++ HAVEN
ADVOKÁTNÍ KANCELÁŘ

LEGAL NEWS JANUARY 2021

Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during January 2021 and previous months. We will inform you about next changes soon.

+ Maintenance Payment Act

In the Collection of Laws of the Czech Republic has been promulgated an Act under No. 588/2020 Coll., of substitute maintenance benefit, is coming into effect on 1. 7. 2021 and brings help to families, where debtor parent does not fulfill its maintenance obligation. The Act makes possible to child with permanent residence in the CR (not the parent taking care of the child) draw from **social benefit once in 4 months** in the amount declared by the court, however in the max. amount of 3 000 CZK. For the payout of the social benefit from the Labour Office, it will be necessary to submit a final court decision on the amount of maintenance and prove that the debtor parent does not pay the maintenance (namely by a proposal to initiate execution, or that the execution proceedings take place within 4 months before the filing of the petition, eventually that it was stopped for lack of debtor's property). If the parent will not pay maintenance **after every social benefit payout, it will be necessary for further payout to prove that the debtor parent did not pay**. The social benefit will be possible to collect for a maximum period of 2 years, then the claim passes to the state, which will enforce it.

+ Collection of legal regulations of territorial self-governing units

A new Act No. 35/2021 Coll., collection of legal regulations of territorial self-governing units and certain administrative authorities is coming into effect on 1. 1. 2022. The collection should contain for easier orientation in these legal regulations not only generally binding decrees of municipalities and regions, regulations of administrative authorities and acts stipulated by law (e. g. decisions on the state of danger according to the Crisis Act or decisions on suspension of the effectiveness of a legal regulation of a territorial self-governing unit) issued after 2022, but also on every previous documents, including resolutions on regional referendums, lists of protected areas or decisions of the Constitutional Court concerning local government legislation. Publication in this collection must be conditional on their validity.

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+ Act on the examination of foreign investments

The president of the Czech Republic signed an act on the examination of foreign investments. Newly all foreign investments from non-EU members will be subject to examination. The state will able to affect form of risky investments and in last resort will be possible to prohibit or cancel retroactively. Under the examination will not be every investments but only the strategical one (e. i. to the production, research and development of military material, the operation of elements of critical infrastructure, systems managing them or to the development and production of so-called dual-use goods. The regular investments should not be more affected by the new legislation. If the investor will not be certain that its investment is subject to this Act, it is possible to ask for preventive examination by the State (so-called consultation).

+ Amendment of the Act on the registration of beneficial owners

The Act on the registration of beneficial owners is coming into effect on 1. 6. 2021 which substitutes current legislation in the Act of Public Registers. The Act makes entries more accessible for the public and explicitly establishes sanctions for breach of the obligation to register (in contrast to the current regulation). It also specifies a term of beneficial owner. This is meant to every natural person who is final beneficiary or a person with final influence. The final influencer is every person, which can directly or indirectly obtain more than 25 % of profit shares, own funds, assets or liquidation balance of a legal entity. The person with final influence is a governing person referring to provision on group law in the Commercial Corporations Act. If it is not possible to find with every effort the beneficial owner of the legal entity, or there is no one, it a person in the top management of the corporation is considered (e. i. the case of association of unit owners). The Statute also counts on automatic transcription of data on the real owner from their records (ESM) to the Commercial Register or the records of trust funds. The automatic transcription will however only apply to persons enrolled in the ESM after the entry into effect of this Statute. The sanction for breach of the obligation to register the beneficial owners in the ESM is imposed by the Act prohibiting the payment of a share in the profit or other benefit which the corporation would otherwise pay to the beneficial owner and a fine of up to 500 000 CZK if the registering person does not ensure the entry of any data in the ESM or does not ensure the entry of new data deleted by the court for inaccuracy. In addition, the fine may be punished by the real owner, who does not provide the registrant with the necessary obligation, if the court confirms the breach of the real owner obligation.

Protected account of the debtor

An Act No. 38/2021 Coll., amending civil procedure code (CPC) and code of execution is coming into effect on 1. 4. 2021. It is an reaction to the corona crisis in which the amendment should prevent too many people from falling into the debt trap as a result of the related economic crisis. The Act increases the non-seizable amount for individuals to three times the subsistence level. This amount will be possible to pay together with the non-seizable wage component to a so-called protected account, which the bank will open at the request of the debtor and which will not be subject to execution. The establishment and maintenance of such an account must be provided by the bank free of charge and its establishment must be notified to the court. The debtor can own only one protected account according to the Act. If it turns out that the debtor has deliberately provided false information to the bank, the court may decide that the account will cease to be protected, and the funds on it will subsequently be penalized in the execution.

Amendment of the Tax Code

The last amendment of the Tax Code (TC) which has come into effect on 1. 1. 2021 brings some new important changes. The Amendment firstly allows the tax administrator to pay to the tax subject an unverified part of the deduction (if it amounts to at least 50 000 CZK) in the form of an deposit. Next change relates to initiation of a tax audit which will be not possible to initiate personally during the oral hearing. At least a notification delivered to the data box will be required. This also applies to the termination of the tax audit. The amendment also unified the sanction system of the TC, where the amount of interest on arrears is to be determined in accordance with the Civil Code (i. e. 8% plus the repo rate set by the Czech National Bank). Interest on late payments will arise from the fourth calendar day after the tax is due. The shortening of this period is compensated by the increase of the minimum limit for the assessment of interest on late payments to 1 000 CZK. The basis for calculating the interest will be the unpaid tax. It will also be necessary to use the overpayments to the tax administrator for payment, otherwise the tax administrator will not stop interest. The Act also newly introduces a 4 month deadline for filing a tax return, if filed electronically.

From case-law

Avoidance of double taxation between the Czech Republic and Germany

The Supreme Court (NSS) in its judgment ref. no. 5 Afs 468/2019-68 issued in December 2020 that the court cannot determine whether or not any agreement concluded with the other contracting state under a double taxation agreement is valid or invalid. The double taxation agreement between the Czech Republic and Germany allows resolve any doubts as to whether the taxation took place in accordance with the agreement by concluding a mutual agreement. In this case the doubt arose, because the Ministry of Finance sought to conclude such an agreement. The Ministry was finally convinced by the German authorities that the tax domicile of the taxable person is in Germany. The tax entity disagreed with this conclusion and filed a lawsuit to the court declaring the procedure of the Ministry of Finance illegal. The lawsuit was dismissed and this procedure was also confirmed by the

NSS. The NSS concluded that although the tax subject has an interest in the outcome of the conciliation procedure, it is not a party to it, and therefore the court cannot determine how the negotiation on the agreement should be conducted. The lawsuit would be admissible only if the request for the conciliation was rejected by the Ministry or if the conciliation procedure had already ended (however, in this case it was still pending at the time of filling the action). In addition to the solution, the NSS stated that a possible lapse of tax obligations in the Czech Republic could not be a reason for refusing conciliation proceedings.

+ The factual situation is not decisive when issuing a hedging order

The NSS confirmed in its judgment on 8. 1. 2021, ref no. 5 Afs 362/2019 procedure of the Financial Administration in the area of hedging orders. The Court stressed regarding to the nature of the procedure for issuing a hedging order, the Financial Administration does not, in principle, provide evidence at this stage, because the process of the issuance of a hedging order is not about proving the facts, but about finding clues that reasonably indicate concerns. Therefore, even a mere indication of possible participation in a chain store of VAT fraud may justify the issuance of a hedging order.

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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