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Audit Tax & Legal Services

NEWS No. 2/2006

Tax novelties

Record date for tax payment (amendment of the law on tax and fees administration)

effective as of 8 March 2006

The new definition of the payment date is the most significant change. From 8 March on, the date on which money is credited to the account of the tax administrator is the payment date used when transferring money from an account in foreign currency or from an account abroad. This differs from the previous practice in which the date used was the day the payment was transferred from the account of a tax entity.

Prospectus of security (amendment of the law on capital market transactions)

effective as of 8 March 2006

The most significant change in the amendment of Act No. 256/2004 Coll. on capital market transactions is an extensive arrangement relating to the public offer of investment securities and the prospectus. There is now a generally binding obligation to publish the prospectus no later than at the moment of the public offer.

In addition, the amendment stipulates basic rules to be followed when making a security prospectus and its contents.

The amendment further introduces some obligations for security traders. For instance, they will have to keep their own funds separate from funds entrusted to them by clients, and to keep such records for at least 5 years.

Changes of the income tax law

effective as of 8 March 2006

The amendment adds wording to the interim provisions of the income tax law. The wording provides that a taxpayer, who in accordance with interim provisions of the law in the wording valid as of 1 January 2006 for the tax period started in 2005 used the amended provision of Section 23 (17) (disregarding the valuation difference with a change in the real value of securities and derivative instruments in the accounting), cannot use the provision of Section 24 (2) (zg) in the wording valid as of 1 January 2004. This relates to the possibility of a tax deduction from a loss in trading with derivatives which were not agreed upon for the purpose of hedging.

Permits for the emissions of greenhouse gases or preference limits are not considered to be intangible assets and are excluded from tax depreciation even in the tax period commencing in 2005.

Some other changes of the said law relate to the joint taxation of married couples. A husband/wife who has no taxable income before joint taxation does not pay tax prepayments except for income relieved from taxes and for income taxed by a special tax rate. The tax base, which is the sum of the partial bases of both the husband and wife (spouses), shall be reduced by the non-taxable parts for both the husband and wife. Hence, the spouse with no taxable income may also apply the non-taxable parts of the tax base.

Common taxation system in cases of company transformation

The Ministry of Finance has published on its web sites a Memorandum (communication) to Section 19 para (3) letter (a) to the Act on Income Tax. The Ministry states that the Directive of Council No. 90/434/EEC on the common taxation system on mergers, amalgamations, divisions and transfers of assets and on exchanges of shares relating to companies from various member countries was amended. According to the amendment, the scope of companies to which the Directive relates is now extended to European companies and European Co-operative companies, which takes effect as of 1 January 2006.

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Announcement of job vacancies to Labour Offices

The Ministry of Labour and Social Affairs has published its opinion on the obligation of employers to announce job vacancies to the labour offices. This is due to several unclear issues in connection with the amendment of employment law No. 435/2004 Coll. Unlike the existing legal arrangement, the labour offices now have the right to sanction the breach of obligation of employers (i.e. failure to announce job vacancies to the labour office) with a penalty up to 500 000 CZK.

Along with the announcement to the labour office, the employer may, as was the practice up to now, take out an ad to fill such vacancy.

Legal novelties

Amendment of the Act on regulation of advertisement and of some other regulations

effective as of 26 January 2006

This amendment deals with relevant regulations of the European Communities in the field of advertisement regulation.
On the condition of the fulfilment of statutory conditions, a comparison advertisement is allowed for pharmaceuticals or for health care if it is focused on persons authorised to prescribe or issue such pharmaceuticals.
Furthermore, an exception from the ban on advertising tobacco products when sponsoring motorcycle competitions was abolished.
Another change is a ban on the advertising of special goods in cases when the seller or the person who orders the advertisement is not able to ensure the offered goods at a certain quantity corresponding to the expected demand, or if they fail to state in the advertisement the quantity of goods to be offered for sale at individual points-of-sale within the special offer.
Food advertisements must not mislead by referencing unspecified clinical studies.
The law now stipulates the categorisation of breaches. The supervisory body can now impose an order penalty up to 50 000 CZK for the non-provision of necessary co-ordination; the penalty can be imposed repeatedly.

Splitting-off (Changes in the Commercial Code)

effective as of 8 March 2006

Amendment No. 56/2006 Coll. introduces another form of dividing the company, now called „splitting-off" (in Czech „odštěpení").
It is now provided that the consent of partners or a general meeting is required for the agreement on the transfer of the business (enterprise) or any part thereof, and further for an agreement on leasing the business or a part thereof, and for an agreement on establishing a right of lien to a business or a part thereof.

Change in leasing of apartments in the Civil Code

effective as of 31 March 2006

The Act now enables the regulation of the period of a lease agreement as the time for which the tenant works for the landlord.

The new provision entitles the landlord to require from the tenant a deposit to secure the rental and other obligations connected with the lease. The landlord has to deposit such funds in a special account common for all tenants. The required sum shall not exceed the

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three times the monthly rent and prepayments for services provided in connection with using the apartment. After termination of the lease, the landlord is obliged to return the deposited funds with collateral (i.e. usually with interest) to the tenant.

The lease agreement can provide that the landlord shall hand over the apartment to the tenant in a condition not fit for proper use, provided that the tenant has agreed with the landlord that he or she will carry out the necessary adjustments to the apartment.

The obligation of using the apartment and common areas in the house in an orderly manner is now explicitly provided in the law not only for tenants but also for persons living in the apartment with tenants.

According to a new arrangement, the landlord may, in cases defined by the law, terminate the lease of an apartment without a court permit.

- the lease can be terminated without permit of the court in following cases:
  - if the tenant or persons living with him/her grossly violate good manners in the house despite being warned in writing;
  - if the tenant grossly violates his/her duties ensuing from the rental of the apartment, namely by failing to pay the rent and payments for supplies provided in connection with using the apartment in an amount corresponding to three times the monthly rent and related payments.
  - if the tenant has two or more apartments; except for cases when s/he cannot be reasonably asked to use only one apartment;
  - if the tenant does not use the apartment without having a serious reason or if the tenant uses the apartment only from time to time;
  - if it is a special purpose apartment or an apartment in a special purpose house and provided that the tenant is not a disabled person.

Notice given without the consent of a court has to be in writing and has to include the reason for the notice, the period of notice and the information that the tenant may file a complaint to a court within 60 days to seek a ruling on the invalidity of the notice. Other statutory reasons for which the landlord may terminate a lease without a court permit remain unchanged.

The law now explicitly provides that a lease agreement has to be in writing and if it is concluded without specifying the time and without the consent of the owner, such agreement shall be invalid.

The tenant is obliged within 15 days to notify the landlord in writing of all changes in the number of persons living with the tenant in the apartment. The tenant shall state first names, family names, date of birth and state citizenship of such persons. Failure to meet this obligation is deemed to be a gross violation of the obligations of the tenant and as such is a reason for which the lease of the apartment may be terminated without the consent of the Court.

The new legal arrangement also relates to cases when the tenant dies. In such a case, the following is applied: if the tenant dies and if the apartment is not in common lease with the husband or wife, his/her children, parents, brothers and sisters, son-in-law, or daughter-in law of the tenant, such persons shall become tenants (joint tenants) only if they can prove that they lived with the tenant in the common household on the day of the tenant's death and

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that they have no apartment of their own. Also, grandchildren of the tenant and those who cared for the common household of the deceased tenant or those who were maintained by the tenant shall also become tenants (joint tenants) if they prove that they had lived with the tenant in the common household continuously for at least three years before his/her death and that they have no apartment of their own. In the case of grandchildren of the tenant, the court may decide for special reasons that the grandchildren shall become tenants even if they had not lived together in the common household with the tenant for three years. In the case of persons taken into the apartment by the tenant only after agreeing the contract of the lease, the above regulation relates to such persons only if the tenant and the landlord agreed upon that in writing; this does not apply to the grandchildren of the tenant.

New rules of administrative procedure – the Administrative Procedure Code

effective as of 31 March 2006

New Rules of Administrative Procedure have become effective as of 1 January 2006, which change the course of administrative procedure in a substantial manner.

The law defines the basic principles of the activity of administrative bodies. According to the new Rules of Administrative Procedure, public administration is a service for the public. Every person fulfilling tasks ensuing from the competence of an administrative body is obliged to behave politely to persons having to deal with the administrative body and if possible to oblige with their wishes.

The new Rules of Administrative Procedure enable the sending of correspondence (notices) to citizens in any place where the correspondence can be delivered in person. Also amended is the time limit after the expiration of which the delivery is deemed to be made even if the addressee was not found (the so-called „fictitious delivery"). The new Rules of Administrative Procedure provides that the tenth day following the deposit of the consignment is the moment of delivery.

The Rules of Administrative Procedure amends complaints. The old Rules of Administrative Procedure did not deal with complaints. Persons are entitled to address administrative bodies with complaints of the unsuitable behaviour of official persons or of the procedure of the administrative body. Complaints can be made in writing or expressed orally. The complaint has to be attended to within 60 days of its delivery to the administrative body with competence to attend to it. If the complainant thinks that the complaint filed at the competent administrative body was not attended to in an orderly manner, such person may ask the superior administrative body to investigate the manner in which the complaint was attended.

The detailed regulation of the protection of the administrative body from inactivity is an important change.

The law substantially increases an order penalty which the administrative body may impose, namely up to 50 000 CZK (previously 200 CZK). Such penalty can be imposed upon a person who fails without excuse to come when summoned to an administrative body, a person who despite prior warning disturbs the order or who fails to obey the instructions of an official person. Such penalty can also be imposed upon a person who has made a grossly offensive filing.