



## Tax novelties

A reminder:

### ■ Transfer prices between related parties

This is a reminder that from the beginning of this year taxpayers may, with an appropriate tax administrator, apply for a binding assessment of the technique for the creation of transfer prices between related subjects. Investment incentives holders can also use this information. If the appropriate tax administrator issues a binding assessment, the risk of subsequent discrepancies in the determination of these prices in actual transactions is reduced by that from which the allocation of a penalty could result.

The basis for a binding assessment is the documentation on transactions between the related subjects, which is necessary for a tax inspection or other tax proceedings. All documentation should in content conform with the Direction of OECD and the Rules of Conduct regarding the documentation of transfer prices for multinational companies in the EU.

The basic information (the so-called „Masterfile“) contains general information on the group of companies as a whole, its activity, strategy, organization and company structure. This information is uniformly applicable.

Each company in the group then keeps documentation with all specificities of the relevant country. This documentation follows from the masterfile, but in all its points it is more detailed, containing also descriptions of commercial relations, comparative analysis and a description of how the company incorporates into the policy of transfer prices for the whole group.

Although it is the subject of an agreement, if the masterfile is also created, or each company creates only its „specific“ part, the presented documentation in each state must always contain the following: information on the group, company, business relations and other circumstances influencing business relations and information on how the transfer prices were created.

### ■ Electronic administration of forms in the customs procedure

On July 1, 2006 electronic submission of customs declarations for goods into the transit regime will simplify and accelerate administration, thus ending the transition period which the Czech Republic had allowed until 30 June 2006. This duty conforms with a regulation by the EC Council, which also contains some exceptions in the form of written customs declarations submitted in terms of tourism or in the case of an accident. This duty should be established for customs declarations when goods are released into the regime export from 1 July 2007, but since 10 October 2006 it has been an optional possibility.

When the forms in the customs procedure are submitted electronically, it is only necessary to consider how they will be stored, so that the possible proof of VAT exemption would not bring increased costs.

### ■ New Act on health insurance

*Effective from 1 January 2007*

The amendment of the act should help highly reduce the abuse of sick-leave benefits and motivate all involved to reduce incapacity to work. The new system should apply uniformly to all insured persons (including self-employed persons).

In addition the employer must now provide compensation during the first 2 weeks of sick-leave. The first three working days amounts to 30% of the daily average earnings (as of now for the first three calendar days it is 25%). From the fourth day till the end of the second week, sick-leave compensation amounts to 69% of the daily average earnings for working days. The compensation of wages will not be taxed and both social and health insurance will not be taken from it. The state budget will pay employers half the costs of disabled employee sick leave.

Sickness insurance is expecting a relatively distinct change. Since the new year the part of the insurance the employer pays to the employees will be reduced from the current 3.3% to



1.4%. For a majority of employers this will mean a decrease in labor expenses. In addition employers with fewer than 26 employees will have the option to choose another system.

The new legal regulations also take into account the adjustment of the conditions of other sickness insurance benefits (e.g. maternity benefits), these will be disbursed starting on the first calendar day claims for these benefits are made. Financial assistance during maternity leave will amount to 70% of the reduced base of assessment and from the new year fathers are also entitled to it. New parents or other members of the household can change one time while caring for a single family member.

### ■ **Double Taxation Avoidance Treaty between the Czech Republic and the Republic of Austria**

*Since 1 January 2007*

The Treaty between the Czech Republic and the Republic of Austria on Double Taxation Avoidance and the prevention of tax evasion in the field of income tax and property tax will replace the Double Taxation Avoidance Treaty between the Czechoslovak Socialist Republic and the Republic of Austria in the field of income tax and property tax, which has stood since 1978. It should go into effect on 1 January 2007, if its ratification comes through in time. We will inform you continuously of specific changes.

### ■ **Amendment of Act on the administration of taxes and charges**

*Effective from 1 June 2006*

This amendment issued as part of Act No. 230/2006, where new paragraphs were supplemented concerning protection from the inactivity of the tax administrator, penalty and duties of the guarantee for this tax deficit.

If the tax administrator infringes his duties by unnecessarily prolonging the tax procedure and he does not make a decision, even though all records necessary for such decision are available etc., the tax subject may address the administrator's superior with a request for revision. The situation will be examined, the tax administrator will be ordered to arrange a remedy within 30 days from the submission of the request, or throw out the request as unjustified.

According to the new arrangement, the tax subject must pay a single penalty from an additionally assessed tax or tax loss, namely 5% in cases in which the tax loss is reduced, or 20% when the tax is increased or in the case of a claim for its deduction.

The penalty will not arise if the tax subject submits an additional tax return, additional report or statement, on the basis of which the tax base and the tax are additionally assessed.

Further the amendment is concerned with the liability of the guarantee for tax debts. It also lists objections, which the guarantee can use in terms of an appeal of a decision by the appropriate authority.

## **Legal news**

### ■ **New Labor Code**

*Effective from 1 January 2007*

The new Labor Code brings forth the following most important changes:

- The contractual approach is strengthened and the main principle becomes the constitutional principle of „what is not prohibited is allowed“. The parties can make arrangements that deviate from the Labor Code. A deviation will not be possible for compensation of damages and for references to the Civil Code. In relation to the Civil Code, the compilers chose an institute of delegation, i.e. only specified provisions of



the Civil Code can be used in labor-law relations. A negotiation of entitlements is allowed where it is not prohibited by the law.

- o The employment contract will be, for the above-mentioned reasons, more flexible and some claims may also be negotiated in another agreement (e.g. an innominate contract according to the Civil Code). The employers will also be allowed to conclude with employees agreements enabling work from home (so-called homeworking or teleworking).
- o The termination of employment does not fundamentally change. The possibility for employers to give notice without reason was not legalized. But the reason for notice „infringement of work discipline“ has changed and it is replaced by the reason „serious infringement of duties resulting from the legal regulations relating to the work performed“, which makes the situation easier for employers. The notice period of two months is the same for both parties. The employer is no longer obliged to offer another vacant position in the company to the employee in case of a lay off for organizational reasons.
- o The compensation payment will amount to at least three times the average earnings in the case of giving notice for organizational changes. A compensation payment of at least 12 average earnings belongs to the employee whose employment was terminated by the employer for health reasons,
- o Agreements on work, not including employment contracts. In the contract of services the limit was increased to 150 hours per year; the limit for the agreement on working activity remained unchanged. The binding limits (impossibility to conclude these contracts if it does not concern the work, which can be performed within the apportionment of the working time etc.) the new Labor Code did not take over.
- o The action and authority of unions was neither increased nor extended. It was not accepted that unions should have the right to prohibit overtime or work at night, potentially endangering the safety and protection of employees' health. Provisions on the duty of the employer to negotiate in advance with trade union on the giving of notice or the immediate termination of employment was left in the Labor Code.
- o The Code presents a comprehensive adjustment to labor-law regulations. It took over areas of employee remuneration in business and non-business spheres and the adjustment of travel expenses, which were till now arranged in separate laws.
- o The Code defines dependent work and the content of labor-law relations, which is important for interpretative purposes also in the area of income tax. The employment and contract on work are defined as principal labor-law relations in which the dependent work is performed.
- o Another new element is the obligation of the employer to provide the employee compensation of wages or salary for the first 14 days of the incapacity to work (in concurrence to the new Act on sickness insurance).
- o In contrast to the previous adjustment, if the employer is a natural person, the labor-law relation terminates when he dies.

#### ■ So called European executors title - Amendment of the Civil Rules of Court

*Effective from 21 October 2005 (from the day of obligation of the following Council Regulation) (EC)*

The so-called European Executors Title (further „EET“) concerns indisputable receivables and strengthens the direct feasibility of executors' titles within the EU without the necessity of their particular recognition in terms of certification procedure.

EET presents the title in cases when the debtor does not deny financial receivable in the title and its amount and the creditor have obtained a legal decision, or disposes of the feasible title on the basis of the debtor's consent (e.g. compromise) or in the form of a public document. It can be issued also in cases in which the accused defaults or does not express, but cannot deny, the claim. The minimum standards of EET are specified in Council Regulation (EC) No.805/2004.



## ■ **Insolvency Act**

*Effective from 1 July 2007*

This Act is cancelled and replaced by Act No. 328/1991 on Bankruptcy and Settlements and carries numerous innovations focused on quicker satisfaction and position reinforcement of creditors, and of non-liquidation form of the failure solution.

New institutes have been established. Firstly, the so-called „threatening failure“, by which the circle of conditions extends under which it is possible to lead an insolvency procedure, also in a situation when the failure only threatens the debtor. The institute of a so-called „moratorium“ is reminiscent of the present institute of the protective term. What is new here is the institute of the so-called „little bankruptcy“, which can be ordered only in a case in which the debtor is a natural person - not an entrepreneur, or the turnover of the debtor does not exceed for the last accounting period 2,000,000 CZK and at the same time the debtor does not have more than 50 creditors. The advantage is a considerable simplification of procedural activities. It establishes the so-called „insolvency register“, which is the information system of the public service.

The act brings new methods to the failure solution, namely reorganization, discharge from debts and particular methods of the failure solution. The decision on the bankruptcy order the court issues only in cases when the failure solution in the above-mentioned methods has been eliminated. During the reorganization the debtor further develops entrepreneurial activity, but according to the so-called reorganization plan. The institute of discharge from debts concerns non-entrepreneurs, and the debtor at the same time pays the creditor only for part of the debt (not less than 30%, unless the creditor agrees otherwise) and the remaining part of the debt is cancelled.

## ■ **Act on European cooperative company**

*Effective from 18 August 2006*

The third economic subject regulated by the EC law (after the European economic interest association and European joint-stock company) in the Czech Republic now lays down the proposed legal regulation. The European cooperative company will perform its activity for the mutual benefit of its members, so that each member profits from this activity adequately to the extent of its participation. A European cooperative company with its registered seat in the territory of the Czech Republic will follow the regulation on the European cooperative company, presented law and secondarily provisions on cooperatives according to the Commercial Code. This legal form is advantageous most of all for persons who operate in the all-European market, without any threat that they have to organize in the companies or cooperatives according to different national legal regulations.

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