

CZECH FINANCIAL LAW

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ACQUISITION OF REAL ESTATE IN THE CZECH REPUBLIC BY NON-RESIDENTS

The legislator in the Czech Republic has traditionally entrusted regulation of the acquisition of real estate by non-residents within the operation of the Foreign Exchange Act, although it does not consider real estate as such to be a foreign exchange value.

The Foreign Exchange Act (Act No. 219/1995 Sb.) essentially represents a code of foreign exchange law in the Czech Republic. Foreign exchange law is regarded as a subsystem of financial law by the legal sciences, specifically the non-fiscal part of financial law. Foreign exchange law means a set of legal standards regulating monetary transactions with foreign countries and the disposal of foreign means of payment, foreign exchange funds as well as other values in relation to foreign countries¹. Two basic categories of persons occur in the relations regulated by foreign exchange law. Their status is decisive also for access to the acquisition of real estate in the Czech Republic. A natural person with permanent residence in the territory of the Czech Republic and a legal person with its registered office in the Czech Republic are persons constituting the **resident** category. Other persons are **non-residents**. Rather than discrimination between legal and natural persons or citizenship and the origin of capital, the determination of foreign exchange status is substantiated on the relation to the territory of the Czech Republic.

The current foreign exchange law is very liberal and built on the liberal principle of free access of residents to foreign currency and non-residents to the

¹ P. Mrkývka in P. Mrkývka (ed.), *Finanční právo a finanční správa*, Brno 2004, p. 227.

Czech currency. However, it is less liberal regarding access to the ownership of real estate.

The acquisition of real estate is an important manner of capital allocation – both domestic and foreign. The state tends to prevent foreigners from accessing the ownership of real estate for various reasons. Soil in particular is traditionally perceived as something national not to be held in foreign hands, but there are also many buildings that are regarded as national treasures. One reason thus rests in the protection of national identity, typical primarily for small nations with a shorter statehood and unfortunate experience with foreign rule. Differences in buying power between the domestic population and economically stronger foreigners are the second cause for unwillingness to liberate the market of real estate. However, there is also a wide range of other reasons. Given that allocation of capital with foreign element is concerned, the basic regulation of the law on the acquisition of real estate with foreign element has been entrusted to foreign exchange law.

The Czech Republic is absolutely liberal with respect to the ownership of real estate abroad by residents and it does not put any obstacles to them. Residents do not have any duty to notify regarding real estate abroad and the state does not demand them to pay a real estate tax². The latter, if in place, is paid abroad³. On the other hand, some non-residents have a reduced access to the ownership of real estate in the Czech Republic.

The following non-residents should be differentiated:

1. non-residents – Czech Republic nationals,
2. non-residents – nationals of a member state of the European Communities,
3. non-residents – nationals of a signatory state of a given agreement on investment support and protection or, as the case may be, other agreement dealing with the ownership of real estate by persons from one state in another state,
4. non-residents – other states' nationals.

For access to the ownership of real estate, categories of the latter must also be differentiated from the view of foreign exchange law. Foreign exchange law differentiates between two **categories of real estate**, specifically:

1. agricultural plots of land,
2. other real estate.

2 On real estate tax in the Czech Republic, e.g. P. Mrkývka in Etel, L. (ed.). *Europejskie systemy opodatkowania nieruchomości*. Warsaw 2003.

3 For more on the subject, refer to M. Radvan, *Zdanění nemovitostí v Evropě*, Praha 2005.

Agricultural plots of land are plots of land falling within the agricultural land fund and plots of land intended to function as forests.

Non-residents – Czech Republic nationals, and subsequently non-residents – legal persons having placed their enterprise or unit of an enterprise in the Czech Republic and having the right to undertake business in the Czech Republic have enjoyed free acquisition of real estate as residents since 1995 and 2002, respectively, and non-residents – nationals with residence permit for a national of a member state of the European Communities have had the same rights as residents since 2004. The last-mentioned are bound to the condition of a three-year residence in the Czech Republic and they simultaneously must be registered in the Czech Republic as farmers in the event that they wish to acquire an agricultural plot of land.

Other non-residents may acquire real estate in the Czech Republic only:

1. by virtue of inheritance,
2. for diplomatic representation of a state on the condition of reciprocity,
3. into the joint ownership of spouses of whom only one is a resident or non-resident – Czech Republic national,
4. from a lineal relative,
5. from a sibling,
6. from a spouse,
7. by exchange, and
8. on the basis of preemption right on account of joint ownership,
9. by exchange,
10. by virtue of construction on own plot of land,
11. if the plot of land concerned forms a single functional unit with a building in his ownership,
12. on the basis of special regulations, in particular in the area of privatization and restitutions.

Foreign exchange law leaves the form of acquisition of ownership to be regulated by civil law and it only determines the right to transfer ownership of real estate. The Civil Code⁴ also deals with the issues of inheritance, joint ownership of spouses, relationship categories, etc.

4 Act No. 40/1964 Sb., as subsequently amended.

There are two limitations concerning exchange. An exchange is in accordance with the Foreign Exchange Act if the price of the real estate does not exceed the price of the original real estate. If an agricultural plot of land is concerned, it may only be exchanged for an agricultural plot of land. The price shall be ascertained according to the Act on Evaluation of Property.

However, the boundaries stipulated by the Foreign Exchange Act are very easy to surmount in a legal manner. It is sufficient for a non-resident to establish a legal person in the Czech Republic with its registered office in the Czech Republic and the latter will become a resident. The Commercial Code,⁵ which *inter alia* governs business companies, makes it possible to establish a limited liability company and register it in the Czech Republic with a single person as partner and a joint stock company in a similar manner. In this manner the non-resident as a sole partner or as a sole person controlling the joint stock company concerned has fully under his control the real estate owned by the legal person concerned and also a direct benefit from the real estate concerned⁶.

Agreements on investment support and protection represent an exception from the possibilities of obtaining ownership right to a real estate under foreign exchange law as they essentially guarantee at least the same rights to investors from the other contracting state as those enjoyed by residents. In addition to these agreements, there may be international agreements stipulating the acquisition of real estate for specific non-residents – investors, and thus place them in the position of residents within the limits of the agreement concerned.

The first half of the 1990s also represented a period of denationalization of the economy, which had two basic forms; restitutions (returning nationalized property to former owners and their successors) and privatization (transfer of property in state ownership to private ownership). The legal regulation of restitutions⁷ and privatization⁸ represents a special regulation in addition to the Foreign Exchange Act with respect to non-residents and the acquisition of real estate in the Czech Republic.

It is not reasonable to anticipate a further liberalization in the acquisition of real estate by non-resident persons outside the European Communities, although given the relatively liberal approach to the possibility of occurrence of the right to undertake business in the Czech Republic, a further liberalization is in fact not very necessary.

5 Act No. 513/1991 Sb., as subsequently amended.

6 P. Kotáb, P. Novotný, in M. Bakeš (ed.), *Finanční právo*, Praha 2006, p. 538.

7 For example Act No. 403/1990 Sb., on the mitigation of consequences of property injuries, as subsequently amended.

8 For example Act No. 427/1990 Sb., on the transfers of state ownership of some chattels to other legal or natural persons, as subsequently amended, or Act No. 92/1991 Sb., on the transfer of state property to other persons, as subsequently amended.

Streszczenie

Nabywanie nieruchomości jest ważnym sposobem lokaty kapitału, zarówno krajowego jak i zagranicznego. Celem państwa jest niedopuszczenie obcokrajowców do nabywania własności nieruchomości, przy czym władze państwowe kierują się bardzo różnymi względami. Szczególnie ziemia jest tradycyjnie postrzegana jako dobro narodowe, które nie może znaleźć się w obcych rękach. Ponadto istnieje również wiele budynków i budowli uważanych za bogactwa narodowe. Zatem jedna z przyczyn związana jest z ochroną tożsamości narodowej, typowej przede wszystkim dla małych narodów z krótszym okresem państwowości i złymi doświadczeniami obcych rządów. Różnice w sile nabywczej pomiędzy ludnością czeską a ekonomicznie silniejszymi obcokrajowcami są drugim powodem niechęci do uwolnienia rynku nieruchomości. Istnieje również wiele innych przyczyn. Jeżeli chodzi o lokowanie zagranicznego kapitału w nieruchomościach, główna reglamentacja prawna w tym zakresie zawarta jest w prawie dewizowym.

Republika Czeska jest całkowicie liberalna jeżeli chodzi o nabywanie prawa własności nieruchomości położonych za granicą przez rezydentów i nie stawia przed nimi żadnych przeszkód w tym zakresie. Rezydenci nie mają obowiązku informowania o swoich nieruchomościach znajdujących się zagranicą i państwo nie żąda od nich zapłaty podatku od nieruchomości. Podatek ten, jeżeli istnieje, jest płacony zagranicą. Nierezydenci mają ograniczony dostęp do własności nieruchomości w Republice Czeskiej.