



Dear clients,

We are sending the last issue of the 2017 Tax News. We would like to inform you about the latest changes to the third and fourth phases of the ERS, the latest development regarding interpretative opinion on some taxes and the latest development regarding trust funds. We believe you will find the information interesting.

We are looking forward to working with you in the future and wish you a merry Christmas and a successful New Year.

The KempHoogstad Team

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## The Constitutional Court's judgement regarding some aspects of the ERS

Last week, the Constitutional Court decided about cancelling some provisions of the Electronic Registration of Sales Act; the decision complies with requests of a group of members of parliament representing ODS and TOP 09.

For tax payers who are not yet obliged to participate in the electronic registration of sales (the ERS), the most important thing is that the provisions which were supposed to start the third phase (from 1 March 2018) and fourth phase (from 1 June 2018) of the ERS have been cancelled, effective from 28 February 2018. For now, only entities who receive their income from accommodation and catering services, wholesale, and retail are obligated to participate in the ERS. Others, such as liberal professions, doctors, lawyers, tax and accounting advisors or providers of similar services, entrepreneurs in transportation or agriculture, food producers, etc. can wait with preparations for the ERS.

The Ministry of Finance informs about the ongoing preparation of an amendment to the ERS Act which should include results of the mentioned judgement. It is assumed that the Ministry will try to determine the obligation to the ERS for the stated entities in the future again even if the amendment would suggest some more exceptions for the stated entities. Exceptions from the ERS granted to some entities now by a governmental decree (e.g. to blind persons or sellers of fresh water fish) stay effective only until 31 December 2018, because the Constitutional Court waived the possibility of granting exceptions by the government. From now, the exceptions should be regulated by law.

Effective from 1 March 2018, the Constitutional Court cancelled the obligation to register payments carried out by a payment card or other cashless methods included in the ERS because these are transactions that can be traceable by other means. The mentioned payment methods are used by entities that were required to install the ERS during the first and second phases and had to invest in the ERS instruments. So the question is whether cancellation of the obligation to register the given payments methods will be implemented in real life, because changing the system set up can mean additional costs. Such payments can be registered voluntarily, and customers can receive sales slips.

The last cancelled provision is related to the obligation to state the tax ID on the sale slip. According to the proposers of the constitutional complaint, this contradicts the protection of privacy, because private individuals have their birth numbers as tax IDs. From 1 March 2018, the tax ID does not have to be stated on the sale slips, but it will be included in the data message sent in the ERS system. If the sale slip is a tax document from the VAT point of view (the tax ID is a mandatory piece of data), the obligation is not affected under the VAT Act.

We will keep you informed about developments in this area, especially preparation of the amendment.



## Interesting information from the financial administration

The financial administration published another opinion regarding VAT and the tax base for real estate transfer tax and also the tax aspects of providing accommodation via the Internet.

### **Real estate transfer tax from agreed price always VAT exclusive**

Based on the decision of the Supreme Administrative Court (SAC), the financial administration in September publicly accepted excluding VAT from the real estate tax base in cases where the tax was paid by the transferor and the transfer was executed between 1 January 2014 and 31 October 2016. Now the financial administration has extended the approach to other cases where the tax base is the agreed price, i.e. where the tax payer is the acquirer and the transfer was executed after 31 October 2016. The conclusion complies with tax neutrality and therefore there should not involve cases where the acquirer is charged a higher real estate transfer tax just because the transferor is a VAT payer (the VAT would increase the real estate transfer tax base).

The financial administration will apply the stated conclusions to cases where the tax proceedings have not yet been finished. If the tax proceedings have already been finished (and tax is assessed), the tax payers may exercise their rights by submitting additional tax returns. This could concern many tax payers because, based on the explanatory report and original interpretation of the financial administration, VAT was included in the tax base.

It is recommended that agreements related to the acquisition of property rights contain the amount of VAT if it is part of the agreed price.

### **Providing accommodation via internet platforms**

The financial administration published information on the tax obligations of providers of accommodation services via internet platforms such as Airbnb and others. Entities using such services should learn about the possible tax consequences.

In general, providing accommodation is economic activity and thus a potential taxable supply. Entities providing such services can be obliged to register for VAT because of the turnover or to register as a person identified for VAT purposes and pay VAT when receiving electronic services from an agent.

Regarding income tax, there is a strong likelihood that the provider does not receive income from rent but it is income from self-employment activity which means a different method of taxation and different effect on social security and health insurance. The essential thing is the form and length of the accommodation. Subsequently, there is a possible obligation to the electronic registration of sales if the accommodation is paid for in cash or other similar method. The obligation is determined by the specific conditions of the contractual relations between the parties.



## Trust funds and their use in real life

Based on the amendment to the Income Tax Act effective from 1 July 2017, trust funds could be considered a parent company and – when meeting certain conditions – exemption from tax on received payments of profit shares from a subsidiary could apply, similar to parent companies which are joint-stock companies, limited liability companies, or a cooperative. The change can help with better use of trust funds because, thanks to this, the trust funds are tax neutral. They do not have any tax advantages, but at the same time if they are structured correctly, they also do not have any tax disadvantages.

Trust funds were introduced in the Czech Republic in 2014. Their governance in the Civil Code was inspired by Quebec civil law where the concept has been in operation for 24 years. Despite this, the instrument was not really used in the Czech Republic in the beginning because it is a relatively new concept which was unknown to many people, including lawyers and public notaries. In the last 18 months, there has been a significant change in its use, not only because of the time that has passed but also thanks to the above-mentioned positive changes related to tax burdens.

The general public has begun using trust funds. The funds can be used for many purposes, most often for the protection of property, inheritance matters, and handing over family firms to the next generations. In many cases, they allow such solutions that had not existed in the Czech Republic before:

- Holding structures
- Protection of family property against future risks and legal actions
- Structures for seeking a balance between the needs of current partners with children against property claims from current and previous marriages.
- Structures resulting in the reduction of the worst consequences of statutory inheritance – including the possibility of skipping a generation
- Handing over of family firms to the next generations – structures that allow the handover of the firm's ownership to the family but control stays in the hands of the founder and/or handed over to professional managers who are designated by the founder.
- Trust funds for publicly beneficial purposes – providing school fees, building and maintaining concert halls, etc.
- Structures maintaining family property for the benefit of future generations.

For the correct functioning of the structure using the concept of the trust fund, it is essential that – with respect to novelty of the concept – the structure be prepared and implemented by experts. The important thing is not only



preparation of the documents of incorporation, but also the subsequent correct administration of the trust fund. In addition, important aspects relating to taxation include the contribution of property to a trust fund, taxation of income generated by the fund activities and subsequently – and namely – the tax aspects of future supplies of profit or fund property to the benefit of the beneficiary.

*(The chapter was prepared with the help of experts from Svěřenské fondy a trusty s.r.o.)*

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