

# Electronic Record-keeping of Cash Sales

August 2016



## Contents:

1. Who and what will be subject to the ERKCS? .....	2
2. Method for sales record-keeping .....	4
3. Data message and receipt .....	5
4. Authentication data, information on business premises and certificates, cash registers .....	6
5. Binding assessment .....	7
6. Sanctions for breach of the ERKCS.....	7
7. Questions and certain issues .....	7
8. Important dates in the ERKCS .....	8

Act no. 112/2016 Coll. on the Electronic Record-keeping of Cash Sales has been approved and selected entities will be obliged to record their cash sales electronically (ERKCS) from the end of the year. What do you know about the electronic record-keeping of cash sales? Those who think that the electronic record-keeping does not relate to them perhaps only know that it will concern sending electronic data about cash sales to the financial authority and issuing receipts which will be traceable in the electronic register of the tax administrator. Those who are concerned with the ERKCS probably know much more.

Do you think that ERKCS concerns only entities that receive the majority of their sales in cash? Are you not quite sure whether the ERKCS concerns you? Or do you think it concerns you but you have not dealt with the issue yet? We have prepared a summary of basic information about the ERKCS just for you. The summary will help you get a grasp of the matter and find potential queries and uncertainties that could appear in your case when applying the ERKCS in real life.

# 1. Who and what will be subject to the ERKCS?

## Legal definition

The ERKCS applies to corporate or personal income tax payers if they receive recorded sales. A recorded sale is a payment which is an income from business activities and is made in one of the following ways:

- || Cash
- || Credit cards
- || Bill of exchange
- || Other similar payments (e.g. vouchers, luncheon vouchers, gift cards, and even bitcoins)
- || Setting off a deposit or similar security paid via some of the ways mentioned above

If the tax payer is an accounting unit, then income means, for the purposes of the ERKCS, an income defined by the Income Tax Act which a tax payer would have if it is not an accounting unit, i.e. de facto a received payment representing taxable income. The ERKCS applies to – for example – all deposit payments made by any way mentioned above.

The ERKCS does not apply to incomes that are not subject to income tax or are subject to withholding tax or tax calculated from the independent tax base of legal entities or are sporadic income compared to the usually received sales.

The act also covers some specific situations:

- || An income generated by a general partnership and limited partnership company is also income of the companies that is taxed at the level of their partners but the companies fulfil the ERKCS duties.
- || If a tax payer acts on behalf of another tax payer, then the one obliged to record the sales is the one who acts on behalf of another (e.g. regarding the sale or return, the commission agent is obliged to do the recording).

- || The tax payer who receives the sales can authorise another tax payer to do the record-keeping for them, but it is not exempt from the responsibility for any possible violation of duties arising from the ERKCS.

## **Sales excluded from the ERKCS**

The Act contains a list of sales excluded from the ERKCS.

These are mainly sales of listed entities such as the state, local authorities, institutions receiving contributions from the state budget, the Czech National Bank, holders of postal licence, listed financial bank-type institutions, insurance companies, investment and pension companies and funds, brokers dealing in shares and securities, etc.

The ERKCS will not apply to the following sales:

- || sales realised within ten days after assignment of the tax identification number
- || sales relating to employment law or similar relations
- || sales for boarding and accommodation of students provided by a school
- || sales from minor secondary business activity by public-service oriented tax payers
- || sales from fares paid in the public transportation system for the mass transportation of people
- || sales from postal services and goods and services provided with respect to them
- || sales on airplanes
- || sales from private railway transportation
- || sales from vending machines
- || sales from operating public toilets

The ERKCS does not apply to sales from business activities in the energy sector licensed according to the Energy Act and sales from business activities permitted by regional authorities according to the Water and Sewage System Act.

The government can exclude other sales from the ERKCS through a decree. However, no decree has been issued yet.

## **Practical questions and examples – who is subject to the ERKCS**

It follows from the above, among other things, that, regarding individuals, the ERKCS applies to incomes from independent profit-making activities and does not apply to incomes from renting real estate or incomes from minor activities that are not business activities (e.g. sale of surplus production from a garden). The ERKCS can apply to activities and professions you would not expect, for example, physicians, artists, lawyers, financial advisors, etc.

Many entities that receive cash payments only occasionally (e.g. occasional deposits or payments from unreliable customers) will be interested in the interpretation of the term "occasional income compared to usually received sales". The fact of whether or not there will be the obligation to use the ERKCS will depend on the scope of interpretation of the term.

Similarly, the interpretation will be important for public-service oriented tax payers who have certain secondary business activity since the ERKCS will not apply to them only if such activity is considered "minor".

To complete the matter, the ERKCS applies to all entrepreneurs who do not have a physical shop but receive payments in the ways defined under law. This concerns, for example, internet shops, vendors, mobile sellers, operators of amusement parks, circuses, etc.

## 2. Method for sales record-keeping

A tax payer subject to the ERKCS is obliged to send data electronically in a data message<sup>1</sup> about the recorded sales to the financial administration at the moment of recording the sale at the latest and to issue a receipt to the customer. Each recorded sale requires one data message.

If needed, it may be cancelled and information on the cancellation will be sent to the system of the financial administration in the same way as information on sales, only with a minus sign (e.g. correction of a transaction or subsequent cancellation of a transaction).

The act differentiates (i) ordinary record-keeping "on-line" and (ii) simplified record-keeping "off-line". In ordinary record-keeping, the tax payer will send the data message with information on the recorded sale to the tax administrator at the latest upon making the payment. In simplified record-keeping, the information will be sent via the data message within five days of making the sale at the latest.

In both cases, the customer will be able to check the record-keeping of the sale via a web application of the financial administration. With respect to this, the tax payer is obliged to place a visible and legible sign in the place where the sales are made with information on the method of record-keeping. The wording is defined in the act. If goods or services are sold via the Internet, the information must be placed on the respective web pages.

### **Ordinary "on-line" record-keeping**

In ordinary record-keeping, the tax payer has to send the data message in the .xml format at the moment of receiving the recorded sale or at the moment of issuing a payment order for the transaction if this happens first (e.g. when receiving a card payment). Confirmation from the system of the financial administration is received with a unique code: the fiscal identification code which will be stated on the receipt provided to the customer.

If the cash register is not connected during the response time because of technical difficulties (e.g. Internet failure, failure of the device), the tax payer does not have to wait for the response from the system of the financial administration and can issue a receipt without the fiscal identification code. The receipt must contain the signature code of the payer<sup>2</sup> instead. A data

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<sup>1</sup> The format and structure of the data message will be announced by the tax administration in a way that supports long distance access, i.e. on the web pages of the Financial Administration.

<sup>2</sup>The manner of creating and the format of the signature code and the security code of the payer, that will be a part of the data message and will be on the receipts, will be defined by a regulation. No regulation is available yet.

message with information on sales must be sent subsequently and immediately after the failure terminates but within 48 hours of making the recorded sale at the latest.<sup>3</sup>

The limit for the response time is the time between the attempt to send the data message and the moment of receiving the fiscal identification code. The response time is set in the cash register by the tax payer and it depends on the type and manner of the business activity and the quality of the Internet connection. The act stipulates that the response time must be longer than two seconds.

The tax payer can record the sale, i.e. send the data message and issue the receipt any time before the sale (e.g. in Internet shops – the receipt can be sent with the goods). The employees of the financial administration, in their ERKCS presentations for the public, state that the tax payer can issue the receipts before sales and the respective data messages can be sent ahead and consequently, if the receipts are not used, the non-received payments can be cancelled – this can be used, for example, in a theatre during intermission when food and drinks are sold and the short period of time and big amount of orders could influence the fluency of sales. The question is whether frequent cancellations can cast doubt on the correctness of the record-keeping of sales.

### **Simplified “off-line” record-keeping**

Tax payers who are entitled to use simplified record-keeping will send the data message with the information on the transaction within five days of the sale at the latest, but they are still obliged to issue a receipt. They are not obliged to state the fiscal identification code on the receipt but are obliged to state the signature code of the payer. Also in this case, each sale requires one data message.

Simplified record-keeping will apply to sales determined by the act or a governmental decree or to sales that will be permitted in simplified record-keeping by the tax administrator based on a request of the tax payer. The current wording of the act permits the simplified system only for the sale of goods and services in transportation during regular mass transportation. No governmental decree has been issued yet. Therefore the possibility of implementing the simplified system will depend especially on the individual request of the payer.

Tax payers are entitled to submit the request when recording the given sales in the ordinary system would enable or fundamentally hinder the fluent and economical execution of the business activities (e.g. the sales are received in places without an Internet connection). The tax administrator is obliged to decide about the request within 15 days of the submission.

## **3. Data message and receipt**

The act specifically stipulates the data that will be in the data message. Part of it will always be data needed for identification of the payer (tax identification number, security and signature code of the payer), business premises, cash register, moment of making the sale, sequence

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<sup>3</sup> The interpretation of the term “immediately” can be questioned with respect to determining the moment of termination of the failure in real life.

of the receipt, amount and the method of record-keeping. When fulfilling certain conditions (e.g. the seller is a VAT payer), there will be other information, such as the tax base and VAT or information on whether it is a payment intended for later use (e.g. gift vouchers, electronic wallet, chip cards).

The act also stipulates data the tax payer is obliged to write on the receipt. Basically, this is data used for identification of the payer and the given sale. Apart from the data required by the act, the receipt can also contain other data and it need not be a tax receipt for VAT purposes.

According to the act, the receiver of the payment must issue a receipt, but the customer is not obliged to take the receipt. The act does not define the format or the manner of presenting it to the customer, i.e. the receipt can be issued and handed over in printed or electronic form (e.g. regarding Internet sales) or in another similar way.

## 4. Authentication data, information on business premises and certificates, cash registers

The payers need for the record-keeping an appropriate cash register that will be able to send via the Internet a data message on a received sale and receive back the fiscal identification code. Such a device can be a typical cash register, personal computer, notebook, tablet or a smart phone with relevant software, an Internet connection and a printer. With respect to this, an income tax discount has been approved for up to CZK 5,000 for individuals (when fulfilling a certain minimal amount of the partial tax base from independent activity). The discount will apply in the year the payer records the first payment pursuant to the ERKCS. Legal entities will receive no tax discount nor any other advantage.

Tax payers who become obliged to record sales must apply for authentication data at the tax administration before they receive the first recorded sale. The authentication data are needed for logging into the tax administration web portal for the purpose of administration of their certificates and record-keeping of sales, especially data concerning the business premises. The application for receiving the authentication data can be send via the data box or delivered in person to any tax administration office (no matter where the tax payer is registered). The tax payer can authorise a representative to deal with the application. It could be done via a power of attorney, which does not have to be certified by a notary.

The authentication data will serve to obtain one or more certificates for the record-keeping of sales which are used for authorising data messages. The certificate will be installed in the respective cash register. Tax payers decide whether they will use one certificate for all their cash registers or separate certificates for each business premises or cash register.

Before obtaining the certificate, tax payers must report to the tax administrator information on their business premises where the business activities that generate income are carried out or where the sales are received (this also means information on the web pages where goods and services are offered). Information on business premises and any respective changes will be reported via the tax administration web pages.

## 5. Binding assessment

It is expected that there will be many uncertainties about specific cases relating to who is subject to the ERKCS and who is not, or whether they can use the simplified system of the record-keeping (if such possibility is granted by the act or a decree). With respect to this, the act contains the possibility of a binding assessment request.

Tax payers describe in the binding assessment request all relevant information on sales that should be assessed, and a decision proposal regarding the binding assessment. The first requests can be submitted on 1 September 2016. The request is subject to an administration fee of CZK 1,000.

## 6. Sanctions for breach of the ERKCS

An inspection of complying with ERKCS duties will be carried out by the tax administration and also the customs administration, which will perform this within their searching activities defined in the Tax Code. The ERKCS Act defines the authority of the institutions to perform a test purchase.

Pursuant to the ERKCS Act, a penalty of up to CZK 500,000 may be imposed on those

- || Who hinder significantly or impede record-keeping; the person in question does not have to be subject to the ERKCS; or
- || Who do not fulfil the duty to send the data message with information on the recorded sale or to issue a receipt.

If the duty to send the data message with information on the recorded sale or to issue a receipt is seriously violated, the inspection institution can close the business premises immediately or suspend the business activities where the sales are recorded.

A penalty of up to CZK 50,000 can be imposed on those who breach the duty to post information on the method of record-keeping or to properly maintain the authentication data and certificates so that these are not misused.

The act defines the breaches in a general way and stipulates only the upper limit of penalties, so it will depend on the decision of the inspection institution how they will assess a given breach. According to information from the tax administration, the most severe punishment would be used only for repeated or serious breach.

## 7. Questions and certain issues

It is clear that many entities will face a number of questions and uncertainties in real life when implementing the ERKCS. The tax administration has carried out a campaign supporting the ERKCS and held a few public meetings where they informed the public of the basic facts relating to the ERKCS and answered questions from real life. They also launched web pages focusing solely on the ERKCS (<http://www.etrzby.cz/cs/index>). However, what the tax payers will need the most

are the official methodical interpretations that should be available at the end of August (as the tax administration informed).

As we mentioned above, the important issues are the definition of "sporadic income" or "minor secondary business activity" of non-profit entities. Other issues can be, for example, clarification of exchange rate calculations for sales received in foreign currencies, solving tips in restaurants, "cash on delivery" payments, or more specific rules for determining the limits on sanctions' for violating the ERKCS.

We will inform you about developments relating to the methodological guidelines.

## 8. Important dates in the ERKCS

We summarise the dates regarding preparation and launching of the ERKCS (based on publicly available information):

13 June 2016	launch of the test platform "Playground" for IT and development (can be used for testing the ERKCS, no authentication data needed)
1 August 2016	phone information lines for the public
31 August 2016	methodological guidelines for information
1 September 2016	start of issuing authentication data and certificates possibility to submit a request for a binding assessment
1 November 2016	launch of the "real" test platform for payers (authentication data will be used there)

### **Gradual start of the ERKCS for various kinds of business activities**

1 December 2016	The ERKCS for providers of accommodation and catering (first phase)
1 March 2017	The ERKCS for retail and whole sale (second phase)
1 March 2018	The ERKCS for all other activities except for those included in the fourth phase (e.g. taxi services, manufacturers – confectioners, butchers, bakers, liberal professions – doctors, lawyers, advisors, providers of transportation, agriculture)
1 June 2018	the ERKCS for specific crafts and manufacturers  (e.g. manufacturing of textiles, leather, clothing, paper and paper products, soap, plastic products, processing of wood, manufacture of furniture, processing industry, specialised construction activities, personal services – hairdressing, masseurs, PC repairs, and products for own needs)

The act contains specific codes for each business activity based on the NACE classification for the purposes of their categorisation in the individual phase of launching the ERKCS. Available also [here](#).

According to the information from the tax administration, if tax payers receive sales from a few business activities all subject to the ERKCS in various phases, they can voluntarily apply the ERKCS on sales from business activities that are not yet subject to the ERKCS but will be in the future. For the purposes of the ERKCS, it is not decisive whether the respective activity already subject to the ERKCS is a secondary or main activity.

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