

# Tax news

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## Changes of Tax Laws in Connection with the Recodification of Private Law

On 17 April 2013, the Government of the Czech Republic approved the bill to change tax laws in connection with the recodification of private law and other changes. The bill includes an extensive amendment to the Income Taxes Act (ITA) and an amendment to the Tax Code. The initial purpose of the amendment to the ITA and the Tax Code was to respond to the changes in terminology and new institutes to be applied in private law from 1 January 2014. The amendment to the ITA and the Tax Code also contains factual changes that do not relate to the recodification. At the same time, the amendment moves the effectiveness of ITA provisions adopted in connection with the introduction of a single collection point (Act no. 458/2011 Coll.) from 1 January 2015 to 1 January 2014. Below is an outline of significant changes in the income tax and the Tax Code, which should apply from 1 January 2014 if the amendment is approved.

### 1. Corporate Income Tax

Under the new civil law concept of a structure as part of a plot of land, no factual changes are made for ITA purposes with respect to structure depreciation. The amendment continues to use the terms "structure" and "land" and allows one to depreciate structures in the standard regime. When selling a plot of land it would be necessary clearly to define the price relating to the land and to the structure that is a part thereof. The acquisition cost of land will be a fully tax-deductible cost even if a loss is incurred by the sale, which is a positive change (this does not relate to taxpayers – individuals).

In transfer pricing, the tax base will be adjusted in situations in which the price agreed between related parties maintaining accounting records is zero. This treatment will be used, for example, if a parent company donates assets to a subsidiary. The donation will be taxed by the subsidiary in the arm's length amount. This change relates to the removal of the Act on the Inheritance Tax, Gift Tax and Property Transfer Tax. Income of a legal entity arising from the acquisition of inheritance or legacy will be tax exempt.

A change in the finance leasing may serve as an example of a change not relating to the private law recodification. The amendment contains an entirely-new definition of finance lease contracts under which the finance lease contracts will only include contracts stipulating as of the contract conclusion date that the owner of the used item will transfer the ownership title to the user of the item after the lapse of the agreed period. Contracts containing options will be considered lease contracts from the beginning. At the purchase of the subject matter of the lease, the amount of the purchase price will be tested with respect to the tax net book value calculated on a straight-line basis as was the case under the existing ITA. The same principle as applied in the existing ITA will be used in situations in which finance leasing is terminated early or the ownership title is not transferred to the user after the agreed period.

The taxpayer will be entitled to apply a tax-deductible item for research and development up to 110% of the incurred costs calculated from the amount of costs exceeding the costs applied as part of a deductible item in a prior taxation period. Now it will be possible to apply the costs of external services provided by universities or public research institutions as part of a deductible item.

A trust will be a newly-defined taxpayer of corporate income tax. A trust is based on the principle that the founder of the trust allocates a certain amount of its assets and entrusts it for some purpose. This will establish separate ownership to which the original owner has no title. The separation of or increase in assets of a trust through acquisition in the event of death, as well as the payment of the share in profit of the trust, will be exempt from corporate income tax.

### 2. Personal Income Tax

The ITA will use new terms of tax resident, lease, borrowing, etc. In addition to the terminological changes, personal income taxation is also subject to major changes resulting from the amendment.

The major changes undoubtedly include the extension of the exemption time test for the sale of securities from six months from the acquisition of securities to three years. The government also proposes positive changes for taxpayers. With effect from 1 January 2014, income from a share in profit and similar income should be exempt from personal income tax. This exemption will only relate to shares in profit paid to Czech tax residents or tax residents of EU Member States, Norway, Iceland or Sweden by legal entities that are tax residents of these states.

Another significant change in personal taxation is a change in the taxation treatment of income acquired by inheritance or donation. This income will be subject to personal income tax instead of inheritance and gift tax. The scope of exemption of the income is similar to the inheritance and gift tax.

Apart from the above-specified changes, the amendment introduces some other adjustments of personal income tax parameters, such as income paid out based on an agreement to perform work, which will be subject to final withholding tax if its monthly amount does not exceed CZK 10,000, and income paid out as income for a contribution to newspapers or magazines, which will be subject to withholding tax if its monthly amount does not exceed CZK 10,000.

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### 3. Tax Code

A significant change of the Tax Code that has a factual nature is the regulation of the inspection of “tax information boxes”. It will be possible to log in to the tax information box using an electronic signature as well as through the data-box log-in information.

The access data for data boxes may now be used for electronic filing for tax authorities. In practice, this will expand the two existing methods of qualified electronic filing (i.e. a data message sent through a data box or signed by an approved electronic signature) to include a third method. Specifically, the third method lies in the filing through a tax portal whereby the filing entity will “confirm” to the tax authority that the entity is the author of the filing using the data applied to log in to the data box. Similar adjustment is proposed for laws regulating filing for the Czech Social Security Administration and health insurance companies in public insurance matters. Thanks to this, a tax portal may be used to submit a joint electronic form to all of these authorities. This functionality should represent the first stage in the path to the target state at which a single collection point is directed.

The Ministry of Finance abandoned the prepared reduction of interest for tax authorities (i.e. the interest paid by the tax authority to the taxpayer if a refundable excess payment is refunded late or if a tax authority’s decision on tax assessment is cancelled) and as such this change is not part of the final wording of the Tax Code amendment. The amount of interest will continue to correspond to the amount of late interest that a taxpayer is required to pay in the event of late tax payment (i.e. the repo rate of the Czech National Bank increased by 14 percentage points).

### | News in Connection with the FATCA Implementation

In connection with the implementation of FATCA, the U.S. Internal Revenue Service (IRS) has been increasing its activity. Recently, IRS has published a new withholding tax reporting form, made the final hardcopy registration form available to foreign financial institutions (although electronic registration will be preferred) and has provided data structures of future lists of financial institutions complying with FATCA. Last but not least, intensive negotiations between IRS and governments of many countries are continuing in order to conclude intergovernmental agreements on cooperation in FATCA.

FATCA becomes a global platform for the exchange of information for tax purposes for other states. The G5 countries (Great Britain, Germany, Italy, Spain and France), inspired by FATCA, agreed on future cooperation under FATCA principles and published the agreement.

### Judicial Decision 5 Afs 17/2012 - 25

The Supreme Administrative Court in its decision no. 5 Afs 17/2012-25 confirmed the common practice of the Financial Authorities regarding computation of the taxable income in case of loans provided by the employer to the employees. According to the Supreme Administrative Court it is possible to consider as the “common” interest the interest in the amount charged by the Financial Institutions at place and in time of the provision of the loan. On the other hand, the Supreme Administrative Court concluded that in case of provision of a loan to the executive of the company, it is necessary to deal with the arguments regarding transfer pricing rules (§23, sect. 7 of the Income taxes Act) and returned the case to the Regional Court.

## Information on Invoicing Rules after 1 January 2013

The General Financial Directorate has issued information describing the obligations of the issuer and the recipient of a tax document from a VAT perspective, if documents in paper or electronic form are involved. The information includes various examples of how to ensure the integrity of the content and the credibility of the origin of the relevant tax document from its issuance to its archiving. The tax administration thus also describes the process of proving the “audit trail”, comments on the sending of tax documents in pdf by regular e-mail, or on the ways of transferring documents from certificate to electronic form and vice versa.

### C 85/11 - Commission vs. Ireland

Ireland, similarly to the Czech Republic, enables including non-taxable persons in a VAT group. The EU Commission challenged this possibility by filing a lawsuit at the Court of Justice of the European Union claiming that the VAT group can only include taxable persons. In early April 2013, as part of judgement C 85/11 – Commission vs. Ireland, the CJEU rejected the opinion of the EU Commission and confirmed the legitimacy of the Irish regulation. It therefore shows that the Czech legal regulation is in line with the EU’s VAT legislation in terms of including non-taxable persons in the VAT group. However, it can further be concluded from the CJEU’s opinion that for the possibility of forming a VAT group, the Czech VAT Act determines also such conditions that are likely to be in conflict with the EU’s VAT legislation.

### C-91/12 PFC Clinic

In its judgement C-91/12 PFC Clinic, the CJEU assessed the application of VAT for aesthetic surgery performed in some cases for health reasons, but sometimes only for purely aesthetic reasons. The CJEU stated that in order to apply VAT exemption, the health purpose of the operation is essential. Assessment by qualified medical staff is of key importance, the purpose of the surgery cannot be derived from the subjective perception of the person who undergoes it. We believe that this judgement is in line with Czech practice.

### C-527/11 SIA Ablessio

Ablessio, which was founded in Latvia, asked its tax administrator to perform a VAT registration. However, the tax administration refused to assign the VAT number arguing that this company has no material, technical and financial possibilities that are necessary for the performance of the declared economic activity (this was an explicit requirement of the Latvian VAT Act). The CJEU concluded that the criterion of the Latvian VAT Act is not correct but admitted that the tax administration can set conditions for the VAT registration of entities. In this sense, the Court specifies the cases when VAT registration can be rightfully rejected.

### C-138/12 Rusedespred

Rusedespred incorrectly applied VAT to a VAT-exempt transfer of real estate. It paid the VAT, the tax administrator never acknowledged its customer’s claim for this VAT deduction (as part of an ordinary review of the filed tax return, it detected the error before the VAT was returned). The Bulgarian VAT Act regulates the possibility of rectifying an incorrectly-reported tax and requires, inter alia, also the issuance of a corrective tax document. Since the Bulgarian law effectively prevents the issuance of a corrective tax document for supplies that have already been subject to the tax administrator’s review, the CJEU addressed the issue as to whether the VAT may remain uncorrected. Its statement suggests that the EU’s VAT Directive actually requires the correction to be made and that a taxable person can possibly challenge the regulation of domestic law, if it prevents the correction.

## Information on the Guarantee in the Case of Payment Made on an Unreliable Account

The General Financial Directorate has announced a very significant narrowing of the application of the guarantee for unpaid VAT. If, in the period from 1 April 2013 to 30 September 2013, the guarantee arises by law as a result of a payment having been made to an account not published in the register of reliable accounts, the tax administrators will not call upon the guarantor to settle the underpayment.

This effectively postpones the application of the guarantee by six months.

### Guarantee for VAT – Possible Limitation only to Amounts Exceeding CZK 350,000

The Ministry of Finance is planning that the guarantee for unpaid VAT could only be limited to amounts exceeding CZK 350,000. Specific legislative steps have yet to be taken.

## Tax Liabilities

### May 2013

<i>Friday, 10</i>	<i>Excise duty</i>	<ul style="list-style-type: none"> <li>Excise duty for March 2013 (except for the spirit excise duty).</li> </ul>
<i>Thursday, 16</i>	<i>Intrastat</i>	<ul style="list-style-type: none"> <li>The Intrastat statement for April 2013.</li> </ul>
<i>Monday, 20</i>	<i>Income tax</i>	<ul style="list-style-type: none"> <li>Monthly deducted advances for personal income tax from dependent activities and fringe benefits.</li> </ul>
	<i>Insurance</i>	<ul style="list-style-type: none"> <li>Submission of a report to the advances on the pension savings for April 2013 and maturity of advances on pension savings.</li> </ul>
<i>Monday, 27</i>	<i>Excise duty</i>	<ul style="list-style-type: none"> <li>Excise duty for March 2013 (only the spirit excise duty).</li> <li>Tax return for April 2013.</li> <li>Tax return to claim a refund of the excise duty on heating oils, green oil, and other technical petrol for April 2013 (if the title exists).</li> </ul>
	<i>Value added tax</i>	<ul style="list-style-type: none"> <li>Tax return and tax for April 2013.</li> <li>EC sales lists for April 2013.</li> <li>Extracts of the records for the first quarter and April 2013.</li> </ul>
	<i>Environmental taxes</i>	<ul style="list-style-type: none"> <li>Tax return and tax from gas, solid fuel, and electricity for April 2013.</li> </ul>
<i>Friday, 31</i>	<i>Excise duty</i>	<ul style="list-style-type: none"> <li>Payment of the tax withheld under a special tax rate for April 2013.</li> </ul>
	<i>Real estate tax</i>	<ul style="list-style-type: none"> <li>Due date for the first tax installment for payers with a tax liability over CZK 5,000 – except for independent farmers.</li> <li>Due date for the whole amount of the tax paid by payers with a tax liability – below CZK 5,000.</li> </ul>

### June 2013

<i>Monday, 10</i>	<i>Excise duty</i>	<ul style="list-style-type: none"> <li>Excise duty for April 2013 (except for the spirit excise duty).</li> </ul>
<i>Friday, 14</i>	<i>Intrastat</i>	<ul style="list-style-type: none"> <li>The Intrastat statement for May 2013.</li> </ul>
<i>Monday, 17</i>	<i>Income tax</i>	<ul style="list-style-type: none"> <li>Quarterly or semi-annually advances are due.</li> <li>Monthly deducted advances for personal income tax from dependent activities and fringe benefits.</li> </ul>
	<i>Insurance</i>	<ul style="list-style-type: none"> <li>Submission of a report to the advances on the pension savings for May 2013 and maturity of advances on pension savings.</li> </ul>
<i>Monday, 24</i>	<i>Excise duty</i>	<ul style="list-style-type: none"> <li>Excise duty for April 2013 (only the spirit excise duty).</li> </ul>
<i>Tuesday, 25</i>	<i>Excise duty</i>	<ul style="list-style-type: none"> <li>Tax return for May 2013.</li> <li>Tax return to claim a refund of the excise duty on heating oils, green oil, and other technical petrol for May 2013 (if the title exists).</li> </ul>
	<i>Value added tax</i>	<ul style="list-style-type: none"> <li>Tax return and tax for May 2013.</li> <li>EC sales lists for May 2013.</li> <li>Extracts of the records for May 2013.</li> </ul>
	<i>Environmental taxes</i>	<ul style="list-style-type: none"> <li>Tax return and tax from gas, solid fuel, and electricity for May 2013.</li> </ul>

Source: [www.mfcr.cz](http://www.mfcr.cz), [www.czso.cz](http://www.czso.cz)

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