

NEWSLETTER

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Dear readers,
The autumn is here again and you are receiving the second issue of LERIKA Newsletter this year. We did our best to come up with articles that will bring useful information and also provide you with a bit of fun.

The main topic of this issue is the significant Labor Code amendment, which has been subject to discussions over several years. It should have come into effect midway through this year already but its preparation and enactment process were delayed, which is why it is being published in the Collection of Laws just one of these days. However, we have the final text already to report on. We will also likely revert to this topic in the future as various procedures will be published and to report back on the developing practice.

I also recommend the article on book subsidies that employers will be able to provide their employees with as of next year. The new legislation will enable companies to compensate employees for the cost of private books, including books for children. Although the books do not represent a tax-deductible expense, provision of this benefit is more beneficial for the company and employees than payment in cash. For many, this can be

an opportunity to think about optimization of the compensation scheme for employees from the tax perspective.

A colleague of ours wrote an article on the dispute of the professional footballer Martin Lafata with the tax administration. The footballer had to appeal to the Supreme Administrative Court where he won. This means that many other professional sportsmen can now file an amended tax return and request a tax refund. Even more importantly though, a general principle has been upheld that if regulations do not provide for a certain procedure with absolute clarity, the taxpayer has the right to choose whichever alternative is the most beneficial one. And if the tax inspector is of a different opinion, it is worth pursuing the matter in courts.

There is one more article in this issue on a decision of the Supreme Administrative Court dealing with the issue of VAT not entering the tax base for calculating real estate transfer tax in certain situations. Yet again, the decision opens up possibilities for filing an amended tax return. This will also appeal to a larger group of taxpayers, as the number of people who bought real estate in the last couple of years is going to be a bit higher than the number of professional footballers.

I think that all these articles demonstrate well our overarching aims. Our goal is not only to eliminate any concerns over account-

Contents

- New Labor Code
- VAT when calculating real estate transfer tax
- David Lafata vs. tax administration
- New company benefit – book subsidies
- Jokes
- Kubík baby boy

ing, payroll and relating difficult queries from authorities, but also to be the one helping with application of all procedures afforded by the law to legally minimize the tax burden.

Last, but not least, our Newsletter would not be complete without personal announcements and jokes. What can happen when there are three accountants and three engineers on the same train? I wish you pleasant reading. And I also wish you that work-related matters do not make you miss the last warm autumn days, the raking of fallen leaves or similar pleasant garden pursuits. Have fun.

Monika Borkovcová

NEW LABOR CODE

Increased protection of employees, more complex administration and some uncertainties – that is the new Labor Code in a nutshell.

The long-awaited Labor Code amendment was supposed to come into force on 1 July 2017. However, a delay in the legislative process caused that it has not been published in the Collection of Laws yet and its legal effectiveness is thus expected in early 2018. The final wording was signed by the president on 4 September. It is not yet fully clear how various institutions will interpret some of the points and no procedural guidance has yet been released either. However, the important points can already be covered now.

Vacation

Finally, it will be possible to carry forward vacation from one year to the next one. However, this is allowed only under the condition that at least 4 weeks of vacation (6 for teachers) or the proportional number of hours have already been utilized. Newly, the vacation will be counted



per hour, not per day. Obstacles to work on the part of an employee (e.g. temporary work disability, quarantine, treatment of a sick child etc.) do not entail reduction of vacation time as long as they do not exceed 20 days of work.

Treatment of experts and top managers

The law newly implements a special category of employees which are designated as top members of management. An employee falls in this category upon conclusion of the relevant contract with an employer. The conditions are as follows:

- The employee must be a member of the board of directors or one level below and
- Have a contractual salary of at least CZK 75,000 a month.

„The top members of management will not be subject to any limitations as to duration of work, overtime, they will not enjoy provisions on periods of leisure between shifts...“

The top members of management will not be subject to any limitations as to duration of work, overtime, they will not enjoy provisions on periods of leisure between shifts, they will not receive extra payment for work on national holidays etc.

Assignment to a different type of work

The current regulation allows a woman employee returning from the maternity to be assigned by the employer to a different work position. Newly, this will be only possible upon her consent. The only exception is an extraordinary situation such as a state of emergency, risk of accidents etc.

The assignment to a different type of work in general will be possible only in cases where the work is suitable i.e. such that is stated in the employment contract. In the contrary case, a consent of the employee will be needed together with a written amendment to the employment contract. If the employee rejects the suitable work, this will be considered an obstacle on their part and no salary or wages will be due to them as a result. The only exceptions are natural

disasters and similar extraordinary circumstances.

Social welfare for the laid off

In case of a mass lay-off, the employer will be obliged to prepare the so-called social welfare plan including measures to mitigate the situation of the laid-off workers. It

„The collective agreement (or an internal directive of the employer, if no trade unions are present in the organization) can implement the so-called work time banks, which will enable to flexibly extend or shorten work time depending on the current needs.“

is expected that the new provision will be applied similarly as in Germany or Austria where a similar obligation has been in place for a long time.

Work time banks

The collective agreement (or an internal directive of the employer, if no trade unions are present in the organization) can implement the so-called work time banks, which will enable to flexibly extend or shorten work time depending on the current needs. This will only be possible within the limits of

the total number of hours worked, mandatory breaks and other conditions.

Elimination of sources of stress, harassment and violence at work place

It is not yet known how this specific area will be covered nor how it will be evaluated whether the measures are sufficient. Many discussions and disputes are to be expected as to whether a certain workplace culture should be respected and how to assess a potential offense. We can only speculate that the decisive element will be a medical report and that the employer will be potentially asked to substantiate that they undertook measures necessary to eliminate the relating risks.

Work from home

The Labor Code regulates the so-called homework and telework. This area has so far been covered only by a short provision of Article 317 which stipulates that “an employee who does not work at the site of the employer” is not subject to regulations on overtime, breaks, work during national holidays etc. Newly added to the list are the following elements:

- The employee’s right to have costs incurred (e.g. power, internet connection etc.) reimbursed. This can be done through a lump sum;
- The employer’s obligation to adopt measures that will prevent the employee’s isolation. This can be bridged e.g. through enabling participation in regular or other meetings;
- The employer’s obligation to ensure technical and program equipment ne-



cessary to carry out the work, including protection of data.

Work on the basis of other than employment contracts

One-off employment contracts (which are currently regulated differently from regular

employment contracts) will newly be subject to many rules that currently apply only to employment contracts. Added to the right to minimum wages (which has already been in place) will be provisions such as on leisure time between shifts and mandatory breaks.

In addition, the amendment introduces other changes that can at first sight appear innocuous but that can have a significant practical impact. We will inform you about all that in the following issues of the LERIKA Newsletter.

Vladimíra Brožiková

VAT WHEN CALCULATING REAL ESTATE TRANSFER TAX

In the last couple of months, events took place that in the final effect resulted in some of the taxpayers having sold real estate in the last three years being allowed to file an amended tax return and requesting a refund of a part of the real estate transfer tax paid. Uncertainties still exist though and it is possible that Supreme Administrative Court (SAC) will have to decide on the matter.

Tax administration changes its view

As the readers may already recognize, the tax administration considered VAT to be part of the tax base for the calculation of the real estate transfer tax. The basis for that treatment was an explanatory report of the legislative measure of the Senate. However,

„SAC concluded that an explanatory report to a legislative measure of the Senate is not a clear enough expression of an intent to include VAT in the tax base.“

should apply to all the other cases of real estate transfers, including retroactively. However, this was initially rejected by the Ministry of Finance. *“Currently, it is clear that tax will be refunded only in the specific case that SAC decided on. Conclusions of SAC cannot be*

„A question remains how the tax administration will deal with situations where the real estate transfer tax payer is the acquirer.“

immediately applied to all similar situations, anticipating court decisions in similar cases,” ran the official press statement of the tax administration. This effectively meant that taxpayers in other, similar, situations would have to follow through with a legal action.

However, early September, the view of the tax administration suddenly changed. In an information published on its website, the tax administration clearly stated that it was adapting its practice to conform with SAC's decision: *“Newly, when determining the real estate transfer tax base, we will accept the price agreed excluding VAT in cases where the*

real estate transfer tax payer was the transferor for transfers effected in the period 1 January 2014 – 31 October 2016.”

How to determine the tax base when the tax was paid by the acquirer?

The stated procedure will be applied by the tax administration to open cases where the tax has not yet been assessed, or to ongoing appeals. Where the proceedings are final, the taxpayers can file amended tax returns (unless the 3-year statute of limitations has already expired). However, the latter possibility is explicitly allowed by the tax administration only in those cases where the facts are identical with the dispute of the town of Střelské Hoštice i.e. in situations where the real estate transfer tax payer is a seller that is a VAT payer.

A question remains how the tax administration will deal with situations where the real estate transfer tax payer is the acquirer. This is relevant given that in the period 1 January 2014 through 31 October 2016, the legislative measure allowed both possibilities whereas since 1 November 2017, the taxpayer is always the acquirer. It is quite likely that the final answer will once again be given by SAC.

Ivana Ottová

in mid-August, SAC issued a decision in which it ended a two-year dispute between the town of Střelské Hoštice from the Strakonicko region with the locally competent tax authority. It decided in line with general logic that it is not possible to pay tax from VAT, which is not income of the seller, but only represents a transitional item ultimately flowing through to the government. SAC concluded that an explanatory report to a legislative measure of the Senate is not a clear enough expression of an intent to include VAT in the tax base.

Although in this case the amount at stake was a mere CZK 3,000, the same rule



DAVID LAFATA VS. TAX ADMINISTRATION 1:0

The final whistle. End of the match. Although the result was not easy in making, David Lafata ends up by scoring and, after a long fight, wins. Using sports terminology, this is how one could describe the decision of the Supreme Administrative Court (SAC) in a dispute of the well-known footballer of the Prague team Sparta, David Lafata, with the tax administration. When, on 13 July 2017, SAC issued its decision no. 6 Afs 278/2016 – 54 in favor of the popular striker of Sparta, Mr Lafata could not have anticipated that that this was going to be the only positive result in the ongoing football season for quite some time. Sparta, including David Lafata, is in a bad shape, but that is a topic for another day. We are going to focus on the decision of the court, why the court decided as it did and what its decision implies.

What was the main point of the dispute?

In 2011-2013, David Lafata realized income from sports activities based on an agreement on cooperation when carrying out sports activities and other professional agreements. Based on these agreements, he acted as a professional footballer play-

ing for FK Baumit Jablonec, AC Sparta Praha clubs and the Czech national team. The income that he realized in the given periods was properly declared on his tax returns and he paid the tax to the locally compe-

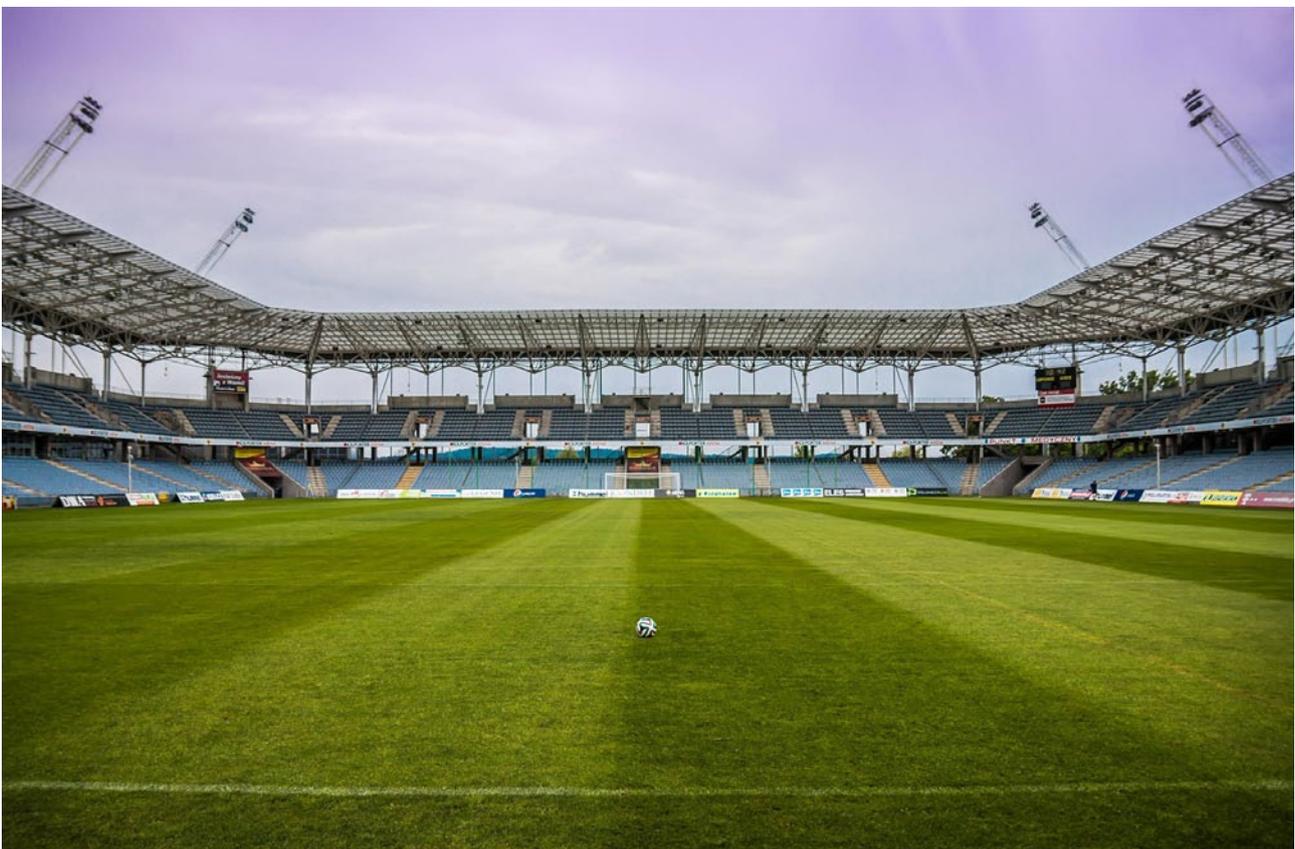
„ All the instances challenged the fact that the business activity was not carried out individually, but did not dispute the categorization of the income under Article 7 of ITA i.e. as income from independent business activities.“

tent tax authority. The income was taxed as income from business under Article 7 of Act No. 586/1992 Coll., on income tax, as further amended (ITA). When determining his taxable income, he used the possibility of claiming lump-sum expenses of 60% due

to the fact that he had a trade license for his business activity.

Nothing unusual at first sight, that is when we disregard the fact that the activity of the professional footballer may not appear to constitute a proper business activity i.e. an activity carried on continuously, in one's own name and for one's own responsibility, with the aim to generate profit and under conditions laid down by the Act on Trades. And this is exactly what is at stake and what was challenged by the local tax authority, the appeal authority as well as the regional court in České Budějovice. The tax authority claimed that David Lafata, as a professional footballer, carried on his activity as part of a football team, which is a collective sports organization, which is why his activities did not constitute activities of professional sportsmen carried on independently within the meaning of Appendix 4, Section 74 of the Directive No. 278/2008 Coll., which provides for definitions of individual trades, and of the Methodical Directive of the Ministry of Industry and Commerce No. 11/2000 (from 27.12.2000, No. 59928/00/4110) on application of the Act on Trades in the domain of sports and physical education.

The tax authority carried out a tax audit and concluded that the income of Mr



Lafata constituted income from business where lump-sum expenses can be utilized, but only up to 40%. This was later upheld by the appeal authority. In line with its reasoning, the tax authority assessed tax of CZK 870,730 and penalties of CZK 174,146 (in total more than CZK 1 million) to Mr Lafata. Not a small sum even for somebody with Mr Lafata's income. However, Mr Lafata is both a gentleman as well as a fighter not only on a football pitch, but in his private life as well, which is why he dutifully paid the tax, but immediately appealed against the decision. Just as he scores goals on the pitch (for an offensive is the striker's best defense), he went into counter-offensive in this dispute as well by filing an appeal to the appeal authority. Although his appeal as well as a legal action filed with the regional court failed, he did find support and achieved the final victory at SAC.

What did SAC say

SAC first pointed out inconsistencies in the decisions of both the tax authority as well as the regional court. All the instances challenged the fact that the business activity was not carried out individually, but did not dispute the categorization of the income under Article 7 of ITA i.e. as income from

that the regional court's decision cannot be properly reviewed and, in this respect, could be dismissed straight away. I personally think that this is a bit of a pity, as it would be interesting to see what the tax authority would have to say to this.

In the remainder of the decision, the reasoning of the regional court and the tax authority could be properly reviewed which

„... a dispute with a tax authority is worth carrying to the very end and not give up after the first failure.“

is why SAC reviewed Mr Lafata's legal action.

At first, SAC pointed to its own previous decision (e.g. 2 Afs 16/2011-78, 2 Afs 20/2012-35) in which it concluded that the activities of professional sportsmen have a highly uncertain legal status and so are open to contractual freedom in the sense that a sportsman's activities in favor of their club can be contractually captured as either an independent business activity or through

The following conclusion of SAC was that no regulation contains a definition of an independent business activity nor a list of any such activities whereas the trade is defined in Article 2 of the Act on Trades as an activity carried on continuously, in one's own name and for one's own responsibility, with the aim to generate profit and under conditions laid down by that law. In order for an activity to qualify as a trade, it is necessary that all the cumulative conditions in the definition be fulfilled. Based on the above Appendix 4, Section 74 of the Directive No. 278/2008 Coll., which provides for definitions of individual trades, the definition of a free trade titled "maintenance of a sports facility and organization of sports activities" comprises the activities of professional sportsmen, referees, carried

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independent business activities. This was paradoxical and was well pointed out by Mr Lafata in his appeals. The tax authority did not even dispute the fact that Mr Lafata levied VAT from his activities, the condition for the payment of which is (as we all know) performance of independent business activity. Neither the tax authority nor the regional court took Mr Lafata's observations into account which is why SAC concluded

an employment contract, so that it is always necessary to consider the actual substance of every single agreement in terms of the underlying activities performed.

All the agreements that Mr Lafata concluded unequivocally stated that the activity performed is an independent business activity. SAC thus concluded that the activities were independent because the contractual parties so freely decided.

on independently and with an aim to generate profit. Article 3 of the Act on Trades also provides an exhaustive list of activities that shall not be considered trades in which the activities of professional sportsmen are not listed. It is questionable whether a professional sportsman carries on his activities purely in his own name and for his own responsibility; however, the activity does have some corresponding traits.

What is important with respect to the above is that the regulations allow a professional sportsman to carry on their activities as a trade regardless of the fact whether the sport in question is a collective or an individual one.

Based on the above, SAC concluded that **in the absence of a clear legal definition, activities of professional sportsmen under Article 7 ITA can be performed either as a trade or as a free profession and the taxpayer cannot be forced to choose whichever legal form is more beneficial for the fiscal interests of the state.** If Mr Lafata carried out the activities of a professional footballer player as a trade on the basis of the relevant license, income from these activities represents income from trade, entitling Mr Lafata to apply the 60% lump-sum expense.

What to say by way of conclusion?

First of all, congratulations to Mr Lafata that he carried his fight to the end and scored again. He helped not only himself, but also other sportsmen who performed their activities using a trade license but applied "only"

40% lump-sum expense or applied 60% lump-sum expense and this was challenged by the tax authorities. All those can now file amended tax returns and request a tax refund. Should they need assistance with their amended tax returns, LERIKA is there to

help. What is more important though is that a dispute with a tax authority is worth carrying to the very end and not give up after the first failure. Cheers to taxes and football!

Martin Pecka

NEW COMPANY BENEFIT – BOOK SUBSIDIES

There is good news for all the avid book readers. Brought to you by the tax package that LERIKA informed you about during its entire legislative process.

An inconspicuous provision adding a new item to the list of employee benefits enables employers to provide subsidies for written books (including illustrated books for children) to their employees. The subsidy is exempt from income tax and from social security and health insurance contributions under the condition that it is provided in kind.

Voucher, reimbursement or cafeteria

The initial concept of a book subsidy, the treatment of which would be similar to meal vouchers, was elaborated by the Organization of Czech booksellers and book publishers and it was widely supported by all the major political parties. We expect that in the near future, new types of vouchers will appear on the market (similar to Flexi Pass vouchers) that will enable purchase of books. One condition is that the vouchers will be widely accepted by booksellers. However, we expect that this will be the case, as the initial idea originated with the booksellers in the first place. "I trust that both independent booksellers as well as bookselling chains will use the

opportunity to create a wide network enabling the use of this benefit", says Mr Martin Vopěnka, the chairman of the Organization of the Czech booksellers and book publishers.

„The stated non-financial benefits can be provided not only to an employee but also to their family members.“

However, there are also alternatives ways of providing the said benefit to employees. As we pointed out, the benefit has to be provided in kind. This means that the employees can not directly receive financial compensation, even if it is provided solely to purchase books. However, to achieve that the benefit is provided in kind, the employee can buy the book directly, provide a receipt to the employer who reimburses its value to the employee (this will likely be

a simplified tax document), treating it as a payment made by the employee on behalf of the employer.

The other alternative that will surely find its use in practice is the embedding of the book subsidy in the system of benefits provided as part of the so-called employee cafeteria, which is typically organized for the employer by a third party enabling the employees to use various benefits up to a certain annual limit.

„... the employees can not directly receive financial compensation, even if it is provided solely to purchase books.“

More beneficial than financial compensation

The condition on the side of the employer is that the subsidy for books must be treated as a non-deductible expense or covered

from a special fund created from after-tax profit. The employer does not benefit from a tax-deductible item but, on the other hand, the subsidies are not subject to social security or health insurance premiums. If the employer provided the same amount in the form of an additional financial compensation, the latter would represent a tax-deductible expense but the employer would have to levy 34% social security and health insurance premi-



ums from the amount. As the tables below demonstrate, it is more beneficial for both the employer as well as the employee to provide a book subsidy than financial compensation.

- of a similar facility for children of pre-schooling age),
- Employer library attendance,
- Attendance at physical education and sports facilities,

Provision of financial compensation vs. book subsidy – comparison of employer costs		
	Financial compensation	Book subsidy
Gross amount by employer	1 000	1 000
Contributions paid on behalf of employees (34%)	340	0
Corporate income tax*)	-257	0
Total employer costs	1 150	1 000

*) 19% applied to the financial compensation as well as the social security and health insurance contributions

Provision of financial compensation vs. book subsidy – comparison of employee costs		
	Financial compensation	Book subsidy
Gross amount by employer	1 000	1 000
Contributions paid by employee (11%)	-110	0
Personal income tax (15%)	-150	0
Net income to employees	740	1 000

For completeness, it is worth remembering that a similar tax treatment as book subsidies also applies to other non-financial benefits provided by an employer, including contributions towards:

- Education and vacation (vacation is limited to CZK 20,000 annually),
- Health (provision of goods or services relating to health and medicine from medical centers, provision of medical supplies based on a doctor's prescription),
- Day care attendance (or attendance

- Attendance at sports and cultural events
- The stated non-financial benefits can be provided not only to an employee but also to their family members.

As of 1 January 2018, the above list has been complemented with contributions for printed books including illustrated books for children. The only sad news is that the books subsidies law will not yet apply during the upcoming Christmas season.

Ivana Ottová



Jana Hradilová,
an accountant that many of you will recognize, has given birth to a cute little boy Kubík. He was born on 18 August in the afternoon, measuring 48 cm and weighing 2.7 kilograms. We wish all the best to him and his mother!

On a train

Three engineers and three accountants are taking a train to a conference. Each accountant buys their own ticket at a train station, noticing that the engineers have only one ticket all together. "How can you all ride with one ticket only?" asks one accountant. "Watch and learn", says an engineer.

They all board the train. Accountants take their seats but the engineers run to the nearest lavatory and lock themselves in. The conductor arrives soon thereafter. He is checking the tickets and when he approaches the lavatory, he knocks on the door. The door opens a bit, a hand with a ticket appears, the conductor validates the ticket and proceeds through the train. The accountants look on, fascinated by the idea.

When coming back from the conference, the accountants get a bright idea that they could save some money by buying just one ticket. However, the engineers do not buy any ticket at all. "How can you travel without any ticket?" asks the accountant again, astounded. "Watch and learn!" comes the answer.

The whole party boards the train. The accountants lock themselves in one lavatory, the engineers in the other. Immediately after the train starts rolling, one of the engineers storms out of the lavatory, knocks on the door of the lavatory that the accountants are holed up in, asking: "present your tickets, please!"

Putting foreigners at ease

The opening statement that can be heard on the call line of the Australian tax administration:

If you speak English, please press one. If you do not speak English, please press two.



Issued by LERIKA Tax & Accounting, s.r.o., Domažlická 1256/1, 130 00 Prague 3, info@lerika.eu, editorial processing Petr Hampl, design Olga Hrdinová, www.atelier-apeo.cz

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