

Legislation: what awaits us in 2009 (1)



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This year legislation has brought many new things for builders and developers - the amended Land Register Act simplifies processes that used to be complicated and often poorly defined, while multiple tax changes will either bring or cancel tax exemptions, as the case may be, for property owners and developers in certain cases.

Amended Land Register Act

The crucial regulations in the field of real estate law with the broadest reach surely include Act No. 344/1992 Coll. on the Land Register of the Czech Republic (Land Register Act), which particularly specifies the procedure for keeping land registers. The amendment implemented by Act No. 8/2009 with effect from 1 January 2009 primarily removes some deficiencies caused by the adoption of other legal regulations. In this respect it is especially necessary to mention the new rule on the incorporation of title to new buildings. The owner of the land on which a building is built shall be registered as the owner of a building newly incorporated in the Land Register, unless a deed proves that someone else is the owner. This arrangement supersedes the old nonconforming provision under which the owner of the land or the builder in charge of construction was incorporated as the owner of the building, without any guideline for determining any priorities between them. The original alternative arrangement was just a partial solution, as it was not possible to appoint the builder mentioned in the occupancy approval as the owner after the adoption of the new Building Act.

Another part of the mentioned amendments brings stricter supervision over the disclosure of some data from the Land Register and creates conditions that allow surveys by the Office for Personal Data Protection in case personal data obtained from the Land Register is used in any other way than as stipulated in the law. In this respect the amendment also adjusts the permissible use of information from the Land Register and makes it more accurate. In practice this change will cause that the Land Registry will check the identity of applicants for title summary (extract from the Land Register and data from the Collection of Deeds. All this information will be provided to interested parties only subject to a written application that contains data on the applicant and the purpose for which the information is requested.

The possibility to provide data from the Land Register kept in electronic form by any Land Registry in the Czech Republic regardless of its place of operation and the provision of Land Register data to the state's organizational units free of charge are huge positives. This should make sure that the state's organizational units will not require extracts from applicants and parties to proceedings. The rather inconspicuous

inclusion of the new possibility to separate a site by the “border of extent of the lien” is a major contribution to real estate market development - in practice it will be now possible to divide land used as a security for the lien only on a part of the original site, without the need of a transfer for the establishment of a new site. Before this amendment it was not possible to divide the land in connection with the incorporation of the lien.

Fewer real estate tax exemptions

Another regulation with a big impact on real estates is the amendment of Act No. 338/1992 on Real Estate Tax, implemented by Act No. 1/2009, which comes into effect on 1 January 2009. This amendment introduces a significant change by exempting new-built houses from the real estate tax. As regards already existing exemptions, they will be cancelled on 31 December 2009 and the running 15-year term for tax exemptions under the previous legislation is therefore shortened for the taxpayers. However, new-built houses that would be eligible in 2009 (i.e. when this amendment comes into effect) under the previous legislation will not qualify any more. At the same time the amendment cancels the five-year exemption from the real estate tax for houses in which changes were made consisting in the reduction of the house’s thermal demands by making adjustments on the basis of the building permit; the last year of application of this exemption shall be 2012. As of the effective date of this amendment there will not be any new right to any such exemption.

Changes in real estate transfer tax and VAT calculation

The amendment to Act No. 357/1992 on Inheritance Tax, Gift Tax and Real Estate Transfer Tax, implemented by Act No. 476/2008, comes into effect on 1 January 2009. The essence of this amendment is the unified arrangement of the mode of exemptions from the individual taxes so as to provide an exemption on gifts donated for public welfare purposes, inheritance and paid transfers of the title to real estates used for permanent residence of a natural person or for registered seat or a legal person with respect to persons from all EU member states (and also Norway and Iceland, as contractual parties to the European Economic Area). In this regard, the amendment also extends exemptions on contributions invested in trading companies and cooperates from real estate transfer taxes so that this exemption will now cover also contributions made under the laws of a different European country (EU member state, Norway or Iceland). This provision can be applied if the trading company or cooperative concerned has its registered office in the Czech Republic or in any such “European” country. The closer specification and extension of the scope of real estate transfer tax exemption is very important for developers in case of the first paid transfer or transfer of title to a flat created by additional construction, newly described in greater detail as flats created by “extension, annex or building modification made in the form of built-in work”.

The amendment to Act No. 235/2004 on Value Added Tax, implemented by Act No. 302/2008, also involves taxes and impacts real estates. The big change brought by the amendment involves taxpayers who transfer the billing of services and utilities, which is typical for landlords. The new provision changes the date considered as the taxation date. In case of services and utilities, the landlord will be obliged to transfer the billing of the payments to the tenant not later than on the date of performance by the original supplier and VAT will be levied on the date of the original performance. Another change involves the landlord’s obligation to pay VAT even on payments for services associated with the lease, received before the taxation date (i.e. especially advances on utilities and services paid by the tenants). The landlords will be thus obliged to issue invoices to the tenants for each advance on the advance receipt date, i.e. to keep accurate records on the advances.

(An article on the legislative changes under preparation will be published on Monday, 26 January.)

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