

Tax, Legal & Business News

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Tax, legal, accounting, advisory and assurance newsletter

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Topic of the month

What 2014 can give us (and take from us)

An extensive amendment to the tax laws is being prepared in connection with the new Civil Code effective from 2014. Hundreds of comments have been made to the proposal of the amendment within the external comment procedure. Only a minimum of comments to the amendment of the Income Taxes Act have been accepted by the Ministry of Finance (MF). On the other hand, it is gratifying that the majority of the comments to the Tax Administration Act have been accepted by the MF. Therefore, the proposal does not include the introduction of a CZK 0.5 million penalty or a decrease in the penal interest for the tax administrator, among other things.

The amendment was discussed at the extraordinary meeting of the Legislative Council of the government on 2 April 2013 and should be submitted at the government meeting soon. Based on the latest information, it should be clear by the end of November whether the amendment will be approved and in which form. So this time, final approval should not be the usual belated Christmas gift!

We have selected some of the more important changes for you:

Terminology

The Civil Code is full of new terms that will be reflected in the tax laws. The amendment responds to the archaic terminology of the Civil Code.

Inheritance and gift tax

The inheritance and gift tax will no longer be regulated in separate acts. The taxation will take place within the income tax. The good news is that all arising from inheritance will be exempt from tax without exception. However, the inheritance will be acquired only after the end of the inheritance proceedings from the tax perspective. For donations, the income will be exempt approximately to the same extent as in the past.

Funds

- The Civil Code is introducing into the Czech environment the concept of a trust fund, which is similar to a foreign trust or a trust management agreement. The income from the trust fund or the allocation of assets to the fund should be exempt from tax. The fund will be taxed as a company – at the present 19% rate.

- The income of other funds (e.g. investment funds) should be subject to a 0% rate. Provided the trust fund qualifies (based on its portfolio compilation) as a basic investment fund, the zero tax rate applies to it as well. Unfortunately, for legal entities, dividend payments from these funds should be subject to withholding tax at the rate of 19% instead of the current 15% or 0% rate. Today's (lower) rate of withholding tax is retained for the payment of the profits generated before the effective date of the amendment, i.e. for profits generated until 31 December 2013.

Exemption of dividends, research and development

- Other dividend payments between domestic taxpayers and taxpayers of the EU countries, Switzerland, Norway and Iceland should be subject to exemptions, both for legal entities and individuals.
- The state decided to further increase support for research and development by extending the deduction even for the acquisition of research and development results from research organisations, with the possibility to increase the deduction in annual increments.

Personal income tax

- The extension of the time test for the exemption of income from the sale of securities from six months to three years is an unpleasant change, as is the introduction of an annual CZK 100,000 limit for the exemption of income from the sale of securities that are not included in business assets.

- The limit for the exemption of income from occasional activities will be increased from CZK 20,000 to CZK 30,000 in one year.

- For monthly income arising on the basis of an agreement to complete a job, the limit for the application of withholding tax according to a special rate has been increased from CZK 5,000 to CZK 10,000, provided the taxpayer has not signed the declaration for the tax.

- The annual tax credit for placing a child into a preschool child care institution in the amount of the expenditure proven to

be incurred for attending the preschool, up to the amount of the minimum wage, for each placed child.

- The maximum limit for the deduction of gifts for publicly beneficial purposes has been increased to 15% for individuals.
- Deductible items can be claimed from the tax base for non-residents only if the sum of income from sources in the Czech Republic is at least 90% of worldwide income and the non-resident is a resident of the EU, Norway or Iceland. The amount of income from abroad will be demonstrated by a confirmation from the foreign tax administrator on a form issued by the MF.

Tax Administration Act

- Extension of the time limit for the determination of tax in case of an international request

- New regulation of tax mailboxes
- Changes in tax execution

Value added tax

The new Civil Code will mainly bring new terminology in respect of value added tax. However, given the fact that the terms used in the VAT Act always need to be interpreted in line with the EU legislation and the decisions of the European Court of Justice, the impact of the proposed changes in VAT should be minimal.

Zenon Folwarczny
+420 251 152 580



If you are interested in receiving Tax, Legal & Business News, please contact [Jan Keprta](mailto:Jan.Keprta@cz.pwc.com), jan.keprta@cz.pwc.com.

Tax

The tax administration will enable bulk online verification of unreliable taxpayer status and bank account numbers that were made public

On 8 March 2013, the tax administration of the Czech Republic published the technical parameters of a web service that will enable the processing of a higher number of taxpayer requests. This step is a reaction to the legal obligation of a VAT payer's guarantee when receiving a supply from an unreliable taxpayer or when paying for taxable supply to a taxpayer's bank account that is different from the one that was made public. Thus, taxpayers have less than three weeks to adapt their companies' ERP systems. More technical details can be found under technical support of the tax portal applications website [here](#).

Martin Diviš

+420 251 152 574

How is the implementation of FATCA proceeding?

The Czech financial institutions which are affected by the new American legislation FATCA should primarily follow the wording of the

bilateral agreement which the Czech government plans to conclude with the USA.

According to the resolution of the Czech government, this bilateral agreement will correspond to the standard model I of bilateral agreements (the USA has already concluded bilateral agreements according to this model with the United Kingdom, Denmark and Ireland, among others).

One part of the bilateral agreements concluded according to model I is annex II, which specifies the list of entities that are not required to report information and the list of exempted products. This will apply to exempt institutions, the financial institutions that already comply with FATCA requirements and to exempted products.

The Ministry of Finance asked the financial institutions to apply for their inclusion or the inclusion of selected products into annex II of this draft bilateral agreement on 8 February 2013. The original deadline for submission of these applications (11 March 2013) has been prolonged until 5 April 2013. The received applications will then be reflected by the Czech party within the conclusion of the particular wording of annex II.

Vincent Santamaria

+420 251 152 071

Karel Herbst

+420 251 152 599

Law

The end of bearer stocks is approaching

In the context of the government's fight against corruption, anonymous paper bearer stocks should practically disappear by 1 January 2014. After a third reading, the deputies approved a draft act which aims to minimise the existence of non-transparent joint stock companies with unclear structures.

The draft act follows the new regulations of the Civil Code and takes into consideration both the concepts of the Act on Business Corporations and the amendment to the current Commercial Code, the Act on Securities and the Act on Capital Markets Business.

If the law is approved, the owners of the paper bearer stocks will be obliged to register on the list of shareholders by 30 June 2014 in addition to taking the respective formal steps (presenting their stocks to imprint the necessary data or exchanging the stocks for new ones). Until now, the list was maintained only for registered stocks. If the owners fail to register, they will be restricted in the exercise of shareholders' rights.

Czech joint stock companies will thus face the decision on whether and how to change their structure. The law and other legal sources offer several options. If the companies are interested in retaining bearer stocks, they will have the possibility to register the stocks with the Central depository or to physically place them in a banking institution.

Registering with the Central depository should undoubtedly be the most transparent way due to the fact that the name of the owner of each stock will be freely searchable in the unified system of the depository. On the other hand, placing the stocks in a bank will be more considerate of protecting the owners' identity. Under this option, the stocks will only be available to the police of the Czech Republic and, in relevant cases, to investigative, prosecuting and adjudicating bodies.

Companies that will not choose any of the above options will be considered for a fictive transfer of the stocks into registered stocks.

Despite these steps, the regulation of foreign companies operating in the territory of the Czech Republic still remains the greatest challenge for the legislators. The draft act is intended only for Czech companies; foreign companies are not affected in any way. As a result, Czech companies that want to preserve the anonymity of their shareholders will be able to simply establish a company abroad. Anonymous shares will then be issued according to the law of the country where the company is located, and Czech legislation does not apply to them.

Barbora Masařová

+420 731 648 572

Nad'a Pračková

+420 775 430 345

Accounting

How to correctly account for own bonds

Last year was marked by a series of bond issues, often with the aim of taking advantage of favourable tax treatment. In many cases, however, issuers failed to place the whole issue on the market, so at the end of the year the bonds were temporarily included in the assets of the issuer or located within the consolidated entity. In this context, we would like to point out some of the specifics which the accounting unit will apply in its own financial statements and the consolidation unit will apply when buying own bonds issued by any of its members.

The issuer must not value the securities at fair value pursuant to Section 27 of the Act on Accounting. Decree No. 500/2002 Coll. requires the value of own bonds to be deducted from the value of the issuance on the passive side of the balance sheet. But neither any decree nor the Czech Accounting Standards (CAS) for entrepreneurs contains detailed provisions on the accounting for own bonds. So let's get inspired by CAS 108.18 for financial institutions, which actually does provide adequate instructions. The basic principle must be to maintain the same valuation of the account payable from the issue of a bond and the acquired own bond in the balance sheet because nothing is owed to anybody

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Accounting

from own bonds, i.e. there is no payable or receivable. Therefore, it is necessary to post any difference between the purchase price and the valuation of the payable from the issuance on the profit and loss account when buying back the own bond. On the other hand, the difference between the valuation of the payable and the selling price of the own bond upon its subsequent sale must be taken into account at the increased value, not directly recorded into the profit and loss account.

Petr Kříž

+420 251 152 045

Employees

Employment in Russia will be included in the calculation of pensions

The period of employment in Russia will now be taken into account when applying for a pension. Even the period of employment before the validity of the treaty on social security will be taken into account. The treaty has been signed by the presidents of both countries, and now we are only waiting for the exchange of ratification instruments. Employees will further be entitled to a proportion of the pension from

Employees

Russia if they fulfil the conditions of the Russian legislation.

On the other hand, the period of employment in Russia is still not taken into account when calculating the Czech pension. So some employees may be missing this time in the total time required for entitlement to a pension if they did not pay contributions to voluntary pension insurance.

Tomáš Hunal

+420 251 152 516

Czech immigration policy is changing

New legislation relating to the employment and residence of foreign nationals in the Czech Republic should change the existing principles, mechanisms and instruments in the area of immigration policy. It should be valid from January 2014.

The discussion over the wording of the new Acts on Employment and Residence of Aliens is currently ongoing. Please contact us in case the topic of foreign nationals' employment is important for your business so that you can also get involved in the discussion on this legislation.

Jana Zelová

+420 251 152 567

Study

Losses caused by recent hacker attacks did not exceed CZK 10 million.

The Czech Republic became the target of a hacker attack in early March. The attack was conducted against web servers, banks and telecommunication operators. PwC Czech Republic issued a study estimating that companies' losses related to the attacks did not exceed CZK 10 million and internal company costs to combat hackers did not exceed CZK 1 million.

The hacker attacks, which resulted in the unavailability of some internet services, do not represent a significant risk for data that are collected by banks or telecommunication operators about their clients if these institutions have dealt properly with the risks associated with data loss in the past.

Nevertheless, some Czech companies plan to boost expenditure to protect against any future hacker attacks, even those that have so far avoided attacks. The aim of the investment is to strengthen the infrastructure. PwC, however, sees its effects as being very doubtful.

It's a similar situation with the unequal arms race – the investments largely outweigh the costs. In other words, the investments in infrastructure add up to tens of millions of Czech crowns, whereas the costs associated with hacker attacks amount to just thousands of Czech crowns.

While the recent hacker attacks on web servers enjoyed great interest from the media, the daily efforts of hackers to get hold of data take place in utter silence. These attacks originate in China and Russia and target America and Western Europe, and occasionally also companies in the Czech Republic.

Czech companies, however, still have significant weaknesses in the area of data security. Among other things, their IT services are often provided by a supplier that fails to demonstrate compliance with the basic safety and control mechanisms. Companies should also check that their recovery business plans and business processes after a power failure or crash adequately respond to today's potential risks.

Tomáš Kuča

+420 251 152 054



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We invite you

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**Contact****Jiří Moser**

Country Managing Partner
PwC ČR
+420 251 152 048

Peter Chrenko

Lead Tax & Legal Services Partner
+420 251 152 600

Věra Výtvarová

Lead Assurance Services Partner
+420 251 152 099

Miroslav Bratrych

PwC Advisory Partner
+420 251 152 084

Daniel Čekal

PwC Legal Partner
Legal Services
+420 251 152 900

Prague Office

Hvězdova 2c, 140 00 Prague 4
+420 251 151 111

Brno Office

náměstí Svobody 20,
602 00 Brno
+420 542 520 111

Ostrava Office

Zámecká 20, 702 00 Ostrava
+420 595 137 111

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