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## Communication of the Ministry of Finance

In connection with the anticipated adoption of a directive that all EU member states have expressed their preliminary consent with, the Ministry of Finance issued a communication stating that the period for filing applications in EU member states for VAT refunds in 2009 has been extended until **31 March 2011**. VAT payers shall be entitled to a VAT refund, but submission of applications shall be subject to the restriction of meeting the minimum amount of VAT refund being requested. The directive shall become valid on the first day after its announcement in the EU Official Bulletin, retroactively from 1 October 2010.

### NEW BILLS

#### Amendments to the VAT Act and the Act on Excise Tax

In *Tax News No. 4* from June 2010, we informed of the government proposal for an amendment to amend the VAT Act ("Amendment to the VAT Act") with effectiveness proposed from 1 January 2011. This Amendment to the VAT Act was submitted to the Chamber of Deputies as Parliamentary Press No. 129/0.

After duly completed consultation procedures, an amendment to the Excise Tax Act (Parliamentary Press No. 115/0) was also submitted, which we mentioned in *Tax News No. 4* from June 2010.

The two amendments were included in the agenda of the next meeting of the Chamber of Deputies, which will commence on 26 October 2010, for consideration in the first reading.

#### Amendment to the Real Estate Tax Act

On 5 October 2010, a governmental proposal for approval of an act was submitted to the Chamber of Deputies. The proposal amends Act No. 338/1992, Coll., on Real Estate Tax, as amended (Parliamentary Press No. 119/0). The

proposed effectiveness of the amendment is from 1 January 2011.

The amendment aims to remove ambiguities of interpretation with regards to taxation of land with flat constructions, i.e. reinforced land surfaces. The definition of reinforced land surface is contained in the new Section 6, subsections 5 and 6. Special tax rates are set forth for reinforced surfaces in Section 5, subsection 2.

#### Amendment to the Income Tax Act

On 7 October 2010, a governmental proposal for amendment of Act No. 586/1992, Coll., on Income Tax, as amended ("Amendment"), was submitted to the Chamber of Deputies as Parliamentary Press No. 130/0. Simultaneously, it was proposed to consider the bill so that the Chamber of Deputies could already approve it in the first reading. The amendment should become effective on 1 January 2011.

The consideration of the Amendment was determined for the next meeting of the Chamber of Deputies, commencing on 26 October 2010.

Below we state selected changes to the existing wording of the Income Tax Act ("ITA").

#### Cancellation of exemption of income from operation of ecological sources and equipment

Cancellation of the existing wording of Section 4, subsection 1, letter e), Section 4, subsection 3, Section 19, subsection 1, letter d) and Section 19, subsection 2 of the Income Tax Act, which stipulate exemption of income from operation of ecological sources and equipment for production of energy, is proposed with effectiveness from 1 January 2011. Tax payers who fulfill the conditions for exemption of income from ecological sources and equipment shall be allowed to apply tax exemption for the last time to the taxation period of 2010. The new Section 30b of the Income Tax Act proposes the obligation and method of application of tax depreciations of assets for production of electricity from equipment for production

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of electricity from sunlight, with effectiveness also from 1 January 2011. Depreciations of solar panels and other equipment shall be applied evenly for a period of 240 months without the possibility of interruption. Technical improvement shall increase the initial prices of the cited equipment and shall be depreciated for the remaining depreciation period, but for no less than 120 months.

### Reduction of tax reliefs of working old age pensioners

A proposal for reduction of the amount of tax reliefs for working old age pensioners was submitted on the basis of the Coalition Agreement. If the sum of incomes of a working old age pensioner pursuant to Section 6 (dependent activity) and partial tax bases pursuant to Section 7 (gainful self-employment) and Section 9 (lease) of the Income Tax Act exceeds CZK 840,000 in a calendar year, then pursuant to the Amendment the working old age pensioner would be obliged to tax the entire income from the regularly paid pension that it receives (i.e. without the possibility of exemption of a part of the annual pension of up to CZK 288,000 from the income tax).

### Tax reliefs for pension insurance products

On the grounds of ensuring compatibility with primary EU law, it is proposed to extend the existing tax reliefs to pension insurance products pursuant to an agreement concluded between the payer and the pension insurance institution or on the basis of an otherwise agreed participation of the payer in pension insurance at a pension insurance institution that is authorized to operate pension insurance in an EU member state, Iceland and Norway.

### Cancellation of exemption of interest income from savings and interest cooperatives

The proposed Amendment cancelled exemption of interest income generated by savings and interest cooperatives. As a reason for cancellation of such exemption, the Ministry of Finance stated the removal of exemptions in the Income Tax Act that

would give rise to an unjustified competitive advantage for the cited entities.

### Tax regulation of income from collective investment funds

The Amendment extended the application of a 5% tax rate to the tax base of collective investment funds established in another EU member state, Norway or Iceland (Section 21, subsection 2, letter c) of the Income Tax Act), subject to fulfillment of the determined conditions.

### Component depreciation from the viewpoint of taxes

The Amendment reacts to the possibility of using the so-called component depreciation in accounting, which was introduced by an amendment to Decree No. 500/2002, Coll., which implements certain provisions of the Accounting Act for entrepreneurs. For determination of the income tax base, the influence of the accounting method of component depreciation is excluded.

### Breach of the condition for recognition of a tax expense (cost)

In case of a breach of the condition for recognition of a tax expense (cost), the Amendment no longer imposes the obligation to file a supplementary tax return for the taxation period in which the relevant expense (cost) was incurred. The new Section 23, subsection 3, letter a), point 14 of the Income Tax Act sets forth that the consequences of such breach should be reflected in the taxation period in which the breach occurred. This provision does not have retroactive effects and therefore it will be possible to apply it only to breaches occurring under the effectiveness of this new legal regulation.

### Financial lease

The submitted Amendment newly determines in Section 24, subsection 4, letter a) of the Income Tax Act a minimum period of duration of financial lease for assets included in the first through third depreciation groups by reference to Section 30, subsection 1 of the Income Tax Act. In case of tangible assets included in the



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second and third depreciation groups, it should be possible pursuant to the Amendment to shorten such determined period of lease by up to six months. For real estate, the period of lease must be agreed for at least 30 years.

### Expenses (costs) incurred for achieving, securing and maintaining income

Section 24, subsection 2, letter zu) of the Income Tax Act proposes a tax payer's motivation contribution (motivation to employ students), provided on the basis of a contractual relation to a student of a high school or higher vocational school preparing him/herself for performance of a profession, should be considered as a tax deductible expense (cost) in the maximum amount of up to CZK 2,000 per month. In case of a university student, the maximum amount of the motivation contribution would amount to CZK 5,000 per month.

### Tax relief

The Amendment cancelled without any substitution Section 35, subsection 1, letter c) of the Income Tax Act, which allowed reduction of the income tax by half in the event that the average full-time equivalent of a tax payer's employees amounted to at least 25 persons, of whom more than 50% are handicapped persons. The Ministry of Finance justified this intention by efforts aimed at removing undesirable tax optimization.

A further proposed change is reduction of a tax advantage for a tax payer (Section 35ba of the Income Tax Act) by CZK 1,200 per year, i.e. CZK 23,640. The reduction only applies to the 2011 taxation period. The ground for such change is reduction of financial stress in connection with repeated flood damages.

### Tax regime of a rescission charge for assignment of a lease-purchase agreement

The proposed amendment to Section 25, subsection 1, letter ze) of the Income Tax Act allows application of a rescission charge for assignment of a lease-purchase agreement in the tax base in the form of tax deductible depreciations in the event that

such amount becomes a part of the initial price of assets in compliance with accounting regulations. This provision can be applied for the first time to agreements entered into after 31 December 2010.

### Submitting of accounting for personal income tax from employment activities and functional emoluments

In Section 38j, subsections 4 through 7 of the Income Tax Act, the Amendment imposes an obligation on tax payers who collect tax advances from income from employment activities or functional emoluments to submit accounting for personal income tax from employment activities and functional emoluments, collected by withholding in the form of tax advances, within two months following the end of the calendar year. In the event that the tax payer is obliged to submit such accounting electronically, the period shall be extended by 20 days, i.e. until 20 March of the relevant calendar year. The latter deadline may not be extended.

### Reserves and adjustments

In connection with the submitted Amendment, a change to Act No. 593/1992, Coll., on Reserves for Identification of the Income Tax Base, as amended ("Act on Reserves"), was proposed. Here we draw your attention in particular to the legislative-technical specification in Section 4, subsection 1 of the Act on Reserves, which sets forth that in the course of liquidation or insolvency proceedings and in the period of duration of the effects of bankruptcy declaration, it is impossible to create reserves and adjustments pursuant to the Act on Reserves.

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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.

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