May 2015

TAX NEWS

LERIKA, Domažlická 1, 130 00, Praha 3, www.lerika.eu

Dear Clients and Business Partners,

In the May issue of Tax News, we will introduce some news related to the value added tax, specifically the check report and the expansion of the domestic reverse-charge to other commodities including waste, which this expansion brings. We will also deal with the issues of interest-free loan taxation in relation to the novel of the income tax law as of 1 January 2015.

With best regards

LERIKA Team

In this issue

VAT CHECK REPORT

Because VAT payers will have a new obligation to submit a VAT check report, we will focus on some specific aspects of these issues in the current issue of Tax News. At the beginning, let us briefly summarise, what exactly is a VAT check report. The VAT check report (CR) is a tax report, which will contain the list of all received and expended domestic supplies. Its submission will only be allowed in the electronic form, namely in the format and structure published by the tax administrator. The check report is in general submitted by persons registered inland for VAT as tax payers, regardless to whether it is a domestic or foreign entity. As far as its submission periodicity is concerned, legal entities will have an obligation to present a check report individually for every month, regardless to the specific month, regardless to the taxation period. With physical entities, the submission period will correspond with the VAT tax return submission period, i.e. on a monthly or quarterly basis. The obligation to submit the check report is conditioned by the arising of one of the following facts.

- Taxable supply implementation with a domestic supply point or receipt of a payment before the day of implementation of this supply took place (stated in lines 1, 2 or 25 of the VAT tax return).
- Taxable supply with a domestic supply point was received or payments were provided before the implementation day of this supply (stated in lines 40, 41 or 10 and 11 of the VAT tax return).
- The subject of taxation is investment gold, with which specific situations occur (receiving of a mediation service, with which the tax has been applied pursuant to Section 92 par. 5 of the VAT act, implementation of the investment gold delivery exempt from the tax, with which the payer is entitled to a tax deduction pursuant to Section 92 par. 6 let. b) and c) of the VAT act, and the production or conversion into investment gold according to Section 92 par. 7 of the VAT act).

The actual CR form is divided into 3 main sections. In Section A., the received or implemented supplies are completed, with which the payer is obliged to acknowledge the tax. An exception is part A.1., where the implemented taxable supplies in the mode of a tax obligation transfer are stated, with which the supply receiver is obliged to acknowledge the tax pursuant to Section 92a of the VAT act. Part B. is designed for received taxable supplies with a domestic supply point and the last part C. will serve with its structure as a check for tying the CR data to the VAT return.

Tax I Accounting I Payroll

Should you not wish to receive our Tax News, please contact Kateřina Navrátilová
via e-mail:
katerina.navratilova@lerika.eu
or phone: +420 222 362 678.

For further information please contact the respective LERIKA's specialist.

Upon a default concerning the obligations connected to the VAT check report, the payer exposes himself to relatively stringent financial recourses. If the CR is submitted in a replacement period, however without the tax administrator's invitation, the tax entity automatically exposes itself to a fine amounting to CZK 1,000. In case the CR is submitted in connection to the tax administrator's invitation, a fine amounting to CZK 10,000 is charged. If the tax entity does not submit a subsequent CR for a change, confirmation, or complementation of the data stated in the CR or even does not submit a proper CR, namely even within a replacement deadline determined by the tax administrator, the fine is increased to CZK 30,000 or up to CZK 50,000. Who would severely worsen or impair tax administration by not submitting the CR, exposes himself to the risk that the tax administrator will charge him with a penalty up to CZK 500,000. The payers, to whom the obligation to submit the CR will apply, should also focus more on the observance of the deadline for its submission. The rule stated in Section 250 of the Tax Code that a delay of up to 5 working days is not penalised in any way does not apply to the CR.

The financial administration has already published also the model CR form including instructions for completion and other important information concerning these issues on its website at the internet address: http://www.financnisprava.cz/cs/dane-a-pojistne/dane/dan-z-pridane-hodnoty/kontrolni-hlaseni-DPH .

petr.hajek@lerika.eu

INTEREST-FREE LOANS IN 2015

The novel of the income tax act effective from 1 January 2015 also applied to gratuitous incomes. We have already informed about this news briefly in our October Tax News. Let us take a look at the basic framework of the tax impact, which the novel has brought.

From the historical standpoint, gratuitous incomes were the subject of the gift tax still at the end of 2013. By its cancellation as of 1 January 2014, they became the subject of the income tax of physical or legal entities, with the exception of assets benefit of the borrower during an interest-free loan, the borrower during a bailment and the letter during a let. However, since 1 January 2015, the aforementioned assets benefits have become the subject of the income tax again, while some cases are removed from taxation in the form of exemption.

In case of physical entities, this exemption applies to income from a relative in a direct and auxiliary line (siblings, uncles, aunts, nephews, nieces, etc.) pursuant to Section 4a let. m) of the ITA, furthermore, on the income from a person, with which the payer had lived for a period of at least one year immediately before obtaining the income in a commonly managing household, furthermore, the income of the beneficiary, and the income, which from the same payer does not exceed the amount of CZK 100,000 in the taxation period. If the income from these assets benefits exceeds the limit of CZK 100,000 the tax base is the entire income amount, thus not only the part exceeding the limit.

Let us take a look at individual cases of providing an interest-free loan (the contract of loan according to the new Civil Code arises when the lender lets a fungible thing to the borrower so that he uses it as desired and returns a thing of the same type after some time).

Provision of an interest-free loan to an employee

Since 1 January 2015, the advantage from an interest-free loan, which the employer has provided to his employee, is the subject of the dependent activity tax. Upon exceeding the security limit amounting to CZK 300,000, the employer additionally taxes the usual interest to the employee. The same adjustment will be used also for loans provided before 1 January 2015.

However, no value limit is determined from the standpoint of loans (by the contract of loan, the lender lets the thing to the borrower and undertakes to allow him its gratuitous temporary use in a predetermined manner). The loans provided to the employee from the part of the employer are then fully subject to the income tax from dependent activity in 2015.

Provision of an interest-free loan by a partner to his business corporation

In case of an interest-free loan by a partner to his business corporation, the question, whether it is a gratuitous income or not, is solved in relation to the legal regulations. The practice so far and the Coordination Committee held between the GFR and the Chamber of Tax Advisors of the Czech Republic agree that it is not gratuitous income, because a counter-supply is expected, be it in the form

of an expected increase of the share value or the possibility of obtaining higher profit shares. According to the aforementioned, the novel of the law will not apply to these loans and this income will not be subject to the taxation with the income tax of legal entities in any amount, thus not even when exceeding the limit of CZK 100,000.

Provision of an interest-free loan between related entities

According to the regulations valid in 2014, an increase of the tax base by the usual interest on the creditor's part took place upon providing an interest-free loan and the tax base with the debtor was decreased by the same amount. The tax impact of the entire group was thus neutral. This had not applied to cases, where provision of an interest-free loan between related entities took place from an entity, which is not a tax non-resident of the Czech Republic, is a member of a business corporation (a Czech Republic resident) or is a payer of the income tax of physical entities – here the provision of an interest-free loan was completely outside the tax subject. Since 2015, modifications take place in connection to the aforementioned changes, where the receiving company (debtor) has the obligation to tax the obtained other assets benefit flowing from an interest-free loan (i.e. an amount at the level of the usual interest), however, it can decrease its tax base by the same amount, provided it utilises the received financial means for achieving its taxable income. Therefore, taxation on the creditor's part primarily takes place here.

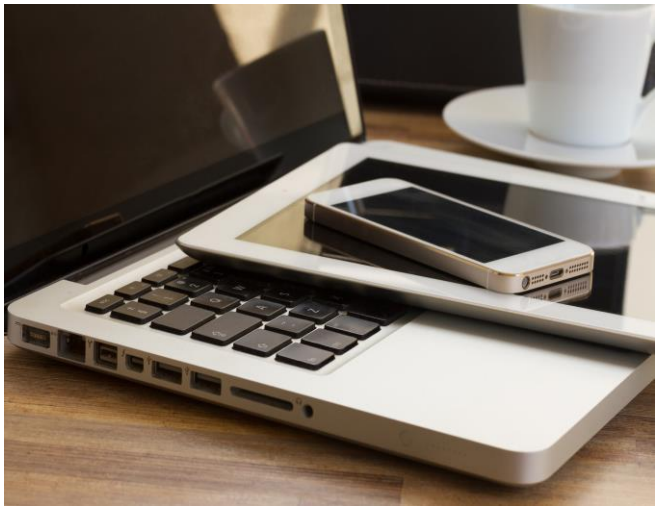
Provision of an interest-free loan within the family

An exemption from the income tax of physical entities applies to the interest-free loans within the family. However, the regulations are not identical with the regulations valid before 1 January 2015. The novel of the income tax act introduced the notification duty, which applies to individual exempted incomes higher than 5 million crowns. This obligation of course does not apply only to the family members, but all physical entities, which exceed the limit of these exempted incomes.

It could seem that in connection with the new legal regulations, it will always be necessary to have income from interest-free loans, borrows, and lets evaluated, in order to be able to determine, whether the limit of CZK 100,000 for application or non-application of the exemption has or has not been exceeded. However, the explanatory report for the novel of the law contradicts this necessity, while the gratuitous income does not arise always, when the form of the contract of borrow or let is fulfilled. These exceptions apply especially to contracts, which form a part of wide contractual provisions within economic relations. These are e.g. the cases, where the securing of an obligation by a transfer of a right takes place, from which the borrower does not obtain any benefit and this securing is utilised for the elimination of risks on the creditor's part (and it is comparable with the lien in case of real estate), furthermore, for the borrow of machines, equipment, templates, and moulds for securing the contractual supplies for the lender or if museum and gallery objects are borrowed for various exhibitions with publicly beneficial payers. Due to this, these cases will not be considered gratuitous income and the novel of the law does not apply to them.

katerina.navratilova@lerika.eu

TAX ALERT: VAT – DOMESTIC REVERSE-CHARGE MODE



Based on the novel of Law No. 235/2004 Coll., on value added tax, as amended, and governmental ordinance No. 361/2014 Coll., dated 22 December 2014, an expansion of the application of the so-called reverse-charge (R-CH) mechanism (a transfer of the obligation to acknowledge and pay the VAT from the supplier to the consumer) takes place in the Czech Republic from 1 April 2015. By 1 April 2015, the domestic R-CH mechanism had applied e.g. to the provision of construction or assembly works, delivery of gold or transfer of permits for greenhouse gas emissions. Now, further kinds of goods are added to these supplies, among which belong e.g. technical crops, selected cereals, some metals, integrated circuits, mobile phones, portable devices for automated data processing (tablets, notebook…), and videogame consoles. In connection to the new regulation, the tax obligation transfer mode will be used only if the total amount of the tax base of all delivered selected goods exceeds the limit of CZK 100,000. Another condition is that these must actually be selected goods, because its verbal delimitation must be met and it must also be delimited with the corresponding code of the customs tariff nomenclature.

Persons, whose activity field is trading or other handling of the aforementioned commodities and goods, expose themselves to the following tax risks in connection with the expansion of the reverse-charge mode. A situation may occur, where a tax entity purchases goods with a value exceeding the amount of CZK 100,000 and receives a tax document. In this document, the VAT, which the tax entity wants to apply via the deduction claim, will be stated. In case the reverse-charge mode is applied incorrectly, be it for reason of a wrongly assessed limit of CZK 100,000 or from the title of incorrect goods classification within the nomenclature of the customs tariff, the tax entity may be exposed to a situation, where this claim for VAT deduction is accepted on the part of the financial authority. Analogically, the completely opposite situation may occur, where the tax entity sells the goods in question, issues a document without VAT, but because incorrect application of the reverse-charge mechanism has taken place, the financial authority will proceed as if there was no reverse-charge mode and additionally assesses VAT to the entity. So that the tax entity avoids the aforementioned undesirable situations, it is completely crucial to observe the conditions for the application of the tax obligation transfer mode precisely.

In practice, situations may occur completely regularly, where e.g. subsequent modification of the tax base entering the limit of CZK 100,000 occurs. What will the procedure in such situations from the tax obligation transfer mode standpoint be? We will clearly show that using the following several examples. Imagine a situation, where the supplier implements the delivery of mobile phones, while the tax base amounts to CZK 150,000. Subsequently, based on an agreement between the supplier and the consumer, the tax base will be decreased by CZK 60,000. The original delivery will be implemented in the tax obligation transfer mode, because it exceeds the limit of CZK 100,000. However, in what mode will the subsequent tax base decrease be taxed, when the resulting amount of the tax base gets below the limit of CZK 100,000? Because with the original delivery of the goods, the limit for the tax obligation transfer mode application was exceeded, also the decrease of the tax base value by CZK 60,000 will be implemented in the tax obligation transfer mode.

In the supplier-consumer relations, the completely opposite situation may also certainly occur, where the tax base is subsequently increased. Imagine the supplier implemented a delivery of mobile phones again, however, now the tax base amounted to only CZK 90,000. The tax base has not exceeded the determined limit and the supplier therefore applied the VAT at the output. Then an increase of the original tax base by CZK 20,000 takes place based on a mutual agreement, i.e. the total value of the tax base after the increase will amount to CZK 110,000. The one-hundred-thousand limit has been exceeded in our case. The tax obligation transfer mode will be applied to the actual tax base increase by CZK 20,000, while the actual mode with the original tax base, which was subject to the regular taxation mode, will not be corrected.

The last practical example, which we will show in this place, will deal with a change of the value of the delivered goods after accepting an advance payment. Consider a situation, where the payer ordered mobile phones in the total value of CZK 130,000 from the supplier, while paying an advance payment of CZK 50,000 for them. This transaction exceeds the limit of CZK 100,000 for application of the tax obligation transfer mode, therefore, the supplier will not tax the received advance payment. However, what will the procedure be in a situation, where mutual agreement occurs just before the implementation of this transaction and the consumer finally withdraws goods in the total value of not CZK 130,000, but only CZK 90,000? The final delivery of the goods (CZK 90,000) will be taxed in the regular mode, i.e. the supplier pays the tax. However, the supplier will also have to be ready to prove to the tax administrator that the original order exceeded the one-hundred-thousand limit, which entitled him not to tax the original received advance payment amounting to CZK 50,000.

The payers will also have to pay attention that their actions are not viewed from the standpoint of the financial authority as activities with the goal of avoiding the tax obligation transfer mode application. That could occur in case e.g. the supplier intentionally issued multiple documents for one consumer with the same taxable supply implementation day, while the individual documents (contracts of purchase) would no exceed the limit of CZK 100,000 for the application of the tax obligation transfer mode with their amount, but in the sum, they would exceed this level. The tax administrator will always evaluate these situations while considering the specific circumstances of the case in question. At the moment, when the tax administrator would find the payer's actions as actions having the goal of avoiding the use of the tax obligation transfer mode, he could, i.a., accede to the assessment of the legitimacy of the related claim for the tax deduction with the consumer. In real business relations, an entire series of complicated situations may occur, which the payers must pay attention to. Other circumstances may of course occur as well, where it will be very difficult in practice to determine, whether, with a specific supply delimited based on Section 92f par. 2 of the VAT act, the conditions for the application of the tax obligation transfer mode have been met. In a situation, where it will not be completely clear, whether the supply in question falls under the specific item of the customs tariff nomenclature and both parties (both the provider and the receiver of the supply) will, based on a justified presumption that the tax obligation transfer mode applies to the supply in question, act in accordance and apply the tax obligation transfer mode anyway, then in such case, fiction of law occurs, based on the aforementioned, and the application of the tax obligation transfer mode with this supply will be viewed as if it was applied completely in accordance with Section 92f par. 2 of the VAT act.

As you can see, the situation concerning the tax obligation transfer mode may sometimes be significantly unclear at first sight. Therefore, should you encounter some uncertainties in practice, we recommend you to address our team of experts, who will gladly help you in this matter.

petr.hajek@lerika.eu

Contacts:

Corporate taxation
Ivana Ottová
+420 277 277 085
ivana.ottova@lerika.eu

VAT and customs
Alena Kučerová
+420 277 277 084
alena.kucerova@lerika.eu

Personal taxation
Martin Pecka
+420 277 277 087
martin.pecka@lerika.eu

Accounting
Monika Borkovcová
+420 222 363 073
monika.borkovcova@lerika.eu