

KODIF

*Andrej BABIŠ*  
*First Deputy Prime Minister and Minister of Finance*

Prague, - 2 -02- 2017  
Ref. No.: MF-42228/2016/2502-14

Dear Mr. Langen,

Allow me to send you answers to your letter IPOL-A-PANA D (2016) 50862 from 23<sup>rd</sup> November 2016 concerning investigation of tax evasion, tax avoidance, tax fraud and money laundering in the Czech Republic.

**1) The legal definitions of administrative and criminal tax-related offences in the Czech Republic**

a) In terms of tax legislation (administrative level) we can quote the following institutes:

- Procedural Penalty (Section 247 of the Act No. 280/2009 Coll., Tax Code as amended, hereinafter "TC")
- Penalty for Noncompliance of Commitment of Nonpecuniary Nature (Section 247a of TC)
- Penalty for Late Tax Declaration (Section 250 of TC)
- Penalty on Additionally Assessed Tax Amount (Section 251 of TC)
- Default Interest (Section 252 and 253 of TC)
- Special Provision on Penalty (Section 38p of Act No. 586/1992 Coll., Act on Income Taxes, as amended, hereinafter „ITA“)
- Penalties in Tax Assessment in Special Manner in Accordance with Auxiliary Mechanisms (Section 38zb of ITA)
- Increase of Tax Base in case of withdrawal and non-payment of social security premium (Section 23, paragraph 3 letter a) point 5 of ITA)
- Fine for Failure to Notify Exempt Income (Section 38w of ITA)
- Penalty for Non-submission of the Control Statement for purposes of administration of VAT (Section 101h of Act No. 235/2004 Coll., on Value Added Tax, as amended)
- Forfeiture or Taking of Seized Selected Products or Means of Transport (Section 42d of Act No. 353/2003 Coll., on Excise Duty, as amended, hereinafter "AED")
- Fine in Case of the Usage of Tax Securing to the Reimbursement of Tax (Section 43 of AED)

|  |    |   |   |
|--|----|---|---|
| millions CZK)  |    |   |   |
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| Number of fines imposed because of breach of international sanctions | 22 | 2 | 5 |

The evaluation of activities of FIUs within the EU is constantly treated in a number of studies the most topical among them was conducted under the leadership of the Italian Unità di informazioni per l'Italia Finanziaria under title "Mapping exercise and gap analysis on FIUs' powers and obstacles for obtaining and exchanging information". I am convinced that this report could be for you a very significant source of information about the issue of the Czech FIU.

Furthermore I would like to notify you that the control of compliance of duties imposed by AML Act is also performed by the Czech National Bank. This control is targeted at the verification of system of measures which were implemented and carried out by financial institutions with the aim to prevent legalisation of revenues from criminal activities and financing of terrorism.

### 3) Investigation in the connexion with Panama Papers and Bahamas Leaks

As to the Supreme Public Prosecutor's Office of the Czech Republic there was notified only one criminal case relating to the Panama Papers. .

A chain of companies is being investigated because of a suspicion of legalization of proceeds from crime through invoicing of goods and services. During the inspections of headquarters of involved companies there were seized inter alia documents drawn up by law office Mossack Fonseca i.e. this criminal investigation was not launched on the basis of information leaked from the law office Mossack Fonseca, but coherence appeared with context of those inspections.

As to the identification of problems linked with tax offences encountered by the Czech Tax Administration allow me to provide you with following findings:

- a) correctness of the ascertainment of the tax base, i.e. especially tax deductibility of incurred expenses
- b) transactions between related parties in the area of transfer pricing. The biggest problem is the discrepancy of information, without knowledge of functioning of the whole group there is in many times not possible to determine the correct amount of transfer price.
- c) detection of widespread fraudulent chains of entrepreneurs with miscellaneous commodities and providers of services (e.g. precious metals, metallurgical materials, tobacco products, printing machines, fuels, telecommunication services, advertising services, etc.)
- d) detection of beneficial owners (for hiding of BO there are used following techniques: offshore structures, bearer shares, nominee directors)
- e) digital economy and genesis of PE – it is possible to exercise activity without a physical presence in the Czech Republic. Therefore it is impossible to identify a PE in the Czech Republic and to tax profits which are from the Czech sources. These providers have typically a seat in countries with preferential tax regime or in countries where they had received advantageous tax conditions through a so-called tax ruling.

- Administrative Offences (Section 28 – 30 of Act No. 112/2016 Coll., on Registration of Sales)
- Offences (Section 135 – 135ib of AED)
- Administrative Offences of Legal Persons and Natural Persons Engaged in Business (Section 135j – 135zzi of AED)
- Administrative Offences in the area of tax on natural gas and some else gases, of solid fuels, on electricity (Act No. 261/2007 Coll. on Consolidation of Public Budgets, as amended)
- Administrative offences (Section 59 – 73 of Act No. 307/2013 Coll., on mandatory labelling of ethanol, as amended)
- Administrative Offences in the area of accounting (Section 37 and 37a of Act. No. 563/1991 Coll., Accounting Act, as amended)
- Administrative offences in the area of payments in cash (Section 5 – 7 of the Act No. 254/2004 Coll., on Restriction of Payment in Cash, as amended)

(wording of these provisions see enclosure)

Brief statistics:

Sanctions imposed by tax administration in the calendar year 2013 in CZK

| Sanction imposed under                 | Number of cases | Amount            |
|--|-----------------|-------------------|
| Section 247 of Tax Code                | 84              | 415 000           |
| Accounting Act – natural persons       | 35              | 745 569           |
| Accounting Act – corporate bodies      | 844             | 21 437 158        |
| Act on Restriction of Payments in Cash | 245             | 5 405 453         |
| Other                                  | 12              | 738 636           |
| <b>Total</b>                           | <b>1 220</b>    | <b>28 741 816</b> |

Sanctions imposed by tax administration in the calendar year 2014 in CZK

| Sanction imposed under                 | Number of cases | Amount            |
|--|-----------------|-------------------|
| Section 247 of Tax Code                | 89              | 624 750           |
| Accounting Act – natural persons       | 36              | 1 216 251         |
| Accounting Act – corporate bodies      | 830             | 28 699 968        |
| Act on Restriction of Payments in Cash | 156             | 3 053 350         |
| Other                                  | 1               | 50 000            |
| <b>TOTAL</b>                           | <b>1 112</b>    | <b>33 644 319</b> |

Sanctions imposed by tax administration in the calendar year 2015 in CZK

| Sanction imposed under                 | Number of cases | Amount            |
|--|-----------------|-------------------|
| Section 247 of Tax Code                | 169             | 1 995 500         |
| Section 250 of Tax Code                | 206 257         | 335 797           |
| Accounting Act – natural persons       | 28              | 289 545           |
| Accounting Act – corporate bodies      | 645             | 44 536 243        |
| Act on Restriction of Payments in Cash | 150             | 4 347 028         |
| Other                                  | 116             | 30 424 000        |
| <b>TOTAL</b>                           | <b>207 365</b>  | <b>81 928 113</b> |

b) In terms of penal legislation we quote the following sections of Act No. 40/2009 Coll., Penal Code, as amended, hereinafter "PC")

- Participation (Section 214 of PC)
- Negligent Participation (Section 215 of PC)
- Legalization of Proceeds from Crime (Section 216 of PC)
- Legalization of Proceeds from Crime out of Negligence (Section 217 of PC)
- Evasion of Taxes, Fees and Similar Compulsory Payments (Section 240 of PC)
- Evasion of Tax, Social Security Insurance Fee and Similar Compulsory Payment (Section 241 of PC)
- Breach of Information Duty in Tax Proceedings (Section 243 of PC)
- Breach of Regulations on Labels and other Items for Labelling Goods (Section 244 of PC)
- Forgery and Alteration of Items for Labelling Goods for Tax Purposes and Items Proving Fulfilment of Fee Duty (Section 245 of PC)
- Forgery and Alteration of Stamps (Section 246 of PC)
- Distortion of Data on Status of Management and Assets (Section 254 of PC)
- Harming Financial Interests of European Union (Section 260 of PC)

(wording of these provisions see enclosure)

Brief statistics:

| Number of condemned persons under PC - years 2013 till 2015 |  |    |      |    |      |    |
|---|--|----|------|----|------|----|
| Section   | Number of condemned persons (natural persons - NP/corporate body – CB) |    |      |    |      |    |
|   | 2013   |    | 2014 |    | 2015 |    |
|   | NP   | CB | NP   | CB | NP   | CB |
| 214   | 507  | 0  | 475  | 0  | 434  | 0  |
| 215   | 20   | 0  | 28   | 0  | 20   | 0  |
| 216   | 30   | 0  | 51   | 0  | 60   | 0  |
| 217   | 15   | 0  | 29   | 0  | 53   | 0  |

|              |             |          |             |           |             |           |
|--------------|-------------|----------|-------------|-----------|-------------|-----------|
| 240          | 260         | 1        | 290         | 3         | 315         | 9         |
| 241          | 166         | 0        | 143         | 13        | 120         | 27        |
| 243          | 0           | 0        | 0           | 0         | 0           | 0         |
| 244          | 103         | 0        | 104         | 0         | 108         | 0         |
| 245          | 0           | 0        | 0           | 0         | 2           | 0         |
| 246          | 0           | 0        | 0           | 0         | 0           | 0         |
| 254          | 127         | 0        | 119         | 2         | 98          | 2         |
| 260          | 4           | 1        | 2           | 0         | 6           | 0         |
| <b>Total</b> | <b>1232</b> | <b>2</b> | <b>1241</b> | <b>18</b> | <b>1216</b> | <b>38</b> |

2) Anti-money laundering and financing of terrorism measures (Act No. 253/2008 Coll., on selected measures against legitimisation of proceeds of crime and financing of terrorism, as amended, hereinafter "AML Act")

Financial analytic department (Czech FIU) was till 31<sup>st</sup> December 2016 the department of the Ministry of Finance and was thus financial intelligence unit of administrative type with the staff of 43 employees.

On the basis of the Act No 368/2016 Coll., amendment to the Czech AML Act, this department has been replaced by the independent Financial Analytic Office, that is subordinate to the Ministry of Finance (see Section 29c, paragraph 1 of AML Act). All its assignments and powers have been assigned to newly born Financial Analytic Office with effect from 1<sup>st</sup> January 2017.

Basic activities of the FIU is to receive and to analyse suspicious transaction reports and is also a responsible authority for international sanctions. The FIU performs surveillance competence, including administrative management of potential offences and is a national coordinator for assessment of AML/CFT risks.

Brief statistics of the FIU:

|  | 2013    | 2014  | 2015  |
|--|---------|-------|-------|
| Number of accepted suspicious transaction reports                | 2 721   | 3 192 | 2 963 |
| Total number of lodged criminal complaints                       | 547     | 680   | 514   |
| Number of lodged criminal complaints with seized financial means | 177     | 263   | 294   |
| Amount of seized financial means (in millions CZK)               | 3 003,3 | 2 182 | 5 542 |
| Number of submissions to General Financial Directorate           | 1 162   | 1 491 | 1 744 |
| Number of submissions to General Directorate of Customs          | 42      | 103   | 75    |
| Number of enquiries from abroad                                  | 195     | 200   | 247   |
| Number of enquiries to abroad                                    | 103     | 154   | 328   |
| Number of controls carried out according to AML Act              | 14      | 27    | 51    |
| Number of administrative proceedings about breach of AML Act     | 19      | 18    | 35    |
| Number of fines imposed because of breach of AML Act             | 17      | 18    | 33    |
| Amount of fines imposed because of breach of AML Act (in         | 3,253   | 1,815 | 2,47  |

|  |    |   |   |
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*As to investigation in connexion with Panama Papers and Bahamas Leaks there are nowadays several tax proceeding in process in which the information from Panama Papers will be taken into consideration.*

*As to interaction among enforcement agencies in the Czech Republic it is necessary first of all to mention the project "KOBRA". This project has been in operation since July 2017 and its main purpose is to deepen the cooperation of the Police, Financial administration and Custom Administration.*

*Dear Mr. Langen, allow me to express our deep conviction that aforementioned information prove to be beneficial for you.*

*Yours sincerely*

A handwritten signature in black ink, appearing to be 'P. J. Langen', written in a cursive style.

*Mr.  
Dr. Werner Langen  
chair  
Committee of Inquiry to investigate  
alleged contraventions and maladministration  
in the application of Union law in relation  
to money laundering, tax avoidance and tax evasion  
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