



## **News 6/2010**

### **Changes in the VAT Act valid from 1 January 2011**

This year, as at end of the last year, the Parliament of the Czech Republic is approving the amendment to Act No. 235/2004 Coll., on Value Added Tax (hereinafter the "VAT Act") at the last minute in order to ensure its timely compliance with the relevant legal regulations of the European Union. And as last year, it is not yet clear whether the amendment will be adopted in time and whether it will come into force on 1 January 2011. In spite of this we would like to summarize the main areas that the changes will affect.

A VAT payer's deduction claim will not be admitted unless the submitted tax document contains selected essential elements of a tax document (especially the data decisive for the calculation of tax or the supplier's tax identification number (DIC)). It is therefore recommended to check the accuracy of information contained in a tax document and require rectification from the suppliers who have issued inaccurate tax documents.

The decisive moment for the possibility to claim a VAT deduction will be the date of receipt of the tax document. Contrary to the current legislation valid until the end of 2010 stipulating that a payer can claim a VAT deduction no sooner than during the tax period according to the date of taxable supply contained in the tax document; starting from 1 January 2010, a payer will be entitled to claim the tax deduction during the tax period wherein the taxpayer has physically received the tax document and no sooner.

The payer will be entitled to claim the tax deduction only in the amount corresponding to the tax to be claimed under the VAT Act. Should a supplier use a wrong tax rate, the contractor will be obliged to correct the error solely by means of an additional tax return. It is therefore recommended to check the accuracy of the VAT rate for all received input supplies before claiming a VAT deduction.

A payer will now be entitled to claim a VAT deduction on acquired fixed assets only proportionally if such assets are also used for other activities not related to the business activity of the VAT payer (e.g. business cars provided to employees for private use as well).

Changes will be also made to rules governing the tax base correction and credit/debit note issue. The term tax credit note/debit note will be replaced with a single term "corrective tax document". The corrective tax document containing all essential elements stipulated by the VAT Act will be also required in the case of a tax base reduction.

A VAT payer should now also be able to claim a refund of VAT paid on bad debts from debtors involved in insolvency proceedings.

No VAT tax return will be submitted and no tax paid by a supplier in the case of selected domestic deliveries between two VAT payers; this duty will be transferred to



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the contractor. Under the current wording of the amendment, such regime will be applied to petrol or oil supplies exceeding 1,500 litres, gold supplies, supplies of selected non-ferrous metals and waste and in greenhouse gas emissions permit trading.

## **Instruction D-343**

A new Council Directive 2010/66/EU has come into force with retroactive effect from 1 October 2010. The Ministry of Finance of the Czech Republic announced this via the Instruction of Rank D No. 343 on extending the deadline to submit a VAT refund application for VAT payers to get a 2009 VAT refund from another Member State by 31 March 2011.

## **Tax Code**

As we have already described in one previous issue, Act No. 280/2004 Coll., the Tax Code, will come into force on 1 January 2010 replacing the currently valid Act No. 337/1992 Coll., on the Administration of Taxes and Fees.

The Tax Code valid from 1 January has not been finalised yet; certain provisions are still to be amended before the end of 2010. Nonetheless, we would like to summarize certain changes to be expected starting from 1 January 2011.

One of the major changes concerns the power of attorney granted to an authorised person and its validity for the tax administrator. The current legislation stipulates that unless the scope of the power of attorney is specified correctly and completely, the power of attorney is considered to be a general power of attorney (i.e. the authorised person is empowered to represent the tax entity in all its tax matters). Starting from 1 January 2011, Sections 27 and 28 of the new Tax Code will stipulate that where a power of attorney should lack the specification or exact specification of its scope, the tax administrator will request the principal to replace the power of attorney, stipulating a deadline to remedy the faults. It means that the tax administrator will not consider a power of attorney to be valid immediately but only after all defects have been corrected. Should the authorised person deal in any way with the tax administrator until then, any such acts will be considered invalid.

According to preliminary provisions, a power of attorney used prior to the coming into effect of the Tax Code will be considered to be valid; its effect, however, will be judged according to the new Tax Code. In case of any doubt as to the scope of a previously granted power of attorney, the tax administrator will ask the principal to submit a new power of attorney. Only the principal will be asked, however, not the person authorised under the power of attorney – the tax advisor.

Should other facts or evidence arise suggesting that the tax liability was assessed in a wrong amount, the taxpayer will be entitled to file an additional tax return stating a lower tax liability by the end of the following month after having become aware of such fact. No additional return stating a lower tax liability due to an erroneous application of the law will be accepted.



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A three-year preclusive deadline for the tax assessment will start on the day of the deadline to file a tax return (deadlines will be individual for each return according to the situation). The preclusive deadline will be extended by one year if, among others, an additional tax return is filed or a payment assessment is issued during the last 12 months of its duration.

In the event of a tax inspection, the preclusive deadline starts anew on the day the tax inspection started. This rule will similarly apply in the event of the filing of an ordinary tax return or the call to file an ordinary tax return.

The restriction of the possibility to repeat a tax inspection will only apply for already inspected matters.

The tax will be due on the last day of the deadline for filing the return. If the tax administrator receives the tax payment more than 10 days before the due date, it will be assessed as an overpayment and the tax administrator will be able to use it to pay other outstanding payments (i.e. interest on delayed payment).

The interest on delayed payment of tax liability will start accruing on the fifth work-day after the due date.

The penalty in the case of additional assessment by the tax authority resulting in the reduction of a tax liability has been reduced to 1% of the loss (in the case of an increase in the tax liability or reduction of the deduction it remains in the amount of 20%).

## **New provisions of the Income Tax Act – a supplement to News No. 5/2010**

- the annual allowance per taxpayer will be reduced from CZK 24,840 (CZK 2,070 per month) to CZK 23,640 (CZK 1,970 per month); this measure should only apply to 2011 and has been called in the media the “flood's one hundred crowns”;
- the tax deductibility of employer's contributions to an employee's pension contributory insurance with the state allowance and also private life insurance now applies to contributions to institutions domiciled in another EU Member State, Norway or Iceland; existing limits for the exemption from the tax on income from dependent activities remain in force; employer's contributions to pension insurance without the state allowance is now exempt from tax, too, subject to its compliance with similar conditions as the insurance with the state allowance; the law also extends the use of the non-taxable part of the tax base in the amount of the insurance paid by a taxpayer to pension insurance without the state allowance, subject to its compliance with similar conditions as the insurance with the state allowance;
- a new possibility to reduce the tax base by gifts to secondary schools and colleges, provided that these are given to acquire materials or to repair and renovate facilities used for the purposes of the practical education of students;



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- it will now be possible to consider so called motivation benefits provided to a pupil or a student under a contract to be a tax deductible expense (cost), if the student is preparing to work for the taxpayer, up to CZK 2,000 per month, or up to CZK 5,000 per month in the case of a university student; in the case of a student, the motivation benefit will be assessed as a taxable income gained by the taxpayer in connection with the future performance of dependent activities;
- starting from 2011, the corporate income tax rate will no longer be reduced by one half for legal entities employing disabled staff; a discount of CZK 18,000 or CZK 60,000 per each disabled employee remains unamended;
- the electronic submission of the 2010 advance tax reconciliation will be obligatory for the first time, provided it includes as obligatory Schedule 2 stating the data of each tax non-resident; the deadline for the electronic submission (whether obligatory due to the employment of non-residents, or voluntary) of the reconciliation will be postponed from the end of February to March 20;
- the accompanying act to the Tax Code will change the deadline for the reconciliation submission of the tax withheld till the end of April of the following year (up till now, according to the old law, it was the beginning of March of the following year); the withholding tax will now be rounded up to whole crowns.

*(Note: The new law will be used for the 2010 withholding tax reconciliation; the deadline for its submission will therefore be by 2 May 2011, because 30 April 2011 falls on a Sunday. The 2010 withholding tax reconciliation will be submitted using a new form – template No. 1322.)*

## **Changes made in other laws – a supplement to News No. 5/2010**

- Starting on 1 January 2011, the General Health Insurance Company (VZP) will use new blank forms; the 2011 maximum assessment base for employees is set at CZK 1,781,280;
- Decree No. 350/2010 Coll. dated 26 November 2010 determines the basic rates of foreign meal allowance for 2011.
- Starting from 1 January 2011, interest from construction saving schemes will no longer be exempt from personal income tax and the 2010 contribution accrued in 2011 will be subject to a one-off 50% taxation; the state allowance will be tax exempt.

**Warning:** All of the above mentioned is of a general indicative nature only and is not comprehensive. The purpose is only to draw attention to the most important points of the amendments and changes. No damage claims for steps made based on the information shall be accepted. If you use information included in this document, you will only do it at your own risk and responsibility.

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