

January 2012

In our first issue of this year's Financial Update let us wish you every success and positive business and economic developments in 2012. The amendment to the Transformation Act not only changes the deadlines for filing tax returns on company transformations but also the conditions for writing off receivables. The deadline for the year-end income tax settlement is also approaching. The conditions for claiming tax reliefs by tax non-residents as part of their annual tax settlement done by employers have become stricter, as have the conditions requiring a debtor to file for insolvency. A debtor is obligated to file an insolvency petition without undue delay upon learning of his bankruptcy. The good news is that on 4 January 2012, the 2nd Call for Proposals under the Real Estate programme of the Operational Programme Enterprise and Innovations (OPEI) has been extended. Under this programme, companies may apply for support for projects involving industrial zone preparation, facility renovation or project design/documentation development. All new owners of real estate, who have to file a real estate tax return by the end of January, can view the list of real estate tax coefficients valid as at 1 January 2012 on the Czech Tax Administration's website at <http://cds.mfcr.cz>.

LEGISLATION

Some implications of the Amendment to the Transformation Act

The deadline for filing income tax returns on company transformations has been changed. The Income Tax Act has restored the condition that a write-off of a receivable can be claimed for tax purposes only if a tax adjustment to this receivable can be created.

Year-end tax settlement vs. personal income tax returns filed by tax non-residents for 2011

Employers cannot claim deductible items and tax credits within the year-end tax settlement performed on behalf of foreign employees (tax non-residents), except for applying a basic credit per taxpayer and per student.

Stricter conditions on the duty of a debtor to file for insolvency

From 2012, a debtor is obligated to file an insolvency petition without undue delay upon learning of his bankruptcy.

CASE LAW

Supreme Administrative Court on the 'Svarc system'

The question whether work performed by an individual for a company represents employment or separate business activities should be considered on an individual basis. From 2012, performance of dependent work by an individual outside the scope of employment is regarded as illegal work according to the Act on Employment.

CJEU: VAT aspects of the sale of inventory and equipment of a retail outlet

'The transfer of a business (or part thereof)' is an autonomous concept of EU law that must be interpreted uniformly across the EU.

EU FUNDS AND SUBSIDIES

Call under Real Estate programme extended

The Ministry of Industry and Trade has extended the 2nd Call for Proposals under the Real Estate programme of the Operational Programme Enterprise and Innovations (OPEI), for the following types of projects: zone preparation, facility renovation and project/design documentation development.

EU NEWS

Proposed sharing of consolidated tax base by group members comes under fire

It is possible that the draft Directive will be approved in the form of a common corporate tax base without the consolidation option.

SLOVAKIA

Financial Statements Register

From 2012, an electronic Financial Statements Register has been established in Slovakia, administered by the Ministry of Finance, where entrepreneurs have to file their financial statements and other accounting documents in electronic form.

LEGISLATION

Some implications of the Amendment to the Transformation Act

Deadline for filing a tax return in the case of company transformation shortened again?

The regulation of deadlines for filing tax returns in the case of company transformations where the decisive date of a transformation is not the first day of the calendar or fiscal year has been amended many times in the Income Tax Act. Before 14 July 2011, the deadline for filing a tax return was the end of the month following the month in which the general meeting approved the transformation. The amendment in effect from 15 July 2011 adjusted this deadline by extending it to three months, to converge with the standard deadline for filing tax returns. The Amendment to the Transformation Act in effect since 1 January 2012, which also includes an amendment to the Income Tax Act, adjusts the deadline back to a one-month period, although it is likely that this may be a legislative error. As a result, the application of deadlines in practice is uncertain, especially as there are no transitional provisions. The Chamber of Tax Advisors plans to raise this issue at the next meeting of the Coordination Committee.

Tax write-off of receivables from 2012

Tax write-off of receivables has also been subject to many significant changes over the years. Until the end of 2010, tax write-off of receivables was conditional on whether it was possible to create tax adjustments to receivables in accordance with the Act on Reserves. From 2011, tax write-off of receivables was allowed even where receivables were not covered by tax adjustments (e.g. statute barred receivables) but only where other conditions had been met. The Amendment to the Transformation Act effective from 2012 restores in the Income Tax Act the condition applicable in 2010 stipulating that a write-off of a receivable can be claimed as tax deductible only where a tax adjustment to such receivable has been established in accordance with the Act on Reserves. There are certain exceptions to this, such as receivables less than six months overdue and receivables with a nominal value exceeding CZK 200,000 that have not been subject to any arbitration, court or administrative proceedings. The condition requiring the creation of tax adjustments need not apply in these cases. These receivables can be written-off for tax purposes if one of the other conditions determined in the Income Tax Act is met.

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Year-end tax settlement vs. personal income tax returns filed by tax non-residents for 2011

Tax non-residents who want to claim various tax credits (except for the basic credit per taxpayer and per student), a tax allowance per dependent child and, in accordance with new legislation, all tax-deductible items (such as gifts provided, contributions to the supplementary pension insurance scheme, contributions to private life assurance schemes, interest on mortgage loans) can do so only through a personal income tax return. This means that an employer may not claim these tax reliefs through the year-end settlement of personal income tax advances.

For completeness, we draw attention to the fact that the above tax reliefs can only be claimed by tax non-residents whose total income from the Czech Republic represents at least 90% of their global income (except for income that is exempt from or not liable to tax, as well as income from which tax is withheld).

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Stricter conditions on the duty of a debtor to file for insolvency

Section 98 (1) of the Insolvency Act, which stipulates the duty of a debtor to file an insolvency petition, has been amended with the effective date of 1 January 2012. The anti-crisis Amendment to the Insolvency Act No. 217/2009 Coll. limited the debtor's obligation to file an insolvency petition to cases of bankruptcy arising from insolvency. The duty to file an insolvency petition in the case of bankruptcy resulting from heavy indebtedness only applied to entities in liquidation. This restriction was temporary and expired at the end of 2011.

From 2012, the debtor (either a corporate entity or an individual) is obligated to file an insolvency petition without undue delay as soon as he learns, or should with due diligence have learned, of his bankruptcy. The debtor must proceed in this manner regardless of whether his bankruptcy arose from insolvency or indebtedness.

Bankruptcy arising from insolvency is understood to be a situation where the debtor owes money to a large number of creditors and is unable to pay his debts within thirty days of the due date. Bankruptcy arising from indebtedness is understood to be a situation where the debtor owes money to a large number of creditors and the total of all his liabilities exceeds the value of his assets. When determining the value of the debtor's assets, it is necessary to take into account further management of his assets or further operation of his enterprise if, on balance, it can be reasonably assumed that the debtor will be able to continue to manage his assets or operate his business.

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CASE LAW

Supreme Administrative Court on the 'Svarc system'

The Supreme Administrative Court has recently expressed its views on the difference between employment and business activities carried out by individuals.

In Decision Ref. No. 1 Afs 53/2011-208 dated 26 May 2011, the Supreme Administrative Court agreed with an opinion of the tax authority that reclassified a commercial-law relationship between a company and individuals carrying out business activities as a labour-law relationship, and consequently assessed additional employment tax.

The case in question concerned individuals who carried out crane operation, welding, assembly and locksmith's work based on contracts for work. The tax authority argued that the individuals performed work for the company based on its requirements and instructions. It did not involve complete pieces of work for which individuals would bear responsibility. Work was directly dependent on the material provided by the company. Moreover, work was performed over a long term and on a continuous basis. Individuals did not work for any other customers, performed their work at the company's premises and did not pay any consideration for the lease of such premises.

In Decision Ref. No. 2 Afs 16/2011-78 dated 29 November 2011 regarding the case of an ice-hockey player, the Supreme Administrative Court did not agree with the tax authority's proposal to reclassify the commercial-law relationship as a labour-law relationship. On the contrary, it held that contractual parties are allowed to freely choose the type of contractual relationship if the nature of the individual's activity allows it. The Supreme Administrative Court confirmed that the activities of professional sportsmen can be carried out through a relationship governed by commercial law. This decision also cites other previous decisions that emphasised the freedom and voluntary nature in choosing between a labour-law and commercial-law relationship.

It is clear from the above that it is always necessary to consider each individual case based on the nature of the activities carried out by the individual.

Significantly, from 1 January 2012 the performance of dependent work by an individual outside the scope of employment is regarded as illegal work in accordance with the amendment to the Act on Employment. An employee can be fined up to CZK 100,000, whereas an employer can be subject to a penalty of up to CZK 10 million.

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CJEU: VAT aspects of the sale of inventory and equipment of a retail outlet

In November 2011, the Court of Justice of the EU (CJEU) issued a decision in the Christel Schriever case (C-444/10) that involved the application of VAT on the sale of inventory and equipment of a retail outlet in connection with the lease of the outlet's premises to the buyer. During the transaction the outlet owned by the seller was not sold but only leased for an indefinite period of time, with an option for both parties to terminate the lease at relatively short notice.

The seller regarded the transfer of inventory and equipment as a transfer of a business that is not liable to VAT. However, the tax authority was of the opinion that the conditions for the transfer of a business had not been met because the real property, which constituted a substantial part of the business, had not been transferred to the buyer.

The CJEU has decided in the past that the transfer of a part of a business must be interpreted as the transfer of business assets including tangible (and possibly also intangible) items, which together constitute the business (or part thereof). The aggregate of transferred items must be sufficient to enable the performance of independent economic activity. In the case of Schriever, the CJEU held that the question whether the transfer must also include the real property should be examined by considering the nature of the business activities.

When considering this, the CJEU stated that the operation of a retail outlet cannot be carried out without commercial premises. It is not, however, necessary to own these premises to ensure the outlet's operation. Nothing in principle can hinder the transfer of a right to use the property by concluding a lease contract. According to the CJEU, the transfer of inventory and equipment of the retail outlet in connection with its lease can in principle be classified as the transfer of a business.

The CJEU also held that the transfer of a part of a business is an autonomous concept of EU law that must be interpreted uniformly across the EU. Generally, the member states may not extend or restrict the interpretation of this concept. The decision helps in clarifying the concept of 'the transfer of a business' used by Council Directive 2006/112/EC on the common system of value added tax but which is not directly defined there. The question, however, is to what extent the CJEU's interpretation is reflected in the definition of a sale of an enterprise in the Czech VAT Act.

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EU FUNDS AND SUBSIDIES

Call under Real Estate programme extended

On 4 January 2012, the Second Call for proposals under the Real Estate programme of the Operational Programme Enterprise and Innovations (OPEI) was prolonged. The Call is open to all enterprises irrespective of their size, and for projects implemented in the Czech Republic, outside the City of Prague. Entrepreneurs may apply for support for the following types of projects:

Zone preparation

Creating investment-ready areas/sites within the construction of a new industrial zone, or improving the quality or usability of areas/sites in an existing industrial zone. Eligible costs include costs incurred in connection with land preparation, demolition of disused structures, and the construction of technical and transportation infrastructure (engineering networks and special-purpose roads).

Facility renovation

Renovating a building as a business facility. Only where the renovation will facilitate more efficient use of the real estate will projects be supported. Eligible costs include, apart from those above, the costs of the renovation itself, and certain other types of costs.

Project/design documentation development

Creating project or design preparatory documentation for the above given projects. Recipients of support have to start the implementation of the project for which the documentation has been prepared within two years. Eligible costs include the costs of the construction project documentation and of an architectural tender.

The amount of the subsidy for each project is determined as a percentage of eligible project costs according to the applicable regional map (refer to: <http://www.czechinvest.org/verejna-podpora>), i.e. 30–40% depending on the region. The maximum subsidy per project is **CZK 20 million** (CZK 2 million for project documentation development projects). An entity (identified by ID No.) may only file one project.

The total allocation for this Call is **CZK 1 billion**.

Registration of applications is open from 1 March 2012 to 30 April 2012. The programme administrator reserves the right to close admission if the financial volume of registration applications filed exceeds twice the amount of funds allocated to the Call, without prior notice. It is therefore important to file the registration application as soon as the Call is open. Admission of full applications will start on 1 May 2012.

More information is available at: <http://www.czechinvest.org/nemovitosti-vyzva-ii-prodlouzeni>

Other ways to benefit from EU support

Apart for the above, calls for proposals under the following programmes are planned for this year:

- **Eco-energy** (OPEI) – a call is planned for the first months of 2012. Supported activities for large enterprises are those aimed at increasing the efficiency of energy generation, transmission and consumption (energy savings).
- **Potential** (OPEI) – a call is planned for the spring of 2012. Under this programme, support is provided for the establishment or extension of development centres focused on research, development and innovation of products or technologies if it is expected that they will be used in production.
- **EDUCA** (OP HRE) – a call is currently being prepared for the first half of 2012. The programme focuses on specific education (providing qualifications that are not transferrable or are only transferrable to other enterprises and fields to a limited extent).

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EU

Proposed sharing of consolidated tax base by group members comes under fire

In the [April 2011 issue of Financial Update](#), we reported on the European Commission's presentation to the European Parliament and Council of the EU of a draft Directive on a Common Consolidated Corporate Tax Base (CCCTB). The Directive would make it possible for corporate groups operating within the EU to file a single consolidated tax return for the entire group. The tax base of each group member would be determined by apportioning the consolidated tax base using a common formula. The tax base of each group member would then be subject to the corporate income tax applicable in its home country.

The shape of the formula will thus have a key impact on the resulting tax revenues of individual member states. As currently proposed, the formula apportions the consolidated tax base to member states based on the local enterprise's share in total sales, labour and assets of the group; the three factors have equal weight.

The opponents mostly point out that this method of apportionment is based on an obsolete concept of enterprise, as it does not reflect the crucial role intellectual property often plays today; does not consider financial assets; and, above all, does not examine which member of the group actually bears the business risk. Within the discussion, the idea of reducing the weight of the sales factor, or eliminating it altogether, was raised, since the formula currently puts larger member states at an advantage, at the cost of the smaller ones. Studies have also shown that a formula focusing on the three factors above may significantly affect companies' decisions in the area of employment, thus deforming the labour market. It has even been suggested that the formula be modified to take the economic situation of individual member states into account.

At the moment, a discussion is taking place at the level of member states, with the support of the professional community. For the Directive to be approved, the consent of all member states is needed, meaning that rejection by even a single country may result in the Directive not being passed, or being passed in a substantially changed form. Another alternative being discussed is a common corporate tax base, (CCTB) without the consolidation option.

The European Parliament is to discuss the draft Directive in February or March 2012. We will keep you updated on further developments.

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SLOVAKIA

Financial Statements Register

On 1 December 2011, the Slovak National Council approved Amendment to the Act on Accounting No. 431/2002 Coll. Some provisions come into effect on 31 December 2011, some on 1 January 2012, and some will do so on 1 January 2013. One of the important provisions of the amendment is the establishment of the Financial Statements Register, which is administered by the Ministry of Finance of the Slovak Republic and managed by Datacentrum.

The following documents shall be filed in the Financial Statements Register:

- Ordinary, extraordinary, interim, individual and consolidated financial statements;
- Statements of selected information from individual financial statements prepared in accordance with the International Financial Reporting Standards as adopted by the European Union, and from the consolidated financial statements;
- Audit reports;
- Summary of public administration financial statements; and
- Financial statements and annual reports of municipalities and regional authorities.

The duty to file the documents shall apply to the financial statements prepared as at 31 December 2012 and beyond.

Following the establishment of the Financial Statements Register, entities preparing their individual financial statements in accordance with the IFRS and those preparing consolidated financial statements shall have the obligation to prepare a statement of selected information from these financial statements. These statements will not be part of the financial statements. This provision of the amendment to the Act on Accounting has been in effect since 31 December 2011.

Fines for non-compliance with the Act on Accounting

The penalisation rules relating to non-compliance with the Act on Accounting have changed. Oversight of compliance with the Act will still be performed by the tax authorities; they will, however, only penalise entities for administrative delicts.

Administrative delicts are classified by the seriousness of the breach.

The amount of the penalty is based primarily on the value of assets presented in the balance sheet (i.e. it depends on the size of the entity); the maximum amount of the penalty is, however, limited.

The tax authorities now also take into account whether the entity had notified the tax authority, in writing, before the inspection was initiated, of making a correction recorded in the current accounting period of an error relating to the accounting period under inspection, and of the content and amount involved.

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NEWS IN BRIEF

- An Amendment to the Employment Act was published in the Collection of Laws under No. 1/2012 Coll.
- Amendment to Decree No. 500/2002, on Double Entry Accounting for Entrepreneurs was published in the Collection of Laws under No. 413/2011.
- A Decree on the requirements of forms for filing a petition for registration in the Commercial Register was published under No. 414/2011 Coll.
- A Decree on the documents that an entity taking part in a cross-border transformation has to submit to a notary in order to be issued a certificate for registration in the Commercial Register (No. 415/2011) and a Decree on the documents that a Czech entity taking part in a cross-border transformation has to submit to a notary in order to be issued a certificate for a cross-border transformation (No. 416/2011 Coll.) were published in the Collection of Laws.
- According to a Notice of the Ministry of Labour and Social Affairs No. 435/2011 Coll., the average salary for the 1st to 3rd quarter of 2011 was CZK 23,726. From this amount, the maximum amount of unemployment benefits and the maximum amount of retraining benefits are derived, while it is also used to determine the amount of charges to be paid to the state budget if an entity fails to meet the obligatory share of employees with disabilities in the total number of employees. For 2011, the charge is CZK 59,315.

- The Corporate Criminal Liability Act was published in the Collection of Laws under No. 418/2011 Coll.
- Acts relating to the pension reform, which will come into effect from 2013, were published in the Collection of Laws under No. 426, 427 and 428/2011 Coll.
- Rates of basic compensations for the use of motor vehicles and of meal allowances, and the average prices of fuel for the purpose of providing travel expense compensation were published in Decree No. 429/2011 Coll.
- The Financial Administration Act and amendments to related Acts were published in the Collection of Laws under No. 456 and 457/2011, effective from 2013.
- The Act on Changes to Laws in Connection with the Establishment of a Single Collection Point and Other Changes to Tax and Insurance Laws was published in the Collection of Laws under No. 458/2011 Coll., effective from 2015.
- An Amendment to the Sickness Insurance Act was published in the Collection of Laws under No. 470/2011 Coll.
- Instruction of the General Financial Directorate No. D-7 on the procedure of tax administrators when delivering documents via data boxes was published on the Czech Tax Administration's website.
- A list of coefficients for the calculation of real estate tax valid as at 1 January 2012 was published on the Czech Tax Administration's website.
http://cfs.mfcr.cz/cps/rde/xchg/cfs/xsl/legislativa_metodika_14835.html
- The Czech Tax Administration published on its website an Opinion of the General Financial Directorate on the implications of the VAT reverse charge regime for recipients of subsidies.
- The Czech Social Security Administration announced on its website changes in pension insurance introduced by the amendment to the Sickness Insurance Act:
<http://www.cssz.cz/cz/o-cssz/informace/media/tiskove-zpravy/tiskove-zpravy-2012/zmeny-v-duchodovem-pojisteni-prinasi-novela-zakona-o-nemocenskem-pojisteni.htm>
- The European Commission has announced that explanatory notes on changes to VAT invoicing rules are now available in 21 languages:
http://ec.europa.eu/taxation_customs/taxation/vat/traders/invoicing_rules/index_en.htm
- An outline of changes from 1 January 2012 as part of the social reform has been published on the website of the Ministry of Labour and Social Affairs. <http://www.mpsv.cz/cs/11708>

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.