

Notification of the Finance Ministry

Notification of the Finance Ministry dated 2 December 2008 on classification of tangible assets into depreciation groups pursuant to Annex 1 to Act No. 586/1992, Coll., on Income Tax, as amended, after 1 January 2008

Classification of movable tangible assets into depreciation groups will be carried out after 1 January 2008 in compliance with the Standard Classification of Production (introduced by the Czech Statistical Office in its notification dated 5 December 2002 on introduction of the 2nd edition of Standard Classification of Production) set out in Annex 1 to Act No. 586/1992, Coll., on Income Tax, as amended, under the designation ++).

The Notification of the Czech Statistical Office dated 31 July 2008 sets forth the new Production Classification (CZ-CPA) can be applied retroactively from 1 January 2008 for statistical purposes, but it is not decisive for classification of tangible assets into depreciation groups.

Decree sets foreign meal allowances for 2009

The Finance Ministry ("MoF") issued Decree No. 417/2008, Coll., setting forth the basic amount of foreign meal allowances for 2009. The Decree becomes effective as of 1 January 2009 and Decree No. 338/2007, Coll., setting forth the basic amount of foreign meal allowances for 2008, will be cancelled simultaneously.

Information on application of the provisions of Section 36, subsection 11 of the VAT Act

Effective 1 January 2009, the new subsection 11 will be added to the VAT Act, which sets forth what received amount shall not be included in the tax base.

The new legal regulation sets forth that an amount received from and paid by another that is not to be included in the tax base must be received on behalf and account of this other party. The new legal regulation determines that the amount received from and paid by another person that is not to be

included in the tax base must be received on behalf and account of this other person. According to the MoF's interpretation, the new regulation shall be applied to events where the received and paid amount was an interim item for the payer. In case of lease agreements, the MoF does not mention that it is necessary to fulfill the basic legal condition, namely the receipt of the amount on behalf and account of another person. The information implies that such condition need not be fulfilled in case of lease agreements. It is known that the MoF employees present opinions at trainings that the legal condition need not be fulfilled in case of lease agreements. It is therefore a question how administrative authorities will respond, in practice, to the above information and whether financial offices will strictly request fulfillment of the legal condition that amounts not included in the tax base be incurred on behalf and account of another person.

International tax relations

The following new regulations shall impact international tax relations:

1. Notification of the MoF concerning agreement on the Double Tax Treaty between the Czech Republic and New Zealand in the field of income taxes. This new treaty will be applied from 1 January 2009.

2. Communication of the Ministry of Foreign Affairs concerning Agreement on Cooperation in the Field of Tax Administrative Activities between the Ministry of Finance of the Czech Republic and Ministry of Taxes of the Azerbaijan Republic.

New developments in legal regulations from 2009

Changes in payment of social security contributions from 1 January 2009

The Czech Social Security Administration has notified of changes arising to employers in payment of social security contributions starting from 1 January 2009. The contribution for the calendar month will be newly due within the period from the 1st to



Prague Main Office

Jungmannova 24, 110 00 Prague, Czech Republic
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234
e-mail: ksbpraha@ksb.cz

Karlovy Vary Office

Na Vyhliďce 53, 360 21 Karlovy Vary, Czech Republic
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781
e-mail: ksbkv@ksb.cz

Brussels Office

36, avenue d'Auderghem, 1040 Brussels, Belgium
tel.: +32 / 223 032 15, facsimile: +32 / 223 033 47
e-mail: brussels@ksb.cz

the 20th day of the subsequent calendar month. The original eight-digit variable symbol shall be replaced by a new ten-digit symbol. This symbol will be allocated to the employer for the whole registration period – even, for example, in the event of change of the registered office. Another change is a new prefix number of the account for payment of the contributions. The original prefix number remains for payment of pension insurance of gainfully self-employed individuals and persons who have voluntary pension insurance. Another change is cancellation of the classification of payers pursuant to the number of employees as “organizations” and “small organizations” and the introduction of the term “employer”. The new variable symbol, as well as other information concerning collection of contributions, will be sent to every employer in writing in January 2009

Maximum assessment base for 2009

Individuals who, on the grounds of income from employment activities and income from performance of independent gainful activities, obligatorily participate in the pension and health insurance in the Czech Republic will be newly obliged to pay pension insurance contributions and state unemployment benefit contributions as well as health insurance contributions. The participation in the health insurance with the obligation to pay contributions for such insurance is obligatory for the employee and voluntary for gainfully self-employed individuals. The same maximum annual assessment base applies to both categories of insured persons, and the amount of the **maximum annual assessment base for 2009 will amount to CZK 1,130,640.**

Sickness Insurance Act

On 1 January 2009, Act No. 187/2006, Coll., on Sickness Insurance, as amended, becomes valid, the effectiveness of which has already been postponed twice. The act brings important changes in the field of sickness insurance, in particular with regard to insured persons, in claims from the insurance system, in determination of the amounts of provided allowances, in assessment of health condition for the

purposes of sickness insurance, as well as in the organization of sickness insurance.

Negotiated amendments

Amendment to the Income Tax Act (“ITA”)

On 10 December 2008, the Chamber of Deputies of the Parliament of the Czech Republic approved a proposed amendment to the Income Tax Act, including certain proposed changes. The amendment was approved in the Senate on 18 December 2008 and signed by the president on 19 December 2008. After the amendment to ITA becomes effective, we will inform you in detail of the main amended provisions of ITA. Below please find certain important proposed changes that have been adopted:

1. Effectiveness of the amendment to ITA

On legislative and technical grounds, a change to the effectiveness of the amendment to ITA was approved, so that the date of effect shall be the date of announcement in the Collection of Laws. This means that this amendment may become effective on another date than 1 January 2009 and this fact could cause certain problems of interpretation. If the amendment is declared in the Collection of Laws by 31 December 2008, problems in interpretation cannot be excluded in terms of whether certain provisions should also apply to tax duties for taxation periods commenced in 2008.

2. Tax exemption of income from transfer of an interest in a subsidiary

The deputies approved a proposed change to the amendment to the ITA, which canceled the exception from tax exemption for incomes of parent companies from transfer of an interest in a subsidiary as originally proposed by the amendment. Pursuant to point 24 of the amendment to the ITA, the originally proposed exception referred to income from transfer of an interest in



Prague Main Office

Jungmannova 24, 110 00 Prague, Czech Republic
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234
e-mail: ksbpraha@ksb.cz

Karlovy Vary Office

Na Vyhliďce 53, 360 21 Karlovy Vary, Czech Republic
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781
e-mail: ksbkv@ksb.cz

Brussels Office

36, avenue d'Auderghem, 1040 Brussels, Belgium
tel.: +32 / 223 032 15, facsimile: +32 / 223 033 47
e-mail: brussels@ksb.cz

a company 50 % of whose assets in the market valuation as of the date preceding the date of interest transfer consisted of intangible assets located in the Czech Republic. However, the deputies' approval of the proposed change cancelled this point.

The tax exemption of income was so far applied to parent companies that are tax residents or tax residents of the EU or a contractual state (and fulfill other conditions set forth by law) only in the case of income from transfer of an interest in a subsidiary generated by its permanent establishment located in the Czech Republic. The amendment to the act deleted the condition concerning the permanent establishment in the Czech Republic.

3. Rules of low capitalization

The amendment to the ITA approved by the deputies contains, *inter alia*, a new wording of Section 25, subsection 1, letter w), which restricts tax deductibility of financial costs from loans and credits for the purposes of determination of corporate income tax base (with several exceptions) if the creditor or the person that secures the loan or credit is a related person in relation to the debtor within the meaning of the relevant provisions of the ITA; the tax deductibility applies to the amount by which such loans and credits exceed double the equity.

Tax costs further do not include financial costs in cases where the interest or revenue or payability thereof depend entirely or partly on the debtor's profit and also in cases where a liability under a loan or credit is subordinated to another liability.

4. Personal income tax rate and tax reliefs

The amendment cancels the existing reduction in the personal income tax rate. The flat income tax rate of 15% will also be valid in 2009

In relation to the above, the existing tax reliefs for a tax payer in the amount of CZK 24,280 and for a spouse living under joint household in the amount of CZK 24,840 shall remain valid. However, the amount of maximum annual personal income of the spouse for application of the relief has been changed to CZK 68,000.

5. Mandatory contributions for determination of the employment income tax base

A new method of determination of the tax base for employment income tax payers (employees) has been set forth so that the employment income is now increased by the amount of the so-called mandatory contributions. The amount equaling the social welfare and unemployment benefit contributions that employers are obliged to pay on such income pursuant to Czech legal regulations is now considered to constitute the mandatory contributions for the purpose of the ITA.

In case of employment income tax payers with regard to whom the employer is not obliged to pay the mandatory contributions, the tax base is calculated by adding the amount equaling the mandatory contributions from the employment income to the employment income.

Chamber of Deputies postpones approval of partial harmonization amendment to the VAT Act and Excise Tax Act

The Chamber of Deputies did not meet the governmental proposal and postponed approval of the amendment to the VAT Act pursuant to which goods were to be exempt from VAT and excise tax in the value of up



Prague Main Office

Jungmannova 24, 110 00 Prague, Czech Republic
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234
e-mail: ksbpraha@ksb.cz

Karlovy Vary Office

Na Vyhliďce 53, 360 21 Karlovy Vary, Czech Republic
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781
e-mail: ksbkv@ksb.cz

Brussels Office

36, avenue d'Auderghem, 1040 Brussels, Belgium
tel.: +32 / 223 032 15, facsimile: +32 / 223 033 47
e-mail: brussels@ksb.cz

to EUR 430 if brought by a traveler from third countries. The Czech Republic thus does not fulfill its obligations arising from its EU membership. Persons who wish to utilize the exemption from VAT and excise tax in case of import of goods therefore cannot rely on Czech law but must seek the direct effect of Council Directive (EC) No. 2007/74/EC dated 20 December 2007 on exemption of goods brought by persons travelling from third countries from VAT and excise tax. Pursuant to the cited directive, the tax exemption should become effective from 1 December 2008 and the Czech Republic should adopt a change to the VAT Act and Excise Tax Act as of the same date.

Amendment to the Foreign Currency Act

A proposed amendment to the Foreign Currency Act was presented to the Chamber of Deputies pursuant to which foreigners can acquire real estate in the Czech Republic effective 1 May 2009. Pursuant to Article 56 of the Agreement on Establishment of European Community, all restrictions of free movement of capital and payments are prohibited between member countries and vis-à-vis third countries outside the EU. When joining the EU, the Czech Republic negotiated two transitory periods to preserve certain restrictions in the field of acquisition of domestic real estate by foreign persons for a period of five years in case of secondary residential property and for a period of seven years in case of agricultural land and forests from the date of accession to the EU. On 1 May 2009, the Czech Republic's agreed period determined for preservation of the transitory period for acquisition of secondary residential property will expire. The restriction in the field of acquisition of agricultural land and forests should be preserved pursuant to the proposed amendment.

From judicature

The Constitutional Court issued a breakthrough resolution concerning the interpretation of periods set for tax assessment. Pursuant to the award of the Constitutional Court dated 2 December 2008, the three-year period in which a tax or

an additional tax can be assessed does not commence at the end of the taxation period in which the tax return is to be filed but already from the end of the taxation period provided it is evident at the moment the obligation to file a tax return arises. The Constitutional Court simultaneously explained that it is not possible to tolerate an extensive interpretation of periods for tax assessment without a rational explanation of the reasons why the matter was not settled within the basic three-year period of time. Pursuant to the existing judicature, it is impossible on the basis of this resolution to newly enter already closed court or tax proceedings, nonetheless in case of proceedings that are currently pending it is necessary to assess whether the objection concerning termination of the period for tax assessment could be extended within the meaning of the interpretation presented now by the Constitutional Court.

This summary includes only basic information that shall not substitute for the full wording of the relevant legal regulations under any circumstances. Should you require more detailed information or wish to resolve more specific problems, please contact any tax advisor in law firm Kocián Šolc Balaščík. We would be pleased to provide you with more detailed information on the aforementioned issues.

KŠB Tax Team :

tel. 22410 3316

fax. 22410 3234

e-mail: hnavratilova@ksb.cz
pblazkova@ksb.cz
rkucerova@ksb.cz
ajuric@ksb.cz
vpatek@ksb.cz



Prague Main Office

Jungmannova 24, 110 00 Prague, Czech Republic
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234
e-mail: ksbpraha@ksb.cz

Karlovy Vary Office

Na Vyhliďce 53, 360 21 Karlovy Vary, Czech Republic
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781
e-mail: ksbkv@ksb.cz

Brussels Office

36, avenue d'Auderghem, 1040 Brussels, Belgium
tel.: +32 / 223 032 15, facsimile: +32 / 223 033 47
e-mail: brussels@ksb.cz