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## NEW BILLS

### Amendment to Value Added Tax Act in comments stage

The Ministry of Finance submitted a governmental bill for comments. The bill will amend the VAT Act with effectiveness from 1 January 2011. The Ministry of Finance called upon selected institutions and authorities to provide comments to the presented bill by 12 July 2010.

On the basis of the above-mentioned commentary procedure, a final draft amendment (bill) to the VAT Tax Act will be prepared and subsequently submitted to the government for approval and then to the Parliament for consideration. With regard to the deadlines for passing bills in Parliament, the approved bill is expected to be published in the Collection of Laws by early December of this year at the earliest.

The reason this bill has been presented is due to the obligation of the Czech Republic to implement EU directives regulating the value added tax issues. The bill simultaneously contains other changes that aim at preventing tax evasion which EU member countries can include in their acts. From the proposed changes, we state only the most important ones below:

#### 1. Changes caused by EU directives

The amendment to the VAT Act, *inter alia*, aims to change the rule for determining the place of performance of services in the field of culture, art, sport, science, education, entertainment and similar services. Today, the place of performance is determined pursuant to the place where the event in question takes place regardless of the recipient of the performance. Effective 1 January 2011, the place of performance of services connected with the organized event (such as an organizer's services) for the person obliged to pay the tax is determined by his/her registered office. In case of persons who are not obliged to pay the tax, the place of performance shall not be changed.

#### 2. Fighting against tax evasion

Pursuant to the bill submitted by the Ministry of Finance, the customer's

guarantee for tax that was intentionally not paid by the supplier is to become a tool for fighting against tax evasion. The basic criterion for applying the proposed provisions will be failure to pay the tax for taxable supply by the supplier to the tax administrator. The guarantee is to be applied in two situations. The first situation is when the customer knew or should have known that the supplier would not pay the tax stated in the tax document and the other situation is when the payment is apparently different from the usual price without any economic justification. A similar amendment was instituted in Slovakia from 1 January 2010.

The Ministry of Finance proposes simultaneously to introduce a taxation system at the customer for deliveries of scrap and waste (the so called reverse charge rule). The bill includes a new Annex no. 5, which states a list of goods that the new taxation system relates to. The reverse charge is used for the performance between tax payers only.

#### 3. VAT for outstanding receivables

Pursuant to the draft amendment, the tax payer should be allowed to correct VAT payment from the value of the identified receivable arising within six months prior to the court decision on the bankruptcy of the recipient of the performance. In such a case, the creditor shall deliver a tax certificate to the debtor in which the amount of the corrected tax is specified. The debtor is subsequently obliged to decrease its input tax. Corrections may not be executed between affiliated parties. If the receivable or a part thereof is finally satisfied, the creditor shall be obliged to report and pay tax from the payment received, and deliver a new tax certificate to the debtor.

#### 4. Other changes

Pursuant to the bill, changes have been made in the introductory definition of terms. Certain terms defined earlier have been deleted due to redundancy (such as import tax, tax exemption with a claim), with other newly instituted terms (such as the definition of goods subject to the excise

tax) and specification of other terms (e.g. business assets).

A new proposal permits the tax payer to decide on whether to pay tax on transfer of constructions, flats and non-residential premises older than three years, which otherwise are tax exempted. If the tax payer applied the claim for input tax deduction, it is suggested that the transfer of constructions, flats and non-residential premises always constitutes taxable performance.

Rules for raising claims on input tax deduction should also be changed. The claim to input tax deduction shall exist only in case of tax applied in accordance with the law. The question is raised whether the Ministry of Finance wishes to declare by this change that it is now possible to apply the input tax also in cases where tax was not applied in accordance with law.

### ***Amendment of Excise Tax Act in comments stage***

The Ministry of Finance submitted a governmental proposal for comments pursuant to which the Excise Tax Act is to be amended. The proposed date of effect of the amendment is from 1 January 2011. Comments to the submitted bill can be sent until 12 July 2010.

Out of the proposed changes, we select the following:

1. Changes of rules in proceedings on securing, forfeiture and confiscation of selected products and transport means. The issuance of decisions and their delivery shall be stipulated independently to ensure rights *in rem* of parties to secured products or transport means.

2. Preferential treatment on application of excise tax on growers' distillation. The proposal responds to the decision of the Supreme Administrative Court and specifies in detail which rate of excise tax shall be applied to alcohol in products from growers' distillation. The reduced excise tax rate shall be applied for volume of up to 30

l of ethanol per grower for production period.

3. Increased rates for tobacco products. Rates of excise tax from tobacco products should be changed in accordance with EU directives by 1 January 2014. This planned change should be divided in two steps according to the proposal. This proposal includes the rates increase which should occur with effectiveness from 1 January 2012. Simultaneously the proposal stipulates that purchasing tobacco products with lower tax rates in advance are to be prevented by the proposed cancellation of valid provisions stipulating rules in case of a change of rates.

### **MF COMMUNICATION**

**On 10 June 2010 the Ministry of Finance published a communication on photovoltaic power plants relating to real estate tax on their website**

(<http://cds.mfcr.cz>). The Ministry of Finance states that photovoltaic panels or bands located on buildings are not independent constructions and buildings are to be taxed in the standard way according to the type of use thereof.

According to the Ministry, if structures bearing photovoltaic panels are located in a free area and relatively easy to remove or movable, they cannot be considered to be real-estate and are not subject to real estate tax.

**The Ministry of Finance published information on the termination of validity of the Instruction D-336 on 21 June 2010**

Effective 1 July 2010, in connection with a change in the Administrative Fees Act implemented by Act No. Act no. 227/2009 Coll., which amended certain acts in connection with the adoption of the Basic Registers Act, the exemption from administrative fees is to be cancelled provided the application is filed electronically with a guaranteed signature.

It results from the aforementioned that proceedings commencing from 1 July 2010,



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when an act is required and executed via remote access and attached with the electronic signature (based upon the qualified certificate issued by the accredited provider of certification services), shall be subject to the payment of an administrative fee according to the relevant rate schedule.

## FROM JUDICATURE

**On 1 June 2010, the Supreme Administrative Court ruled in Ref. no. 5 Afs 64/2008-156** regarding the right to information on tax exemption or, as the case may be, tax interest and charges, which occur due to the decision of the Ministry of Finance or the tax office. Entities, which are exempt from tax or tax interest and charges by the state, are in principle recipients of public funds according to the Supreme Administrative Court, and the duty of confidentiality does not apply on information on exemptions within the framework of the tax proceedings.

In comparison with other persons who are not recipients of public funds, the protection of data on such person's property is weaker with regard to the above mentioned persons. According to the SAC, the interest in transparency of the administration of public funds and effective public inspection of the procedures of the tax administration shall prevail here.

Pursuant to the Act on Free Access to Information, state authorities and public institutions are obliged to provide the following data: name, surname, the year of birth, municipality in which the recipient has the residential address, and the amount, purpose and conditions under which public funds were provided. This obligation does not relate to events in which the public funds were provided pursuant to acts in the social area, provision of health care, unemployment benefits, and state aid for construction saving scheme and renewal of territories. The Supreme Court has not specified whether it is possible to request that information on tax exemption be provided retrospectively. ([www.nssoud.cz](http://www.nssoud.cz)).

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