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NEWS 2/2015

News No.2/2015

Depositing documents in the Collection of Deeds

We have compiled our final accounts, we have gone through the audit process successfully, we have filed the legal entities' income tax returns – mission accomplished and now it is time for some rest! Unfortunately, this is only part of the story. We have forgotten to deposit (or we have even intentionally not deposited) the final accounts in the Collection of Deeds. Is this just unnecessary paperwork? Do we reveal sensitive information about our business with each published document? Perhaps, but we should always bear in mind the sanctions we face for breaching this obligation.

Starting on 1 January 2014, depositing documents in the Collection of Deeds has been regulated by Act No. 304/2013 Coll., on public registers of legal entities and private individuals. Essentially, it builds upon the previous regulation contained in the Commercial Code but imposes more stringent sanctions. Below you will find an overview of all sanctions to which you are liable under current statute if you breach the obligation to deposit a document in the Collection of Deeds.

1. Administrative transgression pursuant to the Public Registers Act

Unless an entity discharges its obligation to deposit a document in the Collection of Deeds, a fine may be imposed, the maximum amount of which has increased from CZK 20,000 to CZK 100,000. Before a fine is imposed you receive a notice of the breach of obligation and a request to comply with this duty. The penalty may be imposed several times if the entity fails in its obligation even after receiving such a request. Subsequent to a failure to abide by such a request, the registry court may initiate action to liquidate the company.

2. Administrative offence pursuant to the Act on Accounting

The Act on Accounting also states an obligation to deposit documents in the Collection of Deeds. For failure to deposit the final accounts or the annual report in the Collection of Deeds, it stipulates a fine of up to 3% of the total value of assets. As there is no cap on the fine, this sanction might be considerable for many companies.

3. Misdemeanours

The Act on Misdemeanours stipulates fining the private individual in charge up to CZK 50,000 or applying a ban on specific activities for up to one year for failure to deposit a document in the Collection of Deeds.

4. Breach of due managerial care

Where members of mandatory bodies fail to discharge their statutory obligations, the refutable legal presumption holds that they are in breach of their due managerial care. The consequence of a failed obligation can be an obligation to pay the damage incurred or, alternatively, removal from office of the member of the mandatory body.

5. Criminal offence

The Criminal Code also mentions a failure to deposit documents in the Collection of Deeds. Where third-party rights are limited or jeopardised by the failure to deposit a document in the Collection of Deeds, the member of the mandatory body that was obliged to discharge this obligation and failed the same without undue delay faces imprisonment for up to two years or a ban on specific activities.

Although, from time to time, the Ministry of Finance warns that it will conduct a general inspection of the discharge of the obligation to deposit documents in the Collection of Deeds, it had not done so to date, mainly for staffing reasons. Searching for the necessary funds to replenish public budgets, keeping such a promise might be expected in future. The discharge of this obligation is easy to inspect using publicly available resources and the costs related to sending out requests are already minimal.

Registrations in public registers

Act No. 334/2013 Coll., on public registers of legal entities and private individuals, which entered into effect on 1 January 2014, introduced an obligation to notaries to make registrations in public registers if approached with a request to make such a registration by the entity that is entitled to file a proposal for registration with the registry court. Pursuant to this Act, therefore, such an authorised entity can decide whether it will request the registry court or a notary to make the registration. The aim was to reduce the costs associated with the

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registration of information in the register and reducing the agenda of registry courts. According to the interpretation of the Chamber of Notaries, however, a notary will make a registration in the public register only if the facts to be registered are based on a notarial record drafted by the notary in question, and if other statutory assumptions have been met.

Until recently, however, it was technically impossible for notaries to make registrations in the public registers at all, mainly because the software prepared by the Ministry of Justice was insufficient. According to the most recent information, however, all modifications should now be in place. Hence, it appears that within a short period of time it will be possible to register through a notary.

For which insolvency claims can you claim VAT refunds?

Effective from April 2011, a new concept for the correction of the VAT amount for receivables due from debtors in insolvency proceedings has been inserted in the VAT Act. A creditor with an outstanding receivable due from a debtor in insolvency proceedings can collect the tax it was obliged to report and pay.

The VAT Act stipulates explicitly that "a receivable incurred no later than 6 months before the court's ruling on insolvency" is eligible for VAT correction. Hence, it is not clear which insolvency receivables are covered by the above option.

The above provision allows for two entirely different interpretations:

1. The correction can be applied to receivables incurred at least 6 months before the court ruled on insolvency and at any time before that date.
2. The correction can be applied to receivables incurred not earlier than 6 months before the court ruled on insolvency.

The Financial Administration has opted for the first of the two interpretations and issued a methodical guidance on that basis.

In its recent judgment (case No. 9 Afs 170/2014 -42), however, the Supreme Administrative Court did not agree with the Financial Administration, taking account, inter alia, of the explanatory report to the amendment to the VAT Act. The explanatory report notes that the "pre-insolvency" receivables are to be eligible for VAT correction, i.e. receivables that emerged within a short period of time before the court's ruling on insolvency.

The Supreme Administrative Court's ruling has fundamentally changed the interpretation of the above provision of the VAT Act.

When is VAT on undemonstrated deficit payable?

Since 2009, the Supreme Administrative Court supported the Financial Administration several times in the Administration's opinion indicating that VAT needs to be paid on undemonstrated deficit. It is a taxable supply – i.e. using assets for purposes unrelated to the taxpayer's business.

So far, however, the courts have not considered when it is necessary to pay VAT on undemonstrated deficit. The prevailing practice to date has been that the taxpayer paid tax at the exit as at the balance sheet date, i.e. upon compilation of final accounts.

Now, the Supreme Administrative Court has given judgment (case No. 4 Afs 183/2014-42) stipulating that VAT needs to be paid upon discovery of the deficit, i.e. as at the date of physical stock-taking. The Act on Accounting allows for a physical stock-taking to take place any time between four months before the balance sheet date and two months after the balance sheet date. Hence, the date of posting the deficit in the accounts and the date of payment of VAT on the deficit can differ considerably.

In conclusion, the Supreme Administrative Court has vindicated the tax entity, thus opposing the Financial Administration's opinion that the taxpayer was to pay VAT as at the balance sheet date.

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