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# **NEWSLETTER** (16.10.2020)

Dear Clients and Partners,

Please let us provide you with news in the following areas:

- Real estate acquisition tax abolished
- Tax exemption for proceeds of sale of real estate
- Deduction of interest on loans taken to finance own housing
- Changes in VAT on supplies of goods applicable from 1 September 2020
- COVID: Accommodation scheme
- Return of contributions paid under Antivirus job retention scheme
- „Kurzarbeit“ in Employment Act
- Retrospective application of tax loss
- Decision of the Supreme Administrative Court: Deduction of interest on loans taken to finance own housing

## 1. REAL ESTATE ACQUISITION TAX ABOLISHED

The real estate acquisition tax has been definitively abolished for all transactions in which the legal effects of the registration of the transaction in the Land Registry occurred on 26 September 2020 or later. According to the new legislation’s interim provisions, the abolition will have retrospective effects and will also include all transactions for which tax returns were to be filed before 31 March 2020, i.e. all transactions for which the change of title was registered in the Land Registry in December 2019 or later.

Taxpayers who have already paid the tax in the above period must apply for the tax to be returned, as this will not occur automatically. A sample application is published at the Financial Administration’s website, but the form is not binding, and taxpayers may phrase the application differently. The application may be made either in writing (and filed physically or via a data mailbox) or orally to an official record made by the respective financial office.

## 2. TAX EXEMPTION FOR PROCEEDS OF SALE OF REAL ESTATE

In relation to the above-mentioned abolition of real estate acquisition tax, the applicable time test, which is used to determine whether proceeds of sale of real estate by natural persons shall be exempted from tax, has been changed. While previously, it was sufficient to own real estate in which the taxpayer did not live for five years, from 2021, the test will be extended to 10 years. Tax exemption will still be granted before the end of this 10-year period if the taxpayer uses the proceeds of the sale to finance his/her own housing. The change will not affect real estate acquired before 31 December 2020, which will remain to be subjected to the original 5-year test.

## 3. DEDUCTION OF INTEREST ON LOANS TAKEN TO FINANCE OWN HOUSING

Even though a complete abolition of the possibility do deduct interest paid on loans used to finance own housing (mortgages, loans taken on building savings accounts etc.) was originally proposed, the Parliament in the end adopted a compromise, which reduced the maximum amount to be deducted in one taxation period from CZK 300,000 to CZK 150,000. This does not affect interest on loans used to finance housing purchased before 1 January 2021 (and refinancing of these loans).

## 4. CHANGES IN VAT ON SUPPLIES OF GOODS APPLICABLE FROM 1 SEPTEMBER 2020

On 1 September 2020, Act No. 343/2020 Sb., which implements European tax legislation into Czech law, became effective. The Act includes provisions amending the Value Added Tax Act and concerns the following areas of regulation:

Chain transactions

In case of cross-border intra-EU supplies of goods transported directly from the first supplier to the final customer, but in the meantime sold and bought by a number of other intermediaries, it is necessary to determine which of these transactions qualifies as an intra-community supply and is therefore exempted from VAT and which does not. If transportation is arranged for by any of the intermediaries in the chain, the new rules state that it depends on what VAT number this person will provide its supplier with. Based on this criterion it will be determined which transaction is exempted from tax, while all previous transactions are to be treated as taking place in the member state of origin and all subsequent supplies are to be treated as being made in the member state of destination.

Call-off stock

The rules for taxation of transactions in which suppliers move goods to a stock located in another member state to deliver them to a local customer, while the title to the goods is transferred at a later stage (when the goods are taken from stock), are now harmonized.

General rules applicable to the transaction described above result in supplier being identified for VAT purposes in the member state to which the goods have been supplied. This may now be avoided by using a „call-off stock“ arrangement, which transfers the tax obligation to customer (who at the moment of acquisition of the goods from the stock records intra-community acquisition of goods from another member state). A number of conditions must be met for the call-off stock regime to apply, such as:

- Supplier cannot be identified for VAT purposes in the state where the stock is located;
- Both supplier and customer must keep records of the goods in stock;
- The goods are not stocked for longer than 12 months;
- Future customer’s VAT identification number is stated in supplier’s recapitulative statement.

The Act also includes rules which apply when goods are lost, stolen or destroyed in the stock, when supplier changes or goods are returned, or when the conditions for the use of call-off stock are breached.

Call-off stock has no impact on Intrastat declarations, since the reporting unit is not bound by the date of the taxable transaction, but only by the actual physical movement of the goods. The reference period is always the calendar month in which goods have been supplied to or dispatched from the Czech Republic. The code to be recorded is „12" in case of call-off stock and „92" if goods are transported by the owner of the goods who is identified for VAT purposes both in the state of dispatch and supply.

Supply of goods into another EU member state

The amendment to the VAT Act specifies and tightens the rules for exemption from VAT on supply of goods to another member state. We have already informed you about this change in our newsletter from February 2020, and therefore, we will only provide you with a brief summary of the main changes.

Supply of goods to another member state may now be exempted from VAT only if all conditions specified below are met:

- Customer provides supplier with its VAT identification number;
- Goods have been demonstrably transported or dispatched from the Czech Republic to another member state by supplier, customer or their designee; and
- Supplier records the supply of goods in its recapitulative statement.

The fact that the goods have been transported or dispatched to another member state may be proved by a combination of documents defined in the directly applicable EU Regulation[1] or by other evidence.

As a result of these rules, we recommend that all taxpayers who supply goods to another member state shall always

- State customer's up-to-date VAT identification number on all tax documents;
- Record the supply of goods in their recapitulative statements; and
- Keep sufficient evidence that the goods have indeed been dispatched from or transported to another member state.

If the above conditions are not met (e.g. if supplier does not know the VAT number of its customer or fails to record the supply of goods in its recapitulative statement), the supply of goods cannot be exempted from VAT and supplier may be additionally assessed Czech VAT during a tax inspection.

[1] Council Implementing Regulation (EU) No 282/2011, amended by Council Implementing Regulation (EU) No 2018/1912 from 4 December 2018 effective from 1 January 2020

## 5. COVID: ACCOMMODATION SCHEME

The „COVID: Accommodation“ support scheme is intended to help tourism, specifically to provide financial support to accommodation providers in the form of a fixed sum per room for the period when accommodation facilities were closed due to measures adopted by the government. The maximum period for which the support may be paid is from 14 March 2020 to 24 May 2020.

Applications may be filed until 30 October 2020 for all accommodation facilities at once via an electronic app, similar to the one used for „COVID: Rent“ scheme. A number of conditions must be met to be eligible for support from the scheme, one of the most important ones being that applicants are not entitled to close their accommodation facilities within 6 months from the provision of the support.

## 6. RETURN OF CONTRIBUTIONS PAID UNDER ANTIVIRUS JOB RETENTION SCHEME

In order to receive support from the Antivirus scheme, specifically its regimes A and B, employers were obliged to make agreements with the Employment Office of the Czech Republic, in which they undertook to first pay statutory payments to the social security insurance system. If an employer received support from the Antivirus scheme before paying insurance payments for the respective month, it is now obliged to return the support as agreed with the Employment Office.

Since the Antivirus scheme is soon to end, inspections checking whether employers indeed made statutory insurance payments are frequent and support which has not been provided lawfully is claimed back. Since employers are obliged to keep records related to the Antivirus scheme for ten years and supervisory authorities are able to impose penalties for as long as ten years back, we recommend that employers shall not wait for an inspection from the Employment Office, but rather themselves make sure that they have adhered to the conditions of the Antivirus scheme.

Regime C of the Antivirus scheme sets forth a similar obligation for employers, i.e. to pay all statutory payments on social security insurance so that the payments are credited to the respective social security office’s account at the latest on the last day of the deadline. Any delay, albeit of hours, may be deemed as a breach of the conditions of Antivirus resulting in the employer being obliged to pay the insurance in full, without any discount.

## 7. „KURZARBEIT“ IN EMPLOYMENT ACT

Following the end of the Antivirus job retention scheme, which was used as an alternative to a permanent system of support for times of partial unemployment (known as *„kurzarbeit”* in Germany), the Parliament now considers an amendment to the Act on Employment, which is supposed to introduce a legal basis for a similar scheme in the Czech Republic.

State support should be paid in times of partial unemployment on the basis of a governmental decree as a reaction to the results of national economy, natural disasters, epidemics etc. which have caused that employers are not able to fully assign work to employees as defined in Section 207 and Section 208 of the Labour Code, or in case of partial unemployment as defined in Section 209 of the Labour Code. The government should, by means of state support, help employers and employees in events affecting the entire country or an entire region. The amendment is not intended to provide support to employers who experience partial unemployment due to purely economic reasons on their part.

The relevant factor to receive support from the state is a decrease in employees' workload, which must be of at least 20 %, but cannot exceed 80 % of the employee's working hours agreed in the employment contract.

Support will be paid to employees by the Employment Office via employers on the basis of a monthly overview of support for individual employees.

Since it was not possible to pass the bill in the fast-track legislative emergency procedure, the expected effective date of the new legislation, 1 November 2020, will most likely be postponed. The Government reacted on such situation and extended the regime A of the Antivirus job retention scheme until 31 December 2020. Any help with situations reflected in regime B, i.e. the partial unemployment as a result of decrease of sell and demand existing hand in hand with the governmental restrictions, has not been presented so far.

## 8. RETROSPECTIVE APPLICATION OF TAX LOSS

As we already informed you in our previous newsletter, an amendment to the Income Tax Act made it possible to retrospectively apply tax loss for the taxation period of 2020 and following. A tax loss assessed by a final decision of the financial authority may be applied by additional tax returns as an item deductible from the tax base in two immediately preceding taxation periods up to CZK 30 million (in aggregate for both taxation periods). An exception to this rule applies in case of an additional tax return filed for 2019, in which taxpayers are able to deduct also the „expected" tax loss for 2020.

The amendment also introduced a possibility to waive the right to apply the tax loss, which should prevent unnecessary delays in tax assessment as a result of late assessment of tax loss.

## 9. DECISION OF THE SUPREME ADMINISTRATIVE COURT: DEDUCTION OF INTEREST ON LOANS TAKEN TO FINANCE OWN HOUSING

The Financial Administration did not accept deduction of interest paid on a loan used by a taxpayer to finance a house which has been approved for use (and recorded as such in the Land Registry) as a house for family vacation, in which, however, the taxpayer and his family permanently lived. The Financial

Administration (and also the court of first instance) ruled that the purpose of use of a building may be proved only by a document issued by the building authority (building permit, approval for use etc.) and therefore, the actual state (i.e. whether the taxpayer indeed permanently lives in the building or not) is not relevant for its decision, due to which it did not even try to ascertain the facts of the case. The Supreme Administrative Court rejected this interpretation in its decision ref. no. 1 Afs 133/2019 as pure formalism which ignores the purpose and meaning of the statutory provision on deduction of interest paid on loan used to finance own housing, and thereby made a way for deduction of interest even in case of loans used to finance buildings registered as vacation houses. The decision of both the court of first instance and the Financial Administration have been reversed by the Supreme Administrative Court and the case referred to the Financial Administration for further proceedings.

Let us add that during tax inspections focused on income generated from dependent work, we frequently experience that financial offices review the actual purpose of transactions employees declare in their annual tax declarations in order to deduct interest paid on mortgages and other similar loans from their tax base.

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We hope that our newsletter will help you navigate your current options and we are ready to assist you to find the right solution for your situation.

Your LTA team