



Tax&Legal Highlights

Czech Republic

A new crime of obstruction of justice and its impact on submitting means of evidence

With effect from 1 February 2019, a new provision of Section 347a was introduced in the Criminal Code (Act No. 40/2009 Coll., the Criminal Code, as amended) stipulating a crime of obstruction of justice. Its substance is the effort to prevent obstruction of just decisions of a court or another body by proceedings participants supporting their statements by submitting forged or modified evidence.

What does obstruction of justice mean?

The crime of obstruction of justice may be committed in two ways.¹ Our article will only focus on the state of facts in Section 347a (1) of the Criminal Code that is quite controversial for both the professional and general public. This state of facts introduces the punishability of submitting forged or modified evidence as authentic in proceedings before court or an international body of justice or in criminal proceedings.

For committing this crime, perpetrators may be punished by a prison sentence with a term of up to two years. If additional conditions stipulated by the Criminal Code are met, perpetrators may be subject to a stricter sentence with imprisonment of up to ten years.²

Before the crime of obstruction of justice was introduced, only submitting a false expert opinion or public deed was punishable with respect to submitting evidence. From now on, submitting practically any forged or modified means of evidence (both documentary or material) that has a substantial impact on a decision as if it were authentic may be punished. It will be up to the court to decide whether the evidence has a substantial impact on the decision.

At the same time, the perpetrator has to act with the intention to submit forged or modified evidence as authentic. An act of a person submitting forged or modified means of evidence without having any reason to doubt its genuineness and authenticity is thus not relevant in terms of criminal law.

The last legal condition is that such evidence must be submitted as part of court proceedings, in proceedings before an international body of justice or law enforcement authority. The crime of obstruction of justice thus does not relate to submitting forged or modified means of evidence in, for example, administrative or tax proceedings. This brings us to the question of how the courts will interpret a situation in which a plaintiff in court proceedings following immediately after administrative proceedings refers to forged or modified means of evidence submitted in administrative proceedings and filed with an administrative body in order to support the plaintiff's statements. In our opinion, there is a chance that these means of evidence may be understood in the future as being "submitted" by the plaintiff in proceedings before court and the plaintiff may become a perpetrator of the crime of obstruction of justice.

How will this issue be treated in practice?

In our opinion, a crime may be constituted typically in situations in which a plaintiff in proceedings before court intentionally submits a purposive backdated contract in order to simplify supporting legitimacy of the plaintiff's claim raised as part of the legal action. If there is any suspicion that the evidence was forged there is a threat of criminal prosecution of the plaintiff on the grounds of a crime of obstruction of justice. The prosecution may be started, for example, at the initiative of a judge who advances the case to the police or a public prosecutor. In this situation, the court proceedings may be suspended until it is resolved whether forged or modified means of evidence were submitted by the plaintiff. A situation in which court proceedings are extended by months or years may easily occur. There is also a chance that a defendant against whom the plaintiff's claim is raised may use this approach to cause delay in the proceedings.

In addition to the example above, a similar approach may be easily applied to submission of backdated invoices, fictitious acceptance of debts or falsified transport documentation.

Will the introduction of the new crime effect the relation between a client and an attorney at law or a tax advisor?

An attorney at law is bound by the Code of Ethics that prevents him from verifying whether the client's statements are true or complete.³ Attorneys at law are not authorised to ask clients whether a deed (or any other means of evidence) submitted by clients is authentic or forged/modified. Clients thus do not have to worry that attorneys at law will cast doubts on any deeds submitted by their clients.

On the other hand, an attorney at law is a client's representative who in fact submits the evidence. Thus, attorneys at law may ask their clients to sign amendments to agreements on the provision of legal services by which clients will be informed about the possible consequences of submitting forged or modified means of evidence.

The situation of tax advisors may be rather different as the above rule does not apply to tax advisors and the Chamber of Tax Advisers of the Czech Republic does not bind its members to follow any such rule. Although tax advisor's activities will be more typical in administrative and tax rather than court proceedings as stated above, certain circumstances may occur in which the crime of obstruction of justice may be constituted by submitting forged or modified evidence in the pre-trial part of proceedings (administrative or tax proceedings). In the absence of the above-described rule, tax advisors may start reviewing documents submitted by their clients more carefully for prudence reasons.

In our opinion, the most probable consequence of the situation will be that clients will be asked by their attorneys at law or tax advisors to sign a declaration that the evidence provided to the attorneys at law or tax advisors to be submitted is authentic and the client has no doubt of its authenticity. We believe that the preventive measures adopted by attorneys at law or tax advisors will not have (and may not have in issues such as confidentiality) any effect on their relations with clients. Clients thus do not have to worry that their relations with their legal and tax advisors will be substantially altered in the forthcoming future.

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¹ In a simplified explanation, the first way is submitting forged or modified evidence as authentic; the other way is providing, offering and promising benefit in order to commit a crime of false accusation, false testimony or false expert opinion, or false interpreting.
² This will typically include situations in which the crime will be committed on the grounds on certain qualified motives, in connection with the performance of certain qualified activity, as a member of an organised group or if such a member causes damage in a qualified amount.
³ Refer to Section 6 (3) of Resolution of the Board of Directors of the Czech Bar Association No. 1/1997 of the Bulletin dated 31 October 1996 stipulating the rules of professional ethics and the rules of competition of attorneys at law in the Czech Republic (the Code of Ethics).

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Expansion of exemption from real estate acquisition tax

The Chamber of Deputies approved a legal provision amendment that will allow exempting from real estate acquisition tax also the first acquisition of an apartment unit in a detached house against payment, not just in an apartment building.

At present, exemption from real estate acquisition tax applies to the first acquisition against payment of ownership title to the construction of a detached house, to a plot of land or the right to construction including the construction of a detached house, and to a unit including an apartment and a garage, cellar or storeroom used together, which are found in an apartment building.

However, there are an increasing number of cases where apartment units are delimited in detached houses as well. This occurs for various reasons, for example, because certain areas allow only the construction of detached houses. The first acquisition of such an apartment unit against payment is currently not exempt from real estate acquisition tax.

Financial administration vs. taxpayers

Although certain tax administrators have admitted the exemption from tax even for apartment units in detached houses in the past, the Financial Administration objected against such treatment and emphasised that the legislative objective was indeed to exempt only apartment units in apartment buildings, whether to prevent the construction of "horizontal panel buildings" or due to stricter regulation of apartment buildings. However, taxpayers disagreed with this interpretation as they perceived this exemption as a motivational element for the acquisition of a new apartment regardless of whether it was found in a detached house or an apartment building.

Deputies agreed with taxpayers

The Chamber of Deputies has granted the requests of taxpayers who pointed out the discrepancy in the exemption from real estate acquisition tax in the case of a new apartment unit in a detached house, and it approved an amendment to Senate Ordinance No. 340/2013 Coll., on Real Estate Acquisition Tax, within the terms of Act No. 254/2016 Coll. The amendment will also allow the exemption of the first acquisition of an apartment unit in a detached house against payment.

The amendment will come into force on the first day of the calendar month following its publication in the Collection of Laws. The exemption will apply only to apartment units in detached houses acquired after the effective date of the amendment.

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2020 Tax Package Proposal

Shortly after this year's tax package was approved (with effect from 1 April 2019 – detailed information is available here), the Ministry of Finance has prepared a draft bill to amend the following tax legislation with effect from 1 October 2020.

- As we have already informed you, an EU directive has been transposed into the Value Added Tax Act aimed at improving the existing system of intra-Community supply of goods, affecting, inter alia, the rules for supply of goods to another EU member state, the call-off stock regime as well as a special regime for travel services.
- The already-completed transposition of the ATAD Directive into the Income Taxes Act has been extended to include the borrowing costs restriction to be also applicable to private corporation owners as well as the taxation of controlled foreign entities in the case of basic investment funds. These matters are not specifically addressed in the current wording of the Act.
- Introducing the reporting duty of selected cross-border arrangements for intermediaries (advisors) and taxpayers in the Act on International Cooperation in Tax Administration and the Act on Special Court Proceedings.
- A change in the European Union's customs territory has been reflected in the Excise Tax Act; specifically, the Italian municipality of Campione d'Italia and the Italian waters of Lugano Lake were added.

Circulation of the draft bill for external comments is underway, with numerous comments aimed at specifying the forthcoming changes presented by the Chamber of Tax Advisers of the Czech Republic. We will keep you informed on the future developments of the legislative process.

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VAT news in April

The Czech Tax Administration published an overview of most changes introduced by an amendment to the VAT Act. Case C-201/18 Mydibel assessing sale and lease back transactions in terms of VAT may have significant impacts on the lease market in the Czech Republic. In case C-275/18 Milan Vinš, the Court of Justice of the European Union (CJEU) assessed a potential exemption from VAT in the exports of goods. More information is available in the article.

“April” amendment to the VAT Act

In relation to an amendment to the VAT Act effective (with certain exceptions) since 1 April 2019, the Czech Tax Administration (“TA”) published on its website a detailed overview of the majority of relevant changes. Furthermore, the TA drew attention to the fact that the amended VAT Act also updated selected names and descriptions of the items in the form as well as instructions for completing the VAT return (the content and structure of the VAT return remain unaffected). The TA also emphasised that the xml structure of the Local Sales/Purchases Report was going to be updated as well (however, the existing xml structure of the Local Sales/Purchases Report is to be unchanged until 30 September 2019).

Information as to the treatment of vouchers in line with the updated VAT rules is anticipated to be published by the TA in the near future.

Judicature of the Court of Justice of the EU (CJEU)

Case C-201/18 Mydibel assessing sale and lease back transactions in terms of VAT, may have significant impacts on the lease market in the Czech Republic. The CJEU concluded that in general terms, such transactions solely constitute financing rather than a supply of goods and their leaseback to the supplier. At first sight, the case at hand could also affect other lease financing structures; nevertheless, we believe that its effect is relatively limited.

In case C-275/18 Milan Vinš, the CJEU assessed a potential exemption from VAT in the exports of goods. Apparently, not all conditions in Section 66 of the Czech VAT Act applicable to the supply of goods for exports exempt from VAT are in line with the EU’s VAT Directive. The CJEU opines that a failure to comply with the formal requirement for placing goods under the “Exports” customs procedure cannot result in the exporter forfeiting the right to the VAT exemption applicable to exports. It will be sufficient to prove that the goods in question have actually exited the territory of the European Union.

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New Reporting Duty for Tax Payers

The amendment to tax legislation, which is effective from 1 April 2019, introduces a new reporting duty for tax payers. Income that is generally subject to withholding tax in the Czech Republic but is exempt or not subject to taxation in the Czech Republic based on the applicable double taxation treaty will need to be reported to the tax authority.

Payments that exceed CZK 100,000 and that are exempt or not subject to taxation by withholding tax (e.g. dividends, interest, licence fees) will be reported on a monthly basis. If such income is paid off during April 2019, the first report should be filed as early as in May 2019. The Ministry of Finance has already released the relevant form on the financial administration's website. It is also possible to apply for an exemption from the reporting duty with the tax authority for up to 5 years. The application should be submitted to the relevant tax office; however, it has not been specified what reasons will be considered by the tax administrator to be relevant for the exemption of the tax payer from the reporting duty.

We recommend analysing whether your company pays off any income that is subject to the reporting duty and consider taking additional steps in this regard, if relevant.

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