

GMS Flash Alert



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Czech Republic – Surprise Judgment from Court on Taxing Securities Sales Income

The Supreme Administrative Court (SAC) in the Czech Republic opined on how individuals should proceed when determining the tax base for the sale of securities in foreign currency (2 Afs 4/2019-35 issued in December 2019).¹ The court held that the Income Tax Act gives taxpayers the option to choose the manner of determining the exchange rate, but not the time of the valuation of the expense/income. So far, the approach generally applied in practice has been that expenses were converted using an annual exchange rate applicable in the year of the sale of securities, rather than the exchange rate applicable in the year of their acquisition.

WHY THIS MATTERS

Taxpayers who will be reporting income from the sale of securities in foreign currencies in their tax returns should utilize the new approach as recently opined by the SAC. Taxpayers who in previous tax periods reported income from the sale of securities in foreign currencies may consider filing supplementary tax returns in respect of non-statute-barred fiscal years. (The time limit for filing a supplementary tax return in the Czech Republic is normally three years from the date when the ordinary tax return for the year concerned had to be filed.)

Further Details on the Case

In the case that the court ruled on, a taxpayer purchased securities in U.S. dollars in 2011 and sold part of them in 2012 – within six months from their acquisition – also for a price in U.S. dollars. For the purpose of determining the tax base, he converted the income (proceeds) from the sale using the annual exchange rate applicable for 2012; against this income, he deducted the expenses (costs) calculated using the same exchange rate.

The tax office administrator disagreed and converted the expenses (costs) of the securities' acquisition using the annual exchange rate for 2011. This resulted in a reduction of the taxpayer's expenses and assessment of additional tax (as the

exchange rate was less advantageous for the taxpayer than the one he used for 2012). The case proceeded to the SAC, which confirmed the tax office's opinion.

The SAC stated that the Income Tax Act gives taxpayers who do not keep accounting books the option to choose from two alternative conversion rates: a fixed exchange rate (set for the year), and a foreign exchange market rate (applied pursuant to the Accounting Act). Had the taxpayer been using the foreign exchange market rate, he would have been applying the rate valid at the time of effecting the 'accounting transaction', i.e., the date the securities were purchased. The SAC was convinced that taxpayers must proceed analogously even if they choose to apply the annual conversion rate. This means that the relevant rate would, logically, be the annual exchange rate set for the period when the securities were purchased.

The SAC thus concluded that while the Income Tax Act allows taxpayers to choose the manner of determining the exchange rate, it does not allow them to choose the manner of determining the point in time of the valuation of the expense or income.

KPMG NOTE

Considering the recent strengthening of the Czech crown, this SAC decision may be beneficial for individuals trading in securities.

FOOTNOTE:

1 [Decision](#) of the Supreme Administrative court no. 2 Afs 4/2019 – 35 (19 December 2019) (in Czech).

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