



Dear readers,
We have just been through one of the hottest summers on record. The fall should be pleasant though. We hope you'll have fun reading the September LERIKA Newsletter. This is the first issue that we are publishing from our new seat in the Hamburg City House, Karlín, where we moved recently. We are close to Florenc, closer to our client base.

The news that we are covering in this issue include, first and foremost, the tax package, which implements, among other things, the European Anti-Tax Avoidance Directive (ATAD), which calls for many new requirements. It also aims at removing uncertainties in terms of various interpretations and confirming existing practices. This is good news both for businesses, as

well as for accountants and tax advisors.

The second main topic of the newsletter covers the Electronic Records of Sales, for which a new implementation timetable has been put forth and a new solution has been made available for small taxpayers who cannot afford a device with online connection and a mobile printer.

As always, what looks crystal clear now, can lead to changes during the subsequent legislative process in the Parliament, or the tax administration can come up with a different standpoint at any point. This is why we monitor the situation continuously and will keep you posted well in advance of any changes in the following Newsletter or Tax News issues. More than ever, our team of accountants and tax advisors will also be ready to assist you, from the Hamburg City House.

I wish you the pleasant fall days with minimum of audits.

Monika Borkovcová

Contents

- LERIKA's new premises
- Tax changes since 2019
- Amendment of the Electronic Sales of Records Act
- An accounting department reinforcement
- A joke about accountants



LERIKA'S NEW PREMISES

190 years have already elapsed since the so-called Hamburg City House ("Dům u Města Hamburku" in Czech) was built in Karlín. The name was not chosen randomly. The house served as a pub and lodging house for shippers sailing down the Vltava river, sometimes from as far away as Hamburg. However, who would expect adventure on par with Hamburg's harbor district, nothing of that sort could be obtained in Karlín, not even in its toughest periods.

The past is gone and today's Karlín is mainly about business. In this spirit, LERIKA has become the new proud lessee in the Hamburg City House, after 8 years spent in Žižkov. LERIKA is now closer to its clients, and, as a bonus, it has just obtained brand new offices.

In the end, the best thing to do is to visit us in person. We will be happy to see you around in our new premises.



120 years ago.



TAX CHANGES SINCE 2019

Although the new Czech government took more than half a year to form, the Czech Ministry of Finance has not idled and prepared a package of tax amendments which was presented to the Parliament during summer. If the endorsement process proceeds unimpeded, the tax package will come into effect early next year.

The main changes, which require political support, have been postponed. This concerns mainly the abolition of the so-called supergross salary, implementation of the progressive personal income tax (the original Ministry of Finance proposal included the increase of tax rates to 19% and 24%). Instead, the tax package aims at removing various interpretational uncertainties and at confirming those interpretations that have been already been adopted by the tax administration (e.g. calculation of late payment interest in accordance with Article 104 of VAT Act). In addition, the tax package reflects the changes resulting from the implementation of ATAD (European Anti-Tax Avoidance Directive). Despite that, the tax package contains more than 250 articles and amends 10 acts.

It is not possible to cover all the changes in this text which is why we will cover the highlights one.

Income tax law amendments

EXCESSIVE INTEREST COSTS

This concerns a provision limiting tax deductibility of interest from loans to CZK 80m or to 30% of EBITDA under the assumption that all the other requirements are fulfilled.

“The tax package implements the so-called exit tax i.e. taxation of transfers of assets abroad without a change in ownership.”

Some estimates state that companies operating in the Czech Republic will lose more than CZK 1.5bn of tax-deductible costs.

This provision will not cover providers of financial services or independent companies outside groups. The new rule will also apply to interest payments from contracts that were already concluded in the past.

EXIT TAX

The tax package implements the so-called exit tax i.e. taxation of transfers of assets abroad without a change in ownership. The proposed law aims at situations when taxpayers shift their seats as well as assets abroad. The assets do not change ownership

but future income from them will be subject to taxation only in the target jurisdiction. The current tax system does not cover this situation. The new proposal is to subject the assets being transferred abroad to taxation as if they were sold internally by the taxpayer. Taxable income will include the deemed selling price, with a possibility to apply relating costs. The provision should apply for the first time in tax periods starting as of 1 January 2020.

NOTIFICATION DUTY WITH RESPECT TO EXEMPT INCOME

There is newly an obligation to notify the tax administration about payment of dividends or other sources of income that are exempt from tax and paid abroad. The notification duty will not apply to income of the same kind of up to CZK 100,000, flowing to the same tax non-resident in a given calendar month. The Ministry of Finance's justification for this measure is a need for automatic exchange of information with foreign tax administrations and a need to thoroughly map profit outflows from the Czech Republic in order to prevent tax evasion.

CFC RULES

CFC rules i.e. rules for taxation of Controlled Foreign Companies, represent a novelty in the Czech tax law. They consist in taxation of income of CFCs at the level of their Czech shareholding companies, assuming the latter own more than 50% of shares in the CFCs and the CFCs do not carry out own

“The tax package also introduces rules aiming at exploitation of mismatches of tax systems i.e. cases when the same underlying event is treated by two states in a different way.”

business activities (i.e. shell companies). CFC rules will not apply automatically to all the passive CFCs, but only to those resident in jurisdictions with preferential tax regimes (specifically, in cases where tax payable by the CFC is 50% or more lower than tax that would be payable if it were a Czech tax resident).



HYBRID MISMATCHES

The tax package also introduces rules aiming at exploitation of mismatches of tax systems i.e. cases when the same underlying event is treated by two states in a different way. This can arise e.g. when one state

“There is newly an obligation to notify the tax administration about payment of dividends or other sources of income that are exempt from tax and paid abroad.”

qualifies income as a dividend, which represents exempt income, whereas the second state treats the same payment as tax-deductible interest. The measures should apply for the first time in the taxable period starting as of 1 January 2020.

which are being claimed as part of assets seizures and also in connection with the debtor's death.

In relation with the CONTROL STATEMENT,

the amendment makes clear which date shall be stated in the Control Statement in terms of an obligation to declare tax in case of corrective tax documents. Until now, several interpretations have been followed in practice, which leads to situations when the issuer and recipient of the tax documents state different dates, the tax documents do not match as a result, and the situation needs to be clarified to the Tax authorities. This is why the amendment stipulates that the date when the obligation to declare tax arises is the date when the correction has been performed.

A new feature of the law is the provision on REASONABLE EFFORT,

which aims at situations when the issued corrective tax document is not delivered, via usual means, to the recipient. This is why the amendment proposes that the taxpayer makes a downward reduction of the tax base in the tax period in which they exerted adequate effort (which can be reasonably expected in the given case) to deliver the tax document to the recipient. The burden of proof naturally lies with the supplier.

The provision on 'reasonable effort' will also apply in cases of issuance of regular tax documents, in connection with the newly intro-

VAT Act changes

A small amendment has been made to the provision governing TAX BASE CORRECTIONS.

The new rule stipulates that issuance of a corrective tax document is also possible in cases when 5 or more years have already elapsed since the date of taxable supply, but the customer had, in the meantime, been subject to court proceedings in connection with supplies of goods or services, and the outcome of the court proceedings has a bearing on the price of the supply (tax base).

REORGANIZATION

The VAT Act assumes that, pursuant to the case law, tax base corrections can also be

made by debtors in the process of insolvency proceedings, on the basis of the approved reorganization plan. In such cases, the term for tax base correction would be extended by the period that had elapsed since the start of the insolvency proceedings, until the day when the reorganization plan was approved.

Tax base correction in case of BAD DEBT.

Apart from the well-known provision enabling a tax base correction (and the refund of the VAT by the state) for receivables held against debtors in insolvency proceedings, the amendment further extends the applicability of the provision to receivables

ABUSE OF LAW STAGES A COMEBACK

We have covered the doctrine of the abuse of law in our LERIKA Newsletter from June 2017 in connection with one-crown bonds. We explained that the doctrine covers cases when the law was formally complied with, but in doing so, a goal clearly not intended by the lawgiver was achieved. The doctrine is also covered by the case law of the European Court of Justice and the Czech Supreme Administrative Court. Both courts state that if the taxpayer takes steps, the sole economic purpose of which is to reduce tax, such behavior constitutes abuse of law.

We also pointed out that the application of the doctrine of the abuse of law is complicated and ambiguous. For example, it is not clear why it was not applied to one-crown bonds, not even in those cases where funds so obtained turned out to be more expensive than standard means of financing and the entire package of bonds was issued to one sole investor.

The abuse of law now stages a comeback in the amendment of the Tax Code. The text of the amendment states that abuse of law arises in cases when one of the main purposes of a given act is to enjoy a tax benefit. Applied strictly, this could mean an end to any form of tax optimization. In some cases, the lawgiver also places specific provisions in the tax law with the purpose of steering taxpayers towards specific forms of behavior.

However, the Ministry of Finance assures us, that nothing will change in the current practice. We therefore have to hold off to see how the new measure will be applied. In this context, an intervention of the Supreme Administrative Court somewhere down the line might also take place.

“However, the Ministry of Finance assures us, that nothing will change in the current practice. We therefore have to hold off to see how the new measure will be applied.”

duced obligation to not only issue the tax document within 15 days, but also dispatch it. The law specifically states that, within the 15-day period, adequate effort should be made to deliver the tax document to the recipient. The explanatory report further states that, the obligation of the taxpayer is to make sure that the tax document is sent out

to the recipient's contact address on the last day of the 15-day period at the latest.

FINES IN RESPECT OF CONTROL STATEMENTS

Although the proposed amendment does not mitigate sanctions imposed in connection with Control Statements, it limits the period during which the tax inspector can assess them, to 6 months. Based on the transitional provisions, this measure should apply

retroactively to fines that have already arisen.

LIMITATION OF ELECTION TO EXEMPT LEASE FROM VAT

With delayed effect as of 1 January 2021, it is proposed to limit the possibility to tax lease of property. Whereas currently, the taxpayer can choose whether to apply VAT or not when leasing property to another taxpayer for the purpose of their business activities, newly, the election will only apply to proper-

ties where only up to 60% of the total area is destined for residential use. The explanatory report states that the reason for this new provision is to prevent abuse of the existing law.

Currently, it not possible to comment on all the proposed amendments, as they can be further altered during the subsequent legislative process. We can only hope that such alterations will be limited, and will remove uncertainties and save us work.

Ivana Ottová

AMENDMENT OF THE ELECTRONIC SALES OF RECORDS ACT

Following the decision of the Constitutional Court from December 2017, which abolished a part of the law on Electronic Records of Sales ("EET" in Czech), the Ministry of Finance has prepared a new law amendment, which was approved by the government during summer. During the fall, the Parliament will deal with a proposal regulating the phase 3 and 4 of Electronic Records of Sales, the start of which was cancelled by the decision of the Constitutional Court, and which enables small-scale entrepreneurs to record sales in the so-called offline regime.

EET phase 3 and 4 go live

If the current amendment proposed by the government is eventually enacted, entrepreneurs in EET phase 3 and 4 will start recording their sales at the same time. The go live will be six months after the law comes into effect. The following professions will be affected.

Examples of activities of EET phase 3

NACE	Description
56	Food and beverage service activities, if the sales are realized through sales in stalls (e.g. ice-cream, pop-corn, hot dog stalls etc.)
45.20	Maintenance and repair of motor vehicles, excluding motorcycles (car service shops)
49.32	Taxi operation
49.10	Passenger rail transport, interurban
49.41	Freight transport by road
10.7, 10.1,...	Manufacture of various products (bakers, pastry makers, butchers...)
86, 69.1, 75.0,...	Professional activities (doctors, lawyers, veterinarians etc.)



Examples of activities o EET phase 4

NACE	Description
13	Manufacture of textiles
14	Manufacture of wearing apparel
15	Manufacture of leather and related products
16	Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials
17	Manufacture of paper and paper products
20.4	Manufacture of soap and detergents, cleaning and polishing preparations, perfumes and toilet preparations
22	Manufacture of rubber and plastic products
23	Manufacture of other non-metallic mineral products
25	Manufacture of fabricated metal products, except machinery and equipment
31	Manufacture of furniture
32	Other manufacturing (makers of toys, sports gear, musical instrument manufacturers, etc.)
33	Repair and installation of machinery and equipment
43	Specialised construction activities (e.g. electricians, painters, tilers, roofers etc.)
95	Repair of computers and personal and household goods (general purpose repairmen, computer repairmen etc.)
96	Other personal service activities (e.g. hairdressers, masseurs, fortune-tellers etc.)

The obligation to keep Electronic Records of Sales will no longer apply to payments made with debit or credit cards. However, the Ministry of Finance proposes that payments made with electronic wallets, chip cards, coupons or vouchers be subject to EET.

Off-line regime for small entrepreneurs

A relatively radical change is the proposal enabling small-scale entrepreneurs not to buy a digital device with an on-line access and to record sales only via specialized numbered receipts, which the entrepreneur would get, free of charge, from the tax authorities. The entrepreneur would then have to quarterly declare to the tax authorities, using a specific form, information regarding the sales made, receipts issued and cancelled.

The possibility to use the special regime with registered receipts will only apply to individuals and providers of medical ser-

vices (regardless of their legal form) and the entity concerned will be subject to the following conditions:

“However, the Ministry of Finance proposes that payments made with electronic wallets, chip cards, coupons or vouchers be subject to EET.”

- a) not a VAT payer;
- b) not having received payments of more than CZK 200,000 during the last 12 months;
- c) not having more than 2 employees.

In comparison to the various prior proposals, neither the total turnover nor the use of the so-called lump sum expenses made it among the criteria above enabling the

simplification. The entrepreneur will have to request the tax authorities to use the off-line regime and will have to substantiate

“The entrepreneur will have to request the tax authorities to use the off-line regime and will have to substantiate that they fulfill the criteria.”

that they fulfill the criteria. A question begs itself though, to what extent the regime will be used at all, considering all the paperwork and administration relating to it.

TAX ID required on receipts

Among the other changes, what is worth noting is that the amendment reintroduces the requirement to state TAX ID on the receipts. However, if the personal birth num-

“What is unusual about the situation is that, following the external comment round, the government proposed the same treatment for potable water (delivered via water supply).”

ber is part of TAX ID, the requirement does not apply.

EET destined only for VAT payers or for full abolition?

The proposed governmental amendment on EET was followed in the Parliament by two further amendments proposed by the MPs in relation with this law. The first amendment proposes that EET only applies to VAT payers, the second one pushes for its full abolition. As expected, the government stood against both amendments, yet both amendments have now become part of the legislative process.

We will keep you posted about further developments in this domain in our next Newsletter or Tax News.

Ivana Ottová



BEER AND EET

Together with the proposed governmental amendment of the Act on Electronic Records of Sales, the government also came up with a surprising proposal to lower the rate of VAT on beer from tap.

Based on the proposal, beer from tap could become subject to the lower VAT rate of 10% (from the standard rate of 21% now). What is unusual about the situation is that, following the external comment round, the government proposed the same treatment for pota-

ble water (delivered via water supply).

Based on the governmental amendment, beer should become subject to the lower rate at the same time as the go live for phase 3 and 4 of EET.

Reduce VAT rate for specific services

Last, but not least, the amendment proposes that various services as well as delivery of cut flowers be subject to the lower **VAT rate of 10%**. The list of services so affected includes mainly the following:

- deliveries of potable water via water supply
- collection and cleaning of sewage water
- Food and beverage service activities (excluding the serving of tobacco products and alcoholic beverages – beer from tap excepting)
- cleaning of interiors and of windows in households
- babysitting and care for the old, sick and disabled
- repairs of bicycles
- services of hairdressers and barbers

In the gallery

An accountant goes to the gallery with his wife. They pass by various paintings, until the accountant catches the glimpse of a painting featuring a naked girl, whose private parts are covered with leaves. The wife does not like it too much and wants to carry on, but the accountant stops in his tracks and gazes at the painting.

"What are you waiting for?", asks the wife.

"The fall."

Nothing beats a good interpreter

A mobster boss asks for a former accountant in order to interrogate him, together with his lawyer.

The boss asks: "Where are the three million dollars you have embezzled?"

The lawyer reminds the boss: "Boss, the accountant is deaf and dumb. However, I know the sign language, so I can interpret."

"Good. Ask him then where the missing money is."

The lawyer interprets the question and the accountant responds, in sign language: "I have no idea what you are talking about."

"Boss, he says he does not what you are talking about."

The boss takes out a revolver and puts it to the accountant's hand, cocking the hammer. "Ask him again, where the money is!"

This time, the accountant gives up and says, with signs. "It is in the brown bag in the cellar of my house."

"What is he saying?" asks the boss impatiently.

"Damn you. You are not man enough to pull the trigger anyway."

AN ACCOUNTING DEPARTMENT



Reinforcement

Petra Totinová is from Moravia and, after graduating from the Academy of Commerce in Přerov, she decided to study the University of

Economics in Prague, with Accountancy and Financial Management of Business as her major. While studying, she already started working as an accountant for a small firm, where she stayed after successfully graduating from the university.

When, a few years later, she was deciding about another career change, she found the LERIKA firm appealing mainly due to friendly ambiance and likeable colleagues. Nowadays, she acts as an independent accountant and handles accounting (including payroll agenda) for several clients.



...and a tax department reinforcement

Ing. Kateřina Vokurková has been working for LERIKA since January. Kateřina has been in the business for 20

years. She graduated from the University of Economics in Prague, faculty of Finance and Accounting. She has been a member of the Chamber of Tax Advisors since 2002. She has work experience from the BDO firm, first as an audit assistant, and later as a tax advisor. She specializes in personal and corporate income tax and is fluent in English and German.

In her free time, she spends time with her family and likes travelling and gardening.

Successful completion of the tax advisor exam

"Naturally, he thinks about the tax adviser exam, but is in no hurry. As he says, there is a lot of work to do and he still has things to learn." This is how we ended the article about Petr Hájek in the LERIKA Newsletter in 2014.



4 years later, we can congratulate an experienced adviser who has exhibited the full extent of his knowledge by successfully completing the exam. He succeeded in the written as well as verbal part and obtained the certificate. No mean feat, considering that, based on the information from the Chamber of Tax Advisors, only a little over 20% of the candidates see the exam through. Congratulations!

Issued by LERIKA Tax & Accounting, s.r.o., Sokolovská 81/55, 186 00 Prague 8, info@lerika.eu editorial processing Petr Hampl, design Olga Hrdinová, www.atelier-apeo.cz

www.lerika.eu