

Dear Clients and Business Partners,

We have prepared the April 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

AGREEMENTS ON EXCHANGE OF INFORMATION ON TAX ISSUES

Lately, a number of agreements on exchange of information on tax matters have been concluded with the states referred to as tax havens all over the world. Neither the Czech Republic is the exception in this regard. Just at the beginning of this year agreements on the exchange of information between the Czech Republic and the islands of Jersey and Guernsey, Bermuda, Isle of Man, San Marino or the British Virgin Islands came into force.

Other agreements in the near future will surely follow, as the Czech Republic began the ratification process such as with the Cayman Islands, Andorra, the Bahamas, Aruba, Belize and others.

There is also an agreement with Monaco, the text of which was agreed at the end of last year.

All these agreements have the only goal. Based on them the contractors will be allowed to obtain from contract parties necessary information for the correct determination of tax in the Czech Republic, regardless of whether such information is held by banks or other financial institutions. In other words, such agreements should prevent escorting money outside the Czech Republic without taxation or to facilitate the exchange of information necessary for the purposes of criminal proceedings in relation to tax offenses.



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Tax | Accounting | Payroll

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

Below we would like to send you the link to the website of the Czech Tax Administration, where you can find all the information regarding the agreements concluded, including their texts in both Czech and English.

In case of any additional question to the above topic, please, do not hesitate to contact us in any time.

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SOLIDARITY TAX INCREASE

The solidarity tax increase was implemented in the Czech Republic from 1 January 2013 and should be valid for the period of 3 years, i.e. until the end of 2015. If this happens in the way, as it is projected, we will see in the future. What is certain, however, is that in 2013 the solidarity tax increase will be applied, or in some cases is even being applied.

Everyone already knows today that, in accordance with the law (Section 16a of the Income Tax Act) the solidarity tax increase makes 7% of the positive difference between the sum of income included in the partial tax base pursuant to Section 6 and partial tax base pursuant to Section 7 in the respective tax year and 48 times the average wage set by law regulating the social security premiums.

In other words, the solidarity tax increase will apply wherever the sum of income included under Section 6 and Section 7 (net of expenses) of the Income Tax Act within the tax period exceeds the amount of CZK 1,242,432 (for 2013).

At the same time, the solidarity tax increase is applied even monthly to the advance tax on income from employment, if such an income within a calendar month exceeds 4 times the average salary, i.e. the sum of CZK 103, 536. Some of you may have already noticed of it on your payslip. But it does not stop there. Those, to whom the solidarity tax increase relates, even if it happens only in one month during the respective year, will not be allowed to ask their employer for the completion of the processing of their annual tax after the end of the respective year, but on the contrary they will be required to submit their own tax returns, even if they reached no other revenue.

The above has long been more or less known and in fact might not have surprised any of you. However, there are at least a number of issues that in connection with the introduction of the solidarity tax increase have arisen and which have not yet been fully or officially answered. These questions were asked by the Chamber of Tax Advisors when meeting with representatives of the General Tax Directorate, including proposals for their solution, and as the representatives of the Chamber of Tax Advisors said, they were with their proposals largely successful.

According to the representatives of the General Tax Directorate most of the proposals of the Chamber of Tax Advisors should be disclosed or confirmed in the form of questions and answers on the website of the Czech Tax Administration during the month of April.

The proposals of the Chamber of Tax Advisors, including our comments on some points are presented as follows:

1. The solidarity tax increase is a tax and is considered a part of the tax on income of natural persons;
2. For the purposes of cancellation of the duty of the payer to pay advance tax on income from employment in accordance with Section 38h, Paragraph 11 and 12 of the Act also the payment of the solidarity tax increase under Section 38ha is deemed to be cancelled;

Comment: The law states in the aforementioned provision (Section 38h) that the payer (employer) is not required to deduct the advance tax under the preceding paragraphs of the Act, if the salary is borne as an expense by a permanent establishment situated abroad. However, Section 38ha of the Act goes after Section 38h and therefore it is not the preceding paragraph. According to a strict interpretation of the law it would thus give rise to an obligation to pay the solidarity tax increase from deposits, but the basic advance tax of 15% would not have to be paid.

3. When determining the basis for the solidarity tax increase under Section 16a, Paragraph 2, Letter a) the calculation includes the sum of (i) income included in a partial tax base pursuant to Section 6 and (ii) partial tax base pursuant to Section 7 in the relevant tax year;

Comment: It is more about putting things right, because the wording of the law, in our opinion, can be interpreted in two ways, namely (i) the sum of income included in the tax base according to Section 6 and income included in the tax base pursuant to Section 7 of the Act (i.e. the income according to Section 6 plus income under Section 7) and (ii) the sum of income included in the partial tax base pursuant to Section 6 and partial tax base pursuant to Section 7 (i.e. income under Section 6 plus revenue minus expenses under Section 7). Point (ii) is proposed by the Chamber of Advisors and such was also the intention of the legislature.

4. A partial tax base pursuant to Section 7 for the purposes of calculating the solidarity tax increase in Section 16a, Paragraph 2, Letter a) means the income after deducting expenses. It is necessary to resolve whether maximum equal to zero or for this purpose the loss will be taken into account that in the calculation of the basis for the solidarity tax increase will reduce the income according to Section 6, which we tend to prefer. When taking into account the loss, then with the same logic also the partial tax base pursuant to Section 7 before taking into consideration the losses from previous periods as deductible items should be included in the calculation of the solidarity tax increase in the following periods;

Comment: It is about whether taxpayers who incur a business loss, will be allowed to apply this loss in a given tax year against the income from employment for the purpose of calculating whether they will be required to pay the solidarity tax increase or not. The Chamber of Tax Advisors is inclined to offset losses, but the General Directorate of Finance disagreed on this point. So we will see what will eventually be published on the website of the Czech Tax Administration.

5. For the purposes of Section 16, Paragraph 2, Letter a) the expression "income included" means the income which in the Czech Republic is included in the tax base, as it will be effectively taxed in the Czech Republic according to the relevant provisions of the Income Tax Act or the double taxation treaty. It does not mean the income "generally" included under Section 6 and Section 7, regardless of their source of origin.
6. Incomes included in the separate tax base according to Section 36, Paragraph 1, Letter a), Point 1 in connection with Section 6, Paragraph 15 and Section 22, Paragraph 1, Letter g) Point 6 (remuneration of board members - non-residents) are not subject to the solidarity tax increase under Section 16a. It is not the income included in the partial tax base according to Section 6. The exception is when the person decides to use the opportunity to file a tax return in accordance with Section 36, Paragraph 7;
7. In calculating the tax liability while utilising the avoidance of double taxation under Section 38f, Paragraph 4 or Paragraph 7, the foreign incomes taken out of the tax base are included for the purposes of meeting the threshold for the application of the solidarity tax increase to the income under Section 6 and Section 7 that are subject to taxation in the Czech Republic. Conversely, in case of the method of full exemption according to Section 38f, Paragraph 6, if some of the existing double taxation treaties refers to it, the income from foreign sources for the purposes of meeting the threshold for the application of the solidarity tax increase is not applied;

Comment: According to the above, the taxpayers with employment income from abroad, who are exempted from taxation in the Czech Republic with reservation about progression, should tax their other incomes in the Czech Republic by a higher tax rate than 15% (by the tax rate, calculated as the proportion of tax calculated before excluding incomes to total incomes)

8. In calculating the tax liability while using the avoidance of double taxation under Section 38f, Paragraph 2, both the tax under Section 16 and the solidarity tax increase under Section 16a are regarded as "tax obligation";
9. In cases where the taxpayer has all incomes from sources abroad that are in the Czech Republic exempt from taxation, Section 38g, Paragraph 2 ought to be applied, not Section 38g Paragraph 4, because in this case the tax is not increased by the solidarity tax increase;

Comment: This is a confirmation of the fact that if the taxpayer has only the employment incomes from abroad that are in the Czech Republic exempt from taxation, and these incomes will exceed the amount of CZK 1,242,432 in 2013, the taxpayer in accordance with above-mentioned Section 38g, Paragraph 2 of the Act is not liable to file a tax return.

10. For the purposes of the application of tax discounts and tax relief under Section 35ba and Section 35c the tax according to Section 16 increased by the solidarity tax increase under Section 16a are taken into account.

Comment: In other words, the tax relief can be applied also to the solidarity tax increase, not only to the tax itself, the rate of which in accordance with Section 16 of the Act is 15%.

In case of any questions to the above topic, please, do not hesitate to contact us whenever.

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DIRECTIVE NO. MF-1 ON THE TIME LIMIT FOR TAX ADMINISTRATION

Ministry of Finance on January 7, 2013 published the Directive No. MF-1, which sets deadlines which, if exceeded may cause that the respective persons involved in the administration of taxes may seek redress due to inactivity of the tax administrator. The time limits set out in this Directive shall apply to all tax proceedings commenced after January 1, 2013 and pending tax proceedings commenced before January 1, 2013, at which the Directive No. D-348 was followed, with effect from **January 1, 2013**.

The Directive No. MF-1 for the tax administrator provides the time limits of 6 months, 3 months and 30 days.

Deadlines for selected submissions are listed below:

- **6 months** for issuing the resolution on appeal under Section 116, Paragraph 1, the resolution to permit the retrial, the resolution on tax exemptions or belongings (except for cases in which only the Minister of Finance is authorized to decide);
- **3 months** for issuing the resolution on the delegation of territorial jurisdiction, the resolution to exclude an official, the resolution on appeal under Section 113, Paragraph 1, Letter a) and b), the resolution on the binding assessment, the resolution on the objection, the resolution to accept third party liability;
- **30 days** e.g. to issue a decision on the return of the time limit in the previous state, the decision to declare the ineffectiveness of delivery, the decision on correction of obvious errors, the decision on declaration of nullity of the resolution, the decision on appeal under Section 113, Paragraph 1, Letter c), decisions on determination of tax advances, the decision to postpone the distress, the decision on the complaint against the tax administrator.

The Directive also sets **the course of these time limits**. They generally begin to run from the date of delivery of the submission to the administrative authority. The periods like e.g. the time when the tax administrator asks counterparties to provide coordination, the time of concentration or completion of standpoints, the time from the dispatch of invitation to pay an administrative fee to the expiry date for the payment of the fee should not be included in the course of these time limits. In complex and justified cases, the senior tax administrator may prolong the deadline.

The whole reading of the Directive MF-1 can be found on the following website link:

<http://www.mfcr.cz/cps/rde/xchg/mfcr/xsl/dc2 legis a metod 75779.html>

In case of any questions to the above topic, please, do not hesitate to contact us whenever.

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LIABILITY FOR OUTSTANDING UNPAID TAX

On 29th March 2013 the General Financial Directorate issued the information related to the liability under Section 109, Paragraph 2, Letter c) of the VAT Act No. 235/2004 Coll., where the recipient of the taxable supply shall be liable for unpaid VAT, if the consideration for a taxable supply is provided wholly or partly by the bank transfer to an account other than the account of the provider of the taxable supply, which is published by the tax administrator.

According to the information of GFD the tax administrator will not ask the relevant tax guarantor to whom the tax liability arises for payment of arrears up to 30th September 2013. In this way the tax administrator gives a sufficient leeway to businesses to acquire the new provisions and verify the relevant bank accounts.

From 1st April 2013 the tax administrator publishes the bank account numbers in the "Register of taxpayers," where it is possible to verify the account number. The register of taxpayers can be found on the following website link:

http://adisspr.mfcr.cz/adis/jepo/epo/dpr/apl_ramce.htm?R=/adistc/DphReg?ZPRAC=FDPHI1%26poc_dic=2%26OK=Zobraz.

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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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