HAVEN
ADVOKÁTNÍ KANCELÁŘ

SEPTEMBER 2020 LEGAL NEWS

Dear clients, let us to introduce you several news from Czech legislation and judicial decisions appeared during September 2020 and months before. We will inform you about next change soon.

Taxes

+ Real estate transfer tax´s revocation

President has signed an Act revoking real estate transfer tax. **The tax is revoking retrospectively by March 31, 2020. The revocation will apply on each entry permitted by the Land Register from December 1, 2019 onward.** Those who have to fill a tax return up to March 31 (including postponement till August due to epidemiological measurements from spring of this year) already do not have to pay the tax. To those who have paid the tax already the Financial Administration will pay the money back as a tax overpaid.

The Act also prolongs so called "time test" for income from transfer of real estate not used for one´s own living to 10 years for real estates acquired after January 1, 2021. The Act also preserves a right of a purchaser to deduct interests on a mortgage from the tax.

+ International Cooperation on EU Tax Disputes Act

International Cooperation on EU Tax Disputes Act (No. 335/2020 Coll.) has come into effect on September 15, 2020. The Act in response on new EU-legislation introduces new mechanisms of protection from double taxation. Existing international treaties protecting from double taxation allows taxpayers to apply responsible national authorities which will then attempt to solve the dispute about interpretation and domain conciliatory. The Act is now giving them a 3-years period to do so and provides the taxpayers a right to apply the court or body of independent experts if the national authorities fail to find a solution.

Labour law

+ Prolongation of "Antivirus Program"

On August 24, 2020, the government decided about a **prolongation of regimes A and B** (i. e. partial compensation of paid wages due to a situation of involuntary operation restrictions due to quarantine or related economic troubles) **of Antivirus Program** till October 31, 2020. Regime C which pardoned pays on social security insurance was not prolonged and terminated by the end of August. The Antivirus Program contributes to maintaining jobs during economic crisis. The Chamber of Deputies is now discussing a Kurzarbeit Bill which should be effective from November 1, 2020 and which should therefore continuously replace the Antivirus Program. We will inform you about so called "kurzarbeit" implementation in next number of legal news

Personal data

+ Impacts of EU-USA Privacy Shield´s annulment

As we informed you before, the Court of justice of the EU annulled by its recent decision a legal instrument allowing transfer of personal data between the EU and the USA – the so called Privacy Shield. Czech Office for Personal Data Protection (ÚOOÚ) published a statement answering the most frequent questions connected with Privacy Shield´s annulment. The ÚOOÚ in this context remarks that it is not necessary to notify a use of contractual closes in contracts with the processors (after Privacy Shield´s annulment the standard contractual closes remained the only legal instrument allowing personal data transfer to the third countries) or to apply for their authorization. The ÚOOÚ also does not carry out a revision of the closes of each controller and processor because it is a duty of the controller to evaluate if the closes are proper guarantee of a protection of the personal data during the transfer. In case when even contractual closes cannot guarantee proper protection, the ÚOOÚ does not exclude a possibility of prohibition of the transfer. The controllers are expecting to check the closes in order to prevent this risk. If the controllers decide to transferring personal data to third countries without so much as using the closes (reviewed by them before) – that means if the transfer is based on "non-standard instruments for creation of proper guarantees – then the controller has to be awarded by permission form the ÚOOÚ.

Civil law

+ Large distance between parents residences

The Constitutional Court (ÚS) in the decision from September 2, 2020 (File No. IV. ÚS 4156/19) has stand up for a father of a child put in the custody of its mother who was seeking an amendment of the intercourse rules because his residence was 270 km distant from residence of the child. Mother disagreed also because father proposed that they both of them should alternate in driving the child to the second parent. Father was refused by the common courts. The ÚS consent to the father and ruled that large distance between parents residences under normal circumstances cannot go the debit of one of them and cannot be a reason for breaking a child´s right to intercourse with each parent and *vice versa*. Concerning the equal balance of strain is according to the ÚS possible to demand proportional distribution of the strain between both parents. That is why the ÚS grant a request of the father, including alternation of both parents in driving the child to the second parent.

+ Inappropriate length of factual criminal procedure and suffered harm

The Supreme Court (NS) in the judgement from May 27, 2020 (File No. 30 Cdo 2123/2019), ruled that if the criminal procedure was not properly launched as a result of its postponement according § 159a of the Criminal Procedure Act, then also this factual adhesive procedure should cause the injured person a harm by its inappropriate length laying in state of uncertainty about result of such adhesive procedure. A prescription period according to the NS starts to pass after issuing of a decision about postponement of the prosecution (a moment of coming into force is not decisive, because according to the NS the adhesive procedure *de iure* was not launched and therefore it could not effectively terminate).

Do not hesitate to contact us with any particular question.

We will inform you about next legal news.

YOU'RE NOT ALONE

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