

KempHoogstad Tax News

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Contents:

1. The General Financial Directorate informs	2
2. Approved changes to legislation	4
3. Expected changes to the administration of taxes	6
4. Proposed changes to income tax	8



KempHoogstad

Tax Advice & Solutions

1. The General Financial Directorate informs

Inspection report

As we informed you last year, a new duty relating to VAT will be introduced effective from 1 January 2016, the submission of the inspection report. The Ministry of Finance published on their web pages detailed information on the inspection report, including the relevant form and preliminary instructions for filling it in so that tax payers can prepare for the new duty in advance. All the information can be updated during 2015. We summarise the selected relevant information below.

What is the inspection report and who is obliged to submit it?

The inspection report is based on the recapitulative statements for VAT purposes which tax payers are obliged to keep already. The report will contain data from issued and received tax documents, even simplified, and all other documents related to all supplies that constitute the obligation to submit the inspection report (see below). The content of the report will not be specified by law but by the respective form. Basically, there will be data, such as the VAT ID of the receiver or the supplier, registration number of the document, date of the supply or date of the obligation to declare the tax, the tax base, and the tax.

Entities obliged to submit the inspection report will be those registered in the Czech Republic for VAT regardless of whether they are a Czech or foreign entity.

On the contrary, the obligation to submit the inspection report will not apply to, for example, identified persons or payers who only provide supplies exempt from the tax without the right to claim the tax deduction.

When is the payer obliged to submit the inspection report?

The obligation to submit the report will arise if the payer during the monitored period

- || declares input tax; or
- || made a taxable supply in the regime of transferred tax liability; or
- || applies a claim for an input tax deduction; or
- || made a supply in the special regime for investment gold.

The monitored period for which the inspection report is submitted is a calendar month in the case of a payer-legal entity (no matter what their taxable period is) or in the case of a payer-individual, its taxable period. The time limit for submitting the inspection report is 25 days after the end of the given calendar month for a legal entity. For individuals, the time limit for submitting the inspection report corresponds to the time limit for submitting the VAT return, i.e. 25 days after the end of the taxable period.

What form will the inspection report have?

The inspection report will be submitted electronically; the format and structure will be announced by the tax administrator.

The inspection report can be – similarly to tax returns – in the form of a proper, corrective (correction of originally claimed data submitted in the respective period of a regular report) and subsequent report (correction of originally claimed data submitted after the respective period of a regular report). The payer is obliged to submit the subsequent inspection report within five business days of the day it realised the data was incorrect or incomplete; and the subsequent inspection report will not be submitted as the difference between the formerly submitted inspection report but anew, as a complete report with all the data related to the respective period and with marked corrections.

How could not complying with the inspection report obligations be sanctioned?

There is a number of sanctions connected to the inspection report. If the payer does not submit the inspection report in the given period, it will be legally obliged to pay a fine in the amount of:

- || CZK 1,000 if it submits it subsequently without a notice from the tax administrator;
- || CZK 10,000 if it submits it in a substitutionary period after the tax administrator's notice;
- || CZK 30,000 if it does not submit the subsequent inspection report according to the tax administrator's notice to change, complete or confirm the data recorded in the submitted inspection report; or
- || CZK 50,000 if it does not submit the proper inspection report or does not submit in the substitutionary period determined by the tax administrator.

Moreover, the tax administrator is legally obliged (beyond the above stated):

- || to impose a fine of up to CZK 50,000 on those who, based on a notice to clear uncertainties from the tax administrator, do not change or complete incorrect or incomplete data via a subsequent inspection report; or
- || to impose a fine of up to CZK 500,000 on those who seriously complicate or obstruct the tax administration by not submitting the inspection report.

Application of VAT at supply between the establisher and permanent establishment connected in a group

The General Financial Directorate issued information on application of VAT between the establisher and permanent establishment, based on the judgement of the European Court of Justice no. C-7/13 Skandia America Corp. In this case, the European Court of Justice decided that services provided by an establisher seated in a third country different from its permanent establishment belonging to a group within a member state is a taxable supply.

Based on this judgment, the General Financial Directorate decided that it will use only such an interpretation in common practice which means that in cases where the permanent establishment is a member of a group considered as one person subject to tax according to the VAT Act, then supplies provided by the establisher to the permanent establishment are considered supplies provided to the whole group. Such supplies are not considered – for the purposes of VAT – as intragroup supplies and they are deemed to be supplies from another person, i.e. those subject to tax. Generally this approach should not only be used in the situation of the debated case, but also when the permanent establishment or establisher is a member of a group and it has a seat in the Czech Republic, or in a third country, or vice versa.

Other views published in the past, for example, by the coordination committee that also admitted another approach under certain circumstances will no longer be applicable.

2. Approved changes to legislation

Extension of the regime of transferred tax liability for VAT on cereals and technical crops

The government approved a new decree in June effective from 1 July 2015 that extends the regime of transferred tax liability for VAT in such a way that it will be applied to all commodities stated under the codes of nomenclature of the customs tariff book in chapters 10 and 12 – cereals and technical crop, including oil seeds and sugar beet. The regime applies when the tax base of CZK 100,000 is exceeded.

So far it has been applied to corn and only some technical crop such as soya beans, rape seed and olza, sunflower seeds, mustard seeds, poppy seeds and sugar beet (for this crop, the approved effectiveness is from 1 September 2015).

Amendment to the Investment Incentive Act

The new amendment to the Investment Incentives Act, effective from 1 May 2015, introduces new kinds of incentives and removes some restrictions:

- || The fields of activities supported so far are the manufacturing industry, technological centres, and strategic service centres. The support will be extended to data centres and call centres within the scope of strategic service centres.
- || The area of districts extends where the material support is accessible for creating new jobs and retraining or education of new employees.
- || A concept of preferential industrial estates has been created where more attractive incentives will be available, such as higher material support for new jobs or a brand new incentive – real estate tax exemption for five years.

- ||| The number of minimal required new jobs in the activities with high added value has been reduced, and the limits for providing financial support to strategic investment projects for acquisition of long-term assets has been increased to up to 12.5% of the eligible costs.
- ||| Some sanctions and limitations have been mitigated, especially in the area of transfer prices and reorganisation of a company. Breach of the given conditions in this area no longer means a complete loss of the investment incentives. If the receiver of the investment incentive – for example – increases the tax base for calculation of the relief by business operations with connected persons in such a way that the correct stipulation of the transfer prices is not kept, it will not be obliged to return the tax relief for all the preceding periods but will be obliged to reduce in a relevant way the tax relief in the given tax period.

Amendment to the Real Estate Tax Act

In May, the amendment to the Real Estate Tax Act was published in the Collection of Laws. It will become effective on 1 January 2016. The purpose of the amendment is to clarify inaccuracies and uncertainties in some provisions of the act, especially those that were subject to adjustments related to the recodification of private law. Below are some of the areas concerned by the amendment:

- ||| Specification of the subject of land tax, especially related to plots of land owned jointly by owners of flat units in a residential building.
- ||| Specification of the subject of building and flat tax so that it is obvious that buildings under construction are not subject to the tax, only completed buildings or buildings eligible for use are exempt.
- ||| Adjustments in the definition of building land related to construction of a building that will be exempt from the construction tax, such as waterworks or buildings used for ensuring mass public transportation.
- ||| Specification of conditions for exemption of buildings or units where the energy from biomass is acquired in other forms than its direct burning; and limitation of the building tax exemption from the purpose of change of the local system of heating via solid fuels with respect to their connection to the central heating system.
- ||| Using the CZK 10 per square metre rate for buildings and units used for business with respect to their inclusion in the company's assets for the purposes of income tax, with the exemption of residential houses and units that do not contain any other non-residential premises except for a cellar or storeroom.
- ||| The payer will no longer be sanctioned if it submits tax returns with a lower tax after the deadline, but only if it has been not requested by the tax administrator to submit it.

3. Expected changes to the administration of taxes

New directive relating to the prevention of money-laundering

The European Parliament approved new rules for combatting money laundering, tax fraud and the financing of terrorism. The directive will oblige the member states of the European Union to create central registers that will contain information on real owners (so-called beneficial owners) of business entities and other legal persons, including trusts.

The information from the central registers will be accessible to the respective bodies and financial intelligence services without any limitation. Under certain conditions or limitations, the information will be accessible to:

- ||| “obligors” (e.g. banks performing an in-depth audit of their clients);
- ||| “persons with legitimate interest” with respect to suspicion, for example, that there is money laundering, financing of terrorism, corruption, or tax fraud; or
- ||| the public.

The obligors, for example, banks, auditors, lawyers, tax advisors, real estate agents, casinos, and other entities, will be obliged to make specific notifications about the suspicious transactions of their clients and, further, perform an in-depth audit of their clients that will include – besides other things – finding out and verifying the identity of the entity and its real owner and monitoring transactions made during business relations.

With respect to this, a new ruling on the transfer of financial assets has been approved. Its aim is to increase the capability of tracing payers and receivers and their assets. A system will be created for the purpose of transferring information in the payment chain. The providers of payment services will be obliged to add to the transfers of financial assets information on the payer and receiver.

The member states will have to implement the directive into their intrastate regulations within two years.

Proposal for nationwide operation of Financial and Customs office relating to monitoring and inspection

The Ministry of Finance introduced a bill to the government that should amend some laws with respect to selected measures against tax evasion. The bill is now being passed through comment procedures.

The proposed changes include – besides other things – introducing the nationwide operation of financial and customs offices, especially for the procedure of removing doubts and tax inspection. Currently, the offices are limited locally to a respective region which restricts them

from monitoring and controlling outside their local operation with respect to entities that are not in their local jurisdiction.

The new amendment should help with the current situation when the frequency of performed inspections of individual financial and customs offices differs with respect to their capacity, organisational or material ability. Currently, in some regions (typically Prague), there is a low probability that a tax payer will be inspected or audited by the financial office. Such situation motivate tax payers to move their registered offices to avoiding tax inspections. Nationwide operation of financial and customs offices should enable inspections to be carried out where and when the tax administration needs them, i.e. without local restrictions.

Implementing the nationwide operation should also enable all information related to one case that includes more tax payers under the jurisdiction of various financial offices to be concentrated in one financial office that could review the whole case. This should increase the efficiency, for example, of inspections related to tax evasions in the form of carousel fraud on VAT.

Amendment to the International Exchange of information

The amendment to international cooperation in tax administration passed through comment procedures. The Czech Republic should transpose into its own legislation the changes arising from the relevant European directive and also the global standards for the automatic exchange of information on financial accounts. This step relates to the Czech Republic's accession to the multilateral treaty on the automatic exchange of information on financial accounts signed by 52 countries. The purpose of the provisions is to embody an obligation for financial institutions to process and report data about their account owners – residents of other countries and to prevent citizens from evading income tax by transferring their incomes to foreign accounts.

The amendment tries to unify to a maximum extent the newly introduced obligations of financial institutions based on the above-mentioned treaty with the obligations that exist according to the FATCA Treaty concluded between the Czech Republic and the USA, effective since the beginning of this year. The FATCA Treaty served as an example for the European rules and the common standard of notification created by the OECD.

The proposed changes should take into account the related proposed cancellation of the European directive on the taxation of income from savings in the form of interest payments and its transposition into the Czech Income Tax Act, because its purpose will be replaced by newly implemented global standards.

The changes should be effective from 1 January 2016, and financial institutions will be obliged to file the first reportings in 2017.

The Government approved the electronic record-keeping of cash sales

We informed you in our latest newsletter about the bill on record-keeping of cash sales. The government approved the bill without any radical changes. The electronic record-keeping of cash sales should be introduced gradually from the first quarter of 2016, first in the catering and accommodation services, and in the next quarter, in the retail and wholesale areas.

With respect to this, the government approved the proposal to reduce VAT in the catering services from 21 to 15 per cent, with the exception of alcoholic beverages, effective from 1 January 2016; and also a proposal for tax relief for every personal income tax payer in the amount of CZK 5,000 for those who were obliged to uphold record-keeping under the Electronic Record-keeping of Cash Sales Act because of compensation of the increased costs that would come with respect to the effectiveness of the Act.

4. Proposed changes to income tax

Part of the proposed legislation related to the above-described changes for tax administration are a few changes in income tax, such as:

Categorisation of income from the operations of electricity producers

As a result of the amendment to the Energy Act, in some cases no licence from the Energy Regulatory Office will be needed (in the case of installed output under 10kW). With respect to the change, the income of individuals from such producers should be considered other income under section 10 of the Income Tax Act, i.e. it should be taxed as income from individual gainful activity.

Limitation of profit share exemption

Another proposed change results from the amendment to the directive on parent companies and subsidiaries. The aim of the amendment is to avoid double non-taxation in the case of hybrid credit tools and also in cases where, in some member states, some payments declared as profit share in cross-border relations could be utilised as an item reducing the tax base in the country of the payer and as payments of profit sharing exempt from tax in the country of the receiver. Based on the related amendment to the Income Tax Act, the profit sharing that represents an item reducing the subsidiary's tax base will not be tax exempt.

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