



Praha

David James
Hybernská 32
110 00 Praha

Tel: +420 221 111 611

Email: djames@bakertillyczech.cz

Brno

Lucia Rábllová
Česká 17

602 00 Brno

Tel: +420 542 425 823

Email: lrablova@bakertillyczech.cz

Commercial Code

Valuation of non-monetary contribution, financial assistance for the purchase of own shares

The last amendment to the Commercial Code, whose primary purpose is the implementation of the commercial EU Directive, introduces significant changes in the field of valuation of non-monetary contribution, transactions between related parties and financial assistance.

- The amendment simplifies the valuation of non-monetary contribution to the company. It introduces alternative valuation methods which can be used at the discretion of the statutory body. In such a case, investment securities and other money market instruments are valued on the basis of the price at which they were traded on a publicly regulated market. For the valuation of the assets accounted for at fair value according to the Act on Accounting, it is possible to use the fair value stated in the audited financial statements for the previous period if there are no qualifications in the audit report. Other assets are valued at the value determined by a generally recognized independent professional. For reasons of prudence, if the value of contribution on the date of payment has significantly changed, the amendment introduces the obligation of the statutory body to provide a new valuation.
- The amendment brings substantial simplification in the area of pricing of transactions between related parties. The duty of valuation by a court-appointed expert shall apply only if the company acquires property exceeding 10% of the

registered capital either from its founder or from its shareholder during a period of two years after its establishment.

- If the prevailing nature of business has changed as a result of the acquisition of assets or transfer of part of business constituting a separate branch of legal entity, then the prior consent of the shareholders or the general meeting is required.
- In future financial assistance for the purchase of own shares, i.e. provision of funds by legal entities in order to acquire their own stocks or shares, is allowed not only to joint stock companies, but also to limited liability companies. The company may provide financial assistance only if it is determined by its statute and only if the legal minimum conditions have been met, e.g. the prior consent of the shareholders' meeting or conditions used in normal course of business.

Taxes

Amendment to the Tax Administration Act

Amendment to the Tax Administration Act introduces with effect from 1 January 2010 the following changes:



- An appeal against an additional payment assessment issued after a tax inspection will have a suspensive effect, i.e. the additional amount of tax will not be payable unless and until the appeal is rejected. Moreover, in the future every decision of tax administrator, with a few exceptions, must be provided with justification, which will briefly and clearly state the reasons for the decision. Lucia Rábllová, Head of Tax at Baker Tilly Czech Republic, said: "This is a long-awaited step in the right direction - with the taxpayer being treated as a more equal partner with the state in the spirit of EU democracy. This is part of what many people promised themselves when we joined the EU, and we hope that it will radically improve the experience of the ordinary taxpayer in his or her dealings with the organs of state".

- In response to the decision of the Constitutional Court, the amendment explicitly states that it is not possible to assess tax or to admit a tax deduction claim after the lapse of three years from the end of the period in which the tax became payable or three years from the origin of the tax liability for those taxes which have no tax period. This means that from 1 January 2010 the "3+0 Rule" will apply.

Lump sum expense on transport

For tax periods commencing in 2009, an amendment to the Income Taxes Act has introduced the possibility to claim expenses on transport by road motor vehicles used for business purposes as a lump sum amounting to CZK 5,000 for each whole calendar month and for maximum of 3 vehicles, as an alternative to proving actual costs by means of a so-called journey book. Lump sum expense on transport can be applied under the following conditions:

- the vehicle is used to generate, assure and maintain taxable income, except other income;
- the taxpayer did not let anybody else use the vehicle, even for a part of the calendar month;

- if the taxpayer uses the vehicle both for business as well as for private purposes, only 80% of the lump sum expense can be applied.

Depreciation of motor vehicle remains tax deductible costs. On the other hand, one cannot claim fuel and parking expenses, and 20% of other expenses as tax deductible costs for vehicle for which the taxpayer is required to apply a reduced lump sum amounting to 80%. It is also not possible to apply expense reimbursement for fuel consumed during business trips as well as the lump sum expense.

Finance

The Payment Systems Act

With effect from 1 November 2009, the existing Payment Systems Act will be replaced by a new rule whose purpose is to implement the EU Directive on payment services in the internal market into the Czech law. The main changes provided by the new act include regulation of so-called electronic money, private banking relationships and supervision over non-banking institutions with regard to payment systems.

The Act introduces two new categories of non-banking providers of payment services. The first one consists of payment institutions authorized to provide their services on basis of the permission of the CNB for whose award it is necessary to fulfil a series of regulatory requirements and which is recognized throughout the whole EU (so-called unitary passport). In the second category there are entities, which do not meet the requirements for payment institutions. These are small-range payment service providers, which will be allowed to provide payment services upon registration with the CNB, however, to a limited extent and only in the territory of its home Member State.



The Act realizes harmonisation also in the area of civil-law relations in the area of provision of payment services, i.e. in the area of the reciprocal rights and obligations of providers and users of payment services. The new regulation will particularly affect the reporting obligations in respect of the payment service (the bank will be required to provide state of account for free at least once a month), authorisation, method and deadlines for payment transactions and legal liability of service providers.

The Act also allows the issuance of so-called electronic money which is important especially for electronic transactions. This new form of money brings changes also in the area of VAT when it is required to apply VAT at the payment date.

Accounting

IFRS 8 – Operating segments

With effect from 1 January 2009, International Financial Reporting Standard IFRS 8 which replaces IAS 14 - Segment Reporting stipulates new requirements for disclosure of information about operating segments. The use of this standard is obligatory for entities that prepare individual or consolidated accounts according to IFRS and whose shares or debt securities are publicly traded on the public market.

According to IFRS 8, an operating segment is defined as a component of an entity which generates revenues and expenses and whose financial results are regularly evaluated by body with decision-

making power in order to allocate resources and assess performance. With the introduction of reporting according to IFRS 8, the entity must currently disclose how they define the operating segment, which may be, for example, on the basis of products or services, on the basis of geographic areas or on a combination of these factors.

Newly, according to IFRS 8, segment items are reported in the disclosed financial statements as reported at internal level of the body with decision-making power. Condition according to which separate reporting of information about operating segment is required only if a majority of segment's revenues flows from external customers does not apply anymore. Conversely, IFRS 8 introduces a new requirement for disclosure of information about transactions with major customers. If revenues from transactions with a single external customer or group of customers under common control amount to 10% or more of total entity's revenues, this information must be disclosed, including the total amount of revenues from each customer and the identification of segments in which these revenues are reported.

As regards the first year of application of the new IFRS 8, the information about segments must be reported according to the new rules also for the comparative period, except where the information is not available or the cost of obtaining it would be prohibitively high.

In October this year there are parliamentary elections taking place and therefore we expect a period of few legislation changes. On the other hand, broader changes can be expected from the new government on which we will inform you accordingly.



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