



## LEGAL NEWS

### Legislation

Act No. 300/2008 Coll., the so-called "Act on E-government", comes into effect as of 1 July 2009.

The Act on E-government introduces and implements two key new areas to have a significant influence on all procedures in the public administration; the first one is the introduction of data boxes, and the second is the ability to provide in electronic format all attachments, which at present must be provided in the form of documents. The data boxes mean a decisive turnaround in the public administration function due to implementing a duty imposed on each body of the public administration, i.e. to operate a data box as a place into which any document can officially be filed by virtue of the Rules of Administrative Procedure and other regulations; even a document without an electronic signature. This means that, in addition to the two traditional methods of filing (by post and through a filing counter), the third method is being added in the form of filing to the data box. The Act on E-government implements the duty of bodies of public administration to accept documents filed in this manner, and in addition it imposes a duty on bodies of the public administration also to deliver in the same manner in cases where a client has a data box established. This means that all legal persons (entities) must be communicated with electronically as soon as the data box is established, and this legal duty includes other offices and organisations of the public administration. Electronic transactions will cease being a minor issue and become the main method of communicating to bodies of the public administration. The second important result is the fact that each fellow citizen, or each organisation, has the right (with only a few exceptions) to request a conversion of any document to electronic format, and actually create an entire electronic file, including all possible attachments.

The data box is an electronic depository serving the deliver of documents of bodies of the public authority and the completion of acts to them. The data box is not electronic mail (e-mail), nor is it possible to communicate through it directly to specific officers, but only to the entire office. The data box shall serve as the bilateral communication of bodies of the public authority, communication of bodies of the public authority to legal persons (entities) and entrepreneurs (individuals) determined by law (attorneys-at-law, tax advisors, trustees in bankruptcy) for which the data box is established by law, and for the communication of bodies of the public authority to persons to which the data box has been established upon their request. In addition, the data box shall serve to communicate between legal persons (entities) and natural persons (individuals), and bodies of the public authority. It is not possible to use the data box for communication between natural persons (individuals) and legal persons (entities).

The data box is established for legal persons (entities) by law, and natural persons (individuals) and enterprising natural persons (entrepreneurs) upon their request.

If so allowed by the nature of a document, and if the natural person (individual), enterprising natural person (entrepreneur) or legal person (entity) has established an accessible data box, a body of the public authority delivers a document to such a person through the data box unless delivered by public decree or on the spot. The document in the data box is delivered the moment the person who has access to the document based on data box access authorisation logs in. If the authorised person fails to log in to the data box within 10 days of the day on which the document is uploaded, such document is deemed delivered as of the last day of the foregoing term. This does not apply if any other legal regulation



rules out a substitute delivery. This is about the form of a consignment designated for the recipient's hands only, but in electronic form.

The natural person (individual), enterprising natural person (entrepreneur) and legal person (entity) may execute an act towards a body of the public authority if the data box is accessible, and if so allowed due to the nature of such an act through the data box. The act executed by a person authorised to have access to the data box, or the authorised person having been authorised to do so, has the same effect if done through a data box as an act executed in writing, unless another legal regulation or internal regulation requires the mutual act by more than one of the preceding persons.

Based on temporary provisions, the data box shall be established for legal persons (entities), trustees in bankruptcy proceedings and bodies of the public authority within 90 days of the day on which the Act comes into effect. The data boxes will be made for attorneys-at-law and tax advisors as of the first day of the calendar month of the third year following the day on which such Act comes into effect. This, however, does not have any impact on the right of the attorney-at-law and tax advisor to have the data boxes established upon the request of an enterprising natural person (individual).

### **Summary of Information applicable to Legal Persons (Entities)**

It is mandatory to establish the data box for legal persons (entities) established by law, legal person (entity) registered in the commercial register and organisational units of an enterprise of a foreign legal person (entity) registered in the commercial register;

The data box shall be established for the existing legal persons (entities) within 90 days from the day on which the Act comes into effect;

The establishment of a data box for other legal persons (entities) is voluntary (non-mandatory) and the method of the data box establishment is similar to the one for natural persons (individuals) and enterprising natural person (entrepreneurs);

The statutory body of a legal person (entity) is authorised to have access to the data box, or its member or manager of an organisational unit of an enterprise of a foreign legal person (entity) may authorise a natural person (individual), administrator, to have the access to the data box;

A person authorised to have access to the data box logs is by means of login details. The Ministry of Interior of the Czech Republic shall send by registered post of the legal person (entity), or the administrator, as the case may be, the access details for the data box without any delay after the data box is established;

The data box is made accessible upon the first login of the legal person (entity) or administrator; provided, however, that it is not later than the fifteenth day following the one in which the access data is delivered to the receiving persons.

### **Judicial Decisions**

The limitation to damages by agreement of the contractual parties – Ruling of the Supreme Court of the Czech Republic, File Code 32 Odo 1651/2005 of 27 March 2008.

The Ruling of the Supreme Court of the Czech Republic has been added to unclear opinions on the possibility of agreeing on a limitation to damages in obligatory commercial relations.



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The Supreme Court of the Czech Republic reviewed a case in which participants have concluded the Agreement on Provision of a Legal Service based on which the claimants provided the respondents with legal services as attorneys-at-law and upon the price agreed on. The respondents referred to the unequal position of the contractual parties, having so deduced from the agreement on limitation to the liability of the claimants for damages up to CZK 1,000,000.

In the opinion of the Supreme Court of the Czech Republic, Section 386(1) of the Commercial Code sets forth the fact that the entitlement to damages cannot be waived prior to a breach of duty from which the damage might be incurred. With respect to the fact that, pursuant to Section 263(1) of the Commercial Code, such provision is peremptory (mandatory), the respective agreement of the participants on limitation of the damages of the respondent for damages caused by a breach of the duties by the claimant is invalid due to a contradiction with such provision (it certainly concerns a partial invalidity of the Agreement notwithstanding the remaining extent thereof be affected in any manner whatsoever). Such conclusion cannot influence the existence of a second opinion on the limitation to damages in commercial relations ensuing from a disposability of the provision of Section 379 of the Commercial Code regulating the extent of the damages pursuant to which only the agreement on certain limitation reasonable to circumstances of the given case and commercial relation would be possible according to fair commercial relations (compare I. Štenglová, S. Plíva, M. Tomsa and Coll., Commercial Code, Commentary, Edition 11, Prague, C. H. Beck, 2006, page 1118).

The Supreme Court of the Czech Republic has presented an opinion generally applicable to obligatory commercial relations according to which the agreement on limitation to damages is in contradiction to peremptory (mandatory) provisions, and is therefore invalid.

## **TAX NEWS**

One of the measures of the Government aiming to ease impacts of the global economic recession on entrepreneurs and entities in the Czech Republic has been approved, i.e. amendments to certain tax acts and acts regulating the amount of the social security insurance premium.

### **Deduction of VAT applicable to personal cars**

Act No. 87/2009 Coll., terminates the provision of the Act on value-added tax which prohibited the application of a deduction of the value-added tax (VAT) on personal cars (M1 Category). As of 1 April 2009 then, it is possible to apply a deduction of the VAT in the case of an acquisition of the car in the form of a purchase as well as in the form of a financial "leasing" (rent-to-own).

### **Return of an excessive deduction**

The Ministry of Finance of the Czech Republic has said that excessive deduction of VAT is to be returned within a reduced period of time, 15 days in the case that the VAT tax declaration is filed in an electronic form with a guaranteed electronic signature either through the web application of the Ministry (EPO) or commercial software supporting electronic filings in tax matters. The precondition is, however, that a tax administrator has no doubts about the correctness of the VAT tax declaration.



### **A change in rules applicable on low capitalisation effective also for the year 2008**

1. A change in rules applicable on low capitalisation effective also for the year 2008

Act No. 2/2009 Coll., has implemented a change in the rule applicable to low capitalisation. Thanks to temporary Section 9 of the respective Act, it is possible to apply the regulation of low capitalisation in stipulation of Act No. 2/2009 Coll., also to the tax period commenced in 2008. The simplification of rules of the low capitalisation rests, including, without limitation, in the fact that:

1. determination of a unified interest rate on the market of inter-banking deposits and a comparison of its amount to the amount of the interest rate applicable to loans subject to a review is avoided;
2. the category of subordinate obligations (payables) is avoided;
3. the rules of the low capitalisation do not apply to loans and credits arising from non-connected persons.

Another change has been introduced by Act No. 87/2009 Coll., which rests, including, without limitation, in a change in a ratio between the equity and loans from concerned persons, i.e. 1:4 (1:6 applicable to banks and insurance companies). Even such a change is applicable thanks to the temporary provisions applicable also to the year 2008.

Upon reviewing the low capitalisation for the year 2008, it is necessary to take into consideration 4 different possibilities arising from the history of changes in the provision of Section 25(1w), i.e.:

- a) the definition of interconnected persons in effect until 31 December 2003 applies to loan agreements concluded by 31 December 2003;
- b) the stipulation in effect until 31 December 2007 is to be applied to loan agreements concluded prior to 1 January 2008;
- c) the stipulation in effect as of 31 December 2008 is to be applicable to loan agreements concluded between 1 January 2008 and 31 December 2008, or
- d) the stipulation in effect as of 1 January 2009, as amended by Act No. 2/2009 Coll., may be applied to loan agreements concluded between 1 January 2008 and 31 December 2008, or
- e) The stipulation in effect as of 1 April 2009, as amended by Act No. 87/2009 Coll., may be applied to loan agreement concluded between 1 January 2008 and 31 December 2008.

### **Amortisation of a property acquired between 1 January 2009 and 30 June 2010**

A draft of an amendment to the Act on Income Tax (Parliament Print No. 786/0) is presently being negotiated in the Chamber of Deputies of the Parliament of the Czech Republic which should introduce:

- a) An extraordinary amortisation of a property acquired between 1 January 2009 and 30 June 2010 included in Amortisation Group 1 – such a property shall be possible to



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amortise equally over 12 months;

b) An extraordinary amortisation of a property acquired between 1 January 2009 and 30 June 2010 included in Amortisation Group 2– 60 % of such a property will be possible to depreciate/amortise equally over 12 months, and the remaining 40% thereof equally over another 12 months;

c) The reduction of the minimum term of a financial “leasing” from a property specified in section a) over the period of 12 months, and the property specified in section b) over the period of 24 months.

### **Rebates form social security insurance premium**

A draft of an amendment to the Social Security Insurance Premium (Parliament Print No. 769/0) is presently being negotiated in the Chamber of Deputies of the Parliament of the Czech Republic which should introduce rebates from social security for each employee working based on an assessed base pay not lower than 1.15 times the average wage. The amount of such a rebate from the social security insurance premium for each employee equals 3.3% of a difference between 1.15 times the average wages rounded up to even one hundred and the assessed base pay of the employee. The amount of a rebate from the social security insurance premium for each employee equals 25% in maximum of its assessed base wages. It is possible to apply the rebates until the end of the year 2011 (for December 2011 for the last time).

### **Exemption from the duty to pay advance payments against income tax**

The Ministry of Finance exempted through its Decision Ref. No. 43/20 650/2900-431 published in Financial Newsletter No. 3/2009 natural persons (individuals), generating from a business and other money-generating activity, and legal persons (entities) from remitting advance payments against the income tax due and payable in the year 2009. The precondition thereof is that no more than 5 employees are employed full time as of 1 December 2008.

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