

# Tax, Legal & Business News

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Tax, legal, accounting, advisory and assurance newsletter

December 2011

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## Theme of the month

### New regulation of cross-border mergers

The amendment of the Transformation Act brings a number of important administrative and factual simplifications of a company's transformation process, including e.g. the possibility to also determine the decisive date in the future, the introduction of the possibility of cross-border relocation of a company's seat or the simplification of compulsory publication in Commercial Journal.

This new legal regulation introduces big competitive advantages compared to less flexible legal regulations in other EU member states.

The current wording of the law specifically regulates only cross-border mergers of capital companies. Other forms of cross-border mergers are not regulated by the law and, even if these are not forbidden by the law, they are not used in practice. The amendment of the Act introduces the cross-border splitting of a company, cross-border transfer of assets to a partner and the relocation of

a company's seat from one country of the EU to the Czech Republic and vice versa. In the case of the relocation of a Czech company's seat to another EU member state, the company is not now dissolved in the Czech Republic. The amendment will become effective on 1 January 2012.

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*"The amendment markedly simplifies the transformation process and provides businesses with more decision-making flexibility."*

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## Tax

### What a sheep will not eat, the Tax Office will

The beginning of next year will bring an increase in tax from land with paved areas. The amendment of the Real Estate Tax Act which will become effective and will introduce a new concept of paved areas of land. The tax rate of affected land will thus increase by 500% to 2 500%.

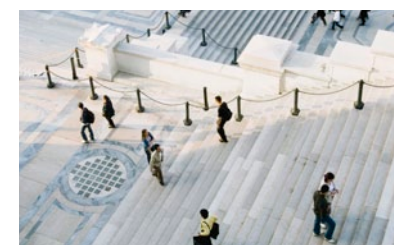
To assess whether the land will be taxed more, it is critical to know how it is recorded in the land register and whether the surface is reinforced by construction under the Building Act. Therefore, if you are a happy owner of, e.g. a parking lot, stopping area, cobble courtyard, etc. it is possible that you will be expected to submit a (partial) tax return for real estate tax, no later than 31 January 2012.

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### The VAT rate will be increased to 14% starting 2012

On 22 November 2011, the President of the Czech Republic signed the amendment of the VAT Act which will increase the reduced VAT rate from 10% to 14% starting 1 January 2012. The amendment further expects the unification of the standard and reduced VAT rate at 17.5% starting 1 January 2013. We discussed these changes in detail in our November issue of [VAT Flash](#).

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If you are interested in receiving Tax & Business News, please contact [Petra Chloubová](#), +420 251 151 837.

## Tax

### The amendment of the Transformation Act also contains income tax regulations

The approved amendment of the Transformation Act also regulates the deadlines for submitting an income tax return. The reason is the greater flexibility in determining the decisive transformation date which can follow the processing date of the merger project.

Tax losses, provisions, reserves and other deductible items of the company being dissolved can now also be taken over if these assets and liabilities are part of the foreign fixed establishment of the succession company. This legal regulation aims at supporting the inflow of foreign investment into the Czech Republic where the company establishes its seat in the Czech Republic and maintains branches in other EU member states.

In reaction to discussions by experts, the law again specifically confirms that the tax relevant write-off of a claim can also be made, among others, in all cases where provisions can be made in respect of a written-off claim.

### European Court of Justice: Sale of debts is not always subject to VAT

The company GFKL Financial Services AG (GFKL) purchased a portfolio of defaulted debts from a bank for a price lower than their nominal value. All rights and risks related to the portfolio of debts thus passed to GFKL (C-93/10). The European Court of Justice (ECJ) decided that the purchase of a portfolio of risky debts for a price lower than their nominal value does not represent, for VAT purposes, either the provision of services or supplying of goods. This is true provided the difference between the nominal value of the listed debts and their purchase price reflects their actual market value.

The ECJ already issued a judgement regarding the purchase of debts (in case MKG, C-305/01). According to this judgement, taxable services are provided when debts are purchased in the event that the difference between the nominal value and the purchase price of transferred debts represents a remuneration related to factoring and assuming the risk of the debtors' default.

If you trade with debts, we would be pleased to assist you in reviewing your transactions from a VAT point of view.

### The amendment of Commercial Code is finalised

The amendment of the Commercial Code effective 1 January 2012 passed through legislative process. The amendment brings mainly the following changes:

- Concerning the registered seat - a businessman is liable to have a legal reason for its use (e.g. rent contract) during the whole period this seat is registered in the Commercial register.
- In the event of missing valuation according to Art. 196a, the good faith of the next acquirer of such assets is protected. This acquirer becomes the owner of the object even if the preceding transaction was absolutely invalid as it was inconsistency with the law.
- Now, it is possible to entrust a person who works for the company in an employment relationship with management of the company. This is in reaction to a recent judgement that qualified as absolutely invalid an employment contract that stated management of the company as a type of the work.
- It is now possible to waive the right to compensation or to limit this right in advance. So far such a limitation was absolutely invalid.

### From new judgments: Business trip costs and claiming un-assessed losses

In its recent judgement the Supreme Administrative Court ("SAC") confirmed that the burden of evidence regarding evidence of business trip costs rests on the side of tax subject. In the event that the log book shows inconsistencies or contradictions, it is the liability of the tax payer to submit evidence to placate the doubts of the tax inspector. The missing documentation cannot be replaced by e.g. affirmation of the customer that was allegedly visited by the tax payer within his business trip. The court further did not agree with the objection according to which the tax administrator should have decreased the tax base by the income that the tax payer could not have reached without expending the expenses for realised business trips. According to the court, the core of the dispute is not the declared income but a question of whether the tax payer expended the declared expenses within his business trips. The aforementioned judgement unequivocally confirms that for the business trip to be tax deductible it is not enough to prove that the business trip took place, the tax payer must also be able to document what the concern of the business trip was and how it was related to achieving, securing and maintaining the taxable income of the tax payer.

In another judgement, the SAC dismissed the claim against the decision

of tax administrator concerning the impossibility of claiming a tax loss from previous years. The court confirmed that tax losses from previous taxable periods can be claimed only in the case that such tax losses were assessed by the tax administrator. It is not enough that the tax loss was stated by the tax payer in the tax return, the tax administrator must subsequently also assess the reported tax loss. According to the court, the proceedings about each tax liability (loss) are led for each taxable period separately. Therefore, it is not possible to merge the proceedings about the assessment of loss with the proceedings that relate to the following taxable period in which such losses should be claimed. With regard to this judgement, it is recommended that if a tax loss is declared in the tax return, then a request for assessment of the declared tax loss be appended to the tax return and the tax administrator be asked to send the information on the assessment back to the tax payer.

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## Accounting

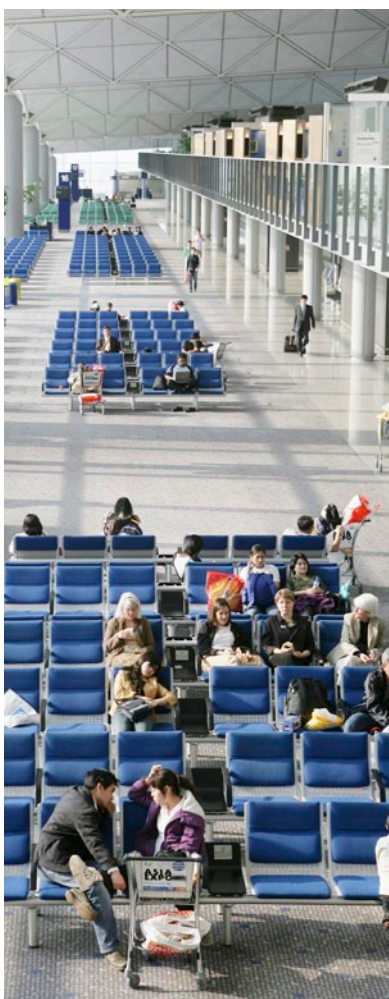
### Transformation Act provides new definition of the decisive date

The new Transformation Act takes effect on 1 January 2012 and introduces new definitions of “valuation date”, “decisive date” and “registration date”. The valuation date is the day that is used to determine the value of assets and liabilities in the case that the registered share capital of the new entity is changed. The decisive date is the date on which the share exchange ratio between the “sellers” and “acquirers” is established. The registration date is the day the business conversion is registered in the Business Register.

The “decisive date” must be between the “valuation date” and the “registration date”. However, compared to the current practice, general meetings can decide to put this into the future rather than the past. Such a decision, although legally possible, would create significant challenges to the process. The sworn expert would need to establish the fair share exchange ratio as at a future date and he would need to assess the future development of the companies involved. For IFRS users, it is clear that, in order to follow IFRS 3 requirements, the companies involved in the business conversion would need to agree on the “decisive date” at the same time when control passes from the original to the new controlling party in order to allow for the consistent application of IFRS 3.

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## Employees

### Important deadlines concerning health insurance extended

The time limit within which the employee is entitled to a refund of overpaid premiums for health insurance is extended to ten years starting 1 December 2011. The overpayment arises, for example, for an employee who works for more employers in one year and whose paid insurance premiums exceed maximum limit. At the same time, however, the time limit for the prescription of unpaid premiums and its enforcement is extended from five to ten years. The periods of limitation for health insurance are thus unified with the periods of limitation for social security. The five-year time limit is still valid for unpaid premiums that arose before the effectiveness of the amendment.

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### Can we use the chance to change?

Only a few months after the amendment of the so-called Aliens Act a revolutionary intervention is being prepared. The Ministry of the Interior together with the professional public (including specialists from PwC) met again around one table with the aim to outline a completely new direction for Czech immigration policy in the future. The proposal should simplify some procedures (e.g. the liability to

report the place of residence or proof of accommodation) which are at the moment identified as bureaucratic and excessively time consuming.

This initial phase of the dialogue about the future direction of immigration policy is considered by PwC to be a great chance to draw attention to the practical problems and, at the same time, set up simpler rules that would be appreciated both by foreign nationals and multinational companies employing them. How immigration procedures are set up is often an important factor deciding the investments that are made in the particular country.

Overall, however, the new immigration policy proposal does not so far fully exploit the opportunity to create a Czech economy that will be attractive for foreign investment and open towards employees that are in short supply on the market. PwC continues to contribute to the discussion in such a way that ensures that the interests of the state and private sector are as balanced as possible. It is expected that the new Alien Act will take effect in 2015.

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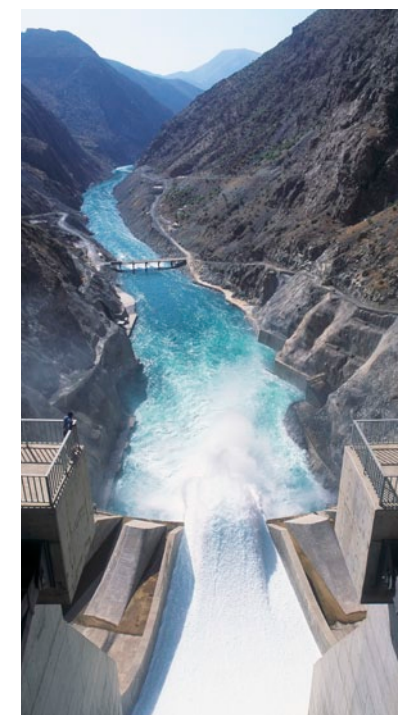


**“Contribute into this discussion with your opinion and help create better conditions**

**for foreign nationals in the Czech Republic!”**

**Jana Zelová**

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## Study

# Tax systems all over the world subject to reforms

The PwC and World Bank study **Paying Taxes** again showed that the reforms of tax systems all over the world continue and that improvement of tax systems is an important agenda item of governments.

### What are the key findings in the EU?

- The Czech Republic is one of 4 EU countries that have currently simplified paying of taxes.
- The EU has, in comparison with the world, lower average values regarding three key indicators – the average tax rate in the EU is 43.4% (world 44.8%), fulfilling the tax obligations takes 207 hours (world 277 hours) and on average the tax subject must make 17 different payments (world 28.5).
- Taxation of employment and social security contributions represent the biggest portion of the tax burden which is 65% from total tax burden (world 36%).
- Many EU countries have complicated system for the taxation of employment and social security contributions which further increases induced costs of the tax subjects.
- To fulfil tax obligations regarding VAT it will take from 24 hours in Finland and Luxembourg to 195 hours in Bulgaria, the reason is mainly the different approaches of the various tax administrators.



**“The rating of the Czech Republic has improved slightly thanks to existing reform**

**efforts of the government. The overall 117 position is, however, not a place where we would like to see our tax system. The study shows how important it is for the tax system to be simplified to successfully initiate the so-called One collecting point. But even after that, there will still be a number of improvements to make. For example, submission of tax returns via the internet.”**

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More information, including results of particular countries, is available at [www.pwc.com/payingtaxes](http://www.pwc.com/payingtaxes).

## We invite you

# Lead an expedition of HUDYsport top managers to Mount Everest and become a certified project manager!

The course is addressed to individuals who need to strengthen their project management skill sets, refresh their fundamental project management knowledge, skills and current tools and for those who are new to project management.

### Seminar content:

Through a two-day simulated case study, you manage a comprehensive project from beginning to end - you learn how to successfully plan, manage and deliver projects. You use real-world tools and templates to actively present plans, control progress and close the project.

The course will be in the Czech language. At the end of the course you will receive a PwC certificate.

### Date and venue:

Date: 29 – 30 March 2012  
Time: 9:00 - 16:30  
Venue: PwC Česká republika, Kateřinská 40, Praha 2

### Registration :

For more information and for registration, please contact  
Martina Kopsová, tel.: +420 251 151 816,  
or write to us at [the.academy@cz.pwc.com](mailto:the.academy@cz.pwc.com)

We organise technical seminars, trainings and conferences for our clients and business partners and we would be pleased to welcome you to any of these. At the moment we are preparing:

- VAT yesterday, today and in 2012
- Ups and downs of transfer pricing

More at [www.pwc.cz/events](http://www.pwc.cz/events)

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