



# AUDITOR

Audit ■ Tax ■ Accounting

## Information for clients No.6 December 2012

### *Dear Client!*

*Just before the end of the year, we would like to draw your attention one more time to the obligations of entities registered in the Commercial Register. Before the year-end, we recommend checking to ensure compliance with all regulations. If empowered to do so, we take care of most obligations (for example, the publication of financial statements). Currently we would also like to point out regulations relating to inventory.*

*Despite the tumultuous times, AUDITOR had a stable year. We held on to our personnel as well as turnover and market position and so we are satisfied with the market situation.*

*This also relates to the quality of our services. In order for us to be able to continue to guarantee this level of quality, this year we invested in training for our employees. In addition to internal and external training for all employees, leading employees also participated in training programs within the scope of the annual UHY conference in Chicago.*

*Our website received a new look this year. In addition to our company presentation, it*

*also has current professional information. A fundamental share of this project can be attributed to our new marketing department.*

*Looking abroad, we can say that we held on to our market position in Slovakia and Austria as well. Our specialists continue to be at your service in Prague, Vienna and Bratislava, to gladly answer any questions regarding local as well as international tax law or social security questions.*

*Thank you all for the many Christmas wishes that we have received from you. This year as well we did not send out any Christmas cards, and instead donated the amount earmarked for this to one regional and one national charity organization.*

*Finally, I'd also like to thank our employees for their dedication and involvement. Most of all, however, my thanks goes out to you, our clients, many of whom we have worked for as advisors for several decades.*

*We wish you a happy and blessed Christmas, along with a satisfying and successful 2013.*

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Already back in December 2010 we informed you of the obligations for entities listed in the Commercial Register arising from their registration. Often, however, we find that not all provisions have been complied with. Therefore, please allow us to once again point out the obligations arising from the Commercial Code.

### ■ Documents, which are subject to obligation of filing in the Collection of Documents

In accordance with § 38i of the Commercial Code, the Collection of Documents must, in particular, contain the following materials:

- founding documents (articles of association, copy of notarial record containing the resolutions of the General Meeting, expert assessments of non-cash contributions upon establishment of the legal entity);
- decision on election, naming or recall of statutory body;
- annual reports, regular, special and consolidated financial statements, if these are not a part of the annual report;
- report on relationships among connected entities;
- profit distribution proposal;
- controlling contract;
- resolution to terminate legal entity;
- change project;
- contract for pledge of business share;
- share transfer agreement;
- court ruling in accordance with the Insolvency Act.

Foreign entities doing business in the Czech Republic through an organizational unit are required, according to § 38j of the Commercial Code, to also publish information on behalf of the founder, namely the establishing contract or articles of association establishing the foreign entity, and the financial statement for the foreign entity as a whole, compiled according to foreign accounting regulations. This information can be published in just the Czech or Slovak language.

### ■ Controlling Entities, Related Entities

A controlling entity or person is an entity that factually or legally exercises direct or indirect deciding influence on the management or operation of

the enterprise of another entity (hereinafter “controlling entity”).

A controlling entity is always an entity which:

- a) Is a majority partner.
- b) Holds the majority of voting rights on the basis of an agreement concluded with another partner or partners.
- c) May promote the naming, election or recall of the majority of persons that form a statutory body or are its members, or majority of persons that are members of a supervisory body of a legal entity in which the controlling entity is a partner.
- d) Entities acting in concert, which jointly control the majority of voting rights.
- e) Holds at least 40% of the voting rights, unless it is proven that another entity holds the same or higher number of votes.

Related entities are understood to be a controlling entity and controlled entity and entities controlled by the same controlling entity.

### ■ Report on Relationships Between Controlling and Controlled Entity

The obligation to prepare a Report on Relationships between a Controlling and Controlled Entity is established in § 66a paragraph 9 of the Commercial Code. According to this provision, the statutory body of a controlled entity is required to prepare a written Report within three months of the conclusion of the accounting period, unless a controlling agreement has been concluded. This Report must be published in the Collection of Documents in the same period as the financial statements, that is, at the latest by the end of the immediately subsequent accounting period.

The Report must contain:

- All contracts that were concluded in the most recent accounting period between related entities.
- Other legal acts undertaken in the interests of these entities.
- All other measures accepted or undertaken by the controlled entity in the interests of or at the behest of these entities.

If the controlled entity provided fulfillments, the report must state the counter-fulfillment provided.



If damages were incurred by the controlled entity as a consequence of the contracts concluded or measures enacted, it must be stated whether or not these damages were compensated in the accounting period or if an agreement on compensation of these damages was concluded.

### ■ Controlling Contract

The Report does not need to be prepared if a controlling contract was concluded. Often in practice, this contract is not concluded, as it binds the controlled entity to be subject to unified management by the controlling entity, even in the case that these instructions will be disadvantageous for the controlled entity while favoring the controlling entity or another entity with which it forms a concern. The obligation arise for the controlling entity to make up the losses of the controlled entity, if these cannot be compensated from the reserve fund or other available resources of the controlled entity.

### ■ Obligation Arising from the Penal Code

In § 254, paragraph 2 of the Penal Code, the failure to comply with the obligation to file a document in the Collection of Documents is defined as constituting the criminal offense of misrepresenting the state of business and holdings. This criminal offense can carry a jail term for the offender of up to two years or the prohibition of business activity. The offender may be punished by a loss of freedom for one to five years or a financial penalty if the above-stated criminal offense results in significant damages to the property of others.

### ■ Financial Sanctions

If a document is not filed in the Collection of Documents, the Commercial Court will call on the

company to present the document without undue delay. If following this summons the relevant document is not submitted, a disciplinary fine can be imposed up to the amount of CZK 20,000 in accordance with § 53 paragraphs 1 and § 200de of the Civil Code.

### ■ Inventory

In order to be able to back up the correctness of accounts, it must be demonstrable upon request that an inventory was duly taken. In this case, an inventory taking as of the decisive date and a permanent inventory are permissible.

### ■ Inventory as of the Decisive Date

The amendment of the Accounting Act no. 239/2012 Coll., which took effect as of 1 September 2012, states in § 30, that inventory as of the decisive date may be performed at the earliest four months prior to and at the latest two months after the balance date.

### ■ Permanent Inventory

Even this method is permissible, but it must be guaranteed that all goods or material states will be inventoried at least once per year.

**Please make sure to archive all originals of inventory documents.** ■

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