SK: The amendment to the Act on the Ownership of Apartments and Non-residential Premises changed more than how owners makes decisions

Since 1 November 2018, changes were introduced for owners of apartments and non-residential premises, which should simplify and clarify the decision-making of owners of apartments and non-residential premises in the building while eliminating the interpretation problems associated with the management of apartment buildings.

The term **garage parking space**, which is a delimited area of non-residential premises in a building intended for parking and is related to the right of the co-owner of the garage to use the parking space exclusively for his/her needs, was introduced. They are generally "mass garages" in which the garage spaces are delimited only with horizontal markings. According to the new amendment, co-owners of the garage do not have the right of first refusal to a co-ownership share of the garage if they also transfer the apartment or non-residential premises in the building. The same rules apply to **warehouse spaces** located in the non-residential premises of the building which are not accessories of the apartment.

The amendment also adjusted the procedure for **convening meetings of owners**, voting at meetings, the possibility of representation, as well as the requirements for the minutes of the meeting. The Act specifies when a two-thirds majority or an absolute majority (e.g. a credit contract or the establishment of easement), or even a unanimous vote of all the owners (e.g. decision on the transfer of title to non-residential premises in the co-ownership shares of the house owners), is required for a decision. Decisions are recorded and kept by the building manager, who must allow the owner to inspect the documents on request, which caused problems in practice.

Annamária Tóthová

CZ: The Supreme Court on damage caused by unlawfully changing the land-use plan

In September 2018, the Supreme Court ruled on state liability for damage in the form of unnecessary costs incurred by the investor in preparations for construction. In the case in question, costs were incurred following a change in the land-use plan, which the court subsequently annulled due to its illegality. As a result, the land became non-buildable (again), and the investments made in the construction so far lost their meaning.

The Supreme Court did not grant compensation for damages to the investor. It deduced that the liability of the state for damages represented by the costs expended for the preparation of construction cannot be established by the good faith of the investor in the correctness of the decision to change the land-use plan, even though this change was later annulled due to its illegality. It justified its decision by the fact that the plaintiff had to be aware of the limits of her good faith in the correctness of the land-use plan, the interests of the other parties concerned, and the legal means of protecting their rights. In other words, the possibility to cancel part of the land-use plan by the court is a risk that the investor should have considered.

The Supreme Court's approach to the legal regulation of liability for damage caused by the unlawful change of the land-use plan is therefore clearly restrictive.

(For details, see ruling of the Supreme Court of the Czech Republic, File No. 30 Cdo 3079/2016, of 11 September 2018.)

Tomáš Mls

CZ: New VAT regulations planned

The changes proposed in the VAT Act for real estate, which will likely come into effect on 1 April 2019, have both negative and positive implications for taxpayers.

1. Adjustment of the VAT deduction for repairs of immovable property worth more than CZK 200,000

The change in the tax deduction adjustment for the supply of immovable property for which a repair worth more than **CZK 200,000** (without VAT) was completed represents an increase in the administrative burden. Taxpayers will have to keep records of such repairs.

If the taxpayer **exercises a claim to a deduction** during real estate repairs (used for the execution of taxable transactions) and subsequently sells the immovable property **as an exempt performance without a claim to a deduction, he/she must adjust the already exercised claim for the deduction**. The adjustment must be made in the taxable period in which the immovable property was sold. However, if the immovable property is sold more than 10 years after the completion of the repair, this rule shall not apply and the exercised claim for a deduction does not have to be adjusted.

2. The impossibility to apply VAT for the lease of apartments and family houses (planned effect until 2021)

The amendment will limit the possibility to choose to apply VAT for the lease of immovable property, and **it will not be possible to apply VAT for the lease of houses, apartments and other residential property**. A high one-off deduction of the input VAT initially applied is an implication for some taxpayers, namely if the VAT has been applied thus far and the mentioned change in the taxation of outputs occurs within 10 years (five years for previously classified assets) from the acquisition of the immovable property.

MOORE STEPHENS Jan Tecl

CZ: Billing of services provided in connection with the lease

When property is leased, whether it be an apartment, an office, or an entire building, the lessor generally also provides the lessee with certain services. These may include power supply, internet connection, security services, or cleaning services. The lessee is obliged to pay the lessor the costs of the services it provides.

If the parties do not agree that the lessee will cover the cost of the services with a lump sum that is not billed, the lessor must duly bill the cost of the services.

Today, most lease contracts already contain provisions for the lessor's obligation to bill the costs, and they often even regulate the detailed billing process, including the lessee's right to check its correctness. If the lease contract does not contain the rules for billing, the parties must proceed pursuant to Act No. 67/2013 Coll., which regulates some issues associated with the provision of services related to the use of apartments and non-residential premises in apartment buildings. According to the ruling of the Supreme Court of the Czech Republic (File No. 26 Cdo 5212/2017), **this Act applies not only to the leasing of apartments or premises used for business purposes, but also to the leasing of property as a whole** (provided that the lessor provides services along with the lease).

According to the cited Act, the **lessor must specify the actual amount of the service costs broken down by the provided services with all the necessary particulars in the bill, including a specification of the total amount of monthly advances received for service so that the amount of any discrepancies in the bill are clear and can be checked to determine whether they conform to the arrangements and rules agreed upon for billing.**

In all cases (i.e. for billing pursuant to a contract and pursuant to the law), the following shall apply:

(i) the proper billing must at least contain the price and amount of service delivered;
(ii) each advance payment must be settled; and
(iii) the lessee must receive information that will enable them to determine whether the required payment corresponds to the consumption or method of calculating consumption to assess the correctness of the calculation.

A condition for the payment of arrears for services according to the decision of the Supreme Court is that the bill be properly executed and that the lessee be familiarised with it.

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