

Dear Clients and Business Partners,

We have prepared the October 2013 issue of our Tax News for you. We believe its content will be interesting and valuable for you. Should you have any questions, please do not hesitate to contact us whenever you like.

With best regards

LERIKA Team

TAX MEASURES APPROVED BY THE SENATE

After the negative standpoint of the Senate to the tax legislation accompanying the new Civil Code in September, we have been on the lookout to see how the situation develops further. 10 October 2013, the Senate approved **changes of tax law** reacting to the new Civil Code in the form of a legal measure. This legal measure includes not only changes with respect to the original proposal submitted by the Parliament in September (which included rejection of exemption of dividends from income tax for individuals) but the original proposal of the legal measure had to be amended as well. This included elimination of extraordinary tax depreciation for certain types of fixed assets. A day earlier, on 9 October 2013, the Senate also approved a legal measure on **real estate tax**. 17 October 2013, both legal measures were signed into law by the President.

The legal measures are just being published in the Collection of Laws. At that point, they will also become legally effective. However, the question remains whether the measures will also be adopted or rejected by the Parliament during its first session. However, reversal of the legal measures in such manner or postponement of effective date of the new Civil Code do not appear to be likely. There is an assumption that the new government will not be formed until mid-December (if at all) and will thus have very little time to take steps towards postponement of the law effectiveness.



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Let us now have a look at the specific changes introduced by the new legal measure.

In connection with **real estate tax** it's worth mentioning that, newly, the taxpayer shall continue to be the seller (whereas the buyer guarantees the tax payment) unless the contractual parties specifically agree to shift the tax obligation to the buyer (in such case the seller shall not guarantee the tax payment). The new legislation also abolishes tax exemption of new buildings that have not yet been used.

The exemption continues to be in effect for new apartments or land with new residential housing. Changes will also affect definition of property subject to building tax in relation with changes being introduced by the Civil Code. Starting 1 January 2014, buildings shall be included in the scope of tax regardless of whether they are part of the underlying land or not.

Starting 1 November 2013, the legal measure also introduces **guarantee for unpaid VAT** that shall be triggered as a result of payment for supply to a bank account not published in the VAT payers' register. Newly, the guarantee for VAT shall apply only to payments for supplies of at least CZK 700,000.

A positive change introduced by the integration of inheritance and gift tax into the scope of income tax is new tax treatment of **interest free loans**. Provision of an interest free loan shall not be subject to tax, not even in cases when they are provided by employers to employees.

Another important point to remember is that the new legal measure modifies legal effectiveness of various measures already contained in different regulations. By way of example, in Act No. 458/2011 Coll., on introduction of a unified cash point, the extension of a **period for tax exemption of income from sale of shares** from the current 6 months to 3 years shall newly be in effect starting 1 January 2014 already (the previous law called for effectiveness starting 2015).

As we can see, there are many tax law changes relating to the private law recodification. We will continue to keep you posted on further news in this area.

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GUARANTEE FOR UNPAID TAX

The concept of guarantee for unpaid tax has again been subject to new information issued by the General Financial Directorate via the official website of the Czech Tax Administration. This information was released on 31 October 2013 and concerns selected types of payments when the payment for a supply of goods or services is credited by the recipient to a different bank account than the one published by the supplier in the VAT Payers' Register.

The information governs guarantee for unpaid VAT in the following cases:

- In case of **factoring services**, when the recipient settles a receivable not to the account published by the supplier, but to the account of the factoring agent to whom the receivable was assigned as a part of accounts receivable management and collection services. The information issued by GFR summarizes that such payments shall be considered trustworthy only when the full chain of transactions involving the ultimate payment for goods and services can be satisfactorily substantiated i.e. all the way from the supply recipient via factoring agent to the account published by the supplier. In practice, such methodology can cause various issues to taxpayers. In particular, the recipient crediting payment to the account of the factoring agent loses any control over how (and whether at all) the factoring agent settles the same amount to the account published by the supplier. If this is not the case, recipient's full guarantee for any VAT unpaid by the supplier steps in.
- **Indirect payments – via notary, attorney or escrow account.** Similar logic as in case of factoring services shall apply in cases when the payment is effected via a notary, attorney or through escrow account. The conditions for the application of guarantee for unpaid VAT shall be considered to be fulfilled only in cases when the funds deposited with a notary or attorney or to an escrow account are subsequently credited to the bank account published by the supplier.

VAT payers taking advantage of indirect methods of payment of payables should thus take greater care when signing contracts on cash depository services making sure that the service provider's obligation to credit the funds only to an authorized (published) bank account is clearly defined.

- **Seizure of property and insolvency proceedings.** GFR information states that in cases when the recipient makes a payment to the account of the executor or insolvency administrator as a result of the fact that seizure or insolvency proceedings have been initiated against the supplier, the concept of guarantee shall not apply to the recipient as a result of such payments.

- **Transactions using credit cards.** In daily practice, payments via credit cards are mostly effected for lower amounts that are unlikely to reach the limit triggering the guarantee (CZK 700,000). However, if the recipient uses a credit card to make a payment exceeding that amount, he or she shall run the full risk of triggering the guarantee.
- GFR information also partly touches on guarantee for unpaid VAT in case of group registration and in cases when business is being pursued in association outside a legal entity.

Based on the previous information of GFR, the concept of guarantee for unpaid VAT shall be in effect starting 1 January 2014. If you have any questions relating to this topic, please do not hesitate to contact us at any time.

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Even though due care is paid to the preparation of the tax news, please be aware that their contents are only meant to be informative. Therefore, we recommend that any action envisaged on the basis of the tax news be discussed with your counsel prior to implementation.

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