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Direct Taxes

Calculate Your Tax Obligation

The Ministry of Finance has published on its websites a tax calculator that tax payers

- natural persons can use to calculate their approximate income tax for 2009.

New Treaty on the Prevention of Double Taxation between the Czech Republic and Cyprus

Please note that starting 1 January 2010 the provisions of the new treaty on the prevention of double taxation concluded between the Czech Republic and Cyprus will be implemented. As we informed you in our previous issues of Tax & Legal News, an integral component of the new treaty is the protocol defining the 'most favored

nation clause' relating to the taxation of industrial royalties while entitling the respective authorities of the contractual countries to deny the preferential treatment arising from individual provisions of the treaty subsequent to the mutual agreement of respective authorities and after specific requirements have been met.

In the table below we outline a comparison of withholding tax rates concerning selected types of income:

Income type	Current contract	New contract
Dividends	Maximum rate of 10%, regardless of the amount of the investment	0% rate (ownership exceeding 10%); 5% rate in other cases
Interest	10%	0%
Royalties	5%	10%

Income Tax Prepayments

In conclusion, once again we would like to restate the provisions relating to the prepayments for the income tax of corporate entities and natural persons. With effect from 1 January 2010, new obligations will arise for corporate entities and natural persons in respect of income tax prepayments.

Thus, please note that starting 2010 tax payers whose most recent tax obligation did not exceed CZK 30 thousand are not obliged to make prepayments. Tax payers whose most recent tax obligation ranges from CZK 30 thousand to CZK 150 thousand will make semi-yearly prepayments amounting to 40%

of the most recent tax obligation. Tax payers whose most recent tax obligation exceeded CZK 150 thousand will make quarterly prepayments amounting to a quarter of the amount of the most recent tax obligation.

Indirect Taxes

Brief news

Amendment to the Value Added Tax Act – Changes regarding the determination of the place of taxable supply

The amendment to the Value Added Tax Act that, inter alia, implements EU Directive on new rules for determining the place of taxable supply was approved by the Senate of the Czech Republic on 10 December 2009. It is likely that the Amendment will be signed by the President within a few days. The expected date for the amendment to come into force is 1 January 2010.

Default Tax Payments

As we previously reported, with effect from 1 November 2009, a legislative change was made in the definition of the date as of which a tax liability is deemed settled after having been paid to the account of the tax administrator. Effective as of 1 November 2009, it is necessary to submit the banking orders sufficiently in advance, since the effective date as of which a tax liability is considered settled is the date when the payment is credited to the tax administrator's account.

In this context, the Ministry of Finance of the Czech Republic has prepared Guideline D-330 which provides guidance on the most common reasons for waiving the payment of accrued penalties and interest on taxes to

reduce strictness in accordance with Section 55 (a) of Act 337/1992 Coll. on Administration of Taxes and Fees. The guideline states that tax administrators may waive interest, if imposed, in cases in which a debtor makes a payment to the relevant tax authority's account before the effective date for settling the tax liability and the payment is credited to the tax authority's account no more than within four business days after the deadline.

Supplies not included in the calculation of the coefficient for reducing a tax deduction claim

In early December 2009, the European Court of Justice (hereinafter 'ECJ') issued a ruling regarding case C-461/08, Don Bosco, which dealt with the possibility of exempting a real estate sale from taxation. Even though the time test for applying the VAT exemption was met, the sale included demolishing the building by the seller in order to prepare the plot of land for new construction work. Thus, a question arose whether the transfer of the building should be taxed, since the purpose of this transaction was, in substance, to deliver a plot of land for construction.

The ECJ ruled that the transaction should be taxed, giving an explanation that, regardless of the legal arrangements put in place between the seller and the purchaser, in

VAT terms, the transfer should be qualified as a transfer of land. According to the ECJ, a transfer of land is taxable if the relevant plot of land is intended for construction. As such, this ruling is not based on the legal state of affairs but emphasizes the economic substance of this transaction.

In addition, the ruling of the ECJ brings along interesting comments specifically regarding the definition of land that is intended for construction. The ECJ noted that it is up to the EU member countries to define such plots of land. Nevertheless, the ECJ commented that this definition must follow the purpose of the guideline which involves applying the exemption only in cases of transferring undeveloped plots of land that are not intended for construction.

The above-mentioned issue may alter the treatment of interpreting the definition of building land which is stipulated in the Czech Value Added Tax Act. This definition appears relatively formalistic in view of the ECJ's ruling. As a result, the ECJ's ruling might be of significance for all companies engaged in land transfers.



Other

Notification of 2010 Tax Obligations

On 4 December 2009, the Ministry of Finance published on its websites a summary list of tax obligations for 2010 including the tax schedule for 2010.

The notification of the Ministry of Finance also relates to statutory deadlines for tax compliance in 2010. Principally, attention is focused on excise duty and energy tax payers who are obligated to file a tax return

by the 25th day after the end of the taxation period (one month) in which the tax obligation originated. The fee for exceeding the minimum limit of bio-fuels is to be settled by 31 January 2010.

VAT Legislative Changes

Significant changes in VAT legislation will arise starting in 2010. In respect of these changes, it is necessary to point out that an obligation to file an EC Sales List will arise, for example,

to tax payers that provided a service the place of taxable supply of which is located in another EU country.

Change in the Determination of the Tax Settlement Day

With respect to the settlement of taxes, we would once again like to draw your attention to the fact that, effective as of 1 November 2009, a change was made in defining the tax settlement day if payments are made from accounts maintained in the Czech Republic.

In accordance with the amended terms, tax is deemed settled first at the moment when the payment is credited to the bank account of the tax administrator. Please note that, starting 1 January 2010, the new method for determining the settlement date will also

be applied for health insurance and social security charges. As a result, we recommend that tax payers contact their bank in order to obtain information on how long it takes to transfer payments to the tax administrator's account.

Deadlines for Submitting the Corrective or Additional Tax Return

We recommend that you submit your tax return in advance, not only on the grounds of the new provision on the tax settlement date, but predominantly with a view to the option

to file a corrective tax return before the deadline has expired if an error is detected in the tax return previously submitted. On the other hand, should an error be identified

after the expiry of the deadline, an obligation will arise to file an additional tax return by the end of the following month.

Increase of Real Estate Tax Rate

In accordance with the approval of Act No. 362/2009 Coll. (the so-called 'Janota Package'), with effect from 1 January 2010, tax rates will be doubled in relation to the following: plots of land that are part of developed land, courtyards, building land and other plots of land and structures, except for structures that serve for other kinds of business

activities regardless of the municipality in which they are located.

However, municipalities are entitled to adjust the amounts of real estate tax by determining coefficients that shall be issued in a generally binding regulation. The regulation must come into force by 1 August of the preceding year.

For the 2010 taxation period, regulations may be issued by municipalities by 30 November 2009. For the purposes of providing better access to information, the Ministry of Finance intends to issue a coefficient list on its websites. In addition, the new real estate tax rates effective of 1 January 2010 can now be found on the websites.

Administration of Taxes

New Tax Code Will Become Effective in 2011

From 1 January 2011 the new Tax Code 280/2009 Coll. will become effective, replacing the current Act on the Administration of Taxes and Fees (AATF). In connection with this change, tax entities will go through a number of changes, which we will regularly include in the Tax & Legal News. Described below are a few selected changes. Deloitte will actively participate in the legislative process to help prepare an amendment to this regulation before it becomes effective.

Application of Temporary Provisions

In practice, a number of entities will be surprised by the practical application of the temporary provisions, because, in line with these provisions, procedures or proceedings initiated before 1 January 2011 will be finalized pursuant to the new regulation after it becomes effective. Similarly, with effect from 1 January 2011, the new regulations will be applied for periods that commenced before the new act becomes effective.

Change in the Wording of Powers of Attorney

A power of attorney provided by a client to a tax advisor before the effective date of the new tax code will remain valid but its contents will be assessed pursuant to the new regulation. If the scope of the power of attorney is not clear from its then-current wording, the tax administrator will call upon the tax entity (authorizer) to submit a new power of attorney. Thus, the scope of the power of attorney will have to be newly defined in a more precise manner and the powers of attorney granted after 1 January 2011 will have to include consent of acceptance by the authorized person.

Application of the Current AATF after 1 January 2011

After 1 January 2011, the current Act on the Administration of Taxes and Fees will also be used in the following processes:

- Request for the waiver of tax or tax payment that was submitted before the new act became effective (similarly as the request for the waiver of tax arrears);
- Schedule proceedings that have not been finished by the effective date of the new regulation; and
- Agenda related to documenting the tax proceedings that have been initiated by the effective date of the new regulation.

If you are interested in more information in respect of tax administration, please contact our specialists (Radka Mašková). We would also like to invite you to a seminar (Business breakfast) that will take place in February and will be dedicated to the issues of the new tax code.

The Tax Administrator Must Proceed in Line with European Law

In mid-November 2009, the Supreme Administrative Court issued a ruling (verdict of the Supreme Administrative Court of 13 November 2009, ref. no. 5 Afs 53/2009-63, www.nssoud.cz) in which it commented on the responsibility of tax administrators in cases when they proceed in line with applicable Czech tax legislation but not in line with the law of European Communities (in line with the Sixth Council Directive 77/388/EEC in this particular case).

The substance of the dispute involved the filing of an additional VAT return for the third quarter of 2004 in which the tax entity accidentally applied the basic tax rate. After noting this error, the tax entity filed an additional return within 30 days from the original filing, in which it applied the correct tax rate. The tax administrator did not want to return the tax overpayment to the tax entity

because, due to an incorrect interpretation of the European legislation by the Czech Republic, no legal way of returning such 'tax overpayment' existed in the VAT Act. The taxpayer did not accept this decision, which was negative for him, and filed a lawsuit against the administrator. He won the lawsuit but the Municipal Court did not recognize his right to have the costs of the proceedings reimbursed. Subsequently, the tax entity requested a settlement of the interest on the tax overpayment because he claimed that this overpayment was caused by the tax administrator due to an incorrect application of the tax legislation.

In this matter, the Supreme Administrative Court confirmed the opinion that the tax administrator is obligated to proceed in line with European law in interpreting national law in the area of legal amendments whose

creation, effectiveness and purpose are immediately connected to EC law. Pursuant to the Supreme Administrative Court, the tax administrator cannot be made responsible for an incorrect interpretation of the Sixth Directive under Czech law. On the other hand, the tax administrator should, by virtue of office, be acquainted with these regulations, their interpretation and application (including the possibility of individuals to appeal to EC law directly in front of national bodies). The court sees the fault of the tax administrator in the fact that it did not apply a 'euroconformist' interpretation of the law in this particular case.

If the tax administrator did not act in line with applicable law of the European Communities in your case, this resolution ensures you a chance to win in a dispute with the tax office.

Grants and Incentives

Czech Republic

Employee Training Infrastructure

From 1 September 2009 to 31 May 2010, subsidy applications will be accepted for the Training Centers programme, which focuses on forming employee training infrastructures, particularly in the processing industry. Individual subsidies may amount up to CZK 100 million. Business entities regardless of their size and corporate or citizen associations can apply. The project must be located outside Prague. The programme supports the construction and restoration of training centers, including furniture, training aids and programmes, etc.

Science and Technology Parks and Enterprise Incubators

Subsidy applications for the Prosperity Programme will be accepted from 1 November 2009 to 30 June 2010. Subsidies will be provided for projects focusing on founding and operating science and technology parks, enterprise incubators and technology transfer centers. All business entities regardless of their size, as well as science and research organizations, universities, other educational institutions and self-governing units can apply for the subsidy. Up to CZK 300 million may be granted per project and a total of CZK 4 billion will be distributed among applicants. The projects must be located outside Prague.

Investments in Information Technologies

From 1 January 2010 to 15 October 2010 subsidy applications under the ICT Programme in enterprises will be accepted. Only small and medium-sized enterprises (SME) can apply. The subsidy is intended for projects focusing on introducing and expanding information technologies, information systems, software, outsourcing of information systems, etc. The maximum subsidy per project is CZK 20 million.

Slovak Republic

Support of Energy Efficiency in Enterprises

Based on the call for submitting applications for support under the Competitiveness and Economic Growth Operational Programme 2.1 – Increase of energy efficiency in production and consumption and introduction of progressive technologies in the energy sector – enterprises may receive a subsidy for various investment projects focusing on energy savings. The support is intended for SMEs and large enterprises that do not employ more than 1 thousand people and whose annual sales are below EUR 50 million. Projects whose aggregate eligible costs do not exceed EUR 25 million may receive a subsidy ranging from EUR 100 thousand to EUR 6 million. Applications can be submitted until 22 February 2010.

Support of Employee Trainings and Employee Adaptability

On 19 November 2009 the Social Implementation Agency announced a call for submitting applications related to adaptability support in enterprises, support of entrepreneurs, associations of entrepreneurs and regions. The only region entitled to obtain a subsidy is the Bratislava region (and the districts of Malacky, Pezinok, Senec and the capital city of Bratislava). The call is focused on medium-sized and large enterprises which have been active on the market for at least a year. The authorized activities include general and specific training. The maximum support amount for a project is EUR 2 million. The closing date for submitting applications is 29 January 2010.

Support of Research and Development Investments

Subsidy applications in the Competitiveness and Economic Growth Operational Programme 1.3 – Support of innovations in enterprises – can be submitted until 27 January 2010. Subsidies are focused on supporting the growth of enterprise competitiveness through industrial research, experimental development and support of innovative activities. Only small and medium-sized enterprises can apply for the subsidy.

Invitation to seminar

Financial Statements 2009 – 5 January 2010 (Prague)

Once again, we have prepared our yearly “Financial Statements” training to assist in clarifying the current version of the financial statements and to deliver a set of practical instructions to follow when dealing with frequently asked questions.

The principal topics of the training will be as follows:

- Component depreciation approach
- Practical examples of the calculation for the valuation of potential impairment
- Deferred tax (focus on the calculation of the deferred tax asset)
- Accounting for derivative financial instruments
- Cash flow statement preparation
- Most frequent errors in the financial statements

For more informatio www.deloitte.com/cz/events/100105/financial-statements

Tax Liabilities

January 2010

Monday, 11 January 2010	Excise duty	<ul style="list-style-type: none">• Due date for the November 2009 tax (except for the excise duty on spirits)
Friday, 15 January 2010	Intrastat	<ul style="list-style-type: none">• Submission of the Intrastat statement for December 2009
Wednesday, 20 January 2010	Income tax	<ul style="list-style-type: none">• Monthly payment of aggregate withheld advances for personal income tax from dependent activities and emoluments
Monday, 25 January 2010	Value added tax	<ul style="list-style-type: none">• Submission of the tax return and tax for the fourth quarter and December 2009• Filing date for EC sales listings for the fourth quarter
	Excise duty	<ul style="list-style-type: none">• Due date for the November 2009 tax (only the excise duty on spirits)
	Environmental taxes	<ul style="list-style-type: none">• Submission of the tax return and payment of tax on gas, solid fuels, and electricity for December 2009

February 2010

Monday, 1 February 2010	Income tax	<ul style="list-style-type: none">• Payment of the tax withheld under a special tax rate for December 2009
	Real Estate tax	<ul style="list-style-type: none">• Submission of the tax return (complete) or partial tax return for 2010
	Road tax	<ul style="list-style-type: none">• Submission of the tax return and payment of the tax for 2009
	Biofuels	<ul style="list-style-type: none">• Statement according to § 3a par. 6 Act No. 86/2002 Coll.
Tuesday, 9 February 2010	Excise duty	<ul style="list-style-type: none">• Due date for the December 2009 tax (except for the excise duty on spirits)
Monday, 15 February 2010	Income tax	<ul style="list-style-type: none">• Signing of the declaration of personal income tax for dependent activities and fringe benefits for 2010 and signing of the annual settlement of prepayments for taxes and tax allowances for 2009• Request for annual settlement carried out by the tax administrator
	Income tax	<ul style="list-style-type: none">• Monthly payment of aggregate withheld advances for personal income tax from dependent activities and emoluments• Submission of the settlement of personal income tax on dependent activities and emoluments for the 2009 taxation period
Wednesday, 24 February 2010	Excise duty	<ul style="list-style-type: none">• Due date for December 2008 tax (only the spirit excise duty)
Thursday, 25 February 2010	Excise duty	<ul style="list-style-type: none">• Submission of the tax return for January 2010• Submission of the tax return to claim a refund of the excise duty on heating oils, green oil and other technical fuels for January 2010
	Value added tax	<ul style="list-style-type: none">• Submission of the tax return and payment of tax for January 2010
	Environmental taxes	<ul style="list-style-type: none">• Submission of the tax return and payment of tax on gas, solid fuels and electricity for January 2010

Source: www.mfcr.cz, www.czso.cz

If you have any questions concerning the items in this publication, please contact your regular Deloitte Tax contact or one of the following experts:

Direct Taxes

Jaroslav Škvrna: jskvrna@deloitteCE.com
John Ploem: joploem@deloitteCE.com
Zbyněk Brtinský: zbrtinsky@deloitteCE.com
Miroslav Svoboda: msvoboda@deloitteCE.com
Marek Romancov: mromancov@deloitteCE.com
Peter Wright: pewright@deloitteCE.com
LaDana Edwards: ledwards@deloitteCE.com

Indirect Taxes

Tomas Seidl: tseidl@deloitteCE.com
Adham Hafoudh: ahafoudh@deloitteCE.com
Radka Mašková: rmaskova@deloitteCE.com
Petr Symanek: psymanek@deloitteCE.com
Ivona Klabouchová: iklabouchova@deloitteCE.com

Grants and Incentives

Jarmila Škvrnová: jskvrnova@deloitteCE.com
Luděk Hanáček: lhanacek@deloitteCE.com

Deloitte Advisory s.r.o.
Nile House
Karolinská 654/2
186 00 Prague 8 - Karlín
Czech Republic
Tel.: +420 246 042 500
Fax: +420 246 042 555
www.deloitte.cz

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