

Tax & Business News

Tax, accounting, advisory and assurance newsletter

01|2009

If you are interested in receiving Tax & Business News, please contact Markéta Veberová, marketa.veberova@cz.pwc.com, +420 251 151 835.



Dear business partners,

Welcome to the first issue of Tax&Business News for 2009. We are once again bringing you updates and news from the area of tax, accounting and financial advisory. Currently, two recent decisions by the Constitutional Court are at the forefront of tax news. These decisions are creating much discussion regarding the conditions that must exist prior to the initiation of a tax inspection. At the same time, there is a lively discussion about the legitimacy of state intervention into the economy and about the extent of regulation and control in the context of the global economic crisis. Regulation and control is often seen as a barrier to doing business, though it is important to realize that ineffective regulation and control is considered as one of the major catalysts that lead to the current economic crisis. I hope you enjoy reading this edition!

Yours sincerely
Paul Stewart

Leading partner for Tax and Legal Services, PricewaterhouseCoopers Česká republika, s.r.o.

Remarkable decisions of the Czech Constitutional Court referring to tax regulations

We would like to draw your attention to two important decisions of the Czech Constitutional court published at the end of December 2008. These decisions represent a significant change in the interpretation of legal provisions related to tax assessment and tax audit.

Time-limit for tax assessment

According to the first ruling, the Constitutional Court abolished the generally accepted interpretation of the computation method for time-limits for tax assessments, i.e., that the 3-year time limit for the tax assessment starts to run from the end of the year in which the procedural obligation to file the tax return arose (e.g., from the end of 2008 for the corporate income tax period of 2007). According to the Constitutional Court, this method should be considered unconstitutional. The Constitutional Court holds the opinion that the commencement of the time limit should be derived from the end of the taxable period, in which the tax obligation arose (e.g., from the end of 2007 for the corporate income tax period of 2007).

The practical impact of the decision can be demonstrated by the following example of the 2005 corporate income tax liability of a company whose tax return is being prepared by the tax advisor.

The computation method of the time-limit for the 2005 tax period for the corporate income tax liability prior to release of the respective court decision:

2005 corporate income tax liability	
Deadline for filing the tax return	30. 6. 2006
The time-limit for tax assessment starts from	31. 12. 2006
The time-limit for tax assessment ends on	31. 12. 2009

Computation of the time-limit for the 2005 tax period for the corporate income tax liability after release of the respective court decision:

2005 corporate income tax liability	
Deadline for filing the tax return	30. 6. 2006
The time-limit for tax assessment starts from	31. 12. 2005
The time-limit for tax assessment ends on	31. 12. 2008

All companies or individuals, for which the Tax Authorities commenced a corporate income tax audit in the last (fourth) year of the time-limit for the assessment, can be affected by this decision.

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The proper commencement of a tax audit

The Constitutional Court further ruled that it is not possible to commence a tax audit without suspecting tax avoidance and without informing a tax payer about specific grounds for this suspicion (preferably in the document called Protocol on commencement of the tax audit). The Constitutional Court hereby refuted the common practise that the Tax Authorities can pick the tax subjects for tax audit more or less at random.

Additionally, tax assessed on the basis of a tax audit without this type of reasoning should be considered unlawful.

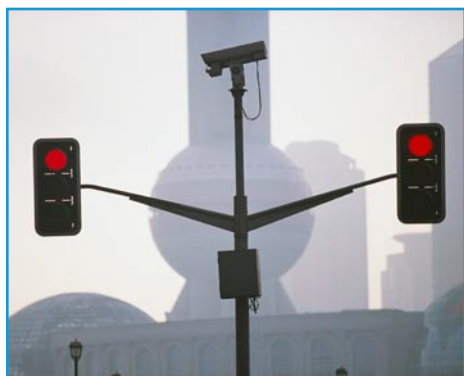
Impact

Did the Tax Office perform a tax audit at your company in the past? Was there additional tax assessed based on the tax audit? We would be happy to assist you with the analysis as to whether these decisions are relevant for you and how you can benefit from them.

Please contact Radek Buršík to discuss your case in more detail.

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The Agreement on Social Security between the CR and the USA entered into force

After years of on-going negotiations, the Agreement on Social Security between the Czech Republic and the USA took effect on 1 January 2009. The Agreement:

- guaranteed cumulation of periods of coverage
- eliminates social security contribution double payments
- leads to the obligation to pay Czech social security insurance contributions for some employers that had not previously been required to do so

Those employees working in the Czech Republic based on a contract concluded with an employer seated in the USA were, in accordance with the Czech Act on Sickness Insurance, in some cases exempt from the group of persons covered by the law and therefore were not obliged to contribute to the Czech social security system. From 1 January 2009, when the Agreement entered into force, this exemption cannot be applied to employees of US companies. Therefore, we recommend, in the case of employees of US companies working in the Czech Republic, reviewing whether they now have an obligation to pay Czech social security insurance contributions.

The Agreement applies to all persons, who are or have been subject to the social security laws of one or both contracting states, irrespective of the nationality of these persons.

The Agreement guarantees the cumulation of periods of coverage acquired in the Czech Republic and in the USA. In other words, the period of coverage acquired in one state will also be considered to determine eligibility for pension benefits in the second state. Based on the Agreement, it will be possible to apply for a US pension benefit in the Czech Republic through the Czech Social Security Administration and similarly to apply for a Czech pension benefit through the respective US authorities (U.S. Social Security Administration). The Agreement further allows payment of benefits to the second state.

The objective of the Agreement is also to eliminate situations where social security contributions are paid from one activity in both countries. Therefore, the Agreement stipulates that the employee (or a self-employed person) shall be subject to the social security law of the country where this person works. However, the basic rule does not apply to some categories of persons — such as employees on secondment (i.e. persons employed in the territory of one contracting state by an employer having a place of business in this state, who are temporarily sent by their employer to perform work for that employer in the territory of the other contracting state). Such employees shall be subject to the social security laws of the first state (i.e. social security laws of the state where their employer is seated) provided that the period of secondment does not exceed 5 years.

An example of a secondment is an employee seconded to perform work in the territory of the Czech Republic for his US employer. If the period of the assignment does not exceed 5 years, the employee will be subject to US social security laws and will not be obliged to pay Czech social security contributions. Participation in the US social security system shall be proved by a certificate of coverage issued by the US authorities.

The Agreement does not cover the area of health insurance. Therefore, it may occur that the same employee will not be obliged to pay Czech social security contributions, however, at the same time, will be obliged to pay Czech health insurance contributions.

Do you need to find out whether your employees are now obliged to pay Czech social security insurance contributions? For further information, please contact:

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Insurance overpayment – procedure for the year 2009

2008 is the first year when an employee's overpayment on social security and health insurance contributions can arise in the case that the employee's income exceeds the maximum assessment base which is 1 034 880,- CZK for 2008.

This situation can, for example, occur when the employee is employed at the same time by multiple employers during the calendar year or in the case that the employee changes an employer during the year.

The overpayment is the insurance premium paid from the sum of the assessment bases (total income) from all employment, which exceeds the maximum assessment base.

The overpayment will be refunded by the social security and health insurance office based on a written application which has to be accompanied by the Confirmation of the amounts of the social security and health insurance assessment base. The employer is liable to issue this confirmation within 8 days after applying. The deadline for an employee to claim the overpayment refund is 5 years after the end of a calendar year during which the overpayment arose.

In order to receive a refund arising from health insurance overpayment, it is necessary to complete the prescribed application form. On the other hand, in the case of the Social security Office, the Application form to claim the refund

Would you like to discuss the impact of maximum assessment base enforcement for insurance payments? For help on how to prescribe an application form for the refund on social security and health insurance contributions or other related questions, please contact:

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Last chance to be exempted from the Real Estate Tax!

Per the tax reform, the Real Estate Tax Act has been changed.

The amended Real Estate Tax Act no longer allows tax exemption on new buildings and flats. These were up to the present time exempt for 15 years starting the year when the house inspection approval was granted or the property was qualified for usage. A transitional rule allows exemption of the above-mentioned buildings for the last time in the year 2009. This calendar year is thus the last year when you will be able to take advantage of the tax exemption of new buildings.

I For more information about changes in real estate tax exemption or for assistance with a real estate tax return, please contact:

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New Rates for Travel

The Ministry of Finance CR issued a new regulation on daily meal allowances for foreign business trips for 2009.

There are over 70 changes as compared to the year 2008, mainly regarding daily meal allowances when travelling to African, Asian and Latin American Countries. One of the most significant differences is the integration of a number of states, for which daily meal allowances will be paid in Euros and not in Dollars. The new rate of EUR 30 as a daily meal allowance is also valid for Slovakia.

Through its regulation, the Ministry of Labour and Social Affairs adjusted the daily meal allowances for domestic business trips and also the basic rates of compensation for using personal cars. From 1 January, the daily meal allowances for domestic business trips will be increased by amount varying from CZK 2 to CZK 7 for various durations as compared with the present status. This change also influences the limit for the tax deductibility of subsistence benefits for meals provided by a third party (e.g. luncheon vouchers).

From 1 January 2009, the basic rate of compensation for using personal cars is reduced to CZK 3.9 per kilometre of a journey which is CZK 0.2 less than in 2008.

I Is your company also affected by changes in basic rates related to business trips? For more information about this area, please contact:

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New obligation for VAT registration for municipalities and other municipal bodies

An amendment to the VAT Act went into effect on 1 January 2009. This amendment, among other things, introduces a change in how municipalities and other bodies governed by public law (a new definition of bodies governed by public law is also included in the amendment) ought to calculate turnover for VAT registration purposes. This issue of VAT registration will be completely new to many small and medium sized municipalities. With this in mind, on 22 January 2009, the Czech Ministry of Finance issued "Information on how VAT should be applied by municipalities".

Although the main objective of the Information is to introduce and explain the new VAT issues relevant to municipalities, in our opinion, the Information contains a number of unhelpful discrepancies, for example, the definition of "an occasional activity" is misleading. Furthermore, there are discrepancies in the list of payments received by municipalities that, according to the Ministry of Finance, do not fall within the new turnover computation for VAT for registration purposes. It is our view that the list erroneously includes activities which should not fall within the computation.

We believe that municipalities, and other municipal bodies, which are currently calculating, or will soon be calculating, turnover for the purposes of VAT registration, should review all their activities very carefully to ensure they arrive at the right answer.

I If you are responsible for accounting and tax matters in your municipality and you are uncertain as regards the correct approach to calculating turnover for VAT purposes, please contact:

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Changes in regulation to the accounting for banks and other financial institutions

On 30 December 2008, the Amendment to the Decree¹ for Banks and other Financial Institutions was published in the Collection of Laws effective from 1 January 2009.

The Amendment only contains two factual provisions: The first one is applicable to financial statements prepared after 1 January 2009, i.e. in reference to all financial statements for the period ended 31 December 2008 — it adds the requirement to disclose the fair value at the balance sheet date for held-to-maturity securities. Consequently, financial institutions will be required to determine and add this data in the course of closing their books which is now in progress.

The second provision is applicable to accounting periods commencing on 1 January 2009 or thereafter abolishes the obligation to capitalise establishment costs and requires financial institutions to write-off establishment costs capitalised prior to the effective date of this amendment no later than 31 December 2009. Hence, through this measure, Czech GAAP regulations for financial institutions have been brought in line with IFRS, capital adequacy requirements and the approach of the Commercial Code.

There is also amendment No 108 to the Czech Accounting Standard for banks and other financial institutions which allows IAS 39 reclassification amendments to be applied for Czech accounting purposes with retroactive from 1 July 2008. It is understood that this amendment is already optionally available for 2008 financial statements and may also be used by other businesses.

We would like to draw your attention to amendment² for entrepreneurs using double-entry accounting with which we will deal in next issue of Tax & Business News. The main areas of change are the component approach to fixed assets, residual value of fixed assets, accounting procedures applicable to cross-border mergers and changes in disclosure of information in the notes to the financial statements. If you are interested in more details relating to these changes, you can read more just now on www.pwc.cz/accounting.

¹ Amendment No. 470/2008 to the Decree No.501/2002 Coll. for banks and other financial institutions
² Decree No. 500/2002 Coll. for entrepreneurs using double-entry accounting

I For more information about recent changes, contact:

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The conversion of registered capital and shareholder contribution into Euro

The introduction of the Euro in the Slovak Republic requires changes in the Commercial Register

Companies registered in the Slovak Commercial Register must take into account that by the end of 2009 it will be necessary to carry out a conversion of the value of registered capital and shareholder contribution in the Commercial Register from Slovak crowns to Euros. As at 1 January 2009, the registration court will not register any changes in the Commercial Register unless the company simultaneously submits an application for the registration of conversion of the registered capital's value and shareholder contribution to Euro.

In connection with the change to Euro, companies have three possible ways of completing the changes in the registration. The company can either file an application for the conversion of the nominal value of shareholder contribution and registered capital or can propose registering the conversion of the nominal value of shareholder contribution and registered capital together with other changes to be registered in the Commercial Register. The third option is to present a written statement of consent on the conversion method. The manner of conversion and rounding is determined by law. The conversion must be made by the end of 2009. The statutory body has to assure that the conversion does not materially change the mutual ratio of amounts of the individually held business shares in the registered capital.

Do you have a company in the Slovak Republic and do you need assistance with the conversion of value of the registered capital and shareholder contribution from Slovak crowns to Euros in the Commercial Register? Please contact:

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Customs news 2009

Changes to the customs tariff

As is the case every year, changes to the customs tariff have also taken place in 2009. The changes concern mainly Chapter 29 (organic chemicals) and Chapter 84 (machines and machinery and mechanical appliances), where several sub-headings have been consolidated and transferred to new ones.

The changes have to be taken into account both for customs goods classification purposes and also when Intrastat is prepared.

New obligation for economic subjects

From 1 July 2009, each economic subject, acting in the EU, has to identify itself to Customs with a registered identification number (so-called EORI number). The EORI number will be valid throughout the EU.

During the first quarter of 2009, Czech Customs will automatically assign EORI numbers to companies, which regularly report customs declarations in the Czech Republic. The EORI numbers for other companies will be issued only upon request; however, at the latest when the first customs procedure has taken place after 1 July 2009.



The number of companies with Approved Economic Operator status is growing

Are you thinking about submitting an application to obtain Approved Economic Operator (AEO) status?

Forty applications have already been accepted in the Czech Republic. Out of these, AEO status has, so far, been granted to fifteen companies. As we have previously pointed out, AEO-approved companies will enjoy easier communication with Customs, which will ensure them a significant competitive advantage. If you wish to learn more about the AEO application process, please contact our Customs experts (for contact details, see below).

Further introduction of e-filing for Customs procedures

From 1 July 2009, the electronic submission of Entry Summary Declarations (ESDs) will be introduced for imports into the EU. The deadline for the electronic submission of ESDs is set and depends on the transport mode used, so that Customs can make a risk analysis based on which they may inform the importer of record if the import into the EU will not be allowed or inform the Customs of the EU Member State of entry that the goods will be subject to a Customs examination. The transport company is primarily responsible for the correct submission of electronic ESDs.

Will the changes in customs tariffs affect your company? Can these changes and new information be beneficial to your business? If you are interested in obtaining more information about customs tariffs, please contact:

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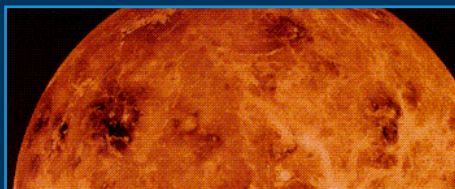
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Are CFOs from Mars and CIOs from Venus?

Research Report conducted by PricewaterhouseCoopers identified a substantial gap in the mutual understanding of financial and information technology departments and it suggests how to overcome these differing perceptions.

CFOs and CIOs in many companies view their cooperation and roles so differently that it seems they are coming from different planets.

Results of our research show that, although it seems that CFOs and CIOs are respectful to each other, CFOs are persuaded about the CIOs inability to understand corporate strategy and the financial situation of the company, whereas CIOs find the communication with the financial department to be insufficient.



Our research also points out that while almost 60% of CIOs regard CFOs as outstanding leaders with an excellent ability to communicate, plan and set up long-term strategy, only one third of all CFOs view CIOs in the same light.

"CFOs and CIOs view the world from a different perspective. Nevertheless, if they both try to understand each other, they can

take advantage of these differences for the benefit of the whole company. To make this synergy happen, it is important that CFOs and CIOs regularly discuss their common strategies. Both occupations are very specialised and complex in nature, still it is crucial that CFOs and CIOs find a common language, without stuffing each other with unnecessary details," said Jiří Halouzka, Partner in the Performance Improvement Department of PricewaterhouseCoopers.

The complete Research Report is available for download at the PricewaterhouseCoopers web-site: www.pwc.cz in the „Publikace“ section and „Studie a Analýzy“ subsection bearing the name „Are CFOs from Mars and CIOs from Venus?“

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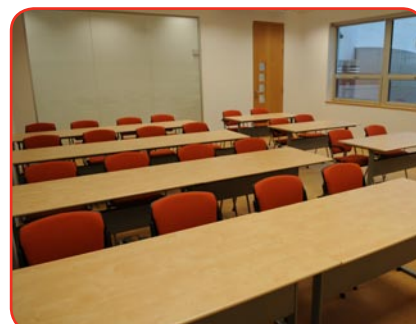
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Why ACCA Diploma in IFRS (DipIFR)?

International Financial Reporting Standards (IFRS) is a major issue for most companies and finance professionals. Over 90% of the world's leading economies either require IFRS or are converging with it, so few companies can afford to ignore the need for their staff to understand IFRS and its implications for their business and financial reporting.

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17:30 Thursday 26th February, PricewaterhouseCoopers, Kateřinská 40, Praha 2.

If you want to come for our Open Evening please contact:

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Business Academy

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Events...

Impact of the Financial Crisis on Human Resources in the Czech Republic

Get up-to-date information about Czech companies' response to financial crisis relating to Human Resource management.

What precautionary measures in the area of HR are you going to put into effect or had already applied? Let us offer you the possibility of sharing information and obtaining a unique perspective of the current situation in Human Resource management.

You will obtain more details about the study and ways of participation at:

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For further details please consult our web-site:
www.pwc.cz/hrstudy

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This Tax & Legal Alert is produced by PricewaterhouseCoopers' tax department in co-operation with Ambruz & Dark, advokáti, v.o.s., a Law Firm associated with PricewaterhouseCoopers.

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