



NEWSLETTER 5/2016

Novelization of the statutory measure on the acquisition of immovable assets tax and other changes in the Czech legislation

I. **Novelization of the statutory measure on the acquisition of immovable assets tax – change of the taxpayer**

- **The Act, by which the statutory measure of Senate No. 340/2013 Coll., on the acquisition of immovable assets tax, is amended**, was published in the Collection of Laws (*Sbírka zákonů*) under No. 254/2016 Coll. and **will become effective as of November 1, 2016**.
- **The main purpose** of the novelization is to give **exact statutory definition of the taxpayer** and to eliminate other ambiguous or imprecise provisions of this act.
- **The most important changes** that are brought by the novelization are the following:
 - (i) **The change of the taxpayer and the cancelation of the statutory guarantor institute** (Section 1 (1)). The new law clearly appoints **the party acquiring the ownership title to the immovable assets (i.e. the buyer)** as the statutory taxpayer and cancels the existing possibility for the contractual parties to agree on the transfer of the tax obligation from the buyer to the seller. The novelization also cancels the position of the buyer as the statutory guarantor of the seller for the due payment of the transfer tax.
 - (ii) **Fewer regulations for the acquisition of engineering underground structures** (Section 2 (2)). In case of the acquisition of the ownership title to underground structures, the object of tax-

ation shall be the acquisition of the ownership title to the building according to the Land Register Act, which is a part of this engineering underground structure and is situated in the Czech Republic. This acquisition must be realized against payment. Such a building is newly expressly regarded as immovable assets.

- (iii) **Taxation in case of the prolongation of the period of the surface right** (Section 3 (2)). Any prolongation of the period of the surface right (*právo stavby*) is newly expressly considered as the acquisition of the ownership title to the surface right and as such subject to taxation.
- (iv) **New regulation regarding the exclusion of object of the taxation** (Section 5 (b)). Pursuant to the new regulation the acquisition of the ownership title to immovable assets as part of the transformations process of legal entities should no longer be subject to taxation (except for the transfer of the assets to a shareholder of the company). On one hand the novelization extends the exclusion in case of transformations of all types of legal entities (not only transformations of business corporations as so far), but on the other hand it cancels the exemption from the tax in case of the transfer of the assets to a shareholder.
- (v) **Acquisition of ownership title to immovable assets by municipalities and regional administrative units is no longer subject to taxation** (Section 6 (1) (c)).

- (vi) **New concept of the taxation exemption with respect to newly constructed buildings and housing units** (Section 7 (1)). First ownership title transfer, which is realized against payment, of newly constructed buildings and housing units (must be finished 5 years prior to sale) will not be subject to taxation. Unlike the existing legal regulation, the exemption will not apply to unfinished buildings or units that are not registered in the Land Register and therefore the control of its transfer by the financial authorities is very complicated.
- The **tax rate** remains unchanged. It is **4%** of the purchase price or the value of the transferred immovable assets (whichever is higher) (Section 26).

II. New Act on Trading Hours for small and large shops

- The New Act on Trading Hours in retail sale and wholesale was published in the Collection of Laws (*Sbírka zákonů*) under No. **223/2016 Coll.** and **became effective as of October 1, 2016.**
- **The main aim** of this new act is to regulate trading hours and to set up **general prohibition of trade** on certain days (on public holidays) and also to restrict trade on Christmas Day (on December 24).

- **The new act is *lex specialis*** in relation to the Act No. 262/2006 Coll., Labour Code, as for regulation of working hours.
- **The prohibition of trade will apply** to the following holidays: 1.1., Easter Monday, 8.5., 28.9., 28.10., 25.12 and 26.12. On Christmas Day, shops will be closed between 12 a.m. and 12 p.m. (Section 1 (1), (2)).
- **Exemptions from trading restriction include:** small shops that measure up to and including 200 square metres, petrol stations, pharmacies, shops at airports and railway stations, shops in hospitals or in other medical facilities, and also small and large shops during the time when a state of danger, state of emergency or state of war is declared (Section 1 (3)).
- **The prohibition is applicable to** pawn shops, second-hand shops and waste collection points regardless of measurement of their retail area (Section 2).
- Breach of the abovementioned prohibition constitutes an **administrative tort** for which a financial fine up to the amount of CZK 1,000,000 may be imposed. If this administrative tort is committed repeatedly, a financial fine up to the amount of CZK 5,000,000 may be imposed (Section 3 (1) and (2)).

III. New regulation of Criminal Liability of Legal Entities

- **The Act, by which the Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and their Prosecution, is amended**, was promulgated in the Collection of Laws (*Sbírka zákonů*) under No. 183/2016 Coll. and will **become effective as of December 1, 2016**.
- **The main changes** are: new concept of the determination of criminal offences for which a legal entity may be criminally prosecuted and modification of the possibility of the exculpation of legal entities.
- **New concept of the Criminal Liability of Legal Entities.** According to the existing law, legal entities may be held liable only for criminal offences that are listed in the Act on Criminal Liability of Legal Entities (total of 73 criminal offences); the new law extends the list of criminal offences for which a legal entity may be held liable to nearly all of the criminal acts that are listed in the Criminal Code, except for criminal offences expressly excluded by the Act on Criminal Liability of Legal Entities (Section 7).
- The exclusion will only relate to **21 criminal offences**, mostly criminal acts that can't be committed by a legal entity due to their nature (i.e., murder, fight (brawl), drunkenness, evasion of alimony payments).

- **Exculpation of Legal entities.** Pursuant to the existing regulation, any legal entity may be exempted from its criminal liability for acts committed by its regular employees. The novelization extends this possibility for exculpation also to conduct of the legal's entity statutory body (members of the statutory body), provided the legal entity made all reasonable efforts to prevent the commission of a criminal offence by such an individual.
- The question, when the above mentioned requirement is fulfilled, will be answered only by the ruling practice of courts. However, there is no doubt that legal entities should implement a system of internal measures and procedures (so-called **Criminal Compliance program**) in order to be able to release themselves from criminal liability and insist that such a compliance program is strictly respected in practice.
- The new law also significantly extends the list of criminal offences for which legal entities may be held criminally liable, while at the same time it also introduces certain new provisions that allow more possibilities to exempt legal entities from their criminal liability.

We hope the above summary will ease your orientation in the new legislation. We are available for any of your additional requests or information.

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