

Summary and conclusions

Death has various legal consequences that *inter alia* influence the tax position of the deceased person and his/her legal successors. The comprehensive analysis of tax rules that concern death as a taxable event cannot be carried out without understanding the domestic civil law rules of succession and international private law rules.

The legal framework including the substantive and procedural rules of succession is embraced in the Czech Civil Code and Civil Procedure Code. Although the decisive moment for succession is the death, rather than any authoritative decision, notaries and courts play a significant role in inheritance proceedings. The Civil Code includes the set of rules for both testate and intestate succession. Intestate succession is based on the classification of a decedent's relatives into four categories, which differ from those for inheritance tax purposes. The rules of testate succession elaborate on the formal and content requirements for a will; however, they fail to regulate any succession agreements, which are thus not reflected by inheritance tax law. Some basic terms relating to inheritance private law seem to be defined insufficiently (e.g. the legal death) or fail to be explicitly defined at all (e.g. estate). The term "estate" is defined for inheritance tax law purposes and is referred to as "property" (naturally excluding the decedent's liabilities).

As far as international private law is concerned, the Czech legal system includes domestic conflict of laws rules. On the other hand, the Czech Republic has ratified few of the relevant international conventions on succession.

In the Czech Republic, the death of a person may trigger tax liabilities and obligations with respect to inheritance tax, income tax and value added tax (VAT). The criteria for determination of inheritance tax follow the German and Austrian regulations. Inheritance tax rates are progressive and depend upon the heirs' relationship to the deceased. For these purposes, heirs are categorized into three groups, other than those for civil law purposes. The Wealth Taxes Act (WTA) governing inheritance tax recognizes various subjective and objective exemption regimes, which in general conform to the EC law and thus are not discriminatory

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for residents of other EU/EEA states. Recently, several suggestions to abolish both the gift and inheritance taxes have arisen; however, these bills have been delayed due to the current economic crisis.

The report further describes different subjective territorial links that apply to taxpayers of either income tax or inheritance tax. The tax liability for income tax is linked to the residence of a taxpayer, whereas the nationality and the registered permanent address of the deceased person are crucial for establishing liability to inheritance tax.

A special focus is devoted to the international issues of double taxation and double non-taxation. Unlike the network of double taxation conventions concerning income taxes, the network of treaties concerning gift and inheritance taxes concluded by the Czech Republic is very limited. In addition, the Czech Republic does not grant unilateral credit for inheritance credit, but merely allows the deduction of foreign tax from the inheritance tax base.

1. Introduction

1.1. The private law rules of succession

Like other civil law jurisdictions, the Czech legal system consists of two basic categories of sources of private law relating to succession. One category includes legal sources regulating the substantive aspects of succession and the other category is composed of a set of rules on the procedural aspects of succession.

The majority of substantive rules relating to succession, such as definitions of inheritance, rules on intestate and testate succession, are enshrined in the seventh part of the Civil Code,¹ namely in §460. Furthermore the Civil Code governs other legal institutions related to succession, e.g. the concept of ownership,² and the matrimonial regime between spouses.³ Succession upon death is in direct relation to the extinction of matrimony embraced in §22 of the Family Act.⁴

The rules on different types of procedures relating to succession, such as inheritance proceedings and proceedings for declaration of death, are embraced in the Civil Procedure Code.⁵ As notaries are entrusted by the courts with carrying out the acts in inheritance proceedings, the Civil Procedure Code also regulates the function of notaries in inheritance proceedings.⁶ Other rules on functions for which notaries are empowered in relation to succession, e.g. maintenance of the Register of Wills, can be found in the notarial procedures.⁷

¹ Act. no. 40/1964 Coll., Civil Code.

² §123 Civil Code.

³ §143 Civil Code.

⁴ Act no. 94/1963.

⁵ Act no. 99/1963 Coll., Civil Procedure Code; inheritance proceedings are included in §175a and proceedings for declaration of death in §195.

⁶ §175za Civil Procedure Code.

⁷ Act no. 358/1992 on notaries and their work activities.

1.2. Pluralism of succession law: federal vs. regional rules

As the Czech Republic is a unitary state, the same set of civil and tax rules on succession is applied consistently throughout the whole territory.

1.3. Private law rules applicable to the succession

1.3.1. *Intestate successions*

Where a deceased person fails to leave a will, the Civil Code provides for clear rules on succession. The Civil Code recognizes the following four categories (please note that the categories are introduced in the order decisive for succession).

The first category consists of the decedent's children and spouse or registered partner,⁸ who each inherit in equal parts. If one particular child of the decedent does not inherit, his children acquire his share in the estate in equal parts, and if these children or some of them do not inherit, the right to inheritance passes to their descendants.

The second category consists of the decedent's spouse or registered partner,⁹ the decedent's parents and also those who lived with the decedent in a common household for at least a year prior to his death and took care of the common household or were dependent on the decedent for their maintenance. Heirs in the second category inherit in equal parts, but the spouse or registered partner inherits at least one-half of the estate.

The third category consists of the decedent's siblings and also those who lived with the decedent in a common household for at least a year prior to his death and took care of the common household or were dependent on the decedent for their maintenance. If one of the decedent's siblings does not inherit, his children will acquire his share in equal parts.

The fourth category consists of grandparents of the decedent who inherit in equal parts, and if none of them inherits, their children will inherit in equal part.¹⁰

The above categories concern predominantly the testator's relatives and spouses, but not other possible heirs as an heir may also be a legal person or a state. All other "non-listed" persons may only inherit on the basis of a will. It is worth mentioning that inheritance tax law also recognizes some "heir categories" which differ from those under the Civil Code.

1.3.2. *Testate successions*

The Civil Code provides for stringent requirements concerning a will, especially prerequisites for its form and content. In general, the decedent has three

⁸ A registered partnership between persons of the same sex was enacted by Act no. 115/2006 Coll., on registered partnerships.

⁹ Spouses and registered partners are included in the second category again to emphasize the importance of blood relationship, if the deceased has no children.

¹⁰ The commentary was taken from the English translation of the Civil Code published by Trade Links (2005).

options as to how to make a will: (a) to write a will in his own hand; or (b) to make a will in another written form in the presence of witnesses; or (c) a will is prepared in the form of a notarial deed. A will is annulled by either its revocation or by a later valid will if the former is inconsistent with the latter. A will also ceases to exist if the deed in which the will is written is destroyed by a testator.

Special rules concerning the form of a will are applicable depending on the testator's capacity, e.g. where a testator cannot read or write, is blind or is deaf and for minor persons under the age of 18 years. A person younger than 15 years has no legal capacity to make a will.

In his will the testator determines his heirs and may also specify the shares or things or rights which are to devolve upon the heirs. Where shares are not fixed in the will, it applies that they are equal. The testator may also establish a foundation by his will.

The will may not include any conditions, and if it does, they have no legal effect. However, a decedent may order "a collation" in his will, i.e. property that the heir received free of charge from the decedent during the decedent's life should be included as a part of his share. Otherwise, in the case of the testate succession the collation is only made if the heir to whom gifts were made would enjoy an unfair advantage over "mandatory heirs".

The mandatory heirs are all descendants of the deceased person (not only his children), and the law distinguishes between those who are minors (under 18 years) and adults. The minor descendants must receive at least as much as constitutes their intestate share in the estate, whereas the adult descendants must receive at least one-half of their intestate share in the estate. The spouse of the deceased person is not included in the category of "mandatory heirs", as his or her interests are protected by the matrimonial regime between spouses.

The law in some cases permits the testator to disinherit his descendants. The deed of will must state the grounds for disinheritance, which are only recognized if the descendant:

- (a) contrary to good morals, failed to provide necessary assistance to the deceased person in sickness, old age or in other similarly serious situations;
- (b) failed to show lasting genuine interest in the deceased person, of the kind that a descendant should display;
- (c) was sentenced for an intentional crime to imprisonment for at least one year;
- (d) the descendant's lifestyle has been permanently improper.

In addition, the law provides that a person has no capacity to inherit¹¹ if he committed an intentional crime against a deceased person, his spouse,¹² children or parents, or if he acted reprehensibly with regard to the decedent's will. However, he may inherit if the decedent forgave him for such an act.

Contrary to the will being a unilateral legal act (made by a testator), the doctrine further recognizes succession agreements, e.g. *donatio mortis causa*. However, there is no legal regulation of succession agreements in the Czech Republic.

¹¹ A person is excluded from succession *ex lege*, even if the decedent does not disinherit this person.

¹² The law fails to cover a registered partner of the decedent.

1.3.3. Meaning of “death”, “ownership” and “estate”

The Civil Code does not provide special definitions of the terms in question in the area of successions; some of these terms are even not defined at all. Thus the role of jurisprudence and case law becomes relevant.

1.3.3.1. Death

The (ownership to) estate of a deceased person passes to his heirs upon his death. This means that it is death which is the legal ground based on which the decedent’s estate is acquired. In this context, inheritance proceedings are in general of declaratory nature. The time of death is in practice introduced in a death certificate. A declaration of death made by a court has the same legal effect as death. In this case, the date of death is considered to be a day determined by a court. The court may only determine that a person is dead if:

- (a) the death is ascertained by other evidence than an examination of a body and an issuance of death certificate; or
- (b) it is probable that a missing person is under all circumstances dead.

The Civil Code fails to define the important legal fiction which would determine the order of circumstances in which a person died if death cannot be proven. In practice, it is assumed that all persons died at the same time.

1.3.3.2. Ownership

The general civil law concept of ownership is applicable for successions without any significant deviations. Within this context, the legal institution of collation is again referred to; gifts acquired by an heir from a decedent during his lifetime are included in the heir’s share on the estate. The Civil Code includes special rules governing protection of an entitled heir, which stipulates that a sham heir is obliged to render to the entitled heir all the property which he had obtained from the estate (but has a right to be compensated for expenses incurred on assets from the estate). In addition, there is a specific rule saying that any person who acquired something in good faith from a sham heir, whose acquisition of the estate was affirmed by a court, shall be protected as if he had acquired it from the entitled heir. This rule breaks the civil law principle *nemo plus juris ad alium transferre potest quam ipse habet*.¹³

1.3.3.3. Estate

The estate of a deceased person embraces predominantly all rights in property (assets) and obligations (liabilities), regardless of whether the heirs are conscious of these rights and obligations.¹⁴ Succession in rights and obligations whose performance

¹³ No one can transfer more right to another than the person himself has.

¹⁴ It is apparent from the wording of civil law provisions on succession that the estate includes all things and rights (unless excluded by law or their nature), all property including enterprises, but also all obligations and liabilities.

was limited personally to the deceased person is not possible.¹⁵ Further, some special laws provide for rights which are not subject to succession.¹⁶ As regards a contract on a transfer of immovable property, where a contractual party deceased before a petition to record an ownership was submitted, the Municipal Court of Prague has held that the rights and obligations are devolved to heirs, and the transferred property shall be included in the estate if a deceased person was a transferor.¹⁷

It must be noted that the estate left by a decedent, who was married, consists of those assets and liabilities which remain after the settlement of matrimonial property, as the death of the decedent also terminates the existence of the matrimonial property.

Unlike civil law, tax law enshrines its own definition of estate referred to as “property”. For the purposes of inheritance tax, property means:¹⁸

- immovable assets, flats and non-residential premises (together “immovable property” or simply property);
- movable things, securities, financial means in Czech and foreign currencies, receivables, property rights and other property values (together “movable property”).

1.4. Private law rules applicable to the administration of the estate

As already mentioned, death is the crucial event upon which all ownership rights to assets and other rights are transferred to the decedent’s heirs. Inheritance proceedings are only intended to declare the status as per the date of the decedent’s death concerning the extent of the estate and identification of heirs. The transfer of the estate to the heirs cannot be restricted by a court. Nevertheless, the actual disposition of the estate by the heirs is limited within inheritance proceedings to acts of “common management”. Other acts beyond common management are allowed subject to a leave of court (permission).¹⁹ In addition, the court can adopt various safety steps in order to preserve the estate, such as deposit in court, lock-up of bank accounts. These safety steps must be recalled at the latest after the court adopts the final decision on inheritance. The recall is, however, not dependent on compliance with inheritance tax rules.

The clear link between the civil procedure on succession and tax proceedings for assessment of inheritance tax is laid down in §21(7) WTA; none the less its personal scope is limited. Under this provision, the court that conducted first instance inheritance proceedings, unless it concerned exclusively acquisition of property by persons included in the first category,²⁰ must send a duplicate copy of the final decision on inheritance and, if relevant, a duplicate copy of the separate final ruling

¹⁵ §579 Civil Code.

¹⁶ Claims arising from social security and sickness insurance are concerned.

¹⁷ The decision of the Municipal Court of Prague no. 24 Co 12/95.

¹⁸ §3(1) WTA.

¹⁹ §175r Civil Procedure Code.

²⁰ The reference to “the first category” implies §11 WTA, when all ascendants, descendants and spouses are covered. Compared to the first category under the Civil Code, the definition of the WTA is of broader personal scope.

on the notary's remuneration, and the entire file on inheritance proceedings to the competent tax office within 30 days after inheritance proceedings were finalized. The tax office must send the file back to the court within 30 days after the effective date of the tax assessment order or after termination of the tax investigation regarding the fact of whether the acquisition of property is fully tax exempt from the inheritance tax. In relation to the tax office, cadastral offices shall have the reporting duty as regards entries of ownership titles, other rights *in rem* in the Real Estate Cadastre.

1.5. Domestic conflict of law rules

The conflict of law rules concerning substantive and procedural aspects of succession are contained in the ACL.²¹ The conflict of law rules come into play, when a deceased person is not a Czech national or at least a part of estate is located abroad.²²

1.5.1. Jurisdiction of the Czech courts

The ACL regulates some cases in which Czech courts are vested with exclusive power to decide. On the other hand, in some cases the jurisdiction of Czech courts is facultative, i.e. a judicial body of the other state is also authorized to deal with the matter.

The exclusive jurisdiction of Czech courts is given provided that:

- the deceased person was a Czech national;²³
- the estate includes property located in the Czech Republic.

However, as regards an estate located abroad, the jurisdiction of the Czech courts is given only if such an estate is “repatriated” to the Czech Republic²⁴ or if foreign bodies recognize the decisions of the Czech courts.²⁵

As regards an estate located in the Czech Republic and left by a deceased person who was not a Czech national, the jurisdiction of the Czech courts is given in the following cases:

- where the estate includes property located in the Czech Republic;
- where the decedent had a domicile in the Czech Republic and the heir, who resides in the Czech Republic, submits a request;
- where the home state²⁶ of the decedent neither repatriates the inheritance of Czech nationals, nor accepts the decisions of the Czech courts.²⁷

²¹ Act no. 97/1963 Coll., on conflict of laws (ACL).

²² Instruction of the Ministry of Justice dated 30 April 2004, no. 56/2004-MO-J, regulating procedure of judicial bodies in respect to civil law and commercial law affairs with foreign countries.

²³ This rule applies even if all heirs are foreigners living abroad.

²⁴ This means that the bodies of a foreign country do not initiate inheritance proceedings and submit the matter to the Czech courts (and their decision will be recognized by foreign bodies).

²⁵ §44 ACL.

²⁶ The term “home state” is to be understood as the state of which the deceased was or the testator is a national.

²⁷ §45 ACL.

1.5.2. Substantive conflict of law rules

Beside determination of the jurisdiction, the applicable substantive law on succession must also be determined. According to §17 ACL, succession is governed by the civil law of the home state of the deceased person (at the time of death), unless an international convention provides otherwise. In practice, it could happen that the conflict of law rules of that state (if the deceased person was a non-Czech national) included a cross-reference to Czech substantive law; the Czech courts would then accept such a cross-reference provided that the application of Czech law was reasonable and equitable.²⁸

Another special rule concerns the capability to leave and revoke the will. All legal acts concerning the will are governed by the laws of the home state of the testator. This law also determines what kinds of testacy acts are admissible. The laws of the home state of the testator are further decisive for the form of the will; however, it is sufficient if the will complies with the requirements under the laws of the state on which territory the will was made.²⁹

1.6. International conventions on private international law

The position of the Czech Republic with regard to international conventions on succession is as follows:

- it has ratified the 1973 Convention concerning the International Administration of the Estate of Deceased Persons;
- it has signed, but not ratified the 1973 Unidroit Convention providing a Uniform Law on the Form of an International Will;
- it has not ratified the 1961 Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions;
- it has not ratified the 1985 Hague Convention on the Law Applicable to Trusts and on Their Recognition;
- it has not signed the 1989 Hague Convention on the Law applicable to Succession to the Estates of Deceased Persons;
- it has not signed the 1972 Basel Convention on the Establishment of a Scheme of Registration of Wills.

The Czech Republic has concluded bilateral conventions on legal assistance with e.g. Albania, Bulgaria, Yugoslavia,³⁰ Hungary, Poland, Romania and Ukraine. Under these conventions, the relevant law for succession of immovable and movable property is *lex rei sitae* (the laws of the state where the property is located) and *lex patriae* (the laws of the state of the decedent's nationality) respectively. Other conventions concluded by the Czech Republic with e.g. Russia or Uzbekistan replace *lex patriae* with *lex domicile* (the laws of the state where the decedent was domiciled) with regard to succession of movable property.

²⁸ §35 ACL.

²⁹ §18 ACL.

³⁰ Currently applicable to Croatia, Macedonia and Bosnia and Herzegovina.

2. Taxes applicable on the death of a person

The death of a person may trigger/affect the following taxes in the Czech Republic:

- inheritance tax is levied on the acquisition of property upon death;
- income tax as well as VAT may be affected by the death of an entrepreneur.

2.1. Taxes levied on the deceased

2.1.1. Inheritance tax

Inheritance tax as a result of succession is one of the wealth taxes levied in the Czech Republic. Inheritance tax applies to the acquisition of the deceased's estate. Unlike other taxes, there is no tax period and inheritance tax is a non-recurring tax which does not exclude the possibility of the same taxpayer paying the tax as many times as he becomes an heir. The main purpose of inheritance taxation is to tax a transfer of title to the new owners by succession.

The effective inheritance tax is regulated by Act no. 357/1993 Coll., on inheritance tax, gift tax and property transfer tax (WTA).

2.1.1.1. Legal sources and history

Inheritance tax was introduced in the Czech Republic in 1993 and replaced notary charges from inheritance. When drafting the inheritance tax system, certain principles of German and Austrian legal regulations were taken into account (e.g. taxpayers' groups, tax rates).³¹ The tax burden has not changed significantly over time, only tax exemptions have been extended.

2.1.1.2. Taxable event

The taxable event is a death of a decedent. The property is always acquired on the date of the decedent's death, even in the case of immovable property where the transfer of the ownership is recorded in the Cadastral Register. Inheritance tax is levied on a similar basis to gift tax, i.e. the taxpayer is the beneficiary.

2.1.1.3. Rates

Inheritance tax rates are progressive and depend upon the recipient's relationship to the deceased person and the value of the property transferred. Heirs are classified according to the relationship to the deceased person into the following three groups:³²

- direct family members (parents, children) and spouses;
- secondary relatives (siblings, nephews, nieces, aunts, uncles) and persons living with the decedent in a common household;
- other individuals and organizations.

³¹ Explanatory report to Act no. 357/1992, Parliamentary Print no. 660, General Part.

³² §11 WTA.

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Transfer of property to persons categorized in the first two groups is fully tax exempt. Progressive rates apply for transfers to persons in the third group as shown in Table 1.³³

Table 1. Tax base (in CZK)

Over	Up to	Tax (%)				
–	1,000,000	7.0%				
1,000,000	2,000,000	70,000	+ 9%	from tax base over	1,000,000	
2,000,000	5,000,000	160,000	+ 12%	from tax base over	2,000,000	
5,000,000	7,000,000	520,000	+ 15%	from tax base over	5,000,000	
7,000,000	10,000,000	820,000	+ 18%	from tax base over	7,000,000	
10,000,000	20,000,000	1,360,000	+ 21%	from tax base over	10,000,000	
20,000,000	30,000,000	3,460,000	+ 25%	from tax base over	20,000,000	
30,000,000	40,000,000	5,960,000	+ 30%	from tax base over	30,000,000	
40,000,000	50,000,000	8,960,000	+ 35%	from tax base over	40,000,000	
50,000,000	and more	12,460,000	+ 40%	from tax base over	50,000,000	

The resulting amount is multiplied by a coefficient of 0.5 to get the final sum of inheritance tax.

2.1.1.4. Exemptions

Besides the tax exemption for the first two groups of relatives (as mentioned above), the WTA provides other tax exemptions. First of all, there is a partial exemption³⁴ on:

- acquisition of movable personal belongings of individuals (unless these things were included in the decedent's business property within a year prior to the acquisition);
- acquisition of deposits by banks or branches of foreign banks operating in the Czech Republic (except for deposits on business accounts), financial means in Czech or foreign currency and securities in the Czech Republic;

as well as on proportionate parts paid out from such property to heirs and on proportionate parts derived from the jointly owned assets of spouses which ceased to exist upon the death of one of them. The threshold for the exemption is CZK 20,000 of the inherited property by each taxpayer. The exemption is available only if the property is included in the tax return, so that the financial authorities have a better overview of the heirs' solvency as well as their ability to pay taxes.

Further, the acquisition of movable property is fully exempt, if a decedent was authorized to represent a foreign country in the Czech Republic or enjoyed other diplomatic privileges and immunities and was not a citizen of the Czech Republic. The exemption is applicable only if reciprocity is guaranteed.³⁵

³³ §14 WTA.

³⁴ §19(2) WTA.

³⁵ §19(6) WTA.

With regard to the exemption of transfers for charitable purposes, the mere fact of the charitable purpose is not enough to qualify for the exemption. The heir must be a legal entity established for performing of activities in the field of culture, education, health care, social care, environment protection. The seat of such an entity must be in the Czech Republic or in any other EU/EEA state. The acquisition of property by state registered churches, religious societies, political parties, foundations and endowment funds, insurance companies for the funds of public health insurance is also exempt.³⁶

Finally, full exemption from inheritance tax applies to the acquisition of property by the Czech Republic, local regional authorities, voluntarily associated municipalities, public research institutions and universities, public non-profit health care institutions and regional councils of solidarity's region.³⁷

2.1.1.5. Transfers of family owned and closely held businesses

The WTA provides an exemption from inheritance tax for the first free of charge acquisition of a property share in a cooperative (housing or agricultural) between close persons.³⁸ As regards the definition of close persons, the Civil Code is decisive: it defines a close person as a relative in the direct line of descent, a sibling or a spouse as well as other persons within a family or similar relationship provided that a detriment suffered by one of them would be justly felt by the other person as his own detriment.³⁹

2.1.1.6. Value of assets and rights

The acquired property is valued according to Act no. 151/1997 Coll., the Property Valuation Act. A share in a company or partnership is calculated as a share on net assets as recorded in the books as of the day of death.⁴⁰

As another example, the valuation of a right of a user or similar rights can be mentioned. In this case, the value is determined as an arm's length annual profit (or the real annual profit if known from the contract) multiplied by the number of usage years (maximum five). Should the right be enjoyed by the same person for his whole life, it is valued as ten times the annual profit. If there is no possibility to determine the value of the right based on the above, then the price is CZK 10,000.⁴¹

The valuation of usufruct is not specifically regulated by the Property Valuation Act. These rights should be valued with respect to their nature.

2.1.1.7. Deductions

The following items are regarded as tax deductible for inheritance tax purposes:⁴²

- documented debts of the decedent transferred to his heir;

³⁶ §20(4) WTA.

³⁷ §20(1) WTA.

³⁸ §20(12) WTA

³⁹ §116 Civil Code.

⁴⁰ §23 Property Valuation Act.

⁴¹ §18 Property Valuation Act.

⁴² §4 WTA.

- the value of property that is exempt from inheritance tax pursuant to the WTA;
- adequate expenses related to the decedent’s funeral;
- notary’s remuneration in connection with inheritance proceedings and other duties levied in inheritance proceedings; and
- documented inheritance dues paid to another state in respect of inherited property there, if such property is also liable to inheritance tax in the Czech Republic.

Except for the value of property that is exempt, the above deduction can be deducted only to the amount corresponding to the ratio between the inherited property, which is not tax exempt, and the total value of the property acquired by an heir. However, the value of other duties levied in inheritance proceedings and relating to specific items of inheritance may only be deducted from the value of these items.

2.1.1.8. Anti-abuse provisions

The Civil Code ensures protection for an entitled heir where it is found out after the inheritance proceedings that someone else is the entitled (lawful) heir. Then, the person who acquired the estate is obliged, in accordance with the principles on unjust enrichment, to give over to the entitled heir all the property which he obtained from the estate.⁴³ However, the wrong heir has a right to be compensated by the entitled heir for any costs incurred in relation to the inherited property. The tax laws fail to provide a solution as to how these cases should be treated in practice. However, the lawful heir should be levied with the inheritance tax, whereas the wrong heir should be refunded.

Further, any person who acquired something in good faith from an incorrect heir whose acquisition of the inheritance was confirmed shall be protected as if he acquired it from the rightful heir.⁴⁴

2.1.1.9. Revenue

The revenue yield of the inheritance tax is from the long-term perspective more or less the same and oscillates around CZK 100 million per year. The main reason for this is the low number of taxable events due to the exemption applicable to direct relatives and spouses. Further, from 1 January 2008, the exemption was expanded to the secondary relatives. As Table 2 shows, the revenue from inheritance tax does not even make up 1 per cent of total tax revenue.

Table 2. Revenue from inheritance tax

Revenue	2004	2005	2006	2007	2008
Total (in CZK million)	323,333	514,440	513,689	567,505	606,654
Inheritance Tax (in CZK million)	100	103	124	109	115
%	0.309	0.0200	0.0241	0.0192	0.0189

Source: Information about the activities of the Czech tax administration for 2008 on <http://cds.mfcr.cz>.

⁴³ §485(1) Civil Code.

⁴⁴ §486 Civil Code.

2.1.1.10. Interaction with gift taxes

The WTA regulates not only inheritance tax but also gift tax as well as property transfer tax. Therefore, certain provisions are identical (or based on the same principles) for inheritance and gift taxes, e.g. provisions concerning the degree of relationship, tax rates, tax assessment, exemptions, filing tax returns and tax assessment periods.

2.1.1.11. Recent developments

Since the revenue yields of the inheritance tax are immaterial from the perspective of the total state revenue, there have been several suggestions to abolish inheritance tax as well as gift tax. Besides the efficiency of the inheritance tax, the other issue is the ethics of the inheritance tax, since the property subject to inheritance tax has been acquired from already taxed income. Currently, there are no pending proposals in this regard.

2.1.2. *Income and capital gains taxes*

The Income Taxes Act (ITA) stipulates several rules for an heir if the deceased person was an entrepreneur or generated rental income. Pursuant to the ITA, the death of an entrepreneur is regarded as the termination of his business activities regardless the fact whether the heir intends to carry on these business activities.

In accordance with the Administration of Taxes Act (ATA), tax liability which arose before the death of an individual passes to his heir.⁴⁵ Further, if the deceased person had not fulfilled his tax obligations, i.e. had not filed his tax return, the legal successor is obliged to file a tax return within six months from the decedent's death (this may concern not only income tax but also road tax, value added tax).⁴⁶ The tax return must be filed even if the inheritance proceeding has not been finished yet.

To determine the decedent's income tax base, it is necessary to adjust the trading result according to the ITA special rules which are different according to whether the decedent had kept books, or had kept tax evidence or had used lump-sum deductions. The adjustments of the tax base can be summarized as follows:

- (a) Decedent who had kept books:⁴⁷ the income tax base must be increased by the balance of created reserves, statutory adjustments, deferred revenues and accrued expenses. The income tax base can be decreased by accrued revenues and deferred expenses.
- (b) Decedent who had kept tax evidence:⁴⁸ the income tax base must be increased by the value of unused stocks, receivables (those which would become taxable after payment) and balances of created reserves. The income tax base can be decreased by liabilities (except for received advance payments).

⁴⁵ §57(3) ATA; confirmed by the decision no. 1 Afs 94/2008-61 of the Highest Administrative Court.

⁴⁶ §40(7) ATA.

⁴⁷ §23(8,b,1) ITA.

⁴⁸ §23(8,b,2) ITA.

- (c) Decedent who had used lump-sum deductions:⁴⁹ the income tax base must be increased by the value of unused stocks, receivables (those which would become taxable after payment) and paid advances.

The ITA also regulates the situation when the heir decides to continue the decedent's business activities. Then he is treated as a new taxable person and is not allowed to continue in the decedent's book keeping or tax evidence. He has to start his own accounting or tax evidence and to observe certain rules:

- the loss carry forward is available for five subsequent taxable periods provided that the heir will continue the decedent's business activities no later than within six month from his death;⁵⁰
- the heir is allowed to deduct the value of inherited stocks provided that he will continue the decedent's business activities no later than within six months from his death;⁵¹
- the heir is allowed to continue the tax depreciation of assets included in the decedent's business property⁵² and to claim half the amount of the annual tax depreciation if he continues the decedent's business in the same tax period during which the decedent passed away;⁵³
- the heir is allowed to include in his business property inherited assets which had not been included in the decedent's business property and to start their tax depreciation. The price determined for the purposes of inheritance tax is regarded as the acquisition price for tax depreciation provided that the period since the acquisition is less than five years.⁵⁴

2.1.3. Other taxes

2.1.3.1. VAT

The Czech Value Added Tax Act (VATA) considers the death of a VAT payer as termination of his business activities and as such also as termination of the decedent's obligation to declare VAT. Consequently, the heir is obliged to reduce the entitlement to VAT deduction on business assets on which the decedent claimed VAT deduction within the last VAT return.⁵⁵

However, the VATA enables the heir to opt for another solution if he carries on the decedent's business activities. Then he does not need to reduce the entitlement to VAT deduction provided that he becomes a VAT payer as of the day subsequent to the death. The application for VAT registration must be filed within 15 days from the VAT payer's death.

⁴⁹ §23(8,b,3) ITA.

⁵⁰ §5(3) ITA.

⁵¹ §5(7) ITA.

⁵² §30(10,a) ITA.

⁵³ §26(7,b) ITA.

⁵⁴ §29(1,e) ITA.

⁵⁵ §74(6) VATA.

2.1.3.2. Inheritance proceedings charges

The amount of the notary's remuneration for the inheritance proceedings is determined by the fee regulation for notaries and estate administrators issued by the Ministry of Justice on 1 July 2001. The remuneration is based on the fair market value of the decedent's property (calculation base) and the amounts are shown in Table 3.

Table 3. Fee regulations

Calculation base (in CZK)		Inheritance proceedings charges
Over	up to	
–	100,000	2.0%
100,000	500,000	1.2%
500,000	1,000,000	0.9%
1,000,000	3,000,000	0.5%
3,000,000	20,000,000	0.1%
20,000,000	and more	is not part of the calculation base

However, if the notary's acts were exceedingly difficult and time consuming, the court is allowed to increase the charges appropriately (by 100 per cent as a maximum).

3. Tax jurisdiction

3.1. Description of tax jurisdiction criteria

The Czech Republic predominantly levies inheritance tax based on the worldwide principle. As regards movable property, the link between the deceased person and the territory of the Czech Republic is decisive. The determinants for the inheritance tax liability of heirs are their nationality and the permanent address⁵⁶ of the deceased. As regards immovable property, the only determining factor is the *situs* of the property in the Czech Republic.

Domestic principles are applicable if the relevant bilateral double taxation convention concluded by the Czech Republic does not provide otherwise.⁵⁷

Likewise, other taxes (gift tax and income tax) are based on the principles of the worldwide system. Gift tax is levied on acquisition of any kind of assets (movable and immovable) effected in the Czech Republic, regardless of the nationality, abode⁵⁸ or seat of either the donor or donee. Acquisitions of assets outside the Czech Republic represent a taxable event provided that either the donor or the

⁵⁶ In Czech *trvalý pobyt*.

⁵⁷ The precedence of international conventions is explicitly stipulated in §3(4) WTA.

⁵⁸ In Czech *pobyt*.

donee is a Czech national having a permanent home in the Czech Republic. As regards income taxation, the Czech Republic employs the standard worldwide system, which means that Czech residents having their residence⁵⁹ or habitual place of abode therein⁶⁰ are subject to unlimited tax liability, whereas Czech non-residents are only subject to tax on their income from sources in the Czech Republic.⁶¹

The above insight into jurisdiction criteria for different types of taxes indicates that the Czech Republic predominantly belongs to the worldwide taxation system, however, with various subjective territorial links to determine the tax liability of a taxpayer.

3.2. Subjective territorial link

3.2.1. *The nature of the subjective links*

Although the heir is a taxpayer of inheritance tax, the tax is imposed on the basis of the territorial link of the deceased to the Czech Republic. As outlined, the decisive criteria for determining which assets will be subject to the tax in the Czech Republic are (a) nationality of the deceased and (b) his permanent address. The combination of these two criteria serves to determine whether the tax will be imposed on all movable property (i.e. that located in the Czech Republic as well as abroad) or solely on movable property located in the Czech Republic.

As regards immovable property the WTA clearly provides that inheritance tax is levied only on property located in the territory of the Czech Republic, regardless of the nationality or residence of the deceased. This means that the subjective links are irrelevant for taxation of immovable property.

3.2.2. *The link with the deceased*

As already mentioned the Czech Republic does not levy inheritance tax on immovable property situated abroad. Thus, it remains to clarify the position of the Czech Republic with regard to taxation of movable property.

The volume of movable property that is taxed in the Czech Republic depends on the status of the deceased given by the combination of the criteria mentioned above of (a) nationality and (b) permanent address. As a consequence, the following alternatives for taxation of movable property come into play, if at the time of his death, the deceased:

- was a national of the Czech Republic and had his permanent address therein, tax will be levied on the entire movable property, regardless of whether the property is located in Czech Republic or abroad;
- was a national of the Czech Republic but did not have his permanent address therein, tax will be levied on his movable property located in the Czech Republic;
- was not a national of Czech Republic, tax will be levied only on his movable property located in the Czech Republic.

⁵⁹ In Czech *bydliště*.

⁶⁰ They spend more than 183 days in the Czech Republic in the relevant calendar year.

⁶¹ Types of Czech source income are exhaustively listed in §22 ITA.

3.2.3. *The link with the heir*

Under §2 WTA, the heir is always the taxpayer of the inheritance tax and any connection of the heir with the Czech Republic is not relevant for the purposes of his tax liability.

3.2.4. *The definition of territorial links with special reference to “residence” and “domicile”*

The Czech Republic employs various territorial links with respect to different types of taxes (inheritance, gift and income taxes). In some cases, it might cause difficulty identifying whether the variety of the territorial links was intended by the legislator or whether it was a result of a sole inconsistency in legal and tax terminology. The following explanation will merely focus on territorial links relevant for the inheritance tax; however, the comparison with links with respect to other taxes is made where needed.

The criterion of Czech nationality is self-explanatory. It is unlikely that the criterion of “permanent address” would cause some interpretative difficulties although this term is not defined in the WTA. However, the term “permanent address”, when used in the WTA, is “equipped” with a footnote that refers to the special Act on Evidence of Nationals.⁶² It is worth mentioning that case law has established that footnotes⁶³ are not legally binding parts of laws.⁶⁴ On the other hand, a footnote can definitely serve as an interpretative tool to understand the intentions of the legislator.

Under the Act on the Evidence of Nationals, the permanent address is the address of a national in the Czech Republic, which the national usually chooses in a place where his family or parents live or where his employer is seated. The definition implies that only a Czech national can have a permanent address in the above meaning.

The WTA provides that inheritance tax is levied on Czech immovable property, regardless of the nationality or residence of the deceased. However, it could be interesting to interpret the term “residence”. Surprisingly, the term “residence”, which is not defined in the WTA, is used herein just once in the case of inheritance taxation of immovable property.⁶⁵

The understanding of the term “residence” is in principle similar under the ITA (for the purposes of income tax) and under the Civil Procedure Code (for the purposes of civil law; however, the material concept prevails in tax law). The ITA explains “residence” as a place where the taxpayer has his home and circumstances indicate his intention to dwell there permanently.⁶⁶ The Civil Procedure Code says that should the individual have more places of residence, regard is had to all places

⁶² Act no. 133/2000 Coll., on report on and evidence of residence of nationals.

⁶³ References made in one legal regulation that refer to other legal regulations.

⁶⁴ Concluded by the Czech Constitutional Court in its decision no. II. ÚS 485/98 dated 30 November 1999.

⁶⁵ For the purposes of gift tax, the Act uses the term “abode” which implies the actual stay in the Czech Republic.

⁶⁶ §2(4) ITA; it is clear that the intention of the taxpayer is decisive.

where he dwells with the intention to stay there permanently.⁶⁷ Therefore, we believe that for inheritance tax purposes the term “residence” should be interpreted in its material sense, even though the precise interpretation is not needed in most cases.

3.2.5. *Emigration of individuals*

The Czech tax laws on inheritance and gift taxes have never included any provisions for exit taxation. Accordingly, individuals have never suffered taxes in the event of their emigration from Czech Republic.

3.3. *Situs of property*

3.3.1. *Relevance of situs of assets*

3.3.1.1. *Immovable property*

The WTA does not include its own definition of the term “immovable property”. In practice, there is no doubt that the term must be interpreted in line with the definition for civil law purposes, unless the law provides otherwise.⁶⁸ The Civil Code says that immovable property is plots of land and buildings connected to the land by a solid foundation.⁶⁹ Apartments (flats) and non-residential premises are also considered to be immovable property. It is important that a building does not form part of a plot of land. Property accessory to immovable property follows the legal status of the immovable property.

In addition, article 5(2) of the Czech-Austrian inheritance and gift tax treaty⁷⁰ stipulates that the term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3.3.1.2. *Movable property*

In two cases,⁷¹ the taxation of movable property of the deceased is limited to those assets located in the Czech Republic. Therefore it is important to determine the *situs* of movable property. Unfortunately, the WTA does not provide for any guidance on this issue. On the other hand, the inheritance tax procedure is closely

⁶⁷ §85 Civil Procedure Code; this definition refers to the intention of the individual only where there is more than one place of residence; it is sufficient if the individual has or formally declares one place of residence.

⁶⁸ For the purposes of the Act on immovable property tax the term “building” is interpreted pursuant to the Building Code.

⁶⁹ §119 Civil Code.

⁷⁰ Convention between the Czech Republic and the Republic of Austria for the avoidance of double taxation with respect to taxes on inheritance and on gifts published under no. 31/2000 Coll. Int.

⁷¹ See subs. 3.2.2.

linked to civil inheritance proceedings. For example, the tax base for the purposes of inheritance tax is equal to the price of the property determined in inheritance proceedings.⁷² This implies that the tax administration largely depends on results arising from inheritance proceeding under civil law.

The *situs* of the assets is to be determined under the private law, namely under the ACL, but even this regulation does not cover all types of assets. Movable assets should have their *situs* in the state where they are located.⁷³ This rule of course applies provided that the nature of movable property allows it.⁷⁴ Apparently, this straightforward rule cannot be applied to all movable assets, as this term also includes property rights and values and intangibles.

As regards participations in companies, the decisive criterion is the registered seat of the company; however, both civil and tax law recognize the concept of the place of effective management.⁷⁵ The *situs* of shares might also be determined *per analogiam* by application of the provision regarding registered financial collaterals (including shares and other securities) under which the legal relations in respect of shares and securities are governed by the law of registration.⁷⁶ No special regulation exists for shares of property companies. The *situs* of intangibles, such as copyright, trademarks and patents, is where the property is registered, or, if not registered, where the rights to the property can be enforced.

3.3.2. Relevance of situs of debts

The *situs* of debts must also be determined based on the law that applies to the particular legal relationship that gives rise to the debt. Generally, the parties can opt for the law by which the property relations should be governed. If this is not the case, the nature of the obligation is relevant to determine *lex situs*.⁷⁷

3.3.3. Discrepancies between situs rules for death duties purposes and situs rules for income tax

The ITA does not provide for any special *situs* rules, unless it refers to the territory of the Czech Republic.⁷⁸ For most items of income, it provides for a general reference that the item of income received from sources in the Czech Republic or abroad is subject to tax in the hand of a non-Czech or Czech tax resident respectively. Czech source income derived by non-residents is exhaustively defined in §22 ITA. This provision includes different criteria, e.g. that assets are located in the

⁷² §4(3) WTA.

⁷³ §6 ACL provides that rights *in rem* are governed by laws of the state, where the movable thing was present at the time of the decisive event (i.e. death of the deceased).

⁷⁴ Shares and other securities are considered as movable things; however, some of them can take the “immaterial” form only if registered in some database.

⁷⁵ The tax administration and the courts fail to apply the concept of the place of effective management in practice.

⁷⁶ §11e ACL.

⁷⁷ §10 ACL lists the standard types of contracts and provides for *lex situs*. For example, relations from a purchase contract are governed by laws of the state, where a seller has its seat.

⁷⁸ This is the case for all types of income from property and income from usage of movable things located in the Czech Republic derived by non-residents.

Czech Republic, the payer of income is a Czech resident, and the activities are carried on in the Czech Republic.

3.3.4. *Situs rules as a cause of double taxation*

3.3.4.1. Double taxation

In general, any rule under which the Czech Republic would consider a property item subject to Czech inheritance tax might give rise to double taxation if such a rule was in conflict with that of the other state.

Shares in companies represent a typical example of such a situation. As outlined, the *situs* rule applied by the Czech Republic for taxation of shares is based on the concept of the registered seat or the place of effective management. Double taxation may arise, e.g. in cases with common law countries that apply the criterion of place of incorporation.

Double taxation may also occur in the case of receivables arising from different types of contracts. This conclusion is valid if an international convention concluded by the Czech Republic does not provide for a tie-breaker rule.

3.3.4.2. Double non-taxation

Domestic law in connection with the respective double taxation may cause the object to be taxed in none of the states. For example, livestock used in agriculture and forestry are under the Czech Civil Code treated as movable property. On the other hand, under the Czech-Austrian inheritance and gift tax treaty⁷⁹ the term “immovable property” also covers livestock. Consequently, it might happen that the Czech Republic would consider livestock as movable property taxable in the state of the deceased (e.g. Austria), whereas the state of the deceased would stick to the definition of immovable property under the treaty and thus waive its taxing right on livestock in favour of the Czech Republic. In this situation, neither state will levy inheritance tax on livestock used in agriculture and forestry and double non-taxation will occur.

4. Avoidance of double taxation under domestic law

The WTA does not stipulate any special method for avoiding double taxation. It only provides the possibility of deducting the documented inheritance dues paid to another state in respect of inherited property there, if such property is also liable to inheritance tax in the Czech Republic.

Further, the Ministry of Finance may determine modifications to the WTA to prevent double taxation with regard to the foreign countries as well as to carry out measures made necessary by the procedures of foreign authorities.⁸⁰ However, no particular modification or measure is known from the practice.

⁷⁹ Art. 5(2) treaty.

⁸⁰ §25(1) WTA.

5. Avoidance of double taxation under treaties

5.1. Tax treaties for the avoidance of double taxation on estate inheritance and gift taxes

The Czech treaty network concerning inheritance and gift taxes is very limited as the Czech Republic seems to focus more on treaty negotiation concerning income in order to promote trade between the parties involved. The Czech Republic tends to deal with problems of double taxation arising in the field of inheritance tax on a case by case basis rather than by extending the treaty network.

The Czech Republic has concluded two treaties for the avoidance of double taxation, namely with Austria (in 1996) and the Slovak Republic (1992). Both of the treaties are based on the 1982 OECD inheritance tax model and cover inheritance as well as gift tax.

With regard to the treaty concluded with the Slovak Republic, it is worth mentioning that it is very brief and does not contain a definition of permanent establishment or any method for elimination of double taxation.⁸¹ However, this should not cause any conflicts or double taxation currently, since the Slovak Republic does not levy inheritance and gift tax.⁸² On the other hand, the situation of double non-taxation may arise in certain cases, e.g.:

- a Czech resident inherits an enterprise with a permanent establishment in the Slovak Republic; the permanent establishment's property is then taxed according to the treaty only in the Slovak Republic;⁸³
- a Czech resident inherits a share in a Slovak company; the treaty gives a taxing right solely to the Slovak Republic.⁸⁴

5.1.1. Scope of the treaties

It can be assumed that the treaty with Austria⁸⁵ covers all the different death duties due to its broad definition of taxes on inheritances in article 2(2) – “taxes imposed by reason of death in the form of taxes on inheritances, of transfer duties or of taxes on donations *mortis causa*”. As mentioned above, the treaty measures apply only to taxes imposed by reason of death and as such do not address the potential double taxation arising from the levy of exit tax which is mostly invoked by the change of the state of residency.

The treaty with Austria addresses especially double taxation caused by:

- residence vs. source taxation – article 5 on immovable property gives a taxing right also to the state where the property is situated;

⁸¹ Art. VII treaty stipulates the credit method only for gifts.

⁸² From 2004, inheritance and gift taxes were abolished.

⁸³ Art. 4(1,a) treaty; please note that unlike the treaty with Slovakia, the model convention stipulates the possibility to tax for the source state as well as the state of residence.

⁸⁴ Art. 4(2) treaty; please note that unlike the treaty with Slovakia, the model convention gives a taxing right only to the state of residence.

⁸⁵ As the Slovak Republic does not levy inheritance and gift tax, the issues are resolved according to the treaty with Austria.

- dual residence – article 4(2) stipulates how to determine the domicile (according to the following steps: permanent home, centre of vital interest, habitual abode, nationality, mutual agreement).

In cases when Austria would tax a different person than would the Czech Republic on the same property, i.e. economic double taxation, such conflicts of qualification are not covered by the treaty and need to be resolved through a mutual agreement between the concerned states. The same conclusion may be reached also in the case of the taxation based in one state on the residence of heir and in the other state on the residence of the deceased.

5.1.2. Relevance of the commentary

The applicability of the commentary on the income and capital OECD MC to the interpretation of inheritance and estate tax treaties is rather limited due to the decision of the Czech Supreme Administrative Court of 10 February 2005 with its very clear approach to the commentary.⁸⁶

The Supreme Administrative Court stated that the commentary was not part of the context of the treaty in the sense of article 31(3) of the Vienna Convention on the Law of Treaties because the tax administration had not proved that the commentary was a “subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions, nor a subsequent practice in the application of the treaty” which established the agreement of the parties regarding its interpretation.

The Court considered the commentary as a supplementary means of interpretation.

5.1.3. Effectiveness of treaty relief

Generally speaking, the unilateral approach seems to be a more popular form of relief, as governments appear to expend less effort on wealth tax treaties than income tax treaties. However, since the WTA does not contain any unilateral relief, the exemption method with progression provided in the treaty with Austria offers the only possibility for avoiding potential double taxation and as such may be regarded as very effective.

5.2. Tax treaties for the avoidance of double taxation on income and capital

Since the Czech Republic does not levy any separate tax on capital gains, there are no tax situations in connection with death which would fall within the scope of bilateral conventions for the avoidance of double taxation of income.

⁸⁶ Case no. 2Afs 108/2004-106.

6. Compatibility with supranational law

6.1. Subjective exemptions

There are three types of exemption that set conditions on the transferor (i.e. the deceased) or transferees (i.e. heirs).⁸⁷ First, all acquisitions of assets are exempt from inheritance tax provided that the heirs fall into the first and second categories. Secondly, persons falling into the third category may acquire free of tax certain assets up to the given value. Thirdly, acquisitions of assets left by diplomatic representatives or by members of their family, if such a person was not a Czech national, are tax exempt provided that the reciprocity is guaranteed. To conclude, the subjective exemptions under Czech tax law do not include any discriminatory condition based on the residence or other subjective link of either the deceased or the heirs. In addition, the above exemptions may be claimed without the obligation to submit an estate tax return to the competent tax authority.⁸⁸

Further, exemption applies to gratuitous acquisitions of assets acquired by qualified non-profit organizations⁸⁹ if the assets are used for charitable activities or welfare services. The law explicitly stipulates that the exemption is available to organizations seated either in the Czech Republic or on the territory of another EU/EEA state. It must be noted that the exemption applies with respect to the EU/EEA organizations from 2009.

6.2. Objective exemptions

Most exemptions do not set forth any discriminatory requirements with regard to the assets, since the statutory provisions are formulated in general terms to apply to domestic as well as foreign assets. Nevertheless, the exemption for private pension contributions covers solely amounts which became a part of an inheritance pursuant to the Act on State-Contributory Supplementary Pension Insurance.⁹⁰ This means that any similar private pension contributions paid abroad do not qualify for tax exemption, which might be considered as a breach of the EC Treaty.

6.3. Deductibility of debts

There are no special requirements for deductibility of debts, as the WTA provides that all documented debts of the decedent transferred to his heir are tax deductible. The law does not in any case differentiate between “Czech” and “foreign” debts.

⁸⁷ Besides these, §20(1) WTA provides for exemption from the inheritance tax for all EEA Member States including their regions and the organizations established by them.

⁸⁸ §21(5) WTA.

⁸⁹ §20(4) WTA lists for example the following organizations: state-registered churches, religious societies, political parties, beneficial foundations and organizations, health insurance companies and other legal persons established for activities in the field of culture, education, protection of children, science, research and development, health care, environment, sports.

⁹⁰ §19(2,c) WTA.

Besides debts the law also allows the deduction of other costs incurred by heirs in connection with the death of the deceased and inheritance proceedings, e.g. notary's remuneration. It is debatable whether this category covers costs paid by heirs only in the Czech Republic or also includes dues paid in foreign inheritance proceedings. Currently, no guidance or case law exists on this issue.

6.4. Favourable regimes

The Czech Republic offers an exemption from inheritance tax if the transfer takes place between direct relatives and spouses. This provision is applicable to all inheritance including family businesses and is applicable to non-Czech residents as well.

Besides the general exemption rule, the WTA explicitly provides that tax exemption applies to the first free of charge acquisition of a property share in agricultural cooperatives⁹¹ between "close persons"⁹² (see section 2.2.1.5). This provision might prima facie cause discrimination concerning the object of tax. Only Czech agricultural cooperatives qualify for tax exemption, while foreign cooperatives or similar entities are not covered. However, one must bear in mind that the general tax exemption for the first and second tax categories covers all types of assets (including participations in legal entities). In practice, there should be no discrimination for transfers of foreign agricultural cooperatives.⁹³

6.5. Emigration tax

There is no emigration tax in Czech Republic.

6.6. Foreign tax credit

Unilateral tax relief for inheritance taxes paid abroad is not available pursuant to Czech tax laws. Taxpayers of Czech inheritance tax are only allowed to reduce their tax base by documented inheritance dues paid to another state in respect of inherited property there if the property is also liable to inheritance tax in the Czech Republic. The current position of the Czech Republic to deduct inheritance taxes paid abroad from a tax base of the Czech inheritance tax and not to grant a foreign tax credit should not in view of the case C-67/08⁹⁴ represent any breach of the EC Treaty.

⁹¹ Only agricultural cooperatives pursuant to Act no. 42/1992 Coll., on property relations concerning cooperatives, are covered.

⁹² §20(12) WTA.

⁹³ This provision might seem to be obsolete after the introduction of the general tax exemption for first (from 1998) and second (from 2008) tax categories. This is not true as the list of "close persons" is not equal to that of the first and second tax categories. It might be that a close person (e.g. a brother-in-law as being "other persons within a family or similar relationship if a harm suffered by one of them is reasonably felt by the other person as his own harm") will fall within the third tax category, but still the transfer of a property share in an agricultural cooperative is tax exempt under the special exemption for agricultural cooperatives.

⁹⁴ Case C-67/08 of 20 February 2008, *Margarete Block v. Finanzamt Kaubeuren*.

6.7. EC Communication

No specific amendment was adopted in connection with the EC Communication. In 1998, the exemption from inheritance tax for the first tax category was introduced. From 2008, the exemption was extended to embrace also the second tax category of the relatives. The tax exemption covers all assets.

