

1. Introduction

This report deals with the international tax aspects of deferred remuneration in the Czech Republic. Due to the immature state of the Czech Republic's current tax system, consisting of laws which came into force only on 1 January 1993, the Czech Republic's regulatory framework regarding the subject of this report is fairly rudimentary, and the role of literature and case law in the country's tax practice is still very limited. Therefore, this report is, probably to a greater degree than other country reports, based on practical experience and on non-official information from the tax authorities. We believe, however, that the inclusion of this experience and information will contribute to the report's practical value.

2. National situation

2.1. General

During the 10 years which have passed since the Velvet Revolution of 1989, the legislature's energy has been taken up with an almost complete reconstruction of the country's legal system. Within this framework, only minimal attention has been paid to creating an environment which favours the advantages of deferred remuneration.

At the same time, economic factors have not created a favourable environment for deferred remuneration. The vast majority of Czech employees cannot afford to defer remuneration which, in another form, would be available to them without delay. In addition, most Czech employers have not yet advanced to the stage where deferred remuneration schemes would be perceived as an important remuneration tool.

The result is that deferred remuneration plays a minor role in the country's remuneration habits.

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Most Czechs' remuneration consists only of current remuneration, including a monthly salary, and the provision of food at the workplace or food-coupons. The higher echelons with commercial responsibilities can arrange for part of their salary to be profit- or turnover-related. The possibility of deferred remuneration does not form part of an employee's salary requirements or of an employer's competitiveness in attracting employees.

2.2. Relationship to public social security and pension schemes

Supplementary pension schemes as a form of deferred remuneration likewise have only very limited importance in the Czech Republic. Apart from the economic factors referred to above, an additional complicating factor with supplementary pension schemes was that in recent years, any contribution by an employer would constitute current taxable income for the employee, and the employee's own contributions would be non-tax deductible.

As a result, most retirees have to rely on the state's old-age pension system supplemented by private savings where applicable. Current old-age pension range from between CZK 5,000 and CZK 10,000 per month (US\$ 150 to 300). From this perspective, the oldest generations who did not save during their active lives are considered to have benefited the least, materially speaking, from the political and economic revolution which took place in the Czech Republic.

Taking into account economic and demographic developments, the Czech Republic has recognised the need for increased individual responsibility in financing retirement. To encourage savings by individuals, a legal framework has been created which allows for private pension savings with supplementary contributions from the state.¹ However, the system was not supported by appropriate tax treatment, and was therefore not regarded as an alternative remuneration tool by employers and employees.

This situation is expected to change as a result of legal amendments that were announced very recently.² These amendments introduce tax deductibility in employer and employee contributions to supplementary pension schemes.³ The amendments came into effect on 3 August 1999. Since pension schemes are outside the scope of this report, we will not consider these any further.

2.3. Spreading and types of deferred remuneration

The above does not mean that there is no relevant deferred remuneration whatsoever in the Czech Republic. Indeed, profit-sharing and bonus types of remuneration are sometimes available to the higher echelons with commercial responsibilities. Although these forms of remuneration have an element of deferral they are, however, in practice often treated as current remuneration.

¹ Act No. 42/1994, on private pension plans with supplementary contributions from the state.
² Collection of Laws No. 170/1999.
³ Arts. 6 (9) and 24 (2) of Act No. 586/1992, as amended (hereinafter the Income Tax Act).

More interesting within the scope of this report are employee participation schemes, which have been introduced in recent years by a variety of multinational-ists for their employees on a worldwide scale, and as such have also been implemented in the Czech Republic. The focus of our report will therefore be on the tax aspects of these employee participation schemes. Limiting factors, as to the scope of our analysis, are that in practice these employee participation schemes always aim at creating employee participation in a non-Czech entity (normally the ultimate parent company which is quoted on foreign stock exchanges), and that the employees eligible for this form of remuneration are often foreign expatriates, who, under the so-called "foreign-expert"⁴ regime, are not taxed as tax residents of the Czech Republic.

There are no relevant civil or labour law regulations governing the granting of deferred remuneration. The Commercial Code⁵ opens the possibility for Czech companies to issue "employee shares", as a special category of shares which may be held exclusively by company employees or former employees. However, due to the conditions attached, the granting of these "employee shares" has not become a common element in employee remuneration on any relevant scale. This form of remuneration will therefore not be discussed in this report.

3. Remuneration, salaries and pensions according to national tax law

The concept of "income from dependent activities" is worded in a fairly broad sense in the Income Tax Act, encompassing all income from current and former employment or from other employment-like relationships, whether paid regularly or as a lump sum, whether there is a legal entitlement or not, regardless of the form of fulfilment, whether in cash or in kind.⁶

"Income" is taxed in the year in which it accrues to a taxpayer. The Income Tax Act does not offer any clear guidelines as to the moment when taxable income is deemed to accrue to a taxpayer. There is, however, a specific rule which relates to employment income. According to this rule, income from employment that accrues to an employee within 31 days of the end of the taxable period in which the income was earned, is taxed in that taxable period.⁷ For example, the salary for December of year 1, paid before 1 February of year 2, constitutes taxable income in year 1. This exception reveals the general rule, i.e. income is taxable at the moment it is actually received by the employee. This system is also applied in practice.

Art. 2 (3) of the Income Tax Act.
 Art. 158 of Act No. 513/1991, as amended (hereinafter the Commercial Code).
 Art. 6(3) of the Income Tax Act.
 Art. 5(4) of the Income Tax Act.

An employer's contributions to mandatory social and health insurance do not constitute taxable income for employees.⁸ This could be regarded as a form of deferred remuneration. However, the monetary and non-monetary benefits from the mandatory social and health insurance are also tax-exempt.⁹ Accordingly, the employer's contributions do not, in our view, actually constitute real deferred remuneration.

Until recently, the Income Tax Act did not make a distinction between the taxation of regular income and pensions and other forms of deferred remuneration. This situation has changed with the introduction of a deferred income tax treatment for contributions to a pension fund. According to this new regime, employers and employees may contribute certain amounts to pension funds, whereby their contributions constitute tax-deductible expenses for both employer and employee, and the employer's contributions do not constitute taxable income for the employee.

These pension funds are, however, outside the scope of this report. Apart from these pension fund contributions, no specific tax rules apply to deferred remuneration.

4. Date of granting/agreement on deferred remuneration

4.1. Taxation of the employer

When discussing the taxation of the employer in relation to deferred remuneration, the focus is on two questions; which amount is considered a tax-deductible expense for the employer, and at what time is this amount tax-deductible?

As to the question of which amounts constitute tax-deductible expenses for an employer, there is a somewhat unusual approach in Czech tax practice.

The Income Tax Act provides that wages are tax-deductible,¹⁰ but that "monetary benefits provided to employees in addition to their wages, unless entitlement to such benefits is regulated by a legislative Act or decree",¹¹ are non-tax deductible. Furthermore, on the basis of the provisions of the Labour Code, it is assumed that "wage" is to mean the remuneration for "labour".¹² From these provisions, the Czech tax authorities conclude that payments which are not made for a person's work are not "wages" and therefore do not constitute tax-deductible expenses, whereby "labour" is interpreted in a fairly strict sense. In addition, the tax authorities require that the employer has a contractual obligation towards employees concerning the payment of labour remuneration. In order to create

⁸ Art. 6(9)(e) of the Income Tax Act.

⁹ Art. 4(1)(h) of the Income Tax Act.

¹⁰ Art. 24(2) of the Income Tax Act.

¹¹ Art. 25(1)(d) of the Income Tax Act.

¹² Art. 35(1) of the Labour Code No. 65/1965, as amended.

tax-deductible salary expenses, it would therefore be necessary for employers to include the remuneration in the labour agreement explicitly as remuneration for the employees' work.

Concerning the question of the time at which the remuneration would be tax-deductible, no specific rules apply to employers. Businesses are generally taxed on their accounting profits, which are adjusted for tax purposes according to the items set forth in the Income Tax Act. No adjustments are prescribed for the area discussed here; accordingly, Czech statutory accounting rules, which broadly follow generally accepted accounting principles, would determine at which time costs are deductible.

Czech statutory accounting rules generally require that costs be allocated to the period in which they belong economically. Hence, the labour costs would have to be allocated to the period in which the work was performed. The time of payment, or the time when the money left the control of an employer, would not be the decisive factor. This would, however, provoke serious problems if work were remunerated via a deferred remuneration scheme, and if at the time of closing the accounts for a certain tax year no estimate of the remuneration could be made. In such a case it can be assumed that the time of the payment or of funds leaving the control of the employer would become decisive.

4.2. Taxation of the employee

The Income Tax Act clearly stipulates that for tax purposes, the term "income" comprises both monetary and non-monetary consideration.¹³ The Act further stipulates that "income from dependent activities" includes income arising from current or former employment paid as regular income or in the form of a lump-sum, whether paid, credited or rendered in another form of fulfilment by an employer on behalf of his employee.¹⁴

The Income Tax Act makes no reference to any specific regulations concerning the taxable moment for deferred remuneration which falls within the scope of this report. The tax treatment of such income would, therefore, have to be assessed by applying the general concepts described above to the various moments which are relevant for deferred remuneration.

4.2.1. Taxation at date of granting

On the date of granting the deferred remuneration, one would have to assess whether any income "accrued" to the employee. The form of the income would not be relevant. As described above, both monetary (cash) and non-monetary (e.g. a valuable right) income are taxable.

Therefore, if the "granting" consisted of a mere promise or even an agreement to render income at a later point in time, this granting would not constitute a tax-

¹³ Art. 23(6) of the Income Tax Act.

¹⁴ Art. 6(3) of the Income Tax Act.

able event. However, if upon granting the deferred remuneration one transferred a non-forfeitable value to the employee, this would, in our view, constitute taxable income according to the text and system of the Income Tax Act.

4.2.2. Taxation when granted rights become non-forfeitable

As stated above, the time when the income became non-forfeitable would be relevant. At this time the employee would receive (non-monetary) taxable income.

4.2.3. Taxation at the time when the employee can exercise his right for the first time

Within the system of the Income Tax Act, this date would not be relevant. A delay in the employee's exercise of his right would have no impact on the question of when the valuable right itself was definitively granted to the employee.

4.2.4. Taxation at the time when acquired rights become freely transferable

In the Czech tax system, a delay in the free transferability of rights would not affect the time at which the right was granted to the employee. Therefore, this date would likewise have no tax relevance.

4.2.5. Taxation on the date when deferred remuneration is actually paid

The actual payment of deferred remuneration would, in principle, always constitute a taxable event. At this time, it becomes important that the system makes the taxation of the deferred remuneration coherent with the taxation of income earlier. Such coherence does not always exist in the Czech system. As discussed later on, an example would be that the taxation of capital gains realised on the sale of shares could collide with the taxation of the benefit as employment income.

It is important to note that the analysis in this chapter is fairly theoretical. In Czech tax practice the general belief is that in the case of deferred remuneration, the time at which the rights are exercised is the taxable event. This opinion was also expressed – although informally – by the Czech Ministry of Finance. This view is not always in harmony with the text and system of the Income Tax Act, as described above. On the other hand, this view has practical advantages because it solves two of the major taxation problems upon granting the deferred remuneration or upon it becoming non-forfeitable:

- (a) The valuation of the right: as a general principle, non-monetary income has to be valued¹⁵ in accordance with the Act on Property Valuation.¹⁶ This Act

generally prescribes valuation at fair market value. For most types of deferred remuneration, the market value would be difficult, if not impossible, to assess. The value of the most frequent form of deferred remuneration, i.e. non-tradable employee stock options, would have to be estimated using the Black/Scholes formula, for example. For obvious reasons, this would be very difficult in practice.

In the case of taxation upon exercise, it would normally be possible to determine the exact amount of taxable income.

- (b) Payment of tax: employees would often have a financing problem if tax had to be paid in cash upon receiving income in a non-monetary form, such as stock option rights.

The exercise of the rights would normally present cash income for the employee, which would allow him to pay taxes on the income.

A range of conditions attached to deferred remuneration, such as the condition that one continue being an employee, limitations on transferability and similar restrictions, could have an impact on the question of when taxable income is received. However, according to the concept of taxation upon exercise, these conditions and restrictions would normally have no impact.

To summarise the above, one could say that deferred remuneration is, in practice, simply not recognised as such, but instead treated as current remuneration at the moment it actually accrues to employees. A bonus payable in year 2 which is related to the profit or turnover of year 1, the right to which bonus was perhaps already granted in year 0, would be treated as current income in year 2. An option right which is unconditionally granted in year 0 and exercised in year 5 would be treated as current income in year 5.

5. Period of deferral

5.1. Taxation of the employer

There are no specific obligations or restrictions upon employers during the deferral period. In particular, an employer would not be obliged to transfer funds to a third party or impose restrictions concerning the use of the money during the deferral period. This would be different for pension fund contributions, which are not discussed here.

As stated above, the tax authorities require, in practice, that employment expenses are allocated to the years in which the work for which the remuneration is paid was performed. Accordingly, a company would be obliged to account for such expenses in the years in which the remunerated work was performed, and the costs are, in principle, tax-deductible only in these years.

In the Czech Republic, forms of deferred remuneration which could be construed as a loan from the employee to the employer are not customary.

¹⁵ Art. 3 (3) of the Income Tax Act.

¹⁶ Act No. 151/1997

5.2. Taxation of the employee

In Czech tax practice, an employee would normally not be deemed as realising taxable income at any time during the deferral period. It has to be stressed that on the basis of the text of the Income Tax Act, a different regime would apply. According to the law employees are liable for tax on income in cash and income in kind at the moment when such income accrues to them,¹⁷ hence one would expect that a valuable right granted to an employee would, at the latest, present taxable income when the granting of the right became definitive and non-feasible.

If a deferred remuneration scheme were to involve an employer transferring funds to a separate body, e.g. an insurance company or investment fund, the question arises as to whether income realised by this body is deemed as accruing to either the employer or the employee during the deferral period. No specific rules apply here, so the general tax treatment appropriate for the separate body's legal status, and the contractual arrangements binding this body, the employer and the employee, would apply. This may indeed imply that the separate body's income would be deemed as accruing to the employees, and constitute current taxable income during the deferral period.

6. Date of payment

6.1. Taxation of the employer

There is no explicit coherence between amounts taxed as income in the hands of employees and amounts deductible as salary expenses for employers. There is likewise no coherence, as a principle, between the times at which taxable income and tax-deductible salary expenses, if any, are taken into account. However, due to the fact that in the Czech tax system deferred income would often be treated as current income when paid or exercised, coherence may to a certain extent occur in practice.

The date of payment has no formal relevance for the employer in calculating deductible expenses, as companies are obliged to allocate salary costs to the years in which the remunerated work was performed,¹⁸ not the year in which it was remunerated. As indicated above, this would present a problem if the exact amount of the remuneration which is to be deferred is unknown at the time of closing the accounts. In that case, the remuneration would have to be treated as a deductible expense in the year it was actually paid.

The time at which a Czech employer makes any payment which constitutes taxable income for the employees is, however, relevant to withholding income tax and social security contributions.

¹⁷ Art. 5 of the Income Tax Act.

¹⁸ Art. 23 (1) of the Income Tax Act.

Coherence between the amount which is deductible for an employer and taxable for an employee would exist in practice, though not as a rule or as a principle, if the remuneration were paid by the employer and agreed between employer and employee as the remuneration for the employee's work. This would frequently be the case for profit-sharing or bonus plans. With stock-option plans, however, Czech employees normally acquire shares in a foreign parent company, whereby the main cost of the option scheme, in the form of the difference between the exercise price and the shares' market value, is not charged to the Czech company. In such an event, there would be no coherence. The employee would, in principle, be taxed on the difference between the exercise price and the shares' fair market value at the time of exercise, while the Czech employer would have no deductible expenses in this respect.

6.2. Taxation of the employee

The date of payment of deferred remuneration, via the employees' exercise of their rights, would, for employees, be the decisive time in Czech tax practice. The time of realising income would normally be regarded as the time of realising taxable income, to the amount actually received. The amount actually received would include the deferred remuneration plus any further accretions, which would, therefore, likewise be taxed as current employment income.

To the extent that income is paid by a Czech employer, it would be subject to income withholding tax and social security contributions. If income were not paid to the employees by a Czech employer, but realised by the employees in another way, it would not be subject to withholdings by the employer. In such a case, the employees would be obliged to themselves report the income after the end of the year.

Here a particular problem arises with respect to stock options. In the Czech Republic, the difference between a share's (security's) acquisition cost and its sales price constitutes taxable income ("other income"), if the shares are sold within six months from the date of acquisition.¹⁹ In the case of shares acquired via a stock option, the "acquisition cost" would, according to the letter of the law, be the actual price paid on exercise. The fact that an employee was already taxed on the difference between the exercise price and the shares' fair market value at the time of exercise would not affect the shares' "acquisition cost" for the employee. Accordingly, if the employee sells the shares he acquired via a stock option scheme within six months from the date of acquisition, he would be taxed twice on the difference between the exercise price and the sales price – once as employment income upon exercise, and once as other income upon sale of the shares. The Czech Ministry of Finance has recognised this double taxation problem, but no steps to mitigate it have been taken as yet.

¹⁹ Art. 10(1)(b) in conjunction with art. 4(1)(w) of the Income Tax Act.

7. International tax aspects of deferred remuneration

7.1. Relevant treaty law

The Czech Republic is currently a party to some 56 tax treaties. Both the Income Tax Act and the Tax Administration Act stipulate that treaties which are binding on the Czech Republic take precedence over the provisions of those Acts.²⁰

Of the Czech Republic's tax treaties, all except two are bilateral tax treaties based on the OECD model tax conventions and the United Nations model tax convention between developed and developing countries. Apart from these bilateral tax relationships, the Czech Republic has inherited membership in the two CMEA (Comecon) multilateral tax conventions, which are still partly valid.

7.1.1. Status of Czechoslovak tax treaties

The majority of the Czech Republic's tax treaties were originally concluded by the Czech Republic's legal predecessors, the Czechoslovak Socialist Republic and the Czech and Slovak Federal Republic. Following the split of the Czech and Slovak Federal Republics on 1 January 1993, the Czech Republic and the Slovak Republic became successors to the tax treaties concluded before that date. The Czech Republic and the Slovak Republic consider themselves bound by the pre-1993 tax treaties, and the counterparties to these treaties have agreed, either explicitly or in practice, to continue the application of these treaties to both new states.

Following the disintegration of Yugoslavia, the Czech Republic announced that it would continue to apply the tax treaty contracted between Yugoslavia and Czechoslovakia to Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro) and Slovenia.

7.1.2. CMEA treaties

Czechoslovakia was a signatory to the multilateral tax conventions of the former Council for Mutual Economic Assistance (CMEA, also known as Comecon) which consisted of Bulgaria, Czechoslovakia, Hungary, Mongolia, Poland, Romania and the USSR.²¹ These multilateral tax conventions, the Convention for the Avoidance of Double Taxation of Individuals and the Convention for the Avoidance of Double Taxation of Corporations, provide for almost exclusive taxation of income in the recipient's home country. The Czech Republic has announced that it will continue to apply the CMEA conventions to the former member countries, until bilateral tax treaties following the OECD model are concluded with such countries. Since the disintegration of the USSR, the Czech Republic has expressed

its willingness to apply the CMEA conventions to its various parts. The Baltic states have not considered themselves bound by the CMEA conventions, and Hungary and Kazakhstan have officially denounced the conventions.

The Czech Republic has now concluded bilateral tax treaties with the Baltic States, Hungary, Poland, Romania, the Slovak Republic and the Russian Federation. Therefore, the significance of the CMEA Conventions is, in practice, limited to a number of former USSR states.

In view of their limited significance, we will not consider the CMEA conventions any further.

7.1.3. OECD

The Czech Republic is a member of the OECD and it adheres to the OECD commitments to the model tax convention.

In cross-border situations, the taxation of deferred remuneration may be governed by the dependent services article (article 15 of the OECD model tax convention) or by the pensions article (article 18 of the OECD model tax convention) of a bilateral tax treaty. To the extent relevant here, the Czech Republic adopts articles 15 and 18 of the model tax convention in its bilateral tax treaties, and it has not expressed any reservations in respect to these articles.

7.2. Interpretation of treaty law

As stated above, the Income Tax Act explicitly states that tax treaties take precedence over domestic tax laws.²² Accordingly, the question as to whether the Czech Republic has the right to tax deferred remuneration at any time would, in relation to the relevant jurisdictions, largely be governed by OECD type tax treaties and the OECD commentary to the model tax convention.

The Czech Ministry of Finance does issue interpretative decrees²³ – which have to be regarded as non-binding opinions – regarding tax treaty issues. However, as regards the subject of this report, no decrees have been issued. Furthermore, there is no relevant literature, rulings, case law or even established practice regarding the questions discussed here.

7.3. Applicability of DTAs

The Czech Republic would tend to apply the pensions article of a tax treaty (article 18 of the OECD model tax convention) exclusively to payments which are formally made as "pension" payments. Other forms of deferred remuneration – even if, on the basis of the deferral period or the moment of exercise, there were a "pension" element to such remuneration – would, in practice, be treated as income from dependent services (article 15 of the OECD model tax convention).

²⁰ See note 15.

²³ Decrees are published in the Financial Bulletin.

When applying the dependent services article, a distinction should be made between the time of performing the remunerated services, and the time at which the remuneration is realised by the employee. As regards the allocation of taxing rights, the tax treaty between the country of residence at the time of performing the dependent services and the country where the services are actually performed is decisive, whereby taxing rights would normally be granted to the country where the dependent services are performed (assuming that in most cases of expatriate services the 183 days limit is exceeded). The moment of realising the remuneration would not be relevant.

In the system of treating deferred remuneration as current employment income at the time when the income is actually received, upon exercise or payment, the Czech Republic would, however, tend to look rather at the time realising income as the decisive moment. In this view, "deriving" employment income within the meaning of article 15 of the OECD model tax convention would correspond to realising the remuneration for the employment. It is clear that such an interpretation may potentially result in double taxation or double non-taxation of the same employment income. In cases where the OECD model tax convention and commentaries do not provide a clear solution to these problems, the mutual agreement procedure would have to be invoked.

7.4. Problems of double taxation

In practice, the questions referred to above will, however, come up rarely. As far as Czech employees are concerned, cross-border deferred remuneration arises in a standard situation of a Czech citizen/tax resident working in the Czech Republic, who derives remuneration from a foreign entity (e.g. a stock option scheme). There is little doubt that the Czech Republic has, and exercises, taxing rights in this situation. As yet, Czech employees are infrequently seconded abroad, so this situation is not complicated by timing factors.

The other category of recipients of deferred remuneration are foreign expatriates, who work for a limited period of time – usually between one and five years – in the Czech Republic. In the Czech Republic these foreign expatriates benefit from a special deemed non-resident ("foreign expert") status, according to which they are liable to tax only for income from Czech sources.²⁴ As regards employment income, this would be limited to income from work performed on the territory of the Czech Republic. Now two relevant situations can be distinguished:

- (a) an expatriate realises remuneration for work performed in the Czech Republic after he has terminated his employment activities in the country;
- (b) an expatriate realises remuneration for work performed abroad while working in the Czech Republic.

In situation (a), the Czech Republic does not exercise the tax claims it may actually have under domestic law or tax treaties. Under the system of treating deferred remuneration as remuneration for work currently performed at the time

when the remuneration was realised, the Czech Republic would not exercise tax claims on income for work performed in the Czech Republic.

In situation (b), the Czech Republic may potentially have a tax claim if it regards the remuneration which was realised as remuneration for work currently performed in the Czech Republic. However, if the remuneration was for work carried out earlier in another country, it can be assumed that the current Czech employer will not be involved in paying or accounting for this income. Accordingly, a discussion as to whether the Czech Republic has taxing rights on such income would arise only if the expatriate were to himself report the income in a personal income tax return filed after the year in which he realised the income. This system will result in non-taxation of the income in the Czech Republic, in practice.

8. Conclusions

As described above, the many potential tax problems of deferred remuneration in cross-border situations have, in practice, only limited relevance for the Czech Republic. For this reason, and due to the general state of development of tax theory in the Czech Republic, this national report can unfortunately not provide a material contribution to the discussion regarding the double taxation problems.

In respect of deferred remuneration, the Czech Republic should focus on creating a more coherent regime in its domestic tax laws. The problems described in this national report which, in view of the increased use of deferred remuneration schemes by international employers, need to be solved first are:

- the gap which currently exists between the law (all remuneration, whether in cash or in kind, is taxable when it accrues to employees) and practice (remuneration is only taxable when and in the amount it is realised) must be closed by making a clear choice for a system of treating deferred remuneration, and implementing this system in the text of the Income Tax Act;
- all amounts which are treated as employment income in the hands of employees and which are borne, directly or indirectly, by a Czech employer should constitute deductible salary expenses for the employer;
- coherence should be extended to the relationship with other income sources; the acquisition costs of assets (rights or shares) acquired as remuneration should, for tax purposes, take into account not only the actual acquisition price of those rights or assets, but also the income which was taxed upon their acquisition.

²⁴ Art. 2 (3) of the Income Tax Act.

Résumé

L'importance des rémunérations différées en République tchèque est encore passablement limitée. C'est état de choses est dû en partie à des facteurs économiques, et en partie à l'absence de réglementations fiscales susceptibles de favoriser une utilisation plus courante de ce type de rémunérations.

Les facteurs économiques prédominants peuvent se résumer ainsi: étant donné le niveau de rémunération moyen en République tchèque, la plupart des salariés ne peuvent se permettre de différer les revenus dont ils pourraient disposer directement sous une autre forme, et les employeurs n'en sont pas encore au stade où les plans de rémunérations différées seraient perçus comme un instrument de rémunération important.

S'agissant des aspects fiscaux internes des rémunérations différées, il importe de noter que les lois en vigueur ne contiennent pas de dispositions spécifiques concernant les rémunérations différées. Le traitement fiscal des rémunérations différées sera déterminé en appliquant les concepts généraux de la loi sur l'impôt sur le revenu aux diverses phases pertinentes à l'égard de ces rémunérations.

Dans le système fiscal tchèque, le revenu du travail, sous sa forme monétaire et non monétaire, est imposable lorsqu'il est encaissé par le salarié. Selon la lettre de la loi et la pratique juridique, l'octroi de droits sérieux et intangibles à un salarié devrait en principe générer un revenu imposable dans le chef de ce salarié. En conséquence, l'imposition de ces formes de rémunération ne sera pas différée. Néanmoins, dans la pratique, il arrive fréquemment que le revenu sous forme de droits ne soit pas reconnu en tant que rémunération différée; par contre, il est traité comme revenu actuel au moment où le salarié réalise le revenu par le biais de l'exercice du droit.

Il n'y a pas, par principe, cohérence entre le montant imposable dans le chef du salarié et le montant déductible pour l'employeur aux fins fiscales, non plus qu'entre les moments où le revenu imposable et les dépenses sont pris en compte. Pour les employeurs, il est essentiel que la rémunération différée soit mentionnée explicitement dans le contrat de travail en tant que rémunération du travail du salarié, et que les coûts soient correctement imputés aux périodes correspondantes.

Les conventions fiscales bilatérales de la République tchèque sont calquées sur les modèles de l'OCDE et des Nations Unies, et ce pays adhère par principe aux directives et commentaires de l'OCDE concernant l'application des conventions fiscales. Dans la pratique, les autorités fiscales tchèques traiteront les rémunérations différées comme un revenu découlant d'activités dépendantes, conformément aux dispositions de l'article 15 du modèle de convention fiscale de l'OCDE. La tendance à traiter les rémunérations différées comme rémunération du travail actuel à l'époque où le revenu est acquis implique des problèmes de double imposition potentiels. Toutefois, ces problèmes apparaissent rarement dans la pratique parce que les rémunérations différées sont normalement accordées aux salariés tchèques qui séjournent en République tchèque pendant tout la période allant de l'octroi jusqu'au paiement final du revenu, ou aux expatriés qui ne déclareront pas le revenu comme provenant de source tchèque si celui-ci a été acquis avant qu'ils ne travaillent en République tchèque. Dans la pratique, la République tchèque ne recouvre pas de créances fiscales à l'égard des émigrés pour les rémunérations différées afférentes à un emploi en République tchèque.

Zusammenfassung

Gehaltsumwandlungen sind in der Tschechischen Republik noch wenig verbreitet. Dies ist zum Teil auf wirtschaftliche Gründe und zum Teil auf mangelnde Steuerregelungen zurückzuführen, die Gehaltsumwandlungen begünstigen würden.

Die wichtigsten wirtschaftlichen Gründe sind zum einen die Tatsache, dass angesichts der Durchschnittseinkommen in der Tschechischen Republik die meisten Arbeitnehmer es sich nicht leisten können, Einkommen, das ihnen unmittelbar zufließen könnte, aufzuschieben, und zum anderen die Einstellung der Arbeitgeber, die noch nicht das Stadium erreicht haben, in dem Gehaltsumwandlungssysteme als wichtiges Vergütungsinstrument betrachtet werden.

Die geltenden Gesetze enthalten keine speziellen Vorschriften über die Behandlung von Gehaltsumwandlungen. Die steuerliche Behandlung von Gehaltsumwandlungen müsste deshalb durch die Anwendung der allgemeinen Ideen des Einkommensteuergesetzes auf die verschiedenen Aspekte einer Gehaltsumwandlung erfolgen.

Nach dem tschechischen Steuersystem ist Beschäftigungseinkommen in Geld- und Sachform zu besteuern, wenn es beim Arbeitnehmer anfällt. Nach dem Geist und Buchstaben des Gesetzes würde also die Gewährung messbarer unverfallbarer Rechte an einen Arbeitnehmer grundsätzlich steuerpflichtiges Einkommen für den Arbeitnehmer bedeuten. Eine Besteuerung solcher Vergütungsformen würde demnach nicht aufgeschoben. In der Praxis jedoch wird Einkommen in der Form von Rechten häufig nicht als aufgeschobene Vergütung betrachtet, sondern vielmehr zu dem Zeitpunkt als Bareinkommen behandelt, zu dem die Rechte ausgeübt werden.

Grundsätzlich besteht zwischen dem Betrag, der beim Arbeitnehmer besteuert wird, und dem Betrag, den der Arbeitgeber absetzen kann, oder den Zeitpunkten, zu denen steuerpflichtiges Einkommen und Ausgaben berücksichtigt werden, keine Kohärenz. Für die Arbeitgeber kommt es darauf an, dass Gehaltsumwandlungen ausdrücklich im Beschäftigungsvertrag als Vergütung für die Tätigkeit des Arbeitnehmers erwähnt und die Kosten korrekt den betreffenden Zeiträumen zugewiesen werden.

In bilateralen Steuerabkommen richtet sich die Tschechische Republik nach den Musterabkommen der OECD und der VN, und grundsätzlich beachtet das Land die Richtlinien und Kommentare der OECD zur Anwendung von Steuerabkommen. In der Praxis werden Gehaltsumwandlungen von den tschechischen Steuerbehörden als Einkommen aus selbstständigen Tätigkeiten gemäss Artikel 15 des OECD-Musterabkommens behandelt werden. Die Tendenz, Gehaltsumwandlungen als Vergütung für Tätigkeiten zu dem Zeitpunkt, in dem das Einkommen tatsächlich zufließt, zu behandeln, kann zu Doppelbesteuerungsproblemen führen. In der Praxis treten solche Probleme jedoch kaum auf, da Gehaltsumwandlungen normalerweise nur tschechischen Arbeitnehmern geboten werden, die sich während des gesamten Zeitraums von der Gewährung bis zur tatsächlichen Zahlung des Einkommens in der Tschechischen Republik aufhalten, oder aber an Ausländer, die dieses Einkommen nicht als Einkommen aus einer tschechischen Quelle angeben würden, wenn es einen Zeitraum vor dem Beginn einer Tätigkeit in der Tschechischen Republik betrifft. Die Tschechische Republik stellt in der Regel keine Steuerforderungen an ausreisende Personen in bezug auf Gehaltsumwandlungen, die im Zusammenhang mit einer Beschäftigung in der Tschechischen Republik stehen.

Las remuneraciones diferidas (RD) tienen aún poca importancia en la República Checa. Ello se debe en parte a factores económicos y en parte a la carencia de normativa fiscal que favorezca la utilización de esta clase de remuneraciones.

Los factores económicos predominantes pueden resumirse así: dado el nivel de remuneración media en el país, la mayoría de los trabajadores no pueden permitirse diferir los ingresos que podrían percibir directamente de otra forma, y los empresarios no están todavía en la fase de poder considerar los planes de RD como un importante instrumento de remuneración.

En lo que se refiere a los aspectos tributarios internos de las RD hay que destacar que las leyes vigentes no contienen disposiciones específicas. El tratamiento fiscal de las RD se determina aplicando los conceptos generales de la Ley del impuesto sobre la renta a las diversas fases de las mismas.

En el sistema tributario checo la renta del trabajo, monetaria o no, resulta gravada en el momento en que el trabajador la percibe. A tenor de la legislación y de la práctica jurídica la concesión de derechos firmes e intangibles debería dar lugar, en principio, a renta gravable para el trabajador. Sin embargo, sucede con frecuencia en la práctica que la renta en forma de derechos no se considera RD; por el contrario, se considera renta actual en el momento en que el trabajador realiza el ingreso al ejercer el derecho.

No existe coherencia, en principio, entre el importe gravable para el trabajador y el deducible para el empresario, y tampoco entre los momentos en que se tienen en cuenta la renta imponible y los gastos. Para los empresarios es fundamental que se cite expresamente la renta diferida en el contrato de trabajo como RD del trabajador, así como que los costes se imputen a los períodos correspondientes.

Los tratados fiscales bilaterales de la República Checa siguen los modelos de la OCDE y de las Naciones Unidas. Este país se adhiere por principio a las directrices y comentarios de la OCDE sobre aplicación de tratados fiscales. En la práctica, las autoridades fiscales checas tratarán las RD como renta de actividades dependientes, conforme a las disposiciones del artículo 15 del modelo de tratado de la OCDE. La tendencia a tratar las RD como retribución del trabajo actual en la época en que se obtiene la renta implica potenciales problemas de doble imposición. No obstante, rara vez se dan estos problemas porque las RD se conceden normalmente a trabajadores checos que permanecen en el país desde la concepción hasta el pago final de la renta, o a expatriados que no declararán la renta como de fuente checa si la obtuvieron antes de trabajar en la República Checa. En la práctica, no se conceden créditos de impuestos a los emigrantes por las RD de un trabajo en la República Checa.

1. National situation

1.1. Use of deferred remuneration payments in Denmark

In Denmark deferred remuneration is used in various forms. Deferred remuneration may come in the form of pensions, severance pay and various kinds of bonus schemes. In this context the tax treatment of pension schemes will not be analysed.

The use of bonus schemes for key employees including management has been widespread for several years. Furthermore, mainly due to an attractive tax treatment, several companies have established a general employee share or bond scheme, which as a general rule must be offered to all employees.

Only during the last couple of years have Danish enterprises started to grant stock options and warrants to their employees. The trend was initiated by the computer industry mainly in order to attract and bind the scarce key employees with the relevant computer education and to retain liquidity; the schemes also enable small computer enterprises to compete with the wages paid by large international enterprises. Presently the use of stock options and warrants has spread to other industries, but they are mostly used within industries with heavy research and development costs.

The different kinds of deferred remuneration generally used by Danish enterprises are:

- severance pay;
- bonus/phantom stocks;
- stock options;¹

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** An option is a right but not an obligation to purchase already existing shares (treasury shares). The exercise of a stock option will therefore not increase the company's share capital. If it is left to the discretion of the company to either deliver treasury shares or deliver newly subscribed shares, the right to acquire stocks will be taxed as an option.