KempHoogstad Tax News

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Contents:

KempHoogstad
Tax Advice & Solutions

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Like almost every year, this upcoming January will be marked by numerous legislative changes that may affect your business. This year's novelties are also underpinned by a new civil legislation (particularly the entirely new Civil Code - the "New Civil Code" and the Business Corporations Act). Below we provide an overview of the most important changes in the fields of taxes and accounting.

The space available in our newsletter does not allow us to discuss all the changes that will occur. However, we are obviously pleased to assist if you wish to obtain more information.

1. Business Corporations - taxes and accounting

The most interesting new features relating to legal entities include the following changes:

- There is a simplification of the rules applicable to provisioning for receivables. However, receivables incurred until 31 December 2013 will continue to follow the existing rules; companies will therefore have to keep separate records for old and new receivables. For new receivables, it will also be necessary to distinguish whether they were incurred through the company's primary activities of or were acquired through assignment.
- In the sale of land, legal entities can now expense the entire acquisition price of the land even if they sell the land for less than the acquisition price. Up until now, the acquisition price only up to the amount of the proceeds from sale could be expensed.
- Department store buildings with a sales area of up to 2,000 square meters will be depreciated in group 6 (50 years), smaller stores can now be fully depreciated already after 30 years.
- Companies can deduct donations to charity up to 10 % of the tax base (currently 5 %).

Equity operations

The Business Corporations Act brings numerous new features to companies; we have selected the most interesting ones in terms of accounting:

- A company may pay a share of profits to parties other than shareholders, on the basis of a decision of the general meeting (the articles of association must provide for this option).
- A company may pay an advance for a share of profits during the year, i.e. the so-called interim dividend (the interim financial statements must be compiled for this purpose).
- Certain uncertainty of interpretation still surrounds the question of whether contributions to other capital funds can be simply reimbursed back to the shareholder in the upcoming year.

Investment funds and trust funds

The taxation scheme applicable to investment funds remains the same as before - the fund pays a 5% corporate income tax, and in the payment of shares of profits it applies a withholding tax of 15 % (or lower based on a treaty for the avoidance of double taxation) or claims exemption. The proposed new legislation (i.e zero corporate income tax and 19% withholding tax without exemption) should apply later, from 2015.

The New Civil Code brings a new tax entity - the trust fund ("svěřenský fond"). This is the Czech equivalent of a trust, i.e. an institute for the administration of property of others. For tax purposes, the fund will be considered to be a taxpayer despite the fact that it lacks legal personality. Trusts are a popular instrument e.g. for the management of family assets.

2. Value added tax

Real estate

The regulation of the VAT in the transfer of real estate has been subject to many important changes due to the new approach to immovable assets under the New Civil Code on the one hand and a new formulation of the relevant provisions in the VAT Act on the other hand. The most fundamental new features include:

- Under the New Civil Code, a building (unit) and land will in most cases be merged into one immovable asset. Thus, even in case of sale, only one immovable asset will be sold (i.e. land including structure, and in case of a unit, only the unit in question with a share of the land), whereas up to now the land and the building or unit were always sold separately. This also brings differences in determination of the tax base and the rate.
- So far, all transfers of land (except for land with construction permit) were exempt. Now, land will be eligible for exemption only if it is entirely empty (not built-up with buildings and infrastructure) and no construction permit has been issued for it.
- The sale of new buildings and units (up to 5 years from approval for use) will be subject to taxation, while older real estate can be exempt or taxed, based on the decision of the payer. Due to the indivisibility of structures and land, the taxation or exemption, as applicable, will also apply to the amount relating to the land.

VAT returns only by electronic means

From 1 January, all required VAT returns including attachments can be sent only electronically (using the data box or the guaranteed electronic signature). The first return to which this applies is the return for December or for the 4th quarter of 2013.

Individuals with a turnover of up to CZK 6 million are exempted from this obligation and may continue to use the printed form for submitting their returns.

Guaranteeing for suppliers

From 1 January onwards, the financial administration will consistently apply the institute of guarantee for supplier. The recipient of a taxable supply shall guarantee the proper payment of the tax on the supply if:

- The consideration clearly diverges from the usual price; or
- The consideration is remitted into a foreign account; or
- The consideration is remitted into an account other than the account which the supplier disclosed to the tax administrator (and the amount exceeds CZK 700,000); or
- The customer is an unreliable payer.

For the payment of high amounts, we recommend to verify compliance with all requisites, especially in relation to suppliers with a short history of co-operation.

3. Employees and individuals

Tax return obligation

All individuals whose income for the year 2013 exceeds the limit of CZK 1.242 million and are therefore subject to the solidarity tax increase must tax their income on their own initiative in their personal income tax return. The annual tax settlement cannot be made by their employer.

Likewise, all employees whose income exceeded CZK 103,536 in at least one month and who therefore paid the advance on the solidarity tax increase must also file a tax return for themselves.

Changes in the taxation of individuals

The Income Tax Act prepares the following new features for individuals:

- For shares/securities trading, the period for exemption of proceeds from sales is extended from the original 6 months to 3 years. The sale of shares/securities held for less than 3 years will be exempt only up to CZK 100 thousand per year.
- The exemption of the sale of an interest in a limited liability company held for more than five years remains intact; however, for interests increased after 1 January 2014, the holding period will be calculated separately for each increase in the interest. *Example: A shareholder increases his ownership interest in a limited liability company from 60 %*

to 100 % in January 2014. The sale of the newly acquired 40 % will be exempt only in January 2019.

- Next year, tax deductions (beyond the basic taxpayer's deduction) can be applied, in addition to Czech residents, only by residents from EU countries, Norway and Iceland. This applies, for example, to deductions on husband/wife and children.
- For workers with the agreement to perform work without a signed tax declaration, the final withholding tax will be deducted up to an income of CZK 10,000 per month (instead of the existing CZK 5 thousand). If, at the end of the year, the taxpayer submits a tax return, he may newly set off the withholding against his liabilities as if it were an advance.

4. Property taxes

Inheritance tax and gift tax

Both of these taxes are abolished; the taxation of income acquired as a gift or through inheritance is newly stipulated in the Income Tax Act.

As a pleasant new feature, heritage or legacy is fully exempt even for unrelated heirs, including legal entities. Gifts are exempt for relatives and related persons similarly as before; the flat tax rate is more favourable for gifts of a great value, while the tax on smaller gifts has been increased.

Tax on acquisition of immovable assets

The rules for the "new" tax on the acquisition of immovable assets are contained in an entirely new law which replaces the original regulation of the real estate transfer tax. We have chosen from among the most important substantive changes:

- The intention is that in most cases the tax be paid by the acquiror.
- However, in the most usual transfer through a purchase agreement, the tax continues to be paid by the seller while the buyer is the guarantor. The parties may contractually transfer the tax obligation to the buyer.
- In many cases it will not be necessary to draw up an expert evaluation in the transfer; instead, it is possible to use an indicative value from a database which will be created by the Ministry of Finance.
- The exemption of the contribution of real estate to the registered capital of a subsidiary has been abolished. An acquisition tax of 4 % of the expert valuation will therefore be paid on non-monetary contributions.
- Another negative impact consists in the taxation of each of the two transfers in the case of exchange of real estate (up to now, tax was only collected on the more expensive real estate).

Tax on immovable assets

In addition to the change of the name, the real estate tax has been subject to several other changes intended to simplify the return and administration of the tax, for example:

- Various accessories of houses which are structures but not buildings (such as fencing, wells, sidings etc.) need not be declared separately.
- For units to which land belongs outside the actual built-up area of the house itself, the land no longer needs to be declared separately; it is enough to increase the floor area using a higher coefficient.
- The situation for multi-floor buildings which are not divided into units is also more favourable for taxpayers - the tax will be paid only for floors which are in excess of one third of the built-up area of the building.

Taxpayers whose tax base is changed under these new rules must file the real estate tax return by 31 January 2014.

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