



Service

AUSTRIA § CZECH REPUBLIC § HUNGARY § SLOVAK REPUBLIC § CROATIA § SLOVENIA § SERBIA

Topic of the month: VAT on housing construction

**CZECH REPUBLIC
No. 2/2007
April 2007**

Contents:

New definition of social dwelling effective after 01.01.2008

Joint taxation of married couples

New tax deductible item for natural persons

Assessment base for the calculation of social and health insurance

VAT on toll

Decree D-300

Average fuel prices in 2007

Euro in CR since 2012

Relationship between an executive officer and a limited liability company

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1. ACCOUNTANCY, TAXES, AUDIT

New definition of social dwelling effective after 01.01.2008

In the last IB Service we informed you that a new definition of social dwelling had been adopted by the Government. This definition was changed by the Government on 05.02.2007 to comply with the criterion of the maximum floor space suggested by the Ministry of Finance.

The floor space has increased from 90 m² to 120 m² for apartments and from 150 m² to 350 m² for family houses. It means that the reduced VAT rate will still apply after 2007 on newly constructed apartments and family house not exceeding the maximum floor space.

The Czech Government wants to keep the reduced VAT rate valid for the future. Dwelling houses constructed within the state social policy will include for example aged-persons homes, all kinds of nursing homes, children's houses, hospices etc.

The reduced VAT rate on repairs, reconstruction and modernization of apartments will be treated in line with the annex to the 6th EU Directive. The Czech Republic has asked for a prolongation of the application period of the reduced VAT rate until the end of 2010 to be able to apply the reduced rate also on renovations and repairs of private apartments and family houses.

An Amendment of the VAT Act has been prepared in this connection.

If you have any questions, please contact

*Dita Skalová
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Joint taxation of married couples**Joint taxation of married couples**

Also this year it is possible for married couples with at least one child to use the so called joint taxation of married couples (calculation of tax from a joint tax base) according to the Czech Income Tax. This method is suitable mainly in situations when one of the married couple has no taxable income or the amounts of income of the two persons are different.

The joint taxation can be used if the condition of at least one dependent child living in a common household is fulfilled by the last day of the taxable period for which the tax return is filed, i.e. by 31.12.2006.

If you are interested in consulting in this matter or in working out of the tax return, please contact:

*Monika Chvalová
Tel. 296 152 241*

New tax deductible item for natural persons**New tax deductible item for natural persons**

The fee for exams taken as part of further education will be deductible from the tax base of employees (unless paid by employers) and self-employed persons (unless included in their tax deductible costs). The maximum amount deductible in one taxation period will be 10.000 CZK (13.000 CZK for handicapped taxpayers). The new tax deductible item will take effect as of 01.08.2007, i.e. will be claimable in the tax return for 2007 for the first time.

If you have any questions, please contact:

*Monika Chvalová
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Assessment base for the calculation of social and health insurance**Assessment base for the calculation of social and health insurance**

In the last IB Service we informed you that the assessment base for social and health insurance had changed with effect from 01.01.2007 to be the same as the tax base. Nevertheless, the insurance assessment base shall not include 1 % of the acquisition cost of a car, which is a part of the tax base (if the car is used for private purposes).

If you have any questions, please contact:

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VAT on toll**VAT on toll**

Information on the application of VAT on toll was published by the Ministry of Finance at the beginning of 2007, eliminating all doubts concerning the re-invoicing methods the shippers should use. The toll can not be separately re-invoiced or invoiced because it represents incidental expenses incurred in connection with provision of shipping services.

If you have any questions, please contact:

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**Decree D-300 –
Technical improvement
versus repair****Decree D-300 – Technical improvement versus repair**

The new Decree D-300 on the application of the Income Tax Act No. 586/1992 Coll. makes the differentiation between a technical improvement and a repair more precise.

A simple exchange of the material used shall not be considered as technical improvement, applying also to windows when a wooden window-frame is replaced with a plastic one, if the former size and number of glass sheets stays the same.

The equipment of cars with winter tires shall not be considered as technical improvement either.

If you have any questions, please contact:

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**Amendment of
the Building Code****2. LEGISLATION****Amendment of the Building Code**

We wish to refer to the new Act No. 183/2006 Coll. on the land-use planning and building regulations (Building Code) introducing some key changes to the building and land-use planning proceedings.

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**Average fuel prices
in 2007****Average fuel prices in 2007**

With reference to the new Labour Code the Ministry of Labour and Social Affairs has set the average fuel prices for 2007 as follows:

Type of fuel	Average price in CZK
Gasoline 91 O Normal	27,80
Gasoline 91 O Special	27,90
Gasoline 95 O Super	28,10
Gasoline 98 O Super plus	31,10
Diesel oil	28,10

These average prices should be used by an employee who has used other than his employer's car during a business journey and has not documented the price by a sales slip.

If you have any questions, please contact:

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Euro in CR since 2012

3. ECONOMICS

Euro in CR since 2012

The so called National Plan for the Implementation of EURO was approved by the National Coordinating Group, comprising representatives of different state departments and the Czech National Bank (CNB). This document should be presented to the Government in March 2007.

The National Plan is a technical program for the implementation of EURO in the Czech Republic, summarizing the procedures and giving guidelines for the particular sectors and individuals how to prepare for the new currency. EURO to be implemented in 2012 is assumed in all these procedures and guidelines. The transition had been previously planned for 2010, but had to be postponed due to the high deficit in public finance. The exact date will be agreed between the Government and the CNB representatives in the upcoming months.

The National Plan introduces measures against the increase in prices connected with the transition to the new currency, such as the obligation of retailers to state the prices in both CZK and EUR in a period starting five months before the transition and ending 12 months after the transition.

Foreign trade in 2006**Foreign trade in 2006**

The best ever results of foreign trade in the history of the Czech Republic (i.e. since 1993) were achieved in 2006.

All partial results were better than in 2005 in year-on-year comparison:

- *The growth rate of export and import* was higher and reached double-digit figures (export 14,6 %, import 14,4 %). These increases were caused by the positive development mainly in the first quarter of 2006.
- *The balance of foreign trade* shows a surplus of 47,3 bil. CZK (import covered by export with 102,3 %),
- As far as the *territorial structure* is concerned the share of EU countries in the total export and import has dropped in 2006. Nevertheless, these countries were still crucial for the Czech foreign trade in 2006 – their share in the total export and total import was 83,9 % and 70,0 % respectively.
- As far as the *commodity structure* is concerned the growth was very different in the different categories. An above-average growth was recorded only in the export of machines and vehicles, which had the biggest impact on the growth rate of the total export.

The results of foreign trade were influenced by a number of positive factors in 2006, mainly by the high growth in industrial production (10% growth as compared to 2005) and the economic development in EU countries (highest growth in EU GDP since 2000). On the other hand there was a negative impact of exchange relations (export prices having dropped in January, import prices being higher) and the ever increasing deficit of foreign trade with certain countries (mainly with Russia and China).

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Basic notions and relationships**4. COMMERCIAL LAW*****Relationship between an executive officer and a limited liability company******1. Basic notions and relationships***

Executive officer (in Czech „jednatel“) is a limited liability company’s statutory organ (compare with § 133 par. 1 of the Commercial Code, as amended, thereafter ObchZ), who is ex lege authorized to act in the name of a company in all its matters (compare with § 20 par. 1 of the Civil Code, as amended). The executive officer’s acts made in the name of a company are accredited to the company as its own acts. According to § 134 of ObchZ, the executive officer of a company is concerned with its business management. The above mentioned term „business management“ is in theory defined as a „company management, i.e. especially organizing and running its business activities, including decision making regarding its business intentions, or more precisely decision making regarding the organization, technical, production, economical, business and human resources etc.”.

In accordance with § 66 par. 2 first sentence of the ObchZ, the relationship between the company and the person who is its statutory organ, or a member of its statutory or another organ, or a member involved in arranging the company’s affairs, shall be subject, as appropriate, to the provisions on mandate (compare with § 566 – 576 ObchZ), unless a contract on performance of an office, if concluded, or the law stipulate the rights and obligations otherwise.

The above mentioned statement „unless (a contract on performance of an office, if concluded, or the law) stipulates the rights and obligations otherwise“ cannot be interpreted as such that the relationship between an executive officer and a limited liability company may be contractually subordinated to the Labor Code. In accordance with § 261 par. 3 f) ObchZ, this relationship is cogently subordinated to the Commercial Code. The provision § 66 par. 2 ObchZ, thus only admits the possibility to depart from reasonable usage of provisions on a mandate contract in a contract on performance of an office. The contract on performance of an office thus cannot be an employment contract. It is also not possible to depart from the peremptory rules of the Commercial Code regulating the relationship between an executive officer and a limited liability company in a contract on performance of an office.

**Acting as
a statutory organ
in a labor law
relation**

2. Is it possible to act as a statutory organ or more precisely an executive officer in a labor law relation?

The Supreme court in Prague stated in its decision of April 21, 1993, 6 Cdo 108/1992, the following: „The activity of a statutory organ (eventually its member, if it is a collective body) of a business company is not performed by a natural person in a labor-law relation, not even in a case when he/she is not a partner. Neither legal regulations nor the nature of a limited liability company prevent natural persons from performing other activities for such company on the basis of a labor – law relations, unless the scope of employment (or another labor – law relationship) is the performance of an activity of a statutory organ.“

According to the above mentioned „legal sentence“, therefore:

1. the activity of a statutory organ may not be performed in a labor-law relationship;
2. business company can establish labor-law relations with natural persons, provided the scope of employment does not include the performance of an activity of a statutory organ.

Concerning the conclusion referred to as ad 1), the decision became very well known in practice and an employment contract regarding the performance of a statutory organ activity or a corporate director's activity as a type of work, would be a genuine exception. Since January 1, 2001, with regard to the already mentioned § 261 par. 3 f) ObchZ which explicitly specified that contractual relationship between a company and a person who is a statutory organ or another organ or its member, abides by the Commercial Code, the above mentioned decision has lost its meaning in its first part.

The fact that a company can employ natural persons (ad 2) is evident and it is not necessary to comment it any further. However, the stated decision maintained its importance due to its conclusion that employment is valid as long as the scope of the employment is not the „performance of an activity of a statutory organ“.

The High Court of the Czech Republic (compare with a decision 21 Cdo 11/98, 21 Cdo 963/2002 or 21 Cdo 2642/2003) later decided similarly.

The new Labor Code No. 262/2006 Coll., which came into force on January 1, 2007, has not changed any of the above mentioned conclusions.

JUDr. Ivan Rada, lawyer

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April 2007

5. TAX CALENDAR

§ April 2007

Monday – 02.04.2007	
Income tax	Filing of the income tax return and payment of the tax for the year 2006 for entities which are not liable to audit and which are filing their tax returns themselves.
Tuesday – 10.04.2007	
Excise duties	Due date for the tax for February 2007 (except the excise duty on alcohol)
Monday – 16.04.2007	
Road tax	Tax advance for the first quarter
Tuesday – 24.04.2007	
Excise duties	Due date for the tax for February 2007 (excise duty on alcohol only)
Wednesday – 25.04.2007	
Excise duties	Tax declaration to claim the refund of excise duties on heating oils, green oil and other (technical) oil for March 2007 (if there was such entitlement)
Excise duties	Tax declaration for March 2007
VAT	Tax declaration and payment of tax for the first quarter and March 2007 Recapitulative statement for the first quarter

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CONTENTS

1. ACCOUNTANCY, TAXES, AUDIT	1
§ New definition of social dwelling effective after 01.01.2008	1
§ Joint taxation of married couples	2
§ New tax deductible item for natural persons	2
§ Assessment base for the calculation of social and health insurance	2
§ VAT on toll	3
§ Decree D-300 – Technical improvement versus repair	3
2. LEGISLATION	4
§ Amendment of the Building Code	4
§ Average fuel prices in 2007	4
3. ECONOMICS	5
§ Euro in CR since 2012	5
§ Foreign trade in 2006	5
4. COMMERCIAL LAW	6
§ Relationship between an executive officer and a limited liability company	6
5. TAX CALENDAR	9