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→ Law

Obligated entities under the draft Act on Protection of Whistleblowers

As the adoption of the Act on Protection of Whistleblowers is approaching, the question of which companies will be the so-called “obligated entities “ after the new law comes into force and what specific legal obligations will arise for them on the basis of this law is becoming more and more topical in the Czech business environment.

Pavel Koukal
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On the draft Act on Protection of Whistleblowers

The draft Czech Act on Protection of Whistleblowers is finally approaching the stage of final parliamentary debate and approval. The Act will bring general legislation on so-called “mandatory whistleblowing”.

The obligations arising from the new Act on Protection of Whistleblowers will undoubtedly be the biggest compliance challenge for commercial companies in the Czech Republic since the implementation of the requirements of the General Data Protection Regulation in 2018 and will bring with it the need to implement a number of internal measures.

Who will be the “obligated entities” under the new act

The definition of “obligated entities” under the draft Act on Protection of Whistleblowers is very broad and is based on several criteria. In terms of companies, the key criterion is the total number of employees as of 1 January of the relevant calendar year.

If such total number of employees reaches at least 50 employees at the company in question on the relevant date, the employer becomes an “obligated entity” under the Act on Protection of Whistleblowers. This then means that the company must establish an internal whistleblowing system through which employees and other potential whistleblowers can file reports of wrongdoing under the Act.

Establishment of an internal whistleblowing system and other obligations

There are a number of issues associated with the introduction of an internal whistleblowing system as well as a need to implement specific measures.

First and foremost, there is the matter of setting up the various methods for submitting a notification, that is, in particular, whether to make use of modern technological platforms for notification or whether to rely on standard options such as a special e-mail address, a special telephone line or whether to also make it possible to submit a notification in the form of a letter sent by post. However, the requirements to ensure confidentiality in the receipt and screening of whistleblowing and the strict confidentiality of the identity of the whistleblower and the content of his/her whistleblowing must always be respected.

In addition to the actual implementation of an internal whistleblowing system in the form of specific methods and internal reporting channels, “obligated entities” have other obligations as well. In particular, the obligation to designate a so-called ‘competent person’ who will receive the notification in strict confidence, communicate with the whistleblower, verify the validity of the notification and, on that basis, make proposals to the “obligated entity” for corrective or other measures to be taken.

In corporate practice, a large number of individual requirements, both legal, organisational and technical, will need to be met. It is therefore high time to prepare conscientiously for the new Act on Whistleblower Protection.

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→ Taxes

Real estate tax 2023: Advice on how to find out what amount you will need to pay and how to pay the tax duly and on time

January of the calendar year 2023 has long since passed and with it the standard deadline for filing real estate tax returns, which is 31 January of the relevant calendar year.¹

Petr Koubovský
Rödl & Partner Prague

If a taxpayer of real estate tax has lost ownership or other rights to all of their real estate in the territorial district of the same tax authority during the tax period, or if these real estate assets have ceased to exist, the taxpayer is obliged to notify the tax authority of this fact by 31 January of the following tax period at the latest (i.e. not by merely filing a zero tax return, but in any form, in practice a simple text in a letter is sufficient).² Provided no decision has been issued by 31 December of the year in which an application for recordation of title in the Land Registry was filed. In such case there is an obligation to file the tax return no later than the end of the third month following the month in which the title was recorded in the land register.

The tax return for real estate tax can be completed and submitted to the tax authorities in several ways:

- It can be filled in online via the EPO application at www.mojedane.cz
- It can be filled in by hand and submitted to the mailroom of the relevant tax authority office, or sent by mail or via a data message

An e-filing of the tax return for real estate tax can be accomplished in the following ways:

- a) In the prescribed manner, with which another relevant legal regulation associates the effects of a handwritten signature

- b) with the identity of the applicant verified by means of a method by which the applicant's data box can be accessed
- c) using identity-assured access
- d) through the tax information box

How to find out what will be the amount of the real estate tax?

Now is the time when the tax authorities begin to act on the real estate tax and send information on the amount and due date of the real estate tax for 2023. The taxpayer can find out this information:

- From a postal money order (složenka) sent to the taxpayer by the Financial Administration of the Czech Republic
- however, a postal money order will not be mailed to taxpayers that selected the option of having information relating to real estate tax sent to them via e-mail
- by looking up the relevant information on the web portal MOJE daně (MY Taxes)
- from information concerning the payment of real estate tax received in the data box of a taxpayer for whom a data box was established automatically by law this year

We recommend checking the amount of the tax on the tax return you may have filed or by comparing it with the amount of real estate tax for the previous year.

¹ Sec. 13a of Act on Real Estate Tax

² Sec. 13a (9) of Act on Real Estate Tax

By when and how does the tax need to be paid?

- Payment via the SIPO central payment collection system if the taxpayer submits a "Notice of Payment of Real Estate Tax via SIPO" no later than 31 January of the tax year to their tax authority together with the SIPO link number (available from 2016)
- In cash at the relevant office of the tax authority
- Via wire transfer of funds
- Payment via QR code
- By payment of a postal money order the taxpayer received (složenka)

Unlike most other taxes, for which the deadline for filing a tax return is identical to the deadline for paying the tax, the due date for real estate tax is

set by default to 30 May or 30 November 2023.³ However, if the amount of the tax is CZK 5,000 or less, it is payable in one lump sum on 30 May of the relevant year.

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³ § 15 of Act on Real Estate Tax

→ Taxes

Extraordinary increase in the electricity price recognized for the purpose of calculating compensation for fuel consumed

In connection with the recent increases in the price of electricity, the Ministry of Labour and Social Affairs has increased the average price per 1 kWh of electricity for the purpose of calculating compensation for fuel consumed with effect from 1 April 2023.

The price of electricity recognized for such purposes has been raised from CZK 6.00 to CZK 8.20 per kWh.

For other fuels, the price remains unchanged from the level set on 1 January 2023:

- CZK 41.20 for 95 octane gasoline
- CZK 45.20 for 98 octane gasoline
- CZK 44.10 for diesel fuel

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→ Taxes

Does the charging of electric vehicles constitute a supply of goods or a supply of services?

In a recent judgment, the Court of Justice of the European Union (CJEU) considered the VAT treatment of the activity consisting of operating charging stations for electric vehicles that are open to the public. Under the VAT Directive for a common system of value added tax, the general rule is that the supply of electricity for the purpose of recharging the battery of an electric vehicle must be regarded as a supply of goods. However, does this conclusion hold even if the taxable supply is a set of separate supplies and tasks in which the off-take of electricity is only one of several supplies?

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In the reviewed case, a Polish company intended to carry out the activity of installing and operating publicly accessible charging stations for electric vehicles. The users of those charging stations were then to receive the supply consisting of access to the charging equipment (including the connection of the charger to the vehicle's operating system), the supply of electricity to the vehicle's battery, the necessary technical support and access to digital applications. It was therefore a complex supply consisting of several sub-supplies and tasks, where the supply of goods and the provision of services are intertwined.

Therefore, if the supply consists of a set of sub-supplies and tasks, it is generally necessary to determine whether for VAT purposes there are two or more distinct supplies or a single supply, and also whether in the latter case the single supply constitutes the supply of goods or the supply of services.

In the reviewed case, the CJEU first concluded that the activities of the Polish company constitute a single (complex) supply. According to the CJEU, a single supply is deemed to exist in cases where two or more individual supplies or tasks provided by the taxable person to the customer are so closely connected that they objectively constitute a single indivisible supply.

In the next step, the CJEU examined whether the (single) supply in question was in the nature of a supply of goods or the supply of services. Here, the CJEU noted that in the reviewed case, there was a combination of the supply of electricity for the purpose of recharging electric vehicles and the provision of various services such as mak-

ing charging stations available and making them convenient to use, providing the necessary technical support and digital applications enabling, for example, the reservation of a charging plug.

Under the VAT Directive for a common system of value added tax, the provision of electricity to the battery of an electric vehicle generally constitutes a supply of goods. Moreover, in the reviewed case, that also forms a characteristic and predominant element of a single complex supply (the main supply). That is because, according to the CJEU, the provision of the abovementioned services in the reviewed case is not an end for the customer but a means of obtaining a benefit from the main supply. On the other hand, the provision of the services in question as part of a single complex supply constitutes an ancillary supply which merely shares the tax fate of the main supply.

On the basis of the foregoing, the CJEU thus concluded that the operation of publicly accessible charging stations for electric vehicles constitutes, for VAT purposes, a single taxable supply in the form of a supply of goods, even though such a supply also includes the provision of certain services.

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→ Taxes

What is the situation regarding fines for a failure to submit a VAT Control Statement?

As we informed you in the March issue, before the end of 2022, the General Financial Directorate amended Guideline No. GFR-D-29 (the Guideline) on waiving fines for a failure to submit a VAT Control Statement. The Guideline was amended in connection with the amending bill to the Act on Value Added Tax.

In the introduction to the amendments to the Guideline, it is stated that starting from 2023, the amounts of fines for a failure to submit a VAT Control Statement have been reduced by one half in selected cases. The change applies primarily to individuals and selected legal entities.

Along with this, however, the possibility of a general one-time waiver of the fine for an offense consisting of a failure to file a VAT Control Statement on the basis of a request by the tax authority to amend, supplement or confirm the data already stated in the VAT Control Statement, or if the VAT Control Statement is not filed within the alternative

deadline granted by the tax authority, has been limited. The penalties are fines of CZK 30 000 and CZK 50 000. Therefore, if at any time during 2023 this type of offence is committed, such a fine cannot automatically be waived on the grounds that it is a first offence. It should, however, be possible to still waive this type of fines upon request and subject to other conditions set out by the Guideline.

On the other hand, there is no automatic obligation to pay a fine for a failure to submit a VAT Control Statement, in the case of the first offence, in the form of the submission of an additional VAT Control Statement, i.e. fines of CZK 1 000 and CZK 10 000.

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