

## 1. Outline of VAT

### 1.1. Scope of VAT

VAT is levied on local taxable supplies in the Czech Republic, on goods imported into the Czech Republic and on unscheduled international transportation of persons by bus, when provided in the Czech Republic by a foreign operator. Taxable supply means the delivery of the goods, the transfer of real estate when the ownership title or the right of management is transferred, and the provision of services. Such supplies are taxable if effected in the Czech Republic as part of a business activity, even when such activity has all the characteristics of business activity except that it is not undertaken by the entrepreneur.

As the Czech Republic is not currently a member of the EU, mechanisms regulating Intra-Community supplies in the EU under the Sixth Directive cannot be applied in the Czech Republic. The provision of the services from abroad (import of services) is outside the scope of the VAT system.

### 1.2. Provision of taxable supplies

Czech VAT has to be accounted for on each effected taxable supply provided that it is realized by a person liable to VAT who is registered for VAT purposes (taxable person). The liability to account for VAT arises on the day when the taxable supply is rendered. The VAT law specifies this day in a different way for particular taxable supplies, e.g. in the case of the provision of the services the taxable supply is considered to be the day when such services are rendered or paid for, whichever occurs earlier.

Under certain conditions the services provided can be considered as partial taxable supplies or as recurrent taxable supplies. In the case of partial taxable supplies the taxable supply is considered as effected on the day specified in a relevant contract. Recurrent taxable supplies are considered as effected no later than the last day of a taxable period.

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The taxable person who provides the taxable supply to another taxable person is obliged to issue an invoice – a VAT document. Among other things, the amount of the output VAT has to be specified in this document.

The VAT on the import of goods has to be paid by the person for whom the goods are to be released into a relevant customs regime regardless of whether this person is registered for VAT or not.

### 1.3. VAT registration

Value added tax registration, through the local tax office, is obligatory for all businesses or individuals whose turnover exceeds CZK750,000 in any consecutive three-month period. All businesses or individuals can register voluntarily if they provide any business activities. The only exemptions are businesses and individuals who provide only exempt taxable supplies without credit.

Under the current position of the tax authorities, a foreign company can register for VAT in the Czech Republic only if it has a branch there. Strictly under the Czech Commercial Code any foreign business which undertakes business activities in the Czech Republic would have to incorporate a branch. Business activity is any activity which is carried out systematically for the purpose of making profit. Czech legislation does not explicitly define what is to be understood under "systematically performed activities".

### 1.4. VAT rates

There are three VAT rates. A standard rate (22 per cent) should be applied on most products, some services, such as maintenance and repairs, operating leases, advertising, etc. Basic foodstuffs, minerals, pharmaceutical products, paper products, books, newspapers, certain medical equipment, certain rental payments, and most services including consulting and advisory services are subject to a reduced rate (5 per cent). However, if any services are provided under a commission agent's contract, a brokerage contract or a commercial representation contract they are subject to 22 per cent VAT rate except for some exempt financial mediatory services.

All exports of goods and services and the international transport of goods are subject to zero tax rates.

In addition to this, the services mentioned below are exempt from VAT without VAT credit:

- mail and broadcasting;
- training and education;
- medical services and products;
- social care;
- financial services and insurance;
- services provided by the state, local administration or the courts;
- lease of buildings;
- lotteries and similar competitions;
- non-profit-making activities;
- sale of businesses to a VAT registered person;

- promotional gifts with a value of CZK200 or less which are visibly marked with the company's name.

### 1.5. VAT returns

The taxable person has to declare the output VAT in his regular VAT returns; details of the input VAT are also included in the return. If the output VAT exceeds the input VAT the taxable person has to pay the difference to the tax authorities. VAT is payable within 25 days of the month or quarter end. Where input tax exceeds output tax for a period, the excess is generally refunded 30 days after filing the tax return.

VAT returns have to be submitted on a monthly or quarterly basis. The frequency depends on the turnover of the last year. In the year of the VAT registration the frequency depends on the expected annual turnover.

If annual turnover is higher than CZK10,000,000, VAT returns have to be submitted monthly by the 25th of the following month. If annual turnover is lower than CZK2,000,000 the VAT returns have to be submitted quarterly by the 25th day of the month following the quarter end.

If turnover is between CZK2,000,000 and CZK10,000,000, the VAT payer can choose whether to complete monthly or quarterly VAT returns.

### 1.6. Input VAT recovery

The recipient of a taxable supply can recover the VAT charged on the received taxable supply by its provider (a taxable person) provided that:

- He is also registered for VAT.
  - He recorded the received tax document in his accounting.
  - He uses/will use the received taxable supply for his business activities.
- In the Czech Republic, it is generally possible to reclaim all VAT with the exception of VAT on:
- purchase of a personal car;
  - entertainment;
  - supplies not used for business purposes.

In the case of a finance lease of a car, VAT can be reclaimed on the mark up of the leasing company, but not on the capital cost.

Where business outputs are exempt from VAT without credit, input VAT cannot be recovered. There are rules for calculating the proportion of input VAT which can be recovered where businesses have a combination of taxable and exempt supplies.

## 2. Characterization of financial services

Services, which should be considered for VAT purposes as financial services, are explicitly defined in the VAT law. However, certain of the services specified in

the law do not fully correspond to the services listed in the "Standard Classification of Production" which contains a detailed list of all services, and assigns to each service a specific classification code which serves as the basis for determining whether the standard or reduced VAT rates should be applied. Therefore, in certain cases, and especially in the case of auxiliary services, it may be difficult to decide whether the specific financial service should be considered as the exempt supply without credit or not.

Financial services can be generally divided into three following groups.

### 2.1. Financial services, which are VAT exempt regardless who provides them

This group of financial services includes the following services:

- intermediary services relating to savings;
- management of securities belonging to a client on his account;
- foreign currency exchange operations;
- money transactions;
- supplying gold to the Czech National Bank.

### 2.2. Financial services that are exempt only if they are provided by "a financial institution"

This group of financial services includes the following services:

- provision of credits and monetary loans;
- transfers of securities, except for a transfer effected by a dealer in securities (a brokerage firm);
- payment and settlement arrangements;
- issue of payment instruments, such as payment cards, traveller's cheques, etc.;
- issue of bank guarantees;
- issue of letters of credit;
- arrangement for the collection of monies;
- trading on one's account or a client's account in foreign exchange value;
- trading on one's account or a client's account in futures and options, including foreign exchange and interest rate transactions;
- trading on one's account or a client's account in securities;
- assignment of a receivable from another person for consideration;
- provision of services consisting in the buy-out of debts and receivables;
- management of investment funds and investment companies.

Under the financial institution the VAT legislation understands banks, insurance companies, investment companies and investment funds, securities dealers, pension funds, the Deposit Insurance Fund and savings and loan cooperatives. Besides, these persons whose revenue or income from their financial activities exceeds 20 per cent of their total revenue or income in the current calendar year, reduced by revenue or income from the sale of depreciable tangible and intangible assets, are also considered as financial institutions for VAT purposes.

If these services are provided by the person who is not considered as the financial institution, they are considered as the supplies outside the scope of the VAT.

### 2.3. Insurance services

Insurance services are the following activities undertaken by insurance companies:

- conclusion of policies;
- insurance management;
- provision of benefits in respect of insured events;
- intermediary insurance activity;
- arrangements for securing fulfilment of another insurance company's obligations arising from concluded policies;
- activities aimed at promoting and developing the insurance business and securing fulfilment of obligations;
- activities aimed at preventing the occurrence of damage and mitigating its consequences.

Besides these activities intermediary activities related to insurance brokerage, state-contributory supplementary pension insurance and intermediary activities related to state-contributory supplementary pension insurance are also considered as insurance activities.

Any other financial services that cannot be classified as one of the financial services described above are considered as a taxable supply even if from the point of view of their substance they represent financial services.

If the financial services form part of other transactions they can follow the VAT regime of the main transaction. For example, a financial lease is considered as the taxable supply, unless the lessor recharges separately insured instalments in the same value to the lessee. In such a case the recharged insurance instalments are considered as exempt supplies. The lessor can also include insurance instalments in the charged financial mark up or recharge them separately at a higher value. In both cases the insurance instalments are considered as taxable supplies.

## 3. VAT on financial services

### 3.1. Services in the sphere of credits, loans and deposits

Financial services in the sphere of credits, loans and deposits represent financial services which are treated as VAT exempt if they are provided by persons considered for VAT purposes as financial institutions, i.e. banks, insurance companies, investment companies and investment funds, securities dealers, pension funds, the Deposit Insurance Fund and savings and loan cooperatives or persons whose revenue or income from their financial activities exceeds 20 per cent of their total revenue or income in the current calendar year (hereinafter "conditional exempt supplies").

Provision of credit and monetary loans includes the provision of credit or loans by banks or the provision of monetary loans by other persons. Provided that consideration of the credit application relates only to the credit and cannot be used for other purposes, such a review is also considered as exempt supply. The revenues related to the provision of credit or monetary loans are interest and the agreed fee.

If the credit is secured through a guarantee, the provision of the guarantee is not considered as a taxable supply. The taxable supply would be effected only at the time of the realization of the guarantee, i.e. the date of sale of the guaranteed asset.

A gratuitous transfer of ownership title in a movable asset effected on the provision of a bank credit between the person to whom such credit is provided and the bank, and the gratuitous return transfer of ownership title in the same movable asset between the bank and the person to whom the credit was provided after the credit was repaid are also not considered as taxable supplies. This provision can be applied only in the case of the gratuitous transfer of ownership title in a movable asset. If the subject of such a transfer were an immovable asset, the transfer would be considered as the taxable supply or an exempt supply with credit.

The above rule cannot be applied where the credit or monetary loan is provided by a person who does not have a business licence for banking activities in the Czech Republic.

The issue of a bank guarantee is an exempt supply only if it is provided according to the relevant provisions of the Czech Commercial Code. In fact, only banks, i.e. persons that are automatically considered for VAT purposes as financial institutions, can issue bank guarantees. As the issue of a bank guarantee the VAT law understands, *inter alia*, consideration of the application for a guarantee provided in connection with the issuing of bank guarantee even if the guarantee is subsequently not issued, provided that the review relates explicitly to the relevant bank guarantee and cannot be used by the client for other purposes. The revenues include the agreed interest and the fee for the payment realized on the basis of the issued guarantees.

Only banks, i.e. persons that are automatically considered for VAT purposes as financial institutions, can, in fact, provide letters of credit. The revenues are the fees charged to the client.

Issue of payment instruments includes the issue, administration, blocking or cancellation of credit cards, the issue of chequebooks, the issue of a cheque, its return or cancellation, etc. The related revenues are the fees charged for the issue of the payment instruments and subsequent related transactions.

The issue of club, discount and similar cards which allow their owner to purchase goods or services with discounts and which do not serve as payment instruments cannot be considered as an exempt financial supply.

Payment and settlement arrangements are usually provided by banks. Within the framework of payment and settlement arrangements the relevant persons provide deposit services, keep current, savings, giro and other accounts in both the Czech and foreign currency, etc. The revenues are the agreed remuneration for the services provided.

The interest from such accounts received by a depositor is considered as supplies outside the scope of the VAT system.

### 3.2. Services in the sphere of money

Money transactions are financial services which are considered as exempt supply regardless of who provides the service. In fact only banks can provide these services under a special law. Money transactions represent the exchange of damaged notes, the exchange of coins for notes and vice versa, the purchase and sale of foreign currency, etc. The revenues are the remuneration, or brokerage charged for these services.

Another financial service in the sphere of money is foreign currency exchange operations, i.e. the purchase and the sale of foreign currency and traveller's cheques. These services are considered as exempt supplies regardless of who provides them. The revenues from the foreign currency exchange operations are the brokerage or the difference between exchange rates.

Arrangement for the collection of monies includes primarily arrangements for the collection of bills of exchange in Czech or foreign currencies, including also the arrangement for the collection of bills of exchange with negative results and the arrangement of any refusal. The revenues are the agreed fees.

### 3.3. Services in the sphere of shares and securities

Securities are not considered to be goods except for their delivery from a maker to an issuer or on their importation by the issuer.

In the sphere of shares and securities it is necessary to differentiate between trading in securities on its own account or on a client's account by a brokerage firm and the transfer of securities by other persons.

Transfer of securities, except for a transfer effected by a dealer in securities (the brokerage firm), represents a conditional exempt supply. Such transfers in fact should be treated either as a supply which is outside the scope of Czech VAT (if they are not realized by the financial institution) or as exempt supplies with credit as the VAT law allows in this specific case the input VAT from the received taxable supplies interconnected with these transfers to be claimed if they are provided by a financial institution.

The transfer of securities abroad can be considered under the general conditions specified in the law as the provision of services abroad, i.e. again the exempt supply with credit. The transfer of securities from abroad to the Czech Republic represents the import of services, which is outside the scope of Czech VAT.

Also the payment of interest or other revenues from bonds and other debt securities at the maturity date is outside the scope of Czech VAT.

On the other hand the above transfer of securities also includes repo transactions, i.e. securing provided credit through the securing transfer of securities.

Trading in securities on one's own account or a client's account covers the purchase or the sale of securities, the arrangement of the purchase or the sale of securities, the loan of securities or their acceptance, the arrangement of the loan

of the securities or its acceptance; these transactions should be provided only by licensed brokerage firms. However, if these activities were provided by a person which was not authorized to provide them they would be considered for VAT purposes, based on the "substance over form" rules, as trading on one's own account or a client's account in securities.

Consultancy services provided in the connection with the above transactions are also considered as exempt financial supplies.

In the cases of the trading on one's own account in foreign exchange values, in futures and options, including foreign exchange and interest rate transactions, it is necessary to differentiate between transactions carried out for the purpose of securing the currency risk within the framework of relationships with suppliers or customers and transactions carried out for speculative reasons.

In the first case these transactions are outside the scope of the Czech VAT. In the latter case they represent exempt supplies.

Management of securities belonging to a client on his account includes primarily portfolio management. In this area it is necessary to ascertain whether the substance of services provided is the management or pure safekeeping of the securities since the latter is not exempt from VAT.

The dividends received from the holding of securities are considered as supplies which are outside the VAT system.

#### **3.4. Services other than core financial services**

Management of investment funds and investment companies under a special law can be arranged only by investment companies which are considered for VAT purposes to be financial institutions. Therefore, these services are exempt automatically.

Provision of services consisting in the buy-out of debts and receivables represents the conditional exempt supply. These services represent the activities known as factoring or forfeiting.

Assignment of a receivable acquired from another person for consideration represents a conditional exempt supply. If the taxable person assigns his own receivables this assignment is outside the scope of Czech VAT.

Intermediary services relating to savings are exempt from VAT automatically and they cover all kinds of savings, e.g. intermediary services relating to the savings in building societies, term deposits, etc. In this case the general condition according to which any services provided under a commission agent's contract, a brokerage contract or a commercial representation contract are subject to 22 per cent VAT rate should not be applied.

#### **3.5. Supply of specific goods**

Under supply of gold to the Czech National Bank the VAT law understands the delivery of gold coins and gold in the form of internationally traded units of bullion, and whose fineness is guaranteed by a internationally reputable legal entity through a print of its mark or an enclosed certificate.

All other sales of gold, including the sale of gold in the form of internationally traded units of bullion, gold coins, gold medals and gold determined for the production of gold coins and gold metals by the Czech National bank represents taxable supplies.

### **4. Taxable persons**

#### **4.1. Taxable persons**

Czech VAT has to be accounted for only where the taxable supply is provided by a person liable to VAT who is registered for VAT purposes (taxable persons). At the same time only persons liable to VAT who are registered for VAT are generally entitled to input VAT recovery.

Persons liable to VAT are individuals and legal entities undertaking business activity in the Czech Republic or performing some activity having all the attributes of a business activity, apart from it being undertaken by an entrepreneur. Such persons are obliged to register for VAT if their turnover exceeds, in the immediately preceding three successive calendar months, CZK750,000 (25,000 euro). The persons liable to VAT are entitled to register for VAT voluntarily if the above threshold is not exceeded provided that they carry out business activities.

However, persons who only provide exempt supplies without credit (including exempt financial services) are not considered as persons liable to the tax. This means that the persons who provide only exempt financial supplies cannot register for VAT.

If the relevant person provides both exempt supplies and taxable supplies such a person is obliged to register for VAT provided that the above threshold has been exceeded. The revenue from the exempt taxable supplies is not included in the above threshold. Such a person can register voluntarily.

The tax authorities can cancel the registration of any person liable to VAT if this person does not provide any taxable supplies within 12 successive months without any explanation.

#### **4.2. Financial services within groups of related companies**

The payment of dividends is considered as a supply which is outside the scope of the VAT system. The input VAT from the received taxable supplies interconnected to the generation of revenue from such supplies could be deducted provided that the activities of the holding company could, in general, be considered as carrying out business activities, i.e. activities provided independently on a continual basis for the purposes of making a profit. There is no clear opinion concerning this issue. As the Czech Republic is not an EU member the decisions of the European Court of Justice are not binding in the Czech Republic.

Due to the broad definition of business activities the Czech tax authorities would currently probably allow VAT recovery in respect of related received tax-

able supplies. Assuming that the holding company does not actually provide any taxable supplies the tax authorities would probably cancel the VAT registration of this holding company after 12 months, as they are entitled to do in law.

If the holding company were actively to involve itself with the management of its subsidiaries, such activities would probably be considered as provision of services. However, it is necessary to differentiate between activities arising from the ownership of the subsidiaries (shareholder's activities) and actual management. As the holding company and its subsidiary will be considered as related persons the holding company has to account for VAT on the taxable supplies provided; the VAT has to be computed from a value of the provided services determined according to the Estimation Act (arm's length price).

Czech VAT legislation does not contain a special provision concerning "VAT group taxation". Therefore, the holding company and its subsidiaries will be for VAT purposes considered as independent taxable persons regardless of their mutual legal or economic relationships.

The issue of shares by a company is outside the scope of the Czech VAT system.

## 5. Effects of exemption

### 5.1. Input VAT recovery

Any person registered for VAT who provides only financial services or other exempt supplies without credit is not entitled to an input VAT recovery. The only exception is transfer of securities effected by the person other than a dealer in securities. The input VAT in respect of received taxable supplies used to effect the transfer of securities can be deducted in full.

If the relevant person provides both exempt financial supplies and taxable supplies (or exempt supplies with credit) it is obliged to divide the received taxable supplies into three groups.

The first group represents the received taxable supplies used to effect only taxable supplies. The relevant input VAT can be deducted in full. The second group represents the received taxable supplies used to effect only exempt financial supplies without credit. The relevant input VAT cannot be recovered.

The third group represents the received taxable supplies used to effect both taxable supplies and exempt supplies or received taxable supplies in respect of which it is not clear whether they will be used for the provision of the taxable supplies or the exempt supplies. The entitlement to input VAT recovery has in this case to be reduced through a coefficient.

The coefficient should generally be calculated as a total sum of revenues from all taxable supplies, exempt supplies with credit and supplies which are not subject to VAT, divided by the revenue from all supplies including exempt supplies without credit. There are certain exemptions when exempt supplies without credit are not included in the denominator. In the area of financial services such an

exemption is the transfer of securities, except for a transfer effected by a dealer in securities.

The input VAT should be deducted through the regular VAT return. Besides this the final input VAT deduction settlement should be done in the VAT return for the last taxable period of a relevant calendar year.

If the received taxable supplies included in the first group related to the acquisition of the capital goods mentioned above which are also used for the provision of exempt supplies, that part or the whole reclaimed input VAT has to be paid back under the conditions specified in the VAT law.

The input VAT recovery is much more complicated in the case of financial services which are exempt only if they are provided by a financial institution. As in the case of the persons who are not considered automatically as financial institutions the application of an exemption can be considered only after the end of the calendar year when the revenue of the relevant person is known; during the current calendar year the received taxable supplies used to effect such financial supplies are considered as non-exempt supplies, i.e. the relevant input VAT can be recovered in full.

If after the end of the calendar year the threshold for the financial institution is exceeded and the relevant person is considered for VAT purposes as a financial institution it is obliged to divide, in the VAT return for the last taxable period, the relevant received taxable supplies into three groups mentioned above and to settle the input VAT correspondingly for the whole calendar year.

If the exempt financial services were provided by a branch of a foreign company located in the Czech Republic all received taxable supplies and relevant input VAT would be subject to reduction through the coefficient. The coefficient is calculated in the same way as explained above, with one exception. The branch should include in the denominator of the coefficient any financial means received from its head office.

This procedure has to be applied unless a relevant double tax treaty concluded between the Czech Republic and the state where the head office is located contains anti-discrimination provisions in the VAT area.

In practice, banks and other "real" financial institutions providing services that are in absolute majority considered as tax exempt without credit do not claim input VAT back at all. The main reason is that the input VAT which could be claimed in full is in practice very difficult to specify due to the fact that only a very small part of the received taxable supplies can be assigned only to the provided taxable supplies.

The VAT law does not differentiate between received taxable supplies which are used both for taxable supplies and exempt supplies in a ratio, e.g. 50:50 or 99:1; all such received taxable supplies reduce the relevant input VAT through the coefficient. The law provides for only one method for calculating the coefficient - based on revenues from taxable supplies and exempt supplies. Due to the value of revenue from exempt supplies the coefficient is usually so small (under 0.05 per cent) that the final input VAT deduction is zero.

Even if certain received taxable supplies could be assigned only to the provided taxable supplies and the input VAT could be fully recovered the value of the

recovered input VAT would be very likely lower than the costs incurred in keeping the necessary evidence, necessary organizational changes, software updating, etc.

### 5.2. Effects of exemption on final customers

The current wording of the VAT legislation does not allow opting for taxation when supplying financial services to business customers and changes in such procedure are not expected. Such an option is allowed only in the case of the lease of buildings.

Therefore, also in the case when services are not provided to private persons but to other businesses, the input VAT from interconnected services cannot be deducted by the persons who provide the exempt services. As such unrecoverable input VAT represents extra costs, which are reflected in the price charged to the customer, the exemption leads in fact to the increase of costs on the side of business customers. This may cause an increase in the price of services or goods acquired by the final customers.

### 5.3. Outsourced services

The VAT implications of the outsourced services provided by service centres differs subject to their substance and to the legal background on the basis of which they are provided. According to Czech VAT legislation any services provided under a commission agent's contract, a brokerage contract or a commercial representation contract are subject to the standard VAT rate. This means that even if the services provided on the basis of one of the above contracts had a financial character the supplier (provided he was registered for VAT) would have to account for the standard VAT rate, except for intermediary services relating to savings and insurance.

If services were provided under a mandate contract, the tax rate applicable to the taxable supply carried out under the contract would be used. If the services provided under the contract are of financial substance the situation is much more complicated and the law is not clear about how to proceed with the "financial" services.

In the case of services that are provided on the basis of other kinds of contracts each case has to be considered separately. However, outsourced services such as data storing, lease of hardware and software, secretarial and similar services are currently considered as taxable supplies.

## 6. Financial cross-border transactions

Under the Czech VAT legislation the place of supply in respect of financial services is the place where the services are provided. Therefore, all financial services provided in the Czech Republic are considered as being subject to VAT without credit regardless of to whom they are provided.

Where financial services are provided in the Czech Republic but their utilization, consumption or use is destined for abroad, the services are then considered as exempt supplies with credit, i.e. the input VAT from the interconnected received taxable supplies can be deducted.

As the law does not define what we should understand under the utilization, consumption or use abroad, it is in some cases difficult to determine whether the above condition is met.

If the financial services are provided by foreign persons that do not have a branch registered in the Czech Republic, their provision is considered as an import of services that is not subject to Czech VAT. As a reverse-charge mechanism does not apply in the Czech Republic the provision of financial services by the foreign person without a branch in the Czech Republic is outside the scope of the Czech VAT system.

## 7. Financial transactions through e-commerce

Czech VAT law does not contain special provisions for supplies provided through e-commerce. Therefore, rules that apply to "normal" financial transactions have to be applied on these well.

Due to the above, the place of supply in respect of the financial services provided through e-commerce is the place where the services are provided. However, there are no legal opinions of the tax authorities concerning where financial transactions through e-commerce are considered to be provided. Therefore, it could be very difficult to determine in the case of the cross-border transactions the place of supply of the financial transactions provided through e-commerce and subsequently to specify whether the relevant supplies should be considered as exempt supplies without credit (the place of supply and the place of its use or consumption is in the Czech Republic) or exempt supplies with credit (the place of supply is in the Czech Republic but the place of its use or consumption is abroad) or it is outside the scope of Czech VAT (the place of supply, i.e. the place where the financial transactions are provided is located abroad).

## 8. Discussion and suggestions

A draft of the amendments of the VAT Act should be discussed in Parliament. If accepted by Parliament the amendments would come into effect from 1 April 2003 or later.

The current draft contains substantial changes in the sphere of the financial transactions. The current two different VAT regimes of the financial exempt supplies (automatic exemption and conditional exemption) should be cancelled and all the financial services specified in the VAT law will be considered as exempt regardless who provides them.

These amendments should lead to the simplification on the side of the persons who are not considered automatically as the financial institutions for VAT purposes. On the other hand, these persons in many cases did not exceed the threshold for the financial institutions specified in the VAT law and therefore they have been entitled to the refund of the VAT from interconnected received taxable supplies.

In addition to this insurance services will not be defined directly in the VAT Act which will refer this matter to the relevant special legislation.

Some other changes are expected in connection with the planned membership of the Czech Republic in the EU.

## 9. Summary and conclusions

The scope of the financial services that are considered as exempt supplies without credit is explicitly defined in the VAT law. However, in certain cases and primarily in cases of auxiliary services it may be difficult to decide whether the specific financial service can be covered by these titles and subsequently whether they should be considered as an exempt supply without credit or not.

The taxable person who provides exempt supplies is not entitled to recovery of input VAT from the related received taxable supplies. Such input VAT has to be declared in a fixed section of the VAT return.

If the taxable person provides both exempt supplies and taxable supplies he is obliged to reduce the total amount of the claimed input VAT through a coefficient. The value of the coefficient is calculated on the revenues from taxable supplies and exempt supplies. The reduced VAT is claimed during a calendar year through the regular VAT returns; however, the final settlement for the whole calendar year has to be done in the VAT return covering the last taxable period of the year in question.

As the final input VAT which can be claimed by the banks, insurance companies and other similar entities is usually very close to zero they do not claim any input VAT as the related incurred costs would be higher than the claimed input VAT.

If financial transactions are carried out by persons who are not banks, insurance companies and other similar entities specified in the VAT law the related current VAT implications are rather complex. Certain "exempt" supplies have to be recorded during the calendar year as supplies, which are outside the scope of VAT. Only after the end of the calendar year, based on the ratio between revenues from exempt supplies and all revenues of the company, the taxable person will find out whether they should be considered as exempt supplies or not. If this is the case, the taxable person has to settle his input VAT recovery for the whole calendar year retrospectively.

## Résumé

La République tchèque n'est pas encore membre de l'UE. C'est la raison pour laquelle les mécanismes qui réglementent les fournitures intracommunautaires à l'intérieur de l'UE dans le cadre de la sixième Directive ne peuvent être appliqués dans la République tchèque, et toutes les opérations nationales et transfrontalières doivent être considérées comme tombant entièrement sous le coup de la loi tchèque sur la TVA. Les décisions de la Cour européenne de Justice n'ont pas non plus actuellement force obligatoire dans la République tchèque.

Le champ des activités financières qui sont considérées comme des fournitures exemptes sans crédit est défini de façon explicite dans la loi sur la TVA. Néanmoins, dans certains cas et en premier lieu dans les cas de services auxiliaires, il peut être difficile de décider si l'activité financière concrète peut ou non être couverte par ces définitions et, par suite, si elle devrait ou non être considérée comme une fourniture exempte sans crédit.

Aux fins de la TVA, les activités financières peuvent être généralement réparties entre les trois groupes suivants:

- activités financières exemptes de TVA indépendamment de leur auteur;
- activités financières qui ne sont exemptes que si elles sont exercées par une "institution financière";
- activités liées à l'assurance.

La personne imposable qui livre les fournitures exemptes n'a pas droit à la récupération de la TVA en amont perçue sur les fournitures imposables reçues. Si la personne imposable livre à la fois des fournitures exemptes et des fournitures imposables, elle est tenue de réduire le montant total de la TVA en amont réclamée par un certain coefficient. La loi ne prévoit qu'une seule méthode de calcul de la valeur du coefficient – sur la base des recettes provenant des fournitures imposables et des fournitures exemptes.

La TVA réduite est réclamée pendant une année civile à travers les déclarations régulières de TVA; toutefois, le règlement final concernant l'année civile entière devra intervenir dans la déclaration de TVA couvrant la dernière période imposable de l'année en question.

Comme la TVA finale en amont qui peut être réclamée par les banques, les compagnies d'assurance et d'autres entreprises similaires est habituellement très proche de zéro, ces entités ne réclament aucune TVA en amont, étant donné que les frais encourus seraient en l'occurrence plus élevés que la TVA réclamée.

Si les opérations financières sont réalisées par les personnes qui ne sont ni les banques, ni les compagnies d'assurance, ni les autres entreprises similaires spécifiées dans la loi sur la TVA, l'impact actuel de la TVA est en l'occurrence plutôt complexe. Certaines fournitures "exemptes" doivent être comptabilisées pendant l'année civile en tant que fournitures ne tombant pas sous le coup de la TVA. Ce n'est qu'à l'expiration de l'année civile, sur la base du rapport entre les recettes provenant des fournitures exemptes et l'ensemble des recettes de la société, que la personne imposable pourra déterminer si ces fournitures devraient être ou non considérées comme des fournitures exemptes. Dans l'affirmative, la personne imposable doit déposer sa demande de remboursement de la TVA en amont pour l'année civile entière à titre rétroactif.

Cette procédure de recouvrement pourra être annulée sur la base d'un projet d'amendements à la loi tchèque sur la TVA qui est actuellement en préparation. Les deux régimes de TVA différents actuellement en vigueur qui régissent les activités financières exemptes (exemption automatique et exemption conditionnelle) devraient être annulés et toutes les activités financières spécifiées dans la loi sur la TVA seront considérées comme exemptes quel que soit leur auteur.

## Zusammenfassung

Die Tschechische Republik gehört noch nicht der EU an. Deshalb sind die Bestimmungen nach der Sechsten Richtlinie über innergemeinschaftliche Lieferungen und Dienstleistungen in der EU in der Tschechische Republik noch nicht anwendbar, und für alle inländischen und grenzüberschreitenden Vorgänge gilt ausschließlich das tschechische Mehrwertsteuergesetz. Auch die Entscheidungen des Europäischen Gerichtshofes sind in der Tschechische Republik noch nicht bindend.

Der Bereich der Finanzdienstleistungen, die als steuerbefreit ohne Anrechnungsmöglichkeit gelten, ist im Mehrwertsteuergesetz genau definiert. In einigen Fällen jedoch und vor allem in Fällen von Nebendienstleistungen kann die Entscheidung schwierig sein, ob eine bestimmte Finanzdienstleistung unter die im Gesetz genannten Kategorien fällt und infolgedessen als steuerfrei ohne Anrechnungsmöglichkeit behandelt werden sollte oder nicht.

Für Mehrwertsteuerzwecke lassen sich Finanzdienstleistungen generell in drei Kategorien gliedern:

- Finanzdienstleistungen, die mehrwertsteuerfrei sind, unabhängig davon, wer sie erbringt;
- Finanzdienstleistungen, die nur steuerfrei sind, wenn sie von einem "Finanzinstitut" erbracht werden;
- Versicherungsdienstleistungen.

Der Steuerpflichtige, der steuerbefreite Dienstleistungen erbringt, hat keinen Anspruch auf die Erstattung von Steuern auf entsprechende in Anspruch genommene Dienstleistungen. Erbringt der Steuerpflichtige sowohl steuerfreie als auch steuerpflichtige Dienstleistungen, muss er den Gesamtbetrag der geltend gemachten Vorsteuer durch einen bestimmten Koeffizienten vermindern. Das Gesetz sieht nur eine Methode zur Berechnung des Koeffizienten vor, die auf den Erträgen aus steuerpflichtigen und steuerfreien Dienstleistungen beruht.

Die verminderte Mehrwertsteuer wird im Lauf eines Kalenderjahres durch die regelmäßigen Mehrwertsteuerklärungen in Anspruch genommen, doch muss die Schlussabrechnung für das gesamte Kalenderjahr in der Mehrwertsteuererklärung für den letzten Steuerzeitraum des betreffenden Jahres erfolgen.

Weil die endgültige Vorsteuer, die Banken, Versicherungsgesellschaften und ähnliche Körperschaften geltend machen können, sehr dicht bei null liegt, machen diese Körperschaften im allgemeinen keinen Vorsteuerabzug geltend, da die hiermit verbundenen Kosten höher wären als die geltend gemachte Vorsteuer.

Werden die finanziellen Dienstleistungen von Personen erbracht, die weder Banken noch Versicherungsgesellschaften oder ähnliche im Mehrwertsteuergesetz aufgeführte Körperschaften sind, ergeben sich ziemlich komplexe Mehrwertsteuerkonsequenzen. Einige "steuerfreie" Dienstleistungen müssen im Kalenderjahr als Dienstleistungen aufzeichnet werden, die nicht in den Geltungsbereich der Mehrwertsteuer fallen. Erst nach Ende des Kalenderjahres kann der Steuerpflichtige auf der Grundlage des Verhältnisses zwischen Erträgen aus steuerfreien Dienstleistungen und den Gesamterträgen feststellen, ob diese Dienstleistungen als steuerfrei zu betrachten sind oder nicht. Ist dies der Fall, muss der Steuerpflichtige seine Vorsteuererklärung für das ganze Jahr rückwirkend geltend machen.

Nach dem Entwurf der gegenwärtig ausgearbeiteten Änderungen des tschechischen Mehrwertsteuergesetzes könnte dieses Erstattungsverfahren entfallen. Die beiden derzeitigen ununterschiedlichen Mehrwertsteuersysteme für steuerbefreite Finanzdienstleistungen (automatische Befreiung und bedingte Befreiung) dürften entfallen, und alle im Mehrwertsteuergesetz aufgeführten Finanzdienstleistungen würden als steuerfrei gelten, unabhängig vom jeweiligen Erbringer.

## Resumen

La Rep. Checa no pertenece todavía a la Unión Europea, de ahí que no se puedan aplicar los mecanismos que regulan las prestaciones intracomunitarias dentro de la Unión, en el marco de la Sexta Directiva, y que todas las operaciones nacionales y transfronterizas hayan de ser consideradas como reguladas por la ley checa del IVA. Las resoluciones del Tribunal Europeo de Justicia no tienen actualmente fuerza de obligar en la Rep. Checa.

La ley del IVA define de forma explícita el ámbito de las actividades financieras consideradas como prestaciones exentas sin crédito. Sin embargo, en ciertos casos y en primer lugar en lo que se refiere a los servicios auxiliares, puede resultar difícil decidir si el servicio financiero en concreto se incluye o no en tales definiciones y, por tanto, si debería ser considerado o no prestación exenta sin crédito.

En general y a efectos del IVA, los servicios financieros se pueden incluir entre los tres grupos siguientes:

- servicios financieros exentos de IVA con independencia de su causante;
- servicios vinculados al seguro.
- servicios exentos de IVA.

El contribuyente que preste los servicios exentos no tiene derecho a recuperar el IVA soportado sobre las prestaciones imponibles recibidas. Si el contribuyente presta a la vez servicios exentos e imponibles, debe reducir el importe total del IVA soportado mediante un determinado coeficiente. La ley prevé un solo método de cálculo del valor del coeficiente – en base a los ingresos procedentes de prestaciones imponibles y exentas.

El IVA reducido se reclama durante el año civil mediante las declaraciones regulares del impuesto. Sin embargo, el pago final correspondiente a todo el año civil se realizará en la declaración de IVA del último período imponible del año en cuestión.

Como el IVA final soportado que puede ser reclamado por bancos, compañías de seguros y otras empresas similares, se aproxima normalmente a cero, estas entidades no lo reclaman supuesto que los gastos que tendrían que soportar serían superiores al IVA reclamado.

Las implicaciones del IVA son más complejas cuando las operaciones financieras no se realizan por bancos, compañías de seguros o las otras empresas similares especificadas en la ley del impuesto. Determinadas prestaciones "exentas" han de contabilizarse durante el año civil como servicios no incluidos en el ámbito del IVA. El contribuyente determinará al final del año civil si esas prestaciones se consideran o no exentas en base a la relación entre los ingresos procedentes de las exentas y el conjunto de ingresos de la sociedad. En caso afirmativo, el contribuyente debe presentar su solicitud de reembolso del IVA soportado de todo el año civil con carácter retroactivo.

En la actualidad está en preparación un proyecto de modificación de la ley checa del IVA que contemplaría el cambio o anulación de este procedimiento recaudatorio. Quedarían derogados los dos regímenes vigentes de IVA que rigen los servicios financieros exentos (exención automática y condicional), considerando exentos todos los servicios financieros especificados en la ley cualquiera que fuere su causante.