



Tax&Legal Highlights

Czech Republic

Inconspicuous amendments to the Income Tax Act

A brief summary of additional amendments to the Income Tax Act undergoing the legislative process

In our previous issues of the Tax dReport, we focused on the relatively extensive amendment to the Income Tax Act ("ITA") which is expected to introduce substantial changes to international taxation and other fields starting from 2019. We note that the amendment is just at the initial stage of the legislative process, with comments being now dealt with by the Ministry of Finance. We will keep you informed about any further development.

The amendment has rather overshadowed additional amendments to the ITA that are presently being debated in the Chamber of Deputies. Let us provide you with a summary of the proposed changes:

Proposed limitation of the 'basic investment fund' category

The Senate's amendment is part of the debate within the second reading in the Chamber of Deputies. With effect from 1 January 2019, it proposes narrowing the definition of the 'basic investment fund', which is subject to the more favourable five-percent rate treatment.

Restoring the expense charge-off flat rate for sole traders to the original level

Another amendment to the ITA is in the first reading, restoring the limits of expense charge-off flat rates to the level of 2016. Legislators state that the introduced reduction of expense charge-off flat rates has been incorporated to the bill through an amending motion and as such, the impact of the measure has not been assessed sufficiently. The administrative burden related to the registration of sales, local sales and purchases reporting and other governmental measures introduced for minor businesses and sole traders has increased and thus it would be appropriate not to expand administrative requirements in income taxation.

Taxation of financial compensation for the church

The amendment to the Act on Property Settlement with Churches and Religious Institutions (the "Act") comprises a related amendment to the ITA. With effect from 1 January 2019, the amendment proposes narrowing the existing provision on the subject of taxation to the extent that the income from gratuitous acquisition of property, except for financial compensation, under the Act by community service taxpayers is not subject to tax. All financial compensation paid out to churches and religious institutions would thus be subject to tax in the future.

Contacts Details

Lucie Rytířová

Senior Manager

Mobile: + 420 606 165 715

Email: lrytirova@deloitteCE.com

Tereza Tomanová

Manager

Mobile: + 420 731 642 218

Email: tomanova@deloitteCE.com

Defending One's Tax-Related Rights Is Not a Losing Battle

Although in some cases defence against decisions and procedures of the Tax Administration of the Czech Republic may seem to be a lengthy battle with uncertain outcomes, the recent rulings of the Supreme Administrative Court ("SAC") often indicate the opposite. In early 2018, the SAC issued two crucial rulings substantially revising the tax authorities' practice and setting a positive direction towards taxable entities.

Both rulings of the SAC may be considered significant in terms of tax administration as well as positive for taxable entities. These rulings serve as a certain confirmation for taxable entities that bringing cases before the court does not have to be a losing game.

The first ruling (ruling of the SAC no. 5 Afs 60/2017 – 60) was issued in a case in which a company was denied a VAT deduction by the tax administrator due to the company's alleged involvement in a fraudulent scheme. The SAC subsequently cancelled the judgment of the court and the Appellate financial directorate's ruling because it was not clearly demonstrated that the company knew or could have known about its involvement in VAT fraud. The SAC predominantly criticised the purposive assessment of evidence when both

administrative authorities emphasised the evidence counting against the company while disregarding the evidence that was to the company's benefit. The SAC believes that it is always solely the tax administrator's responsibility to demonstrate that the taxable entity knew or could have known about the fraudulent practices concerned. The burden of proof thus cannot be transferred to the taxable entity, nor is it possible to extend incommensurately the requirement for examining the business partners' credibility as indicated by the judgments of the Court of Justice of the European Union and to place inadequate requirements on taxable entities. The SAC also emphasised that taxable entities are unable to examine all potential sub-suppliers involved in a business transaction and thus it is impossible to automatically count against the taxable entity the fraudulent practices of entities other than direct business partners as this would establish liability without fault. On the other hand, the SAC gave a reminder of the rule that the taxable entity should be cautious when suppliers, subject of performance, price or other circumstances raise doubts as to the transaction credibility.

The other ruling (ruling of the SAC no. 5 Afs 78/2017 - 33) relates to the statutory duty to guarantee VAT not paid by the supplier. In the legal dispute in question, the company was invited by the tax administrator to settle as a guarantor the VAT underpayment arising from a debt that was unsuccessfully collected from the supplier as part of enforcement of a judgment by a licensed enforcement agent. The tax administrator believes that a guarantee obligation was established as the respective performance was paid by a VAT payer in a cashless transfer to the supplier's account maintained abroad (Slovakia). Nevertheless, the Regional Court cancelled the tax administrator's decision and this was further confirmed by the SAC. The SAC stated that the tax administrator must bear the burden of proof, demonstrating that the taxable entity knew or could have known about the supplier's intention not to pay VAT. Furthermore, the SAC opines that as such, a cashless payment to a foreign bank account cannot establish a guarantee for the actions of another taxable entity that has failed to pay VAT. Besides, the SAC opines that cross-border payments are not unusual in business relations, complying with the principle of the free movement of capital in the European Economic Area. Nevertheless, the SAC did not agree with the Regional Court's opinion that the legal title of guarantee is contrary to the law of the European Union.

Contacts Details

Alena Dugová

Managing Associate

Mobile: + 420 734 691 493

Email: adugova@deloitteCE.com

The Battle for Professional Secrecy is Over. Or is it...?

The proposed amendment to the Tax Code, about which we have already informed you, was, following heated debates, finally approved by the Chamber of Deputies of the Parliament on 21 March 2018.

The original proposal, which substantially exceeded the requirement of the directive on administrative cooperation in the field of taxation on which it should have been based, was, in the end, adopted in a relatively compromising form.

Provision of New Information to the Tax Administrator

Persons that are obliged to identify and check clients in line with the Act on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism (the "AML Act") will newly be obliged to provide the tax administrator, at its request, with data obtained in identifying and checking the client as well as with documents obtained during the process that contain the information, and with information as to the method through which the information was obtained.

Protection of Professional Secrecy

However, only the General Financial Directorate (ie the central liaison office for international cooperation in tax administration) will be able to request the above stated information and documents from attorneys-at-law, notaries, tax advisors, judicial restraint officers and auditors, and it will only be able to do so for the purposes of international cooperation in tax administration. Said professionals will be obliged to provide the information under the same conditions and restrictions as in providing information to the Financial Analytical Office under the AML Act. In so doing, attorneys-at-law and notaries will, to a substantial degree, communicate through relevant professional chambers.

According to the transitory provision, the new obligation will additionally only apply to information that the above stated professionals obtained subsequent to its effective date. The amendment is proposed to come into effect on the day that the act is promulgated in the Collection of Laws.

The transitory provision does not apply to persons liable under the AML Act that do not carry out one of the above stated professions, and the tax administrator will be allowed to contact them with a request for information at any time subject to the condition that the information is necessary for tax administration and that it cannot be obtained from the register maintained by the tax administrator or another public authority.

Breaking Banking Secrecy Restrictions

The amendment also extends the range of information that the tax administrator may request about clients of financial institutions or payment services providers.

The tax administrator will newly have the power to request details about unique identifiers connected with accounts, persons with the account handling authorisation, persons that deposited funds in the account, payment recipients, custody and leases of safety boxes.

The range of information that the tax administrator will be allowed to request from banks and other payment services providers no longer includes information about e-banking (eg the IP address or the phone number of the device used).

In justified cases and subject to statutory conditions being met, public authorities other than tax administration bodies that the law designates as tax administrators will also be able to request information.

More details about the changes will be provided in our upcoming [webcast](#).

Contacts Details

Hana Erbsová

Legal-Senior Associate

Mobile: + 420 739 525 422

Email: herbsova@deloitteCE.com

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee ("DTTL"), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as "Deloitte Global") does not provide services to clients. Please see www.deloitte.com/about to learn more about our global network of member firms.

Deloitte provides audit, consulting, financial advisory, risk advisory, tax and related services to public and private clients spanning multiple industries. Deloitte serves four out of five Fortune Global 500® companies through a globally connected network of member firms in more than 150 countries and territories bringing world-class capabilities, insights, and high-quality service to address clients' most complex business challenges. To learn more about how Deloitte's approximately 245,000 professionals make an impact that matters, please connect with us on [Facebook](#), [LinkedIn](#), or [Twitter](#).

Deloitte Central Europe is a regional organization of entities organized under the umbrella of Deloitte Central Europe Holdings Limited, the member firm in Central Europe of Deloitte Touche Tohmatsu Limited. Services are provided by the subsidiaries and affiliates of Deloitte Central Europe Holdings Limited, which are separate and independent legal entities.

The subsidiaries and affiliates of Deloitte Central Europe Holdings Limited are among the region's leading professional services firms, providing services through nearly 6,000 people in 44 offices in 18 countries.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the "Deloitte Network") is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this communication.

© 2018. For information, contact Deloitte Central Europe