

Communication by the Ministry of Finance

Communication by the Ministry of Finance Ref. No. 18/13276/2009-181 dated 27 January 2009 – How to Determine the Tax Rate Applicable to Waste Collection, Removal and Disposal

Effective 1 January 2009, the text of Schedule No. 2 to Act No. 235/2004 Coll., the VAT Act, has been amended to newly include item “SKP 90.02.11 – Collection and Transportation of Communal Waste” in the items subject to a reduced VAT rate. The VAT Act does not provide an independent definition of “communal waste” but the Ministry has instructed that the definition be taken from Act No. 185/2001 Coll., the Waste Act. On the other hand, waste similar to communal waste but generated by non-production operations of corporations or small businesses (individuals authorized to be engaged in business) should not be included in this definition.

Decision by the Ministry of Finance of the Czech Republic Abolishing the Duty to Pay Tax Advances

The Financial Bulletin (Finanční zpravodaj) No. 3/2009 dated 25 February 2009 included a decision by the Ministry of Finance of the Czech Republic that abolishes the duty to pay tax advances, taking effect on the same date of 25 February 2009. The decision abolishes the duty to pay income tax advances under Section 38a of the Income Tax Act and is scheduled to take place in 2009. The abolishment does not apply to all payers but only to individuals and legal entities without employees or with records of no more than 5 employees as on 1 December 2008. Payers who comply with the above requirements may apply this decision on tax advances due on 16 March 2009, as 15 March 2009 is a Sunday.

Faster VAT Refund

On 19 February 2009, the Ministry of Finance issued instructions to tax authorities to commence expediting the refund of large VAT deductions. If the application is filed electronically and the tax authority has no doubts or objections to the accuracy of the data in the tax return, the refund deadline shall be reduced from 30 to

15 days. This measure complies with the Government's National Anti-Crisis Plan of 16 February 2009. However, the tax authority's compliance with the deadline cannot be imposed and VAT payers who filed tax returns electronically and received refunds between the fifteenth and thirtieth day following the date of the tax assessment shall not have the right to receive interest on overpayment.

2009 Legislation News

Amendment to Income Tax Act Effective 1 January 2009

We informed you of the changes to be introduced by the amendment in *Tax News Issue No. 6/2008* and subsequent issues. Below we refer to selected changes and certain proposed amendments that were finally deleted.

Exemption Applicable to Disposal of Shareholdings

A proposal for amendment abolished the originally proposed, more severe restrictions on the exemption applicable to disposal of shareholdings in subsidiaries pursuant to which the right to have the exemption applied does not exist if real estate constitutes the majority of assets of the subsidiaries. The exemption applicable to disposal of shareholdings will not depend (as it currently does) on whether the company involved is a real-estate company or not.

Thin Capitalization

Effective 2008, thin-capitalization rules that set forth the circumstances under which interests on loans are tax deductible or not have been amended. From now on, thin-capitalization rules are applied only if the lender or arranger is a party related to the borrower (pursuant to the former text of the Act - this also applies to loans between unrelated parties). Financial costs are not tax deductible on amounts in which the aggregate of loans and credits from, or arranged by, related parties exceeds the equity by triple (applicable to banks) or double (applicable to other parties) in a taxation period.



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

Interest on junior loans and credits and loans and credits the interest or maturity of which depend entirely or mostly on the borrower's profit shall not be tax deductible regardless of the borrower-lender relationship, i.e. even if the borrower and lender are not related in any manner whatsoever.

Amendment to the Reserves Act

The terms and conditions of tax deductibility of tangible assets adjustment reserves have been made more restrictive, taking effect from 1 January 2009. These costs are newly tax deductible only if the funds in the full amount of the reserve are transferred to an independent bank account by the deadline for filing the tax return. These provisions do not apply to reserves the creation of which commenced in 2009. The creation of reserves commenced in 2008 and earlier are subject to the former procedures.

Amendments under Discussion

Amendment to the Taxes and Fees Administration Act

The long-discussed amendment to the Taxes and Fees Administration Act (Lower House's Printout No. 387), which is to change the rules for imposing penalties to breaches of confidentiality duties and introduce suspensory effect for additional payment assessments issued after tax inspections, has been returned for a second reading. The amendment should now be discussed together with the new Code of Tax Procedure, which contains similar provisions but is proposed to take effect from 1 January 2010. Subject to approval, the amendment should take effect on the date of its announcement.

Amendment to the Value Added Tax Act

Originally a mere implementation amendment to the VAT Act (Lower House's Printout No. 605) that was supposed to only adjust the terms and conditions for VAT and concise duty exemption on goods imported from third countries by travelling individuals, this amendment was extended by additional proposals for amendments during the repeated second reading. On 3

March 2009, the amendment was passed in the third reading to make it possible to claim VAT deduction for passenger cars. The only category of passenger cars subject to VAT deduction is the N1 category – i.e. cars with a partition wall. Please keep in mind that personal use of passenger cars for which an input tax deduction has been claimed are subject to output VAT. Other proposals during second reading were not approved to reduce lower and standard VAT rates.

The amendment must be passed by the Senate and signed by the President before taking effect. The proposed effective date of the changes is the date of announcement in the Collection of Acts. We expect the date of publication to be on 1 April 2009.

Amendment to Income Tax Act

The draft government amendment to the Value Added Tax Act (Lower House's Printout No. 605) included an amendment to the Income Tax Act presented in the second reading. The amendment was passed in the third reading and contains, without limitation, new thin-capitalization rules (i.e. tax deductibility of interest on loans and credits). The amendment changes thin-capitalization rules again and shall be retroactively effective for 2008, to be applied to new agreements and amendments entered into after 31 December 2007. The amendment has been submitted to delete provisions on unconditional tax non-deductibility of interest on subordinate (junior) loans and credits and loans and credits arranged by a related party and to increase the thin capitalization limit. Financial costs should not be tax deductible on amounts in which the aggregate of loans and credits from, or arranged by, related parties exceeds the equity by six times (applicable to banks) or by four times (applicable to other parties) in a taxation period.

The amendment proposal contains fairly detailed transitory provisions in relation to the periods in which the relevant agreements are entered into and therefore we recommend monitoring them carefully.



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

New Act on Auditors

The Lower House of the Parliament approved the draft new Act on Auditors (Lower House's Printout No. 517), which responds to the requirements of European Directive No. 2006/43/EC on statutory audits of annual accounts and consolidated accounts and introduces a number of substantial changes and novelties compared to the current situation. These apply not only to the position and conduct of auditors but also to audited companies, especially with regard to the provisions on powers of corporate bodies to select an auditor and, thanks to the newly introduced concept of public-interest entities, their duties to establish an audit committee.

The Upper House has not yet approved the new Act on Auditors but after signing by the President, it should take effect on the date of announcement in the Collection of Acts. There are no plans to delay the date of effect, but some deadlines for compliance with certain duties are imposed in the transitory provisions. Below please find our comments on the most significant changes.

The Act on Auditors, if applicable, will require the statutes or articles of association of companies to be amended. This especially applies to statutes or articles of association of public-interest corporations and companies that determine which body shall decide on the auditor appointment. These companies should consider during preparation for general meetings whether to amend their statutes now with delayed effect in order to comply with the upcoming new legislation. Otherwise they will be required to convene another general meeting once the Act on Auditors becomes effective.

Compared to currently applicable legislation, financial penalties will be more severe for cases where audits are not carried out duly. Penalties up to CZK 2 and 5 million have been proposed for statutory and corporate auditors, respectively. On the other hand, imposing penalties on assistant auditors will be abandoned, leaving the responsibility of resolving any misconduct on the assistants' supervising auditors.

Another major novelty introduced by the new legislation is the two-tier regulation system for the profession of auditors, which is standard in a number of European countries. The new supervisory authority will be superior to the Chamber, a self-governing organization, and shall supervise both the exercise of auditing activities and activities of the Chamber. The supervisory authority shall also have the powers of a recalling authority.

The draft Act on Auditors also has impact on the powers of the management bodies of accounting units by setting forth which accounting unit body shall be authorized to decide with which auditor to enter into a statutory audit agreement and by setting forth restrictions for unilateral termination of the audit contract by the accounting unit. The body authorized to appoint an auditor for legal entities shall be the legal entity's supreme body, i.e. the general meeting of a commercial company. The statutory body shall have the right to enter into the statutory audit agreement only with the auditor so appointed. Accounting units may terminate such agreement unilaterally only if the auditor fails to carry out the statutory audit in accordance with law, internal rules or code of ethics.

A mandatory audit based on contracts established prior to the effective date of the Act on Auditors can be made with decisive date no later than 31 December 2010.

The draft Act on Auditors (see Section 2(m)) further defines the following parties, without limitation, as public-interest entities: pension funds, investment funds and investment companies, security brokers, health insurers and, in particular, all commercial companies or cooperatives with over 4,000 employees based on the previous accounting period.

Public-interest entities have a special duty to establish an audit committee as another mandatory body of public-interest entities. The members of the audit committee shall be elected by the general meeting or, if applicable, another supreme body of the public-interest entity. At least one member



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

of the audit committee must be independent of the audited party. A minimum of at least 3 years of practical accounting or statutory audit experience is required. The audit committee is especially in charge of evaluating the efficiency of internal inspection systems, internal audit or risk management system. The draft Act on Auditors will require public-interest entities to comply with the duties imposed by the Act on Auditors by 31 December 2009.

Judicature

Pursuant to the Award by the Constitutional Court dated 1 December 2008 (I. ÚS 705/06), the facts ascertained by tax authorities (carrying out procedural acts) in the course of a tax inspection that serve the decision-making of tax administrators but subsequently found to be illegal by the Financial Directorate, cannot be reapplied by the tax administrator. The Constitutional Court cancelled decisions by court authorities as well as the decision by the Financial Directorate, which denied an appeal against additionally assessed tax in a situation in which the tax administrator interfered with the tax entity's sphere on a repeated basis after the tax inspection had been completed and requested reinvestigation of the same facts that had been subject to the tax inspection before. The erroneous procedure adopted by the tax administrator was sufficient enough for the cancellation of prior decisions without the Constitutional Court dealing with the merit, i.e. the correct amount of tax.

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

dbucek@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

This summary only provides basic information that in no way can substitute the full wording of the relevant acts. If you need more information or resolve specific problems, please contact any KŠB's tax advisor. We will be pleased to provide you more information on the above.