

REAL ESTATE IN TAX LAW

Although there are many tax acts in the Czech Republic, they lack the definition of “tax”. The answer to the question what the tax is can be found just in the tax theory: a tax is an obligatory amount defined by an Act with a laid down rate which is more or less regularly collected from the incomes of economic subjects to the public budgets on the irrecoverable principle¹.

There is the same problem with the definition of tax as with the definition of fee. The tax theory describes the fee² as an obligatory irrecoverable amount defined by an Act and collected by the State or other public corporations for certain legal acts. In contrast to tax this amount is irregular (ad hoc) and the fee payer is eligible to ask for some consideration. It means that fee is very similar to the price and sometimes we can even see somebody to collect “fee” for baggage deposit or coat deposit (though it is not the right term)³.

To tell the truth, the difference between “tax” and “fee” is really more theoretical than practical. The main rule concerning both taxes and fees is included in the Czech Charter of Fundamental Rights and Freedoms. Article 11(5) assigns that taxes and fees can be imposed only by acts. It means not only taxes, but also all the fees, must be imposed by acts, not just by ordinances of municipalities or ministries.

The following text deals with both taxes and fees concerning real estate. Of course all the property taxes and charges (especially real estate tax, real estate transfer tax) should be mentioned in this place, however, we must not forget that there are many provisions in other legal tax acts concerning real estate, for example in Income Taxes Act and Value Added Tax Act.

1 Cp. P. Mrkývka in: P. Mrkývka, *Finanční právo a finanční správa – 2nd part*. Brno 2004, p. 6. We can find something similar to the definition of tax in the Czech legislation; in the Administration of Taxes Act (Act no. 337/1992 Sb., as subsequently amended, Section 1(1)) there is a legislative short cut of tax - tax means: taxes, fees, transfers, advance payments and other assessments.

2 The term “fee” means the same as the term “charge”.

3 Cp. P. Mrkývka, in: P. Mrkývka, *Finanční právo a finanční správa – 2nd part.*, Brno 2004, p. 6.

Real Estate Tax

The most common property tax *not only in the Czech Republic* is the real estate tax⁴. The ownership of the real estate is to be taxed by the real estate tax. Even the Real Estate Tax Act⁵ divides this act de iure into two parts (land tax and building tax), according to specifics of the structural items it is better to divide the tax into three, respectively four parts – land tax, building tax, flat tax and very similar to the last one non-residential premises tax. It is necessary to count every tax for every real estate separately. The total sum of these taxes is the final real estate tax written down in one tax return. The revenue from the real estate tax is the income of the municipality in whose district the real estate is situated⁶. On the other hand, the tax administrator is the Revenue Office, in whose district such real estate is situated. This rule is not very clever and it should be changed, so that the real estate tax would be administered by the municipalities.

The profitability of the real estate tax is not very good and there are a lot of discussions whether to abolish this tax or not. In fact, this tax can be very useful, especially for municipalities as the beneficiaries of real estate tax: a return from this tax is stable and there is hardly any tax evasion. We can expect that the citizens paying real estate tax will try to use their property in the best way they can (lease, reconstruction, land cultivating, etc.), if they are obliged to pay this tax. The penalties are regulated by Tax Administration Act⁷.

a) Land Tax

Since the 18th century there has been the Real Estate Cadastre (land register) in the Czech Republic and it has been used as well for the definition of the object of land tax: the object of land tax is created by the lands in the territory of the Czech Republic registered in the land register. But the land tax is not imposed on some lands; they are even registered in cadastre, for example lands within the area of the ground plan of building which is built on, woodlands, if they involve preventive forests and forests of special designation, water-covered areas, except ponds used for commercial fish-farming or lands used for defense of the state.

4 Vide M. Radvan, *Zdanění majetku v Evropě*. Praha 2007, p. 29–146. L. Etel, *System opodatkowania nieruchomości w Polsce*. In: *Europejskie systemy opodatkowania nieruchomości – praca zbiorowa pod redakcją prof. Leonarda Etela*, Warsaw 2003, p. 175–248.

5 Act no. 338/1992 Sb., as subsequently amended.

6 More about tax revenues of the municipalities in I. Pařízková, *Finanční právo. Finance územní samosprávy*. Brno 2005, p. 112–113. Cp. M. Netolický, *Rozpočtové určení daní pro obce: Jaké změny nás čekají?* in: „*Moderní obec*“ 2007, no. 8, p. 10–11.

7 Act no. 337/1992 Sb., as subsequently amended. On penalties in tax law see, for example D. Šramková, *Penal Tax Law – Sanctions for the breach of legal tax regulation in the Czech Republic*, in: *The problems of the financial law evolution in Central and Eastern Europe within the integration processes*, Białystok–Vilnius 2004, p. 93 + CD.

Although numerous kinds of lands are liable to land tax, they can be tax-exempt. There are a lot of reasons and many conditions for lands to be exempted from taxation. The most common condition is not to use the land for running business. The legislator was motivated especially by public interests, ecological aspects and international treaties in creating exemptions. In several cases, the tax return must not be filed (for example land is owned by state, municipalities or regions); other claims for exemptions must be set up in the tax return (for example lands owned by churches, schools and universities or hospitals). Usually the exemptions are permanent, but several lands are exempted just for several years (lands after reclamation, lands affected by a natural disaster. The last exemption depends on the opinion of municipality. Since the beginning of January 2008, the municipalities have power to exempt agricultural lands, too.

In most cases the taxpayer of the land tax is the owner of the land. In case of lands registered in the Real Estate Cadastre in the facile way the leaseholder has to pay the tax. Even the user of the land can be the taxpayer of land tax. This can happen if the owner of such land is unknown or if the boundaries of the lands came into being in the terrain after such lands were handed over as compensation for the original lands which were consolidated. Of course, any agreement about tax duty transfer is prohibited. If two or more people should be the taxpayer of the land, they must pay the tax jointly and severally. If one of them pays the tax, the tax duty of the other is fulfilled. This is not very fair for the one who is really paying the tax. That is why the new rule was adopted: any of the part owners can file the tax return for his part of land, but he (and of course all the others) has to pay the minimum tax of CZK 50 because of higher administrative costs of the tax office.

The system of assessment of the tax base and tax rate is different for every kind of land:

- The tax base of *agricultural lands* such as arable land, hop-fields, vineyards, gardens, orchards and permanent grass growth is the price of land determined as a multiple of the actual area of the land in square meters and the average price per square meter of the land laid down in a decree. The tax rate is different: lower (0,25%) for permanent grass growth (they have lower productivity), higher (0,75%) for the other agricultural lands.
- In case of *commercial forests and ponds used for fish-farming*, the taxpayer can choose what is better for him: whether to use the price of the land as determined pursuant to the price regulations valid on 1 January of the taxable period or the actual area in square meters multiplied by CZK 3,80. The tax rate is just one of 0,25%.
- The tax base of *other lands* is the actual area of the land in square meters, as ascertained on 1 January of the taxable period. The tax rate per square meter

is different for development lands (CZK 1) and built-on areas, courtyards and other areas (CZK 0,10). Development land has another value depending on the fact whether it is in a small village or in a city. So the tax rate CZK 1 is not final and it is regulated (multiplied) by the location rent⁸ – the coefficient according to the number of inhabitants (municipality can increase or reduce a basic coefficient by a generally binding ordinance).

The counted tax can be multiplied by the local coefficient of 2, 3, 4 or 5. This coefficient can be set for the first time in the year 2009 and it can be set by the municipality in the generally binding ordinance. The tax must be rounded up to the whole CZK.

b) Building Tax

Both buildings for dwelling and buildings used for business are liable to building tax. The objects of taxation are the buildings in the territory of the Czech Republic connected to the land with fixed foundations. These buildings must have an acceptance certificate in a form of assent or decree. Buildings are liable to tax if they are used even if there is no acceptance certificate (but it should be) or if the owner has a permission to use them, too.

Other buildings, especially small-sized buildings, are not liable to buildings tax, so that the land under them is liable to land tax. Some other buildings are not levied as buildings, as well as the land under them is not levied as lands. These are, for example, buildings including flats or non-residential premises (they are liable to flats and non-residential premises tax), water dams and other structures used to regulate water flows, water conduits and sewerages, city waste water treatment plants, energy distribution structures and public transport structures (roads, highways, railways, airports, ports, etc).

There are a large number of buildings that are liable to buildings tax but they are tax-exempt. The reasons and conditions are very the same as the ones mentioned for the land tax. The most common condition is not to use the land for running business. The legislator was motivated especially by public interests, ecological aspects and international treaties in creating exemptions but we can see motivations for economics, too. Sometimes even the tax return can not be filed. This rule is applied for buildings owned by the state, municipalities, regions and diplomatic representatives or used in public passenger transport. Other claims for exemptions must be set up in the tax return. For better understanding, it is useful to create two parts of these exemptions. In the first group there are buildings that are tax-exempt permanently (buildings owned by churches, schools and universities, museums,

8 See more in chapter on Building Tax.

galleries and hospitals, etc.). Other lands are exempted just for several years. We should mention especially newly–constructed residential buildings and flats in newly–constructed residential buildings owned by individuals for 15 years after the issue of an acceptance certificate (they must be used for permanent residence by their owners or persons close to these owners) or structures where the heating system was converted from use of solid fuels to more ecological fuel for five years. The municipalities have a possibility to exempt buildings affected by a natural disaster for a period up to five years to eliminate consequences of natural disasters.

In general, the taxpayer of the buildings tax is the owner of the structure. If the structure is managed by the Czech Republic’s Land Fund or the Administration of State Material Reserves, these entities are the taxpayers. But if these structures are leased, their lessees should pay the buildings tax. (This rule is not used for residential buildings, where the above mentioned entities are the taxpayers.) If two or more people should be the taxpayers of the land, they must pay the tax jointly and severally. If one of them pays the tax, tax duty of the others is fulfilled.

The tax base is the same for all kinds of buildings and it is defined as built–up area in square meters as on 1 January of the taxable period. The tax base must be rounded up to the whole square meters. This system is not modern and the Czech Republic should be inspired by many other European countries where the value of the structure is used as the tax base. The tax rate is different for separate kinds of buildings. In fact, knowing or even finding a correct tax rate in the Act is very difficult, so the following table might help⁹:

Table 1: Buildings Tax Calculation

Object of buildings tax	Standard tax rate (CZK/m ²)	Increased tax rate (additional above–ground floor)	Multiplied coefficients			
			Location rent	Municipal coefficient	National park coef.	Local coefficient
Residential buildings	1	+ 0,75 CZK/m ^{2*}	x 1,0 – 5,0	–	–	2,3,4,5
Other structures that provide facilities for residential buildings (over 16 m ²)	1	+ 0,75 CZK/m ^{2*}	x 1,0 – 5,0	–	–	2,3,4,5
Houses and family houses used for individual recreation	3	+ 0,75 CZK/m ^{2*}	–	none / 1,5	x 2,0	2,3,4,5
Other structures that provide facilities for houses and family houses used for individual recreation	1	+ 0,75 CZK/m ^{2*}	–	none / 1,5	x 2,0	2,3,4,5

9 The tax must be rounded up to the whole CZK.

Garages	4	+ 0,75 CZK/m ² **	–	none / 1,5	–	2,3,4,5
Structures for business activity – primary agricultural production, forestry and water management	1	+ 0,75 CZK/m ² **	–	none / 1,5	–	2,3,4,5
Structures for business activity – industrial production, civil engineering, transport, power and other agricultural production	5	+ 0,75 CZK/m ² **	–	none / 1,5	–	2,3,4,5
Structures for business activity – other business activity	10	+ 0,75 CZK/m ² **		none / 1,5	–	2,3,4,5
Other structures	3	+ 0,75 CZK/m ² **	–	–	–	2,3,4,5

* If the area of a built-up additional above-ground floor exceeds two-thirds of the built-up area

** Always

The standard tax rate shall be increased by CZK 0,75 per each additional above-ground floor (so called increased tax rate). This standard rate or increased rate shall be multiplied by the location rent – the coefficient according to the number of inhabitants (the municipality can increase or reduce a basic coefficient by a generally binding ordinance):

Table 2: **Location Rent**

Number of inhabitants / Municipality	Location rent				
	Basic	Reduced			Increased
≤ 1 000	1,0	–	–	–	1,4
> 1 000 ≤ 6 000	1,4	–	–	1,0	1,6
> 6 000 ≤ 10 000	1,6	–	1,0	1,4	2,0
> 10 000 ≤ 25 000	2,0	1,0	1,4	1,6	2,5
> 25 000 ≤ 50 000	2,5	1,4	1,6	2,0	3,5
> 50 000 + Františkovy Lázně, Luhačovice, Mariánské Lázně, Poděbrady	3,5	1,6	2,0	2,5	4,5
Prague	4,5	2,0	2,5	3,5	5,0

Where the location rent can not be used, the standard tax rate shall be increased by the so called municipal coefficient assessed by a generally binding ordinance of the municipality. The national park coefficient is used for houses located in national parks or first-category protected countryside zones.

The counted tax can be multiplied by the local coefficient of 2, 3, 4 or 5. This coefficient can be set for the first time in the year 2009 and it can be set by the municipality in the generally binding ordinance. The tax must be rounded up to the whole CZK.

c) Flat Tax and Non-Residential Premises Tax

The flats and non-residential premises tax is a special category of the building tax. This tax includes proportionate shares in common areas of the building such as laundries, hanging rooms, corridors, etc. related to the flats and non-residential premises. Only flats and non-residential premises registered in the Real Estate Cadastre are liable to tax. Buildings in which flats and non-residential premises are objects of taxation are not liable to buildings tax.

Exemptions from flats and non-residential premises tax are the same as the exemptions from building tax. Only one more exemption should be mentioned: flats owned by individuals in newly-constructed residential houses, if they are used as a permanent residence by their owners or person close to these owners, are tax-exempt.

The definition of the taxpayer of flats and non-residential premises tax is the same as the definition of the taxpayer of buildings tax; it means the owner of the flat or non-residential premise is usually the taxpayer of this tax.

The tax base of flats and non-residential premises tax is so called adjusted floor area, it means the floor area of the flat or non residential premise in square meters as on 1 January of the taxable period, multiplied by a coefficient of 1,20. The tax rate is different for flats and for non-residential premises. The standard tax base for flats is CZK 1 per square meter of the adjusted floor area. This standard rate shall be multiplied by the location rent and by the local coefficient (see above).

In non-residential premises there are usually run some business activities and the taxpayer must set the standard rate according to this business activity: CZK 1 per square meter of the adjusted floor area for non-residential premises used for primary agricultural production, forestry and water management, CZK 5 for non-residential premises used for industrial production, civil engineering, transport, power and other agricultural production, and CZK 10 for non-residential premises used for other business activity. If the non-residential premise is used as a garage, the standard tax rate is CZK 4 per square meter of the adjusted floor area. These standard rates shall be multiplied by the municipal coefficient and by the local coefficient (see above). If the non-residential premise is used for anything else, the standard tax rate is CZK 1 per square meter of the adjusted floor area and it can be multiplied by the location rent and by the local coefficient (see above). The tax must be rounded up to the whole CZK.

d) Real Estate Tax Administration

The tax return must be filed by the taxpayer by 31 January of the taxable period (the calendar year). The real estate tax is assessed according to the situation as on 1 January of the calendar year of which it is assessed.

In fact, the tax return is not necessary to be filed every year; usually if the tax return was filed in any of the previous taxable period and there are no changes, the taxpayer does not have this duty. Even if there are changes in the tax rate, in the average price of land, in the coefficients, etc., there is no duty to file the tax return.

Every year the Revenue Office sends the assessment with the tax duty to every taxpayer. If the annual real estate tax does not exceed CZK 5 000, it shall be payable in one payment not later than 31 May of the current taxable period. If the tax exceeds CZK 5 000, it shall be payable in two equal installments not later than 31 May and 30 November. The taxpayers engaged in farming and fish-farming have to pay the tax in two installments not later than 31 August and 30 November.

Transfer Taxes

All the transfer taxes (inheritance tax, gift tax and real estate transfer tax) are regulated by one act¹⁰. The difference between these three taxes is in fact whether the transfer of the property is realized for money (real estate transfer tax) or whether it is gratuitous (inheritance tax and gift tax). If that transfer is gratuitous, it is necessary to know whether the transfer is *inter vivos* (gift tax) or *mortis causa* (inheritance tax)¹¹.

a) Real Estate Transfer Tax

The aim of this tax is to draw a part of purchase price obtained from the sale of real estate. Since the acquisition of property is not gratuitous, the tax rate is lower than for other transfer taxes¹². Real estate transfer tax is payable on the transfer of ownership title to the real estate for consideration and the establishment of an easement without consideration upon the acquisition of real estate by donation. Even in cases when this transfer is cancelled and the cancellation renders the contract null and void from its inception, the transfer of ownership title to real estate for a consideration is liable to the real estate tax. Exchange of real estate is considered as a single transfer. The tax will be collected on the transfer of real estate with higher tax.

10 Act no. 357/1992 Sb., Inheritance Tax, Gift Tax and Real Estate Transfer Tax Act, as subsequently amended.

11 Vide M. Radvan, *Zdanění majetku v Evropě*, Praha 2007, p. 147–268.

12 Vide J. Neckář, *Zdanění převodů nemovitostí v Evropě*, "Daně a finance" 2007, no. 10, p. 3–10.

The only important exemption is the exemption of the first transfer for consideration of ownership title to a newly-constructed building, if such a building has not been used yet, or to a flat in a new building, if such a flat has not been used yet, on condition that the transferor is a natural person or legal entity and such a structure is transferred in connection with a business activity of the transferor, or if the transferor is municipality.

The real estate tax is paid mostly by the transferor (the seller). In this case the person acquiring the real estate becomes the surety. In other cases the taxpayer is the beneficiary from an easement or another benefit similar to an easement. Talking about the exchange of real estates, both the transferor and the transferee are liable to pay the tax; both of them are obliged to pay the tax jointly and severally.

The tax base is usually the price ascertained pursuant to the Act no. 151/1997 Sb., Act on Property Valuation, as subsequently amended, and valid on the day of acquisition of the real estate. But if the agreed price of real estate is higher than the price ascertained pursuant to the Act on Property Valuation, this agreed price must be used as a tax base. The tax base can include as well the price of an easement established without consideration, the price ascertained pursuant to the Act on Property Valuation and valid on the day of the acquisition of the real estate on the basis of the relevant financial lease contract, the price from auction, etc. The tax base is rounded up to the whole hundreds of CZK. The tax rate is linear of 3% of the tax base. The tax must be rounded up to the whole CZK.

The taxpayer must file a tax return with the Revenue Office in whose district the real estate is situated latest by the end of the third month following the month when registration of such transfer was made in the Real Estate Cadastre. A tax return shall be accompanied by a certified copy of the contract or other document by which ownership relations to specific real estate are confirmed or certified. The taxpayer must enclose an expert's valuation of the price, too. The taxpayer must state all necessary information in the tax return and calculate the tax. If the real estate transfer tax stated in the tax return corresponds to the real estate transfer tax assessed, the tax administrator need not notify the taxpayer of such assessment. Tax must be paid within the time-limit for filing the tax return. The revenue of the inheritance tax is the income of the state budget.

b) Inheritance Tax

Any acquisition of property (immovable asset, movable things, securities, receivables, property rights, etc.) by inheritance is liable to inheritance tax. There is the difference of property liable to tax depending on the citizenship and permanent address of the decedent and kind of property.

The most useful exemption from taxation is the acquisition of property by inheritance that concerns persons included in the first (direct relatives and spouses) and in the second category (other relatives and persons living with the decedent in one household for at least one year before the death of the decedent and who took care of the common household or were dependent on the decedent for their support). For the third category (other natural persons and legal entities) there are several other exemptions like acquisition of movable property belonging to individuals, if the value of such property does not exceed CZK 20 000. Acquisition of deposit in bank accounts, money (financial means), securities, if the total amount of all these values does not exceed CZK 20 000, is exempted, too. Tax is collected only on those parts of the value by which the above mentioned limits are exceeded. We can see that there are no exemptions of acquisition of real estate like in many other European countries.

The taxpayer of inheritance tax is an heir who acquires an inheritance on the basis of a testament or by operation of law or on both such legal grounds. The person of the taxpayer is always set out in the final decision concluding inheritance proceedings issued by the competent authority.

The tax base is the value of the property acquired by the heir (the price of the property determined in inheritance proceedings) reduced by the debts of the decedent, the value of property exempted from taxation, expenses related to the decedent's funeral and remuneration to the notary. The tax base must be rounded up to the whole hundreds of CZK. The tax rate is progressive and depends on the value of the property. It is necessary to use the same proceedings as the ones used for the gift tax (see below) and the final tax should be divided by two to calculate the inheritance tax. The tax must be rounded up to the whole CZK.

The taxpayer must file a tax return with the competent Revenue Office (the one in whose district the decedent had his residential address or where he mostly stayed) within 30 day of the day when court's decision by which inheritance proceedings were completed became final. The Revenue Office calculates the tax using the data in the tax return and final ruling on inheritance sent by court. The tax must be paid within 30 days since the delivery of the order of tax payment (tax assessment). The revenue of the inheritance tax is the income of state budget.

c) Gift Tax

The main purpose of this tax is to guarantee that decedents will not evade inheritance tax (will not give gifts to the heirs during their life. Gift tax is imposed on the gratuitous acquisition of property (real estate, movable property, other benefits) on the basis of an act in law (*inter vivos*), other than by a decedent's death

(*mortis causa*). There are many acts in law that can be used for donation but the most common is the contract of donation.

The object of taxation is donation of movable property from abroad to a presentee in the Czech Republic or from the Czech Republic to a presentee abroad, too. The tax will be also collected on movable property which is donated abroad or acquired abroad from the means donated to a presentee abroad, if the donated or acquired movable property was imported by a presentee to the Czech Republic. The donation of real estate located in the area of the Czech Republic is always liable to gift tax. There are several situations when the gratuitous acquisition of property is not liable to gift tax (for example benefits or gratuitous transfer of property on the basis of a duty laid down in a legislative act).

There are a lot of exemptions used for the purpose of gift tax. The most useful exemption from taxation is the acquisition of property by inheritance that concerns persons included in the first and in the second category (see chapter on inheritance tax). Persons included in the third are using exemptions in case of acquisition of movable property belonging to individuals, if the value of such property does not exceed CZK 20 000 and in case of acquisition of deposit in bank accounts, money (financial means), securities, if the total amount of all these values does not exceed CZK 20 000. The tax is collected only on those parts of the value by which the above mentioned limits are exceeded. The only exemption dealing with real estate is exemption of free-of-charge transfers of flats, family houses, garages from housing co-operatives' ownership to ownership of such housing co-operatives' members (natural persons).

Usually the taxpayer of the gift tax is the presentee (donee, transferee). The donor is the tax surety (guarantor). However, when a gift is donated to someone abroad, the donor is the taxpayer of the gift tax. If two or more persons are obliged to pay the gift tax, each of them has to file the tax return and each of them has to pay his part of tax.

The tax base of the gift tax is defined as the price of the property (price ascertained under Act no. 151/1997 Sb., Act on Property Valuation, as subsequently amended) reduced by debts and the value of other liabilities pertaining to the object of tax, the value of tax-exempt property and customs and taxes paid on the importation of movable things donated or imported from abroad. To evade tax, many of the taxpayers are trying to divide the gift into parts. The act remembers these situations and sets that the price of gift from the same donor to the same donee within two subsequent calendar years shall be added together and the sum of the prices is the tax base. If the tax was paid in the first year, in the second year it will be credited against the tax assessed on the subsequent acquisition of property. The tax base must be rounded up to the whole hundreds of CZK.

The tax rate is progressive and depends on the value of the property:

Table 3: Tax Rates of Gift Tax

Tax base from (mil. CZK)	Tax base to (mil. CZK)	Tax rate for persons in the third category (CZK +% from the tax base exceeding lower bound)
	1	7,0
1	2	70 000 + 9,0
2	5	160 000 + 12,0
5	7	520 000 + 15,0
7	10	820 000 + 18,0
10	20	1 360 000 + 21,0
20	30	3 460 000 + 25,0
30	40	5 960 000 + 30,0
40	50	8 960 000 + 35,0
50		12 460 000 + 40,0

The tax must be rounded up to the whole CZK.

The taxpayer must file a tax return with the Revenue Office in whose district the real estate is situated (donation of real estate) or the one in whose district the taxpayer has his residential address or registered office (donation of movable property) within 30 day of the day when the donation of a movable asset or some other property benefit took place or a contract on free-of-charge transfer of ownership title to specific real estate with a clause confirming its registration to Real Estate Cadastre was served on the taxpayer. A tax return shall be accompanied by a certified copy of the contract or other document by which ownership relations to specific real estate are confirmed or certified. The taxpayer must enclose an expert's valuation of the price, too. The taxpayer must state only necessary information in the tax return and the Revenue Office calculates the tax using the data in the tax return. The tax must be paid within 30 days of delivery of the order of tax payment (tax assessment). The revenue of the inheritance tax is the income of state budget.

Real Estate within the VAT Legislation

Value added tax (VAT) is the basis of the excise duty system in the Czech Republic, but on the other hand, it is also the basis of the whole tax system. The VAT

is regulated by the VAT Act (Act. No. 235/2004 Sb., as subsequently amended) as of May 1, 2004.

VAT is the excise duty and it is a universal, an obligatory and a rated tax. The system of excise duty is completed with consumption taxes, which are applied only to selected products which have a consumer character. The indirectness of the VAT is seen in the principle when bearers of VAT – who act as buyers, clients etc. – do not fulfill their obligation (tax liability) directly to the State, but through registered taxpayers who are obliged to collect and transfer the VAT. The universality of VAT is based on the principle that it is applied to all business activities (some exemptions of exempted business are applied) and all business subjects (registered as a taxpayer). Therefore equal conditions are created for all forms of business activities.

The subject of the tax is the taxpayer as a person obliged to the tax and it could be a natural or a legal person, which individually gives effect to the business activities which has a firm domicile, a place of business or business premises in the Czech Republic and which has had a turnover in the last 12 successive months of CZK1,000,000.00.

The tax base is an amount of money which is reduced by a tax which the taxpayer obtained or has to obtain in consequences to the carried out taxable payment from the person for which it is done, or from a third party.

The object of the tax is the supply of the goods, the transfer of the real estate or the transition of the real estate in an auction, supply of services and acquisition of the goods from another Member State of the EU. The place of delivery in the situation of the transfer of the real estate is the place of the real estate. The transfer of the real estate is specified as the transfer of the real estate which is an object of registration in the Cadastral Register. If it is not, then the transfer is considered to be a supply of goods.

In case of the supply of services related to the real estates, building surveyor and to construction and assembling works, the place of delivery is stated according to the real estate which is an object of the activities. Consequently to this regulation, it is possible to say that all activities concerning the real estate which is situated in the Czech Republic, are always the object of the VAT in the Czech Republic. The tax rate for those activities is stated in the amount of 19% (this is the basic rate).

The reduced rate – 9% – is stated for construction and assembling works concerning the reconstruction of completed constructions, the block of flats or a flat. The reduced rate is also used for social public housing.

The transfers of real estates, flats or non-flat places is exempted from VAT after 3 years after the acquisition of final building approval, and also the financial leasing of building constructions, flats and non-flat places is exempted from VAT.

The exemption is also applied to the lease of real estates, flats or non-flat places, but only in a long-term lease situation.

The period of taxation is a calendar month or calendar quarter (it depends on the amount of the turnover of the taxpayer).

The declaration of taxes has to be declared by the 25th day at the latest after the end of the period of taxation.

Real Estate within the Income Taxes Legislation

The following text deals with legal regulation of real estate in the income taxes point of view. It intends to refer with its subject both to the traditional Czech income taxes regulation (e.g. the influence of the real estate transfer tax to the tax base, tax exemptions or depreciation of assets) and to the relatively shortly adopted changes in the tax law (e.g. special binding considerations).

The income taxes system in the Czech Republic consists of taxation of individuals and legal entities, both covered by the Income Taxes Act¹³. Personal income tax is imposed on income of individuals. These taxpayers who have their home address in the Czech Republic, or who usually stay here, are liable to tax on income arising from sources in both the Czech and abroad. Other taxpayers (except of those staying here only for the purpose of studies or medical treatment) shall be liable to tax on income arising solely from sources in the Czech Republic. There is a similar rule according to the corporate income taxes.

Since 1.1.2008 a new system of tax rates has been effective:

- Individuals shall be no more subject to taxation at progressive rates ranging. There is one linear rate 15% (from the 2009 taxable period it will be 12.5%);
- The corporate income tax rate is 21% (from the 2009 taxable period it will be 20%).

There are two types of income connected with the real estate which are liable to personal or corporate income tax: rental income and income from transfer of real estate.

13 Act no. 586/1992 Sb., Income Taxes Act, as subsequently amended. For more details see, for example I. Pařízková, Daň z příjmů, in: P. Mrkvyňka, P., Finanční právo a finanční správa – 2nd part, Brno 2004, p. 140–177. Or M. Radvan, Czech Tax Law, Brno 2005, p. 14–25.

a) Income from Transfer of Real Estate:

The tax base in the case of both personal and corporate income tax shall include the income from transfer (sale) of real estate situated in the Czech Republic, reduced by the “documented” expenses. As an expense shall be considered, e.g. the price for which a taxpayer acquired this property. Into the tax base is included neither the real estate transfer tax, nor the real estate tax¹⁴.

b) Rental Income:

The tax base in the case of personal income tax shall include the income from the lease of real estate or parts of it, reduced by the expenses incurred to generate, assure and maintain that income. Moreover, the taxpayer has also another option. Unless he claims the “documented” (real) expenses, he may claim as the “lump” expenses 30% of his rental income. Unfortunately, there are no such rules for those “lump” expenses within the corporate income tax legislation.

On the other hand, according to the Czech Income Taxes Act, the income attained by inheritance, restitution or donation of real estate is not liable to the personal income tax.

However, the most interesting rules concerning the real estate can be found within the tax exemptions as the traditional tax correction institutes. There are different exemptions for personal and corporate incomes.

The following types of **personal income** shall be tax exempt¹⁵:

1. Income from sale of a family house or an apartment (including co-ownership or an ownership interest in the common parts of the building and including the land related hereto) where the seller has his home address. For application of this tax exemption there has to be proved that the seller had his home address there for at least two years immediately before the sale or he had his home address there for a period less than two years and he uses the means acquired from its selling for meeting his house needs. It is not allowed to apply this exemption to income gained from the sale of a real property if it is/was included in business property in the last 2 years.
2. Income from sale of a real estate (including non residential spaces) not pursuant above; generally, if the period of time between their acquisition and sale exceeds 5 years. If the real estate was acquired by inheritance from a person who was the seller’s direct relative or spouse, the 5 year period shall be shortened by the period when the real estate was in the devisor’s

¹⁴ For more details see the Income Taxes Act: Sections 10(1, 5), 22(1/d, e) and 24(2/ch, u).

¹⁵ See Section 4(1/a, b) of the Income Taxes Act.

ownership. As in the first case, there is forbidden to apply this exemption to income gained from the sale of a real property if it is/was included in business property in the last 5 years.

The following types of **corporate income** shall be tax exempt¹⁶:

1. Incomes from regulated¹⁷ rents for apartments and from garage rents (including the income from payments for services connected with the use of apartments or garages) in ownership or co-ownership of housing cooperatives or used by members of legal entities which were formed for the purpose of becoming owners of those buildings.
2. Incomes from leasing of real estates, if such property form part of a certain foundation's assets and is recorded in the Foundation Register.

c) Depreciation

For the purpose of the Income Taxes Act the buildings, houses, apartments, non-residential spaces and structures shall mean “tangible fixed assets”. Those assets are to be depreciated. However, a taxpayer is not obliged to claim depreciation for the purposes of the law and is entitled even to interrupt it¹⁸.

In the first year of depreciation, the taxpayer shall allocate his assets into the relevant depreciation categories according to the Annex No. 1 to the Czech Income Taxes Act. The real estate shall be classified by the depreciation categories 4, 5 or 6. After finding the appropriate category, the taxpayer has to choose one of the depreciation methods mentioned in Section 30 of the Czech Income Taxes Act: either the straight line method or the accelerated one. The determined method may not be changed during the entire period of depreciation.

d) Binding Consideration

Where a taxpayer has doubt whether the conditions laid down in the tax legislation are met, he has the possibility to ask the tax administrator for his binding consideration. Although the binding consideration may be seen as a very useful institute, it may be used only in a few cases. According to the Section 34b of the Tax Administration Act¹⁹, there has to be an extra enactment for each case in the specific tax legislation.

16 For more details see Section 19(1/c, r) of the Income Taxes Act.

17 See Sections 3 and 4 of the Act no. 526/1990 Sb., on Prices, as subsequently amended.

18 For more details see Sections 26 – 32 of the Income Taxes Act.

19 Act no. 357/1992 Sb., as subsequently amended.

Since the 1st January 2008, though, a new legal regulation has been effective, where the binding consideration rules are extended. Nowadays the binding consideration may be requested, e.g. if:

- The taxpayer is not sure about the proportion of the “documented” expenses related to the real estate which is used partly for the business and partly for the private activities.
- The taxpayer is not sure whether his alteration of an asset shall mean the technical appreciation or not.

Local Charge on Evaluation of Building Land

Every municipality in the Czech Republic has a possibility to levy local charges (local fees, local taxes²⁰). The authority for doing so is needed to be established by law. Not every municipality levies every local charge, town council has an opportunity to decide whether the municipality will levy the local charge and it can define the amount of this charge. In fact, the income from the local charges is quite important for the municipalities and paying local charges is the same duty as to pay every other taxes and charges. Local charges have (except the fiscal function) regulation and protective function, too.

The list of local charges is set in Act no. 565/1990 Sb., Local Charges Act, as subsequently amended. In its section 14 it contains authorization for municipalities to assess local charges by the ordinance. In this ordinance conditions for levying, charge rate, charge maturity and possible immunity must be given. The ordinance may not exceed the conditions defined by Local Charges Act (for example, absolute charge rate or varieties of charges)²¹.

If somebody has a duty to pay a local tax and he fails to do it (in time or he does not pay the right amount), the municipality sends him an assessment. The amount due can be raised three times in the assessment. The municipality must make a legal act to a debtor in three years after the end of the year when the debtor had to pay the charge, as then there is no chance to levy the charge. The maximum term is ten years after the end of the year when the debtor had to pay the charge. The administration office is the municipality that levied the charge. The municipality has the right to reduce the charge or to exempt the charge duty or accessories to the charge.

There is only one local charge connected with real estate – the charge on evaluation of building land. This charge is paid by the owner of the lot if he has

20 See also P. Mrkývka, Některé úvahy o materiálním základu veřejné správy, “Časopis pro právní vědu a praxi” 2003, no. 2. Vide M. Radvan, Zdanění majetku v Evropě, Praha 2007, p. 331–332.

21 Vide M. Radvan in: P. Mrkývka P. a kol., Finanční právo a finanční správa – 2nd part, Brno 2004, p. 300–310.

a possibility to connect it to municipal water conduit or sewerage. It means that the charge is paid as a cover of municipality's expenditures of investments to the infrastructure. By this, the value of the building land is increased. But the owner has to pay the charge even if he does not take an advantage to connect to municipal water conduit and sewerage. The charge rate can be at maximum the difference between the prices before and after the possibility to connect the lot to water conduit or sewerage at maximum. Prices are ascertained under Act no. 151/1997 Sb., Act on Property Valuation, as subsequently amended. The charge rate must be published in the municipal ordinance.

Streszczenie

Niniejszy rozdział przedstawia aspekty podatkowe władania nieruchomościami. Najważniejszymi podatkami w tym zakresie są podatki od własności, w szczególności podatek od nieruchomości, który jest związany zarówno z gruntami jak i infrastrukturą (budynkami), w tym mieszkaniami i lokalami niemieszkalnymi.

Władanie nieruchomością może również być przedmiotem opodatkowania podatkiem od spadków, od darowizn oraz podatkiem od przeniesienia własności nieruchomości.

Autorzy omawiają konstrukcje wymienionych wyżej podatków. Wskazują również na podatki dochodowe oraz podatek od wartości dodanej jako daniny obciążające powstałe (w związku z dysponowaniem nieruchomością) przychód, dochód lub obrót. Osobne miejsce poświęcono tematyce opłat związanych z nieruchomościami, w szczególności – opłatą związaną z przyłączeniem nieruchomości do gminnej sieci wodociągowo–kanalizacyjnej.