

APRIL/MAY 2015 NO. 2

## ELECTRONIC SALES REGISTER

## TANSFER PRICES – INSTRUCTIONS FOR COMPLETING TAX RETURN SCHEDULES

## HOW TO PAY VAT AT THE MINI ONE STOP SHOP (MOSS)

## INSTRUCTIONS FOR DEFERRING TAX PAYMENTS

## REAL PROPERTY TAX

## PROTOCOL TO THE DOUBLE TAX TREATY BETWEEN THE CZECH REPUBLIC AND BELGIUM

## TAX CASE LAW (GUIDING DECISIONS)

### ELECTRONIC SALES REGISTER

The Ministry of Finance, in cooperation with the General Financial Directorate (“GFD”), recently launched an Electronic Sales Register website (“ESR”). In addition to providing general information and answering FAQs, the website clarifies the grounds for the ESR and outlines certain technical principles. The GFD admits that catering services may be reclassified from a standard VAT category to a reduced 15% one.

The Ministry of Finance has already dealt with the comments on the ESR Act. The Ministry of Finance responded to the discussion and observations during the consultation proceedings by making several changes. For example, the customer’s duty to accept a bill was deleted, and the penalty system has undergone substantial changes. Closing or suspending the operation of a breaching party’s establishment serves as a preliminary measure which can only be applied on a temporary basis until the breach is remedied.

While the ESR Act continues to be designed to apply nation-wide, the applicable implementation decree temporarily exempts all operations except for accommodation and catering services, wholesale and retail sales from the duty to keep sales records. The ESR Act will extend to other operations later after the tax authorities conduct a risk analysis.

The Ministry of Finance contemplates granting a CZK 5,000 one-off tax break to all personal income tax payers who would be obliged to keep sales records for the particular year as compensation for increased costs which they will incur as a result of the ESR Act.

### TANSFER PRICES – INSTRUCTIONS FOR COMPLETING TAX RETURN SCHEDULES

The GFD has made available FAQs for completing a tax return schedule summarizing transactions between related parties.

Please bear in mind that the schedule must be attached to the 2014 tax return (i.e. a return for any taxation period commenced in 2014).

### HOW TO PAY VAT AT THE MINI ONE STOP SHOP (MOSS)

The GFD published details on its website on how to pay tax in the Mini One Stop Shop procedure which, as of 1 January 2015, responds to rules for determining the place of supply for e-services, telecommunications services and radio and TV broadcasting services provided to parties not liable to tax when the place of supply is in the EU.

### TAX DEDUCTIBILITY OF EMPLOYER CONTRIBUTIONS

In connection with new – as of 2015 – conditions concerning the tax benefit for individuals with life insurance, the Czech Association of Insurance Companies (CAIC) has published some ways to document compliance with the conditions for tax deductibility in respect of employer’s contributions to employees’ private life insurance with member insurers. Taxpayers can check the CAIC’s website to see whether they can apply paid insurance premiums to reduce their tax base.

Whether certain insurance can qualify as tax deductible is documented by the insurance contract/policy. If no implication to that effect is made in the insurance contract/policy, the applicant must present an amendment or an insurer’s confirmation of a unilateral change to the terms and conditions. Further details on how particular insurers proceed are listed in a summary available on the CAIC’s website.

### INSTRUCTIONS FOR DEFERRING TAX PAYMENTS

The GFD made available to the public its internal instructions for trying to unify the tax authorities’ decision-making and help avoid discretionary decisions by tax authorities regarding tax payment deferrals or splitting them into instalments within statutory boundaries. This measure should help avoid ungrounded differences in decisions on identical or similar matters.

If a tax entity makes a specific enough claim and manages to prove that there are economic or social grounds for a tax payment deferral as per the Tax Procedure



#### Prague Main Office

Jungmannova 24, 110 00 Prague, Czech Republic  
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234  
e-mail: ksbpraha@ksb.cz

#### Karlovy Vary Office

Závodní 391/96C, 360 06 Karlovy Vary, Czech Republic  
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781  
e-mail: ksbkv@ksb.cz

#### Ostrava Office

Českosobotská 7, 702 00 Ostrava, Czech Republic  
tel.: +420 / 553 030 511, fax: +420 / 553 030 512  
e-mail: ksbostrava@ksb.cz

Code, it has the right to have the deferral granted by the tax authority. If there are statutory grounds for the tax payment deferral, the tax authority's discretion is limited. The tax authority will grant the deferral if other requirements are complied with, such as where decisive facts exist.

## REAL PROPERTY TAX

The 2015 real property tax (or first instalment) fell due on 1 June 2015. For individuals and legal entities that do not have a data box, money orders are mailed out by the tax authorities.

If a taxpayer's real property is in several jurisdictions (in terms of Czech tax administration) money orders from all tax authorities will be in one envelope. Taxpayers should receive the money orders by 25 May.

The tax administration posted information about global real property tax prescription lists by means of which local tax authorities communicate the new amount of tax. The global list contains taxpayers whose 2015 tax included in the tax changed from the previous year or whose amount included in the tax return changed. Taxpayers can review global prescription lists at their local tax authority office on business days from 30 April through 1 June.

Taxpayers not listed in the global prescription lists will, in line with the Real Property Tax Act, be subject to tax in the amount of the most recently known tax based on the information included in the tax return.

If a taxpayer does not receive an envelope with the money order to pay the real property tax and wants to find out whether or not their tax changed, we recommend that they check the global prescription lists or at least inquire via telephone with the tax authority's staff.

## PROTOCOL TO THE DOUBLE TAX TREATY BETWEEN THE CZECH REPUBLIC AND BELGIUM

The Protocol which took effect on 3 March 2015 amends the Double Tax Treaty between the Czech Republic and Belgium.

The Protocol's primary aim is to ensure tax information is exchanged in line with up-to-date trends and to improve coordination between both countries' tax authorities, which should help reduce potential tax evasion and fraud. The modified provisions of the treaty will be implemented and apply to tax periods commencing 1 January 2016 or later. The text of the Protocol was made available in the Collection of International Treaties.

## TAX CASE LAW (GUIDING DECISIONS)

### E-Book VAT Dispute

The EU's Court of Justice decided that e-books are subject to the base VAT rate, which ends a lengthy dispute among Member States with differing views since the VAT Directive makes no reference to e-books.

The debatable decision may serve as an impulse for EU legislative bodies and speed up the relevant legislative steps needed to unify tax rates applicable to physical books and e-books.

### Supplier's Financial Condition to Be Considered

One of the Supreme Administrative Court's recent rulings features a fairly substantial review of the circumstances under which the tax authority can call upon a customer (as a guarantor) to pay VAT which the supplier failed to pay. The guarantee will apply in cases where the customer knew or should and could have known at the moment the taxable supply was made that the supplier would deliberately not pay the tax.

In the case in question, the supplier, which was in poor financial condition, sold goods to the customer and rented real property to the customer on a long-term basis. The customer paid by offsetting the price against the debt owed by the supplier. However, the supplier was not financially capable of paying the VAT and subsequently went bankrupt. The tax authority then called upon the customer to pay the VAT (on the grounds of the



### Prague Main Office

Jungmannova 24, 110 00 Prague, Czech Republic  
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234  
e-mail: ksbpraha@ksb.cz

### Karlovy Vary Office

Závodní 391/96C, 360 06 Karlovy Vary, Czech Republic  
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781  
e-mail: ksbkv@ksb.cz

### Ostrava Office

Československá 7, 702 00 Ostrava, Czech Republic  
tel.: +420 / 553 030 511, fax: +420 / 553 030 512  
e-mail: ksbostrava@ksb.cz

customer-guarantee). Subsequently, the customer filed a lawsuit seeking annulment of the tax authority's decision. After having reviewed all circumstances, the Supreme Administrative Court held that the customer could and should have known that the supplier was not financially capable of paying the tax and, therefore, that it had no intention of doing so.

The interpretation which the Court chose in relation to the supplier's indirect intention not to pay the tax is fairly broad and could, under certain circumstances, lead to a situation in which all the authorities would try to claim unpaid VAT from customers whose suppliers went bankrupt. Therefore, parties doing business with suppliers who they know are currently or potentially financial unstable should thoroughly consider the tax implications.

### **Insufficiently Documented Difference between Standard Prices and Transfer Price for Tax Purposes**

The dispute involved a transaction in which the claimant agreed to rent a land tract to a company in which she owned a 50% stake for the token amount of CZK 1 without increasing her tax base by the difference between the token and arm's length rents. Since she failed to reason the difference sufficiently to the tax authority, it increased her income tax based on the difference and assessed tax accordingly. Both the Regional Court and the Supreme Administrative Court dismissed the lawsuit and confirmed the tax authority's approach.

The reasoning of the court rulings implies that if a tax entity wants to satisfactorily justify the difference between an agreed and arm's length (standard) price (see Section 23(7) of the Income Tax Act) they must claim and prove that there are special, out-of-the-ordinary market conditions yet economically sound and rational grounds for the agreed price to differ from the arm's length price. Grounds such as the parties' interest in tax optimization or in maximizing the joint revenue of related parties, which the claimant presented, cannot be considered to constitute satisfactory documentation of the difference as per Section 23(7) of the Income Tax Act.

### **Employment-Related Financial Benefits**

The Supreme Administrative Court dismissed a special appeal filed by the Appellate Financial Directorate regarding the tax implications of a financial benefit granted to an employee in 2009: the employer granted its employee a loan whose interest was lower than the arm's length interest. The dispute arose because the employee was also a member of the employer's executive body and a sole member in the company which was the sole shareholder in the employer. The special appeal was dismissed as illegitimate.

Although the relevant provisions of the Income Tax Act changed, the Supreme Administrative Court reached an important conclusion regarding the application of statutory arm's length provisions. The Supreme Administrative Court held that the arm's length provisions do not apply to performance granted to employees since the employment income tax provisions are special provisions in relation to the general arm's length provisions.

---

*Tax News* includes general information only and cannot substitute for the full wording of the relevant legislation. The information contained in *Tax News* should not be construed as legal advice or legal opinion. Kocián Šolc Balaščík expressly denies all liability for any activities or conduct taken as a result of the information contained in *Tax News*.

If you need more details or would like to know more about specific issues, please contact a KSB tax advisor. We would be pleased to provide you with more information on any of the issues above.

You're receiving *Tax News* as a valued business partner. If you no longer wish to receive *Tax News*, please unsubscribe here: <http://www.ksb.cz/newsletter/unsubscribe/tn>.



#### **Prague Main Office**

Jungmannova 24, 110 00 Prague, Czech Republic  
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234  
e-mail: ksbpraha@ksb.cz

#### **Karlovy Vary Office**

Závodní 391/96C, 360 06 Karlovy Vary, Czech Republic  
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781  
e-mail: ksbkv@ksb.cz

#### **Ostrava Office**

Českosobotská 7, 702 00 Ostrava, Czech Republic  
tel.: +420 / 553 030 511, fax: +420 / 553 030 512  
e-mail: ksbostrava@ksb.cz

KŠB's tax team contact info:

tel. č.: 224 103 316

Pavla Blažková [pblazkova@ksb.cz](mailto:pblazkova@ksb.cz)

Jan Černohouz [jcernohouz@ksb.cz](mailto:jcernohouz@ksb.cz)

Alena Jurič [ajuric@ksb.cz](mailto:ajuric@ksb.cz)

Tomáš Lízner [tlizner@ksb.cz](mailto:tlizner@ksb.cz)

Helena Navrátilová [hnavratilova@ksb.cz](mailto:hnavratilova@ksb.cz)



**Prague Main Office**

Jungmannova 24, 110 00 Prague, Czech Republic  
tel.: +420 / 224 103 316, facsimile: +420 / 224 103 234  
e-mail: ksbpraha@ksb.cz

**Karlovy Vary Office**

Závodní 391/96C, 360 06 Karlovy Vary, Czech Republic  
tel.: +420 / 353 225 996, facsimile: +420 / 353 227 781  
e-mail: ksbkv@ksb.cz

**Ostrava Office**

Československá 7, 702 00 Ostrava, Czech Republic  
tel.: +420 / 553 030 511, fax: +420 / 553 030 512  
e-mail: ksbostrava@ksb.cz