March 2013

TAX NEWS

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

Dear Clients and Business Partners,

We have prepared the March 2013 issue of our Tax News for you. We believe that the reported pieces of information 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

In this issue

CHANGES IN INCOME TAXES ACT

This year has brought a number of changes in the Income tax Act that are important for both employers and freelances (one-man businesses). Although you have already been undoubtedly confronted with some consequences of the amendment to the Income Tax Act effective as of 1st January 2013 (hereinafter as "ITA"), in the following text we bring you an overview of the most important changes, some of which may significantly affect the amount of tax liability for 2013.

Limitation of flat expenditure rates for entrepreneurs *(Section 7, Paragraph 7c and 7d, and Section 9, Paragraph 4 of the ITA)*

The percentage of the flat expenditure rates was not changed, it is still in the range of 30 – 80%, nevertheless in the case of the flat expenditure rate amounting to 40% from incomes from other businesses governed by special regulations and incomes from another independent profit-making activity (like incomes generated by authors, assessors, experts, interpreters, bankruptcy administrators etc.), it is possible to apply it only up to the amount of CZK 800,000 and in the case of incomes coming from leases (the flat expenditure rate of 30%) up to the maximum of CZK 600,000).

Wife's tax allowance and tax relief for entrepreneurs applying the percentage expenditure *(Section 35ca of ITA)*

Should the tax payer apply their expenditure as a percentage from their incomes in accordance with Section 7, Paragraph 7 of ITA (or according to Section 9, Paragraph 4 of ITA for incomes from leases) and the sum of partial tax bases, at which the percentage expenditure was applied, exceeds 50% of the total tax basis, they are not allowed to reduce their tax liability by the wife's tax allowance and apply the tax allowances for children. It means that this change will therefore affect only taxpayers whose incomes come mostly from business or lease. Employed taxpayers who do business only as an extra additional job, will therefore not be affected by this change.

Solidarity tax increase *(quite new, according to Section 16a of ITA)*

Tax payers who earn more than 48 times of the average salary within one calendar year (i.e. for 2013 CZK 1,242,432), will pay from the sum exceeding this maximum a tax amounting to 22% (it means that additional tax of 7% ought to be applied for the respective part of their incomes in excess of CZK 1,242,432). This applies only for incomes according to Section 6 and 7 of ITA (i.e. for employees and freelances).

Tax I Accounting I Payroll

Should you not wish to receive our Tax News,
please contact Lucie Hrtoňová
via e-mail:
lucie.hrtonova@lerika.eu
or phone: +420 222 362 678.

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

The tax payers who are subject to the solidarity tax increase are also liable (according to Section 38 g of ITA) to file their tax return on their own and are not allowed to ask their employer to prepare their annual tax reconciliation instead of them.

Abolition of tax relief for old-age pensioners *(Section 35ba Paragraph 1, Letter a) of ITA)*

The basic tax relief is not allowed to be applied to the tax of the tax payer who as at 1st January of the taxation period receives the retirement pension from the retirement insurance or from the foreign mandatory insurance of the same type. Whether to qualify for the tax relief or not the date of 1st January is important and the fact whether they receive or do not receive the old-age retirement pension and not whether they are the old-age retiree e.g. granted with retroactive date.

This issue was discussed in the press, mainly because of the suspension of payment of the pension as at 1st January and a potential claim to a deduction in the following year. The General Directorate of Finance on this issue then issued the following statement: "In the event, where on the basis of application of the pensioner the payment of the pension for 1 January was stopped, and from the number of objective factors it is demonstrated that the sole purpose of this step was to obtain the tax relief for the taxpayer under the said provisions of the Income Tax Act, the process will be evaluated by the Financial Authorities of the Czech Republic in relation to the possible misuse of law with all the consequences stipulated by the Tax Code".

Increase of tax rate with respect to so called tax havens *(Section 36, Paragraph 1, Letter c) of ITA)*

A special tax rate applied to the incomes generated on the territory of the Czech Republic paid to tax payers who are the residents of some of the so called tax havens is increased from 15% to 35%. "A tax haven" is considered a state outside the EU with which the Czech Republic has not concluded the Double Taxation Treaty or the Agreement on Mutual Exchange of Information in the Area of Income Taxes.

Employer's contributions *(Section 6, Paragraph 9, Letter p) of ITA)*

Employer's contributions to the new supplementary pension schem, to additional pension insurance with the state contribution and to the private life insurance are for the respective employee exempted from the income tax (and simultaneously from the liability to pay the social and health insurance contributions from them) up to the summarised annual amount of CZK 30,000 (for 2012 the sum totalled CZK 24,000).

Tax payer's contributions *(Section 15, Paragraph 5 of ITA)*

In order to reduce their tax basis the taxpayer is allowed to claim as a tax-free sum their own contributions to their additional pension insurance and to the new supplementary pension scheme, in total maximally up to 12,000 crowns. However, the sum of CZK 12,000 will be newly deducted from these contributions (by the end of 2012 it was the amount of CZK 6,000).

Registration of tax payer newly within 8 days *(Section 39b of ITA)*

The amendment to the ITA implements the new provision, according to that the tax payer is obliged to file their application to the income tax registration of natural persons or legal entities at the respective tax administrator within 8 days at the latest calculated from the date when the obligation to perform the legal acts of the tax payer stipulated by this amendment to the ITA has arisen to them. Within the same term the tax payer also ought to file the application for the tax payer's cash office. At the registration of the cash office the tax payer will designate a person who will be authorized to carry out all the acts related to the cash office on behalf of the tax payer and in their name.

UNRELIABLE VAT PAYER

Effective as of 1st January 2013 the VAT Act No.235/2004 Coll. in Section 106a implements a status of the "unreliable tax payer". According to the mentioned provision of the VAT Act the tax administrator is authorised to determine that the tax payer is considered the unreliable payer, if there is a serious breach of their obligations related to the VAT administration. The General Financial Directorate has issued information to the application of Section 106a of the VAT Act, where it is among other things defined, what is considered a serious breach of duties relating to the administration of VAT. This includes the following situations:

- The taxpayer has violated its legal obligations, which resulted in the assessment or additional assessment of the VAT based on the materials, at least in the amount of CZK 500,000 without appendage.

- The tax payer is engaged in businesses for which there is a reasonable concern that the VAT from them will not be paid and that's why the tax administrator after 1st January 2013 has issued the locking order related to the respective tax payer that has not been paid within the due time.
- For the tax payer for at least three consecutive calendar months the cumulative arrears in VAT of at least CZK 10 million without appendage are recorded from tax liabilities assessed / additionally assessed after January 1, 2013.

The above stated violations of the tax liabilities will be assessed by the respective tax administrator with regard to the respective person as a tax payer and the experience with them. The tax administrator shall always take into account the objective reasons for non-compliance (e.g. natural disasters, serious health reasons, etc.).

AUTONOMY OF SINGLE LOCATIONS OF FINANCE OFFICES

In the Coordinating Committee between the Chamber of Tax Advisors and the General Financial Directorate the issues of financial autonomy of local workplaces of the financial office, namely the possible service of documents (submissions) to various local workplaces within the same financial office have been addressed with the conclusions set out below.

The local workplaces are internal organizational units of the respective financial office within the financial authorities. Proceedings led by the local workplace of the financial office are therefore the proceedings of that financial office. The local workplace itself has no substantive or territorial scope and the taxpayer's binding to the particular local workplace of the financial office is given only by placing the file on this site.

Mailrooms located in single local workplaces belonging to one financial office are "equal", i.e. it is irrelevant in which of the mailrooms within one financial office the taxpayer shall carry out its submission or to which of the mailrooms within one financial office the tax payer shall send its tax documentation. The same applies also for the data boxes.

TAXATION OF "UNREALIZED" EXCHANGE RATE DIFFERENCES

The Supreme Administration Court on 25th January 2013 issued another ruling related to the taxation or non-taxation of unrealized exchange rate differences.

Like in the previous ruling the subject of the dispute was a question, whether the unrealized exchange rate differences that are recorded in the nominal P&L accounts of the exchange rate gains and losses, enter into the tax basis and are subject to tax. In 2012 the Supreme Administration Court ruled in the case between the same parties, only tax liability for another calendar year was solved.

The Supreme Administration Court has come to the same conclusion as in 2012 that unrealized exchange rate differences do not represent the taxable income because they arise only due to the conversion of the foreign currency. In this case, assets are not disposed, increased or decreased and unrealized foreign exchange differences therefore have no effect or impact on economic productivity and essentially involve only virtual (rather than actual) profits.

The State Administration has so far been of the view that this was a decision in a particular case, which for its uniqueness does not have the character of settled case law and it found no relevant reasons for departing from previous practice (i.e. the inclusion of realized and unrealized foreign exchange rate differences in the tax base). We will see, whether after the repeated ruling of the Supreme Administration Court the view of the State Administration will be reconsidered. We will inform you about further development in this issue.

Contacts:

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

VAT and customs
Lucie Hrachovcová
+420 277 277 086
lucie.hrachovcova@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