



## The planned tax reform for years 2012 – 2013

### Overview of upcoming changes

In March 2011 the Minister of Finance Miroslav Kalousek presented a proposal for tax reform which, according to his plans, should be effective from 1 January 2013. The following article summarizes the key points of the proposal. However, this still needs to go through the whole legislation approval process in Parliament and its parameters may be changed. The aim of the tax changes is to simplify the tax system in the Czech Republic as far as possible. The result of the reform should be lower administrative costs for both the state administration and taxpayers.

#### The introduction of a single collection point

The concept of a single collection point lies in the transfer of the competences related to the collection of public budget revenues which so far has been carried out by customs administration, health insurance companies and social security administration, into a single institution, namely the tax administration. This should reduce the costs of state administration of taxes and insurance contributions. Taxpayers would also save their time spent in respect with administration as they will fill in only one form and make payment of a single amount to the tax administrator. The tax administration should have responsibility for collection of social and health insurance from 1 January 2013.

#### Corporate income tax

The current tax rate of 19% on corporate income tax remains unchanged. However, there is a plan to eliminate the current double taxation, when company tax its profit at the rate of 19% and subsequently its shareholders tax the same profit again at the rate of 15%. The reform would allow businesses to claim in the following period a tax relief in the amount equal to the tax withheld from dividends.

#### Personal income tax

The rate of tax on personal income will increase from 15% to 19%, but the tax will no longer be calculated from the so-called super-gross salary, i.e. gross salary increased by social and health insurance contributions paid by employer. In the future, the assessment base for tax should be the gross salary. Such a measure would unify the assessment base of both, taxes and insurance contributions. This would reduce the effective tax burden on employees by 1.25% (thanks to application of the concept of super-gross salary the effective tax rate is currently at the rate of 20.25%). Furthermore, a special tax relief for individuals amounting 3,000 CZK - the so-called "employment lump sum" - should be introduced.

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### Employers' levies

Tax reform would implement tax on total salaries at the rate of 32%, which would replace the current levy on employers for social and health insurance contributions in the amount of 34% of gross salary. Maximal assessment base for this new tax on total salaries should be four times the average salary, multiplied by the number of employees.

### Inheritance Tax and Gift Tax

Currently, the tax rate for inheritance tax and gift tax varies depending on the value of the gift or inheritance. According to the proposal of tax reform, linear rate should be applied from 1 January 2013. Gift tax rate will be 20% and the rate of inheritance tax 10% while the exemption for taxpayers of first and second group (i.e. spouses, relatives, persons living longer than one year in the same household) should be preserved. Tax exemption for the third group should increase from the current 20,000 CZK to 50,000 CZK; with the exception of real estate transfers, where, as before, tax will be paid on their entire value.

### Value added tax

In connection with the pension reform, there are proposals prepared for changes in rates of value added tax. Since January 2012, the reduced VAT rate would increase from 10% to 14%. At the beginning of 2013, the basic and reduced rate would be unified at the rate of 17.5%. A significant change in the area of VAT might be also a change of the amount of turnover for compulsory registration for VAT, which is currently 1 million CZK. Since the year 2013, business, which turnover exceeds 750,000 CZK would be obliged to register themselves for VAT.

## Liability for payment of due VAT

### New way of combating tax evasion

An amendment to the VAT Act, which entered into effect on 1 April 2011, introduced into Czech legal system a completely new legal institute in order to combat tax evasion in the area of VAT, namely the liability for unpaid tax. The basis for the introduction of this institute into Czech tax law is contained in the corresponding EU directive.

The liability for unpaid tax is, like any other guarantee relationship, a securing institute, which has a so-called accessory character. This means that it always follows the fate of the principal obligation, in this case, the taxpayer's obligation to declare and pay output tax. It implies that the scope of liability is derived from the principal obligation and it also expires simultaneously. Another feature is the subsidiary nature of the liability, which means that it is realized only when the principal obligation is not fulfilled by the main debtor.

In the case of liability for unpaid VAT, the principal debtor is VAT payer who carried out domestic taxable supply, from which he is liable to pay tax. Assuming that statutory requirements will be met, the VAT payer becomes the guarantor, if he received taxable supply from another taxpayer who purposely failed to pay output VAT from the respective transaction.

The liability for unpaid VAT, namely the guarantee relationship, however, arises only when the following conditions are met:

- a) at the moment of realization of the taxable supply, its recipient is or ought to be aware



that VAT showed on the invoice will deliberately not be paid or that the supplier, which is obliged to pay tax related to the respective transaction, has put himself in a position when he is unable to pay VAT, or that VAT will be cut or a tax advantage will be sought;

- b) an obviously unusual form and amount of payment for the respective taxable supply has been agreed without any economic justification.

It is important to point out that the guarantee relationship arises already at the time of taxable supply, but is realized only upon a call from the competent tax authority. Taxpayers who get into the position of guarantor should be also aware that simple negligence is sufficient to raise the liability, i.e. that the tax payer should and could have known the intention of the provider. Moreover, in any future proceedings the burden of proof is levied on the taxpayer. In principle, this means that the taxpayer himself would have to prove not only that he didn't know about the intention of provider of the taxable supply not to pay the tax, but even that on making every effort to find it out, he could not know this fact. According to our opinion, such a situation puts unreasonable demands on recipient of taxable supply, as there is no way to verify whether and how the provider fulfills his tax obligations.

The imputation of a guarantee relationship can be avoided by using so-called special tax securing. If a recipient has not yet been called as a guarantor by the tax authority, he can pay a tax on the respective taxable supply instead of provider directly to the relevant tax authority. This payment will be credited to a personal deposit account of the recipient,

whereas may be used solely for payment of taxes which are involved. Subsequently, the payment will always be transferred from recipient's personal deposit account to the personal VAT account of the provider, namely at the due date related to the corresponding tax liability, or - in the case that payment occurred later than the tax is due - the date of payment on a personal deposit account. Payment done by the recipient of the taxable supply will be transferred to the personal tax account of the provider, even if the tax on the taxable transactions has been already completely or partially paid.

However, the problem is how the recipient will justify that the price of the taxable supply, namely the part corresponding to the VAT calculated at the appropriate rate, will not be paid to the supplier, but will be paid directly to the tax authority. Therefore, it will be necessary to include such a provision into the sale and purchase agreement, which may cause considerable complications in building the customer-supplier relationship.



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