



## New Tax Administration Act

### New sanctions in the New Year?

At the beginning of the New Year 2011, a new procedural tax act (Act No. 280/2009 Coll., Tax Administration Act) came into force and at the same time the old Tax Administration Act ceased to apply. We already spoke about this significant change in the previous issue of our Business&Tax Newsletter, in which the basic principles of the new Tax Administration Act were described. Now we would like to focus on the area related to consequences of breach of duties and obligations in the tax administration – an area which is important for all taxpayers to understand.

In general, you could say that new Tax Administration Act brings only minor changes in the field of sanctions, and they are regulated in the fourth part of the new Tax Administration Act called “Consequences of breach of duties in the tax administration”. Consistently with the old Tax Administration Act, sanctions may be imposed on taxpayers, persons involved in tax procedures as well as on the tax authorities for breach of duties of a monetary as well as a non-monetary nature.

From a practical point of view, three types of sanctions are important to taxpayers: fines for late tax declarations (a change compared to the old Tax Administration Act), penalty and late payment interest.

#### Fine for late tax declaration

The penalty of a tax increase up to 10% for tax returns not submitted on time, as provided in the old Tax Administration Act has been replaced by a fine for late tax declarations in the new Tax Administration Act.

As in the past, it is a sanction for late submission of the tax return, i.e. for submission after the statutory deadline. The sanction is applied for delays longer than 5 working days and is without legal recourse.

The amount of the fine is not dependent on the discretion of the Tax Authority, but is stated directly by the law. The new Tax Administration Act provides lower and upper limits of the fine as follows: for each day of delay the fine amounts to 0.05% in case of due tax or tax refund and 0.01% in case of tax loss, but no more than 5% of the assessed tax, tax deduction or loss. If the amount of the fine calculated pursuant to the percentage is lower than CZK 500, the amount of the fine for late tax declaration is automatically 500 CZK. On the opposite end, the maximum amount is set at CZK 300 000. The obligation to pay the fine is assessed by the Tax Authority by means of a tax payment order and it is payable within 30 days after notification.

#### Penalty

Penalty arises in situations where the tax subject has made a mistake in his tax declaration and consequently the tax is additionally assessed for him ex officio. If he admits his mistake himself in the form of an additional tax declaration, the penalty will not be imposed.

The penalty is calculated from the amount of the additionally assessed tax at the rate of 20% in case of increase in the tax liability or decrease in the tax deduction and at the rate of 1% in case of decrease in tax loss. In the event of tax loss, the sanction has been

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decreased – the percentage is was 5% in the old Tax Administration Act.

## Late payment interest

This sanction applies if the tax subject is in delay with payment, i.e. does not pay the due tax by the statutory deadline. Late payment interest occurs ex lege for each day of delay starting with the fifth working day after the due date until the date of payment inclusive. Late payment interest may be assessed for a maximum 5 years of delay. The amount of late payment interest corresponds to the annual repo rate set by the Czech National Bank, increased by 14 percentage points, valid for the first calendar day of the half-year (i.e. currently 14.75%).

In conclusion, one short notification: It is important to remember that the new Tax Administration Act is not the only one legal regulation concerning the duties of the tax payer in the tax administration. The improper declaration and payment of the tax may under the certain circumstances result in much more severe sanction based on the act No. 40/2009 Coll., Criminal Code. Therefore, we strongly recommend using professional tax consulting services such as those of ourselves, Baker Tilly Czech Republic.

## Tax Administration

### A new form of VAT returns

A new form of VAT returns has been prepared for the year 2011 which first applies for the tax period of January 2011 or 1<sup>st</sup> quarter of 2011 for those on quarterly declarations. Specific modifications were made in connection with the commencement of validity of the new Tax Administration Act on 1 January 2011 as well as with the enactment process of the amendment of the VAT Act, which should become law as of 1 April 2011.

New Tax Administration Act allows the submission of

corrective tax returns. Before the deadline for filing the tax return, taxpayer may replace the already submitted income tax return by a corrective tax return, ticking both the box marked "regular" and also "corrective". In the same way it is now possible to replace the supplemental tax return – the taxpayer puts a tick in the boxes "additional" and also "correcting". However, this procedure may be used only if the deadline for submission additional tax returns has not elapsed, i.e. by the end of the month following the day of discovery by the taxpayer that the tax liability for the period concerned should be higher (or lower) than the last known tax liability.

According to the VAT Act, a creditor who has made an adjustment in the amount of receivables from debtors in insolvency proceedings, is obliged to submit as an attachment to his tax return copies of all issued invoices and other tax documents, where the tax amount was corrected. Moreover, such a taxpayer will also have to submit an extract from its tax records. According to the new Tax Administration Act, the tax payer shall be also newly obliged to give reasons in respect with submission of the additional return for lower taxes or an additional return, where the last known tax remains the same and the change only affects the data declared by the taxpayer in the past.

As of 1 April 2011, a taxpayer who has made or received a taxable supply under the reverse-charge mechanism, has to submit together with the relevant tax return also an extract from his tax records in the format and structure published by tax authority.

## Transfer Pricing

### New "D" Decrees

At the end of the last year, the Ministry of Finance (hereinafter "MF") introduced three new "D" Decrees regarding transactions between related parties and the obligation to follow transfer prices. The decrees come into force on 1 January 2011 and replace the decrees previously issued on these issues (see the table below):



New Decree No.	Replaces Decree No.	
D-332	D-258	Guidance on application of international standards concerning the taxation of transactions between related parties – transfer pricing
D-333	D-292	Communication on Section 38nc of Income Tax Act – binding ruling on the transfer pricing policy used in related party transactions
D-334	D-293	Communication on the scope of transfer pricing documentation

With regard to Decrees D-333 (Communication to Section 38nc of Income Tax Act – binding ruling on the transfer pricing policy used in related party transactions) and D-334 (Communication to the scope of transfer pricing documentation), these decrees were amended only by “cosmetic changes”. Specifically, references to the Tax Administration Act (valid till 31 December 2010) in original decrees were replaced by references to provisions of the new Tax Administration Act (in force as of 1 January 2011). Significant changes were incorporated into decree D-332 (especially the enlargement of the decree) which will be further described in more detail.

#### Decree D – 332

Guidance of MF on application of international standards concerning the taxation of transactions between related parties – transfer pricing

The first part of the Decree (transfer prices, arm’s length principles) was also contained in the original decree D-258. This part is supplemented by annexes with descriptive examples on the use of transfer prices among related parties and explaining the situations when the transactions are regarded as controlled transactions.

But now there are stipulated basic rules for the examination of transfer prices and if they are in compliance with arm’s length principle (i.e., members of multinational enterprises are regarded as if they were not related). The keystone for the application of arm’s length principle is the proper comparative analysis.

Further, recommended methods (traditional as well as profit based methods) are recommended for the determination of transfer prices. The methods are supplemented in an annex by examples illustrating operating principle of each method for the determination of transfer prices. According to MF, it is not possible strictly to define when which of the methods is to be applied. It is necessary to review the suitability of each method with regard to the functional and risk profile of an enterprise. In accordance with the new Tax Administration Act, the financial authority is allowed to request the taxpayer to plausibly justify and to demonstrate the amount of the used transfer price (the topic of transfer pricing documentation was discussed in our Newsletter 2Q 2010).

There is an important notice at the end of the Decree where is stated that this methodical announcement is not a final document but will be gradually amended or replaced by a new version to follow the latest findings and experience in the field of transfer pricing. Our Tax Alerts (issued monthly if you have subscribed – it is a free service) or this quarterly issued Newsletter will inform you about possible changes mentioned above.



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