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# NEWS 6/2013

## News No. 6/2013

### Significant decrease in aid via investment incentives

Currently, aid provided in the form of investment incentives amounts to up to 40% of so-called eligible costs. For example, if you invest CZK 50 million in new machinery, you can get tax relief from the government of up to CZK 20 million, which you are entitled to use over a 10 year period. The aid increases by an additional 20% and 10% for small and medium-sized businesses respectively.

The amount of state aid is limited by EU rules to which the Czech Republic must conform. New rules regarding the provision of such state aid should come into force next year.

The most significant change is the decrease in aid for large businesses from today's 40% to a mere 25%. Restrictive measures are to be introduced at the same time, e.g. project works can be commenced only after the decision to provide investment incentives has been made rather than at the moment of filing the application for investment incentives.

If you are interested in receiving aid under the current rules, it is high time to file an application for investment incentives. Pertaining to this, we would like to offer our assistance in preparing an application and its associated investment project and in dealing with the relevant authorities. We have developed appropriate know-how through our experience and successful cooperation with CzechInvest, the state investment agency.

### Taxation of unrealised foreign exchange gains/losses

Much attention was attracted last year when the Supreme Administrative Court (SAC) ruled in decision Ref. No. 5 Afs 45/2011-94 that unrealised foreign exchange gains were not taxable income. The General Financial Directorate (GFD) immediately announced that considering the unique nature of the decision, there was no need to change the well-established approach to the issue. The vast majority of both professionals and entrepreneurs strongly disapproved of this SAC ruling and continued to consider unrealised foreign exchange gains as taxable income.

This year, SAC has issued yet another decision (Ref. No. 5 Afs 56/2012-37) confirming its previous opinion. Having looked into it in greater detail we can see that the judgment concerns the same taxable entity and the same issue (taxation of unrealised foreign exchange gains arising from the conversion of a long-term foreign currency loans as at the balance sheet day), and that the case has been decided by the same judges; only the taxable period is different.

This time, GFD has not issued any public briefing. However, Financial Administration officials have reconfirmed their original stance, insisting that unrealised foreign exchange gains are taxable income. The Ministry of Finance has prepared an amendment to the Income Tax Act which should eliminate any doubts as to the nature of unrealised foreign exchange gains/losses; it will take effect as of 1 January 2014.



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Should you decide to treat your unrealised foreign exchange gains/losses according to SAC judgments before the amendment is adopted, please note the following:

- If you exclude your unrealised foreign exchange gains from taxation, you will also need to exclude your unrealised foreign exchange losses from the tax base.
- A detailed record of unrealised foreign exchange gains/losses for tax purposes will need to be kept in future.
- It must be taken into consideration that the tax administrator may start a verification process and, if not, will carry out a tax audit later.
- It must be taken into consideration that the tax administrator is likely to refuse the new approach to unrealised foreign exchange gains/losses and you will only be able to succeed if the case is heard before a court.

## **VAT correction of receivables from debtors in insolvency proceedings**

Effective from 1 April 2011, the VAT Act includes a new tax correction concept for receivables from debtors in insolvency proceedings. Under the provisions of Section 44 of the VAT Act, any creditor who records an unpaid receivable from a debtor in insolvency proceedings may claim the VAT that he had to pay.

The VAT Act does not clearly state whether the VAT correction can be made in the case of receivables that arose prior to 1 April 2011. On account of this, on 22 July 2011 the General Financial Directorate (GFD) issued reasoned advice assuring that it is acceptable.

GFD has recently issued an amendment to this briefing stating that the amount of tax cannot be corrected in the case of receivables from debtors in insolvency proceedings which arose before 1 April 2011, i.e. a completely different opinion.

GFD has done so in response to the decision of the Supreme Administrative Court (Ref. No. 9 Afs 69/2012-47) which says that the VAT correction of receivables that arose prior to 1 April 2011 is not possible.

GFD also states in the amendment that the tax authority will proceed according to the amended information in the case of VAT corrections claimed after the date when the amendment was made public, i.e. after 26 April 2013.