but such outlet does not participate in

the delivery. In the released document, information in the area of mandatory registration to pay VAT in the Czech Republic and information regarding voluntary registration to pay VAT is stated separately. This information has its significance also for subjects that receive invoices from non-residents in order to be able to identify the correctness of application of the tax regime applied to the tax document received and eventually also correctly declare this document in its tax returns.

Cases in which an entity that is a non-resident of the Czech Republic **does not have the obligation** to register as a VAT payer in the Czech Republic:

- the place of performance for services provided or goods delivered is not in the Czech Republic – for instance, a German Law Firm provides consulting services to a citizen in the Czech Republic (non-entrepreneur)
- The place of performance is in the Czech Republic, but the recipient of the performance is a taxpayer with obligation file a VAT return in the Czech Republic and pay VAT on such performance according to §108(3) (business entity registered to pay VAT in the Czech Republic)

  This provisions applies to the services provided according to §9 to §10d (consulting, transportation, services related to real estate property, work on movables, rental of movables, catering services, cultural services, educational services, etc.) or in the event that this concerns supply of goods including installation or assembly or supply of goods through systems or networks. In the Czech Republic, the buyer-VAT payer gets recognition of such performances is recognised in reverse charge regime.

  In the event that the recipient of these services was a non-entrepreneur (person liable to tax), it is not possible to transfer the tax obligation to the recipient and in this situation, the non-resident must register as a VAT payer in the Czech Republic. In such case, a limit for waiver of registration is not set for non-residents of the Czech Republic as applies to the Czech subjects up to a limit of 1 million CZK.
- The place of performance is in the Czech Republic and the goods are supplied by a VAT payer in the Czech Republic. VAT on purchased goods is recognised in the reverse charge for the buyer-tax payer in the Czech Republic.
- Shipping of goods – in the event that the non-resident of the Czech Republic ships goods into the Czech Republic from another EU Member State to persons without tax liability, it is necessary to observe the limit of 1,140,000 CZK, which must not be exceeded in the given calendar or preceding year. If the limit is not exceeded and the goods are also not liable to excise tax, the statutory duty to register in the Czech Republic is not established. In this event, a non-resident pays VAT on the realised deliveries in the country where the shipping of the goods starts.

Obligation to register as VAT payer in the Czech Republic for non-residents can be summarised in the following cases:

- in the event that a non-resident of the Czech Republic delivers goods or provides services within the Czech Republic and the buyer of the performances is a person without tax liability,
- exceeding of the limit for distance sales,
- distance sales, which are the subject-matter of excise tax,
- delivery of goods to another EU Member State,
- purchase of goods from the EU to the Czech Republic with the exception of a tripartite transaction (however, in this case the non-resident shall be registered only as an identified person not a taxpayer).

VAT REFUND FOR THE YEAR 2018 FROM OTHER MEMBER STATES

We would like to draw your attention to this deadline: **30th September 2019 is the closing date to file the application for VAT refund for the year 2018 from other Member States.**

The application is necessary to file electronically via the portal of the General Financial Directorate in the Czech Republic.

The detailed technical information concerning the procedure of filing the application is published in the Financial Administration web https://www.financnisprava.cz/cs/dane/dane/dan-z-pridane-hodnoty/vraceni-dph.

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