



## FIRST EXPERIENCE WITH THE NEW TAX CODE

### **The Tax Code Benefits Essentially Everybody**

Most tax entities have experience in dealing with the tax authorities in complying with their tax duties, including disputed issues, whether it be with local authorities or the head office.

At the beginning of 2011, a new Tax Code was introduced, replacing the 18-year old Taxes and Fees Administration Act. The new Tax Code applies to and governs the procedures taken by the tax authorities as well as the rights and obligations of tax entities and third parties (such as witnesses). The requalification can thus be seen as constituting a legislative step in the right direction as it substantially summarizes case-law conclusions (especially those by the Supreme Administrative Court) in matters which the Taxes and Fees Administration Act failed to deal with entirely, or only briefly and unclearly, such as the administration of taxes collected or withheld by the payer, including employment tax advances, tax withheld at a special rate, tax on license fees, dividends and shares in profit, or such as securing income tax of foreign parties from sources in the Czech Republic or tax distresses, and others. The Code also introduced an important new aspect – deadlines for tax determination and circumstances in which the deadline can be extended, re-applied, suspended or resumed, such as following the conclusion of administrative proceedings before a court.

Taxpayers and taxable parties both benefit from the new Code as their rights and obligations are defined in greater detail. It is true, however, that in certain situations the Code imposes stricter rules and higher penalties as compared with the former Taxes and Fees Administration Act. For example, tax entities must now take into account that a power of attorney granted to a tax advisor or another attorney does not take effect until it is delivered to the tax authority, i.e. it does not become valid on the date on which it is granted. Further, tax entities no longer have the chance to file an appeal against their own tax return, a procedure which has often been used in the past to resolve unclear issues quickly without risking default interest and penalties. In addition, now tax entities can no longer apply for a deadline to restart from the original moment after 15 days (previously 30 days) following the date on which the grounds which would cause the applicant to miss the deadline ceased to exist.

The professional public has expressed its appreciation of the legislative quality of the new Tax Code, including the purity of its terminology. The Code is also expected to serve as an element that will help unify both the terminology and the procedures set forth in a number of special tax laws, such as the Income Tax Act, VAT Act, and Property Taxes Act. What needs to be taken into account, however, is that the tax authorities may fail to follow the rule of law on occasion since they have not had a chance to familiarize themselves thoroughly with the new rules, or simply because their IT systems do not yet allow all the procedures to be processed precisely in line with the law.

Thanks to clearer and more thorough tax administration rules, the courts will likely be able to spend more time on disputes regarding the interpretation and application of special tax laws, where there will still be plenty of unclear or unresolved issues. To date many tax disputes have been resolved via judgements merely stating that the tax authorities or the tax entities themselves made a procedural mistake, without dealing thoroughly with the very tax problem itself.

### **Remedy Unclear Issues, Remove Severity**

Practical unclear issues include the question of who shall be authorized to act in tax matters on behalf of a company which has been deemed bankrupt but for which the decision on how the bankruptcy is to be managed has not yet been made. The tax authorities request that the appointed insolvency trustee (as registered in the Commercial Register) be the person authorized to act; however, the insolvency trustee generally is not authorized to act as such, in which case the statutory body should be the party authorized.

Needless to say, practice shows that further provisions will have to be added to the Tax Code. Especially, the institution of release from the obligation to pay tax or interest and any other amounts due under tax (such as default interest, penalties or fines) should be returned to tax administration process regardless of whether such release is made on the grounds of inconsistencies resulting from tax laws or for the sake of removing severity. The Tax Code should also provide room for circumstances deserving special attention and for prudent tax authorities to proceed reasonably given the particular situation.

The provisions in respect of penalties for defaults on filing additional tax returns (the percentage of the tax itself, not of the difference between the originally assessed tax and the newly determined tax or tax loss) appear to be especially severe in practice. In addition, such penalties have impacts on cases in which the taxable party fails to file an additional tax return for a lower tax duty or a higher loss by the statutory deadline, i.e. in situations in which they are actually not required to file an additional tax return.

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