

**OCTOBER 2009
(No.7)**

Announcement of the Ministry of Finance

Page 1

The Income Tax amendment on which the tax payer can use the transport flat rate does not affect the application of VAT

International tax relations

The Ministry of Foreign Affairs announces signing of new Double Taxation Treaty in Peking between Czech Republic and China

Page 3

News in legislations

Amendment to VAT Act increases the reduced and standard rate by 1 %
Amendment to Excise Duty rate increases tax rate

Judicature

Page 3

Pursuant to a resolution by the Constitutional Court Resolutions on tax forgiveness based on the provisions of Section 55a of Act No. 337/1992, Coll., on Tax Administration and Collection can be reviewed by a court



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

Ostrava Office

Českosobotská 7, 702 00 Ostrava, Czech Republic
tel.: +420 / 553 030 511, fax: +420 / 553 030 512
e-mail: ksbostrava@ksb.cz

Notification of the Finance Ministry

Communication from the Ministry of Finance (MF) dated 23 September 2009 on application of VAT to Act No. 304/2009, Coll., containing the new option on application of a transport flat rate for purposes of the Income Tax Act. The tax entity choosing to apply the transport flat rate for calculation of its income tax base shall not be required to keep records (termed "drive logs") documenting expenses incurred in connection with operation of a road motor vehicle. The application of the transport flat rate shall be at the discretion of the tax entity. The MF emphasized the rules for application of the cited transport flat rate and its consequences apply in the area of income tax, but the relevant amendment shall not affect the application of VAT. The same regime and rules apply to VAT as existed prior to the amendment allowing the choice of the transport flat rate for purposes of income tax. It applies that the payer is entitled to apply a claim to deduction if it receives taxable performance from another payer, uses such performance for its economic activities and documents it by a tax document. The payer must document its compliance to such conditions in tax proceedings. The use of a transport flat rate for purposes of income tax does not automatically mean the payer documented the use of transport for economic activities to raise a claim for deduction of VAT. The MF's communication is published on its website (<http://cds.mfcr.cz>) in the section "Information for Users", but it does not contain any reference number or state the person who issued it.

International Tax Relations

The Ministry of Finance announces signing of Protocol in Prague between Czech Republic and Republic of Serbia on 8 September 2009, concerning the Double Taxation Treaty on income tax and property tax executed in Prague on 11 November 2004 (No. 88/2005, Collection of International Agreements Sb.m.s.). The contractual countries now mutually inform each other by diplomatic fulfillment of the

procedures required by their internal legal regulations for the above Protocol to become valid; the Protocol constitutes an integral part of the Agreement in the relationship between Czech Republic and Republic of Serbia. If the course of the legislative process in the two countries becomes standard, it can be assumed that the practical application of the provisions of the Protocol shall commence from 1 January 2011.

The Ministry of Foreign Affairs announces signing of new Double Taxation Treaty in Peking between Czech Republic and China on 28 August 2009.

The validity of this new treaty and practical performance thereof shall depend on internal legislative procedures in these two countries. It applies that the validity of the provisions of the Treaty between the Government of the Czechoslovak Socialist Republic and the Government of the People's Republic of China on prevention of double taxation and income tax evasions, signed in Prague on 11 June 1987 (No. 41/1988, Coll.), shall expire and such provisions no longer be applied to the relationships between the Czech Republic and China as of the date of commencement of performance of the new treaty.

The Ministry of Foreign Affairs announces signing of Treaty in Yerevan between Czech Republic and Armenian Republic on 6 July 2008, concerning prevention of double taxation and tax evasion in the field of income tax and property tax. The Treaty became valid on 15 July 2009 and, pursuant to Article 28 and its provisions concerning withholding tax from the source, shall be applied to income paid or credited as of 1 January 2010 or later. Regarding other income tax and property tax, such provisions shall be applied to property for every tax year starting from 1 January 2010 or later. The Treaty was published under No. 86/2009 in the Collection of International Agreements.

Newly Submitted Bills

Based on the schedule of the Chamber of Deputies, we expect the amendment to

the VAT Act implementing EU directives to be approved on 4 November 2009

(Parliamentary print No. 887/0, see *Tax News No. 6/2009*). The amendment will be also subject of the discussion in the Senate and the President's signature. The amendment takes effect from 1 January 2010.

Amendments to Tax Regulations in the "Governmental Package"

The Chamber of Deputies approved the government bill amending certain acts in connection with the bill on the 2010 state budget of the Czech Republic

(Parliamentary print No. 917, "Governmental Package"). The Act was already approved in the Senate and published in the Collection of Laws under no. 362/2009. The approved changes apply to the following tax regulations:

Chapter One of the Governmental Package amends real estate tax, doubling the real estate tax rate but excluding rates for arable land, permanent grass land, economic forests and lakes with intensive and industrial fish farming. Pursuant to the draft amendment filed in the course of approving the act, municipalities are permitted to determine new coefficients for 2010 if the decree stipulating the coefficients is adopted by 30 November 2009. In view of the effectiveness of the bill, it may be difficult if municipalities change the coefficients for 2010 that were already determined by the previous legal deadline of 1 August 2009.

Chapter Two of the Governmental Package amends income taxes, changing lump sums for entrepreneurs once more within a short period of time.

The deputies approved yet another increase in the lump sums for entrepreneurs, the increase of which was already approved in June 2009 (see Act No. 289/2009, Coll.), in order to support economic growth. The increased lump sums are newly changed for certain groups of entrepreneurs. The lump sums increased earlier, in June, shall apply only

to 2009 and their amounts shall be amended again starting from 2010.

Chapter Four of the Governmental Package amends the Excise Tax Act, increasing excise tax rates on all types of selected products starting 1 January 2010.

The excise tax on fuel shall newly increase by approximately CZK 1 per liter and excise tax on spirits shall newly increase the price of 0.5 l of 40% alcohol by approximately CZK 5, including VAT. The rates of this tax are determined in CZK per hectoliter of ethanol. The excise tax on beer shall newly increase by CZK 8 per hectoliter per percent of extract from the original hopped wort, which is approximately CZK 0.50 per half liter of 10° beer. In the case of excise tax on cigarettes, smoking tobacco and other tobacco, the fixed and percentage portions of the tax shall newly increase by CZK 0.04 per piece and 1%, respectively. The excise tax rates on smoking and other tobacco shall newly increase by CZK 70 per kilogram.

Chapter Five of the Governmental Package amends the VAT Act, changing VAT rates from 1 January 2010. The reduced 9% rate is to be newly increased to 10% and the basic 19% rate is to be newly increased to 20%. The rate valid at the time of making the payment shall apply to amounts received until 31 December 2009 in respect of performance taking place after 1 January 2010.

The proposed governmental bill must be discussed and approved by the Senate and signed by the President. The proposed date of effect of the act and the individual tax amendments is from 1 January 2010.

In the remaining amended provisions, the following changes were approved:

The amendment to the Act on Social Security and Contribution to the State Employment Policy newly increases the maximum assessment base for the social security contribution for employees and self-employed individuals in 2010 from the



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

Ostrava Office

Českosobotská 7, 702 00 Ostrava, Czech Republic
tel.: +420 / 553 030 511, fax: +420 / 553 030 512
e-mail: ksbostrava@ksb.cz

existing 48-multiple of the average salary to a 72-multiple and newly cancels the employer's possibility to apply deductions from the social security contributions. The last time such deductions can be applied is December 2009. In 2010, the health insurance contributions paid by employers shall not be reduced but remain at 2.3%.

On the basis of the amendment to the Act on General Health Insurance

Contributions, the maximum assessment base for payments of such contributions for employees and gainfully self employed individuals newly increases the existing 48-multiple of the average salary to a 72-multiple starting 1 January 2010.

On the basis of the amendment to the Health Insurance Act, the percentage rate for determination of the daily amount of sickness benefits shall be temporarily unified for 2010 in the amount of 60%, i.e. the preferential treatment of long-term sickness leaves (quarantines) will be canceled. For 2010, maternity pay shall be shortened to the same amount as sickness benefits. For 2010, the supported nursing benefits period shall be shortened and nursing benefits be paid from the fourth day of nursing or care. It applies to all the above-mentioned benefits that if a claim to such benefits arose before 2010, the amount thereof for 2010 shall be adjusted in accordance with the approved changes.

On the basis of the amendment to the Act on State Social Support, the existing amount of the state financial aid for 2010 shall be reduced. The amount of the parents' benefits and maternity grant has not changed compared to the government's proposal.

On the basis of the amendment to the Employment Act and act on support of economic growth and social stability, the previous legal regulation, consisting of temporary increase of unemployment benefits, requalification support and extension of the unemployment support period, was abolished prior to the amendment taking effect.

Approved and Effective Acts

Act No. 288/2009, Coll., amending Act No. 185/2004, Coll., on the Customs Administration of the Czech Republic, regulates information exchange between the EU member states and extends the powers of the customs administration to provide necessary information from day-to-day searches to the relevant enforcing authorities of other EU member states, such as police, customs or other bodies that are entitled to prevent, as well as disclose, criminal acts. The act became effective from 1 October 2009.

The Chamber of Deputies outvoted the President's veto and approved the act on support of economic growth. The act was published under **Act No. 326/2009.Coll.** and became effective on the date of publication (for the contents of this regulation see *Tax News No. 6/2009*). The car scrappage allowance introduced by the act on support of economic growth via the Waste Act can only be applied after the government approves the relevant implementation regulations.

From Judicature

Pursuant to a resolution by the Constitutional Court, resolutions on tax forgiveness based on the provisions of Section 55a of Act No. 337/1992, Coll., on Tax Administration and Collection can be reviewed by a court. This conclusion is based on the award of the Constitutional Court dated 22 July 2009, file No. III.ÚS 2556/07. According to the Constitutional Court, when deciding on tax forgiveness (also applicable to tax accessories), a decision is made on the tax debtor's subjective rights and as such it cannot be excluded from a court review. The court practice is shifted thereby to a certain extent. Only recently, the court practice has been that resolutions on tax forgiveness, including tax accessories, must be duly justified. The current resolution by the Constitutional Court thus completes the gradual development in the application of such remedy, which entirely depends on the administrative discretion of the relevant state administrative officials (the full



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

Ostrava Office

Českosobotská 7, 702 00 Ostrava, Czech Republic
tel.: +420 / 553 030 511, fax: +420 / 553 030 512
e-mail: ksbostrava@ksb.cz

resolution is available on
<http://nalus.usoud.cz/Search/Search.aspx>).

Pursuant to the resolution of the Supreme Court dated 9 September 2009, No. 2 Afs 58/2009-85, a request for elimination of doubt based on the provisions of Section 43 of Act No. 337/1992, Coll., on Tax Administration and Collection, is illegal if it does not contain concrete specified doubt for subsequent refutation by the taxpayer. The tax administrator does not need to have complete and certain knowledge of the taxpayer and confirmation of the veracity of its assertions – only a justified suspicion is sufficient. In the case in question, a request was assessed that only contained a requirement for presentation of the relevant records and tax documents, but it did not specify in respect of what the tax administrator held doubts on accuracy, demonstrability or completeness of the submitted additional tax return. The Supreme Administrative Court stated: *“Where the relevant request by which reproach proceedings were commenced is illegal, such situation renders the entire subsequent reproach proceedings illegal, since an illegal commencement cannot be followed by legal course of proceedings.”*
(www.nssoud.cz).

KŠB Tax Team:

tel. 22410 3316

fax 22410 3234

e-mail: hnavratilova@ksb.cz

pblazkova@ksb.cz

ajuric@ksb.cz

vpatek@ksb.cz

dbucek@ksb.cz

DISCLAIMER

The information contained in Tax News should not be construed as legal advice or legal opinion on specific facts or circumstances. The contents are intended for general information purposes only and no person should act or fail to act on the basis of any information contained herein without first seeking appropriate legal or other professional advice on that person's particular circumstances. Kocián Šolc Balaščík expressly disclaims all liability to any person with respect to the contents of Tax News.

If you need more details or would like to solve specific problems, please contact any tax advisor at Kocián Šolc Balaščík. We would be very pleased to provide you with more information on the above-mentioned issues.



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

Ostrava Office

Českosobotská 7, 702 00 Ostrava, Czech Republic
tel.: +420 / 553 030 511, fax: +420 / 553 030 512
e-mail: ksbostrava@ksb.cz