

Information on an unreliable VAT payer in the Czech Republic

In the Czech Republic, a so-called unreliable VAT payer¹ has been instituted in the law with effect from 1. 1. 2013 by a provision of Section 106a of the Act No. 235/2004 Coll., on Value Added Tax, as amended by later regulations (hereafter referred only as “the VAT Act”) that covers behaviour of a payer of value added tax who seriously violates his obligations relating to tax administration in this country. This concept serves primarily as an effective instrument for fighting against evasion in the field of VAT, especially in connection with Section 109(3) of the VAT Act. Other accompanying provisions specifying the position of the unreliable payer are mentioned in Section 106ab of the VAT Act.²

Apart from this measure, a related unreliable person concept is incorporated in Section 106aa and Section 106ab of the VAT Act with effect from 1. 7. 2017, too. For more information, see “Informace GFŘ k aplikaci institutu nespolehlivé osoby a související problematiky podle zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů” (Information of the General Financial Directorate on the application of the concept of unreliable VAT person and related issues in accordance with the Act No. 235/2004 Coll., on Value Added Tax, as amended by later regulations)³, Ref. No.: 47484/17/7100-20118-012287, as subsequently amended.

1. Origin of the unreliable payer

The unreliable payer can be any natural or legal person who is a payer and seriously commits a breach of his obligations relating to value added tax administration, and by this infraction the public interest on proper tax collection is jeopardized.

¹ hereafter referred only as “the unreliable payer”

² As regards the unreliable payer, we refer also to “Informace GFŘ k aplikaci § 106a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů (nespolehlivý plátce) a souvisejících ustanovení” (Information of the General Financial Directorate on the application of Section 106a of the Act No. 235/2004 Coll., on Value Added Tax, as amended by later regulations (unreliable payer) and related provisions), Ref. No.: 101/13-121002-506729, as subsequently amended, which was issued just in Czech.

³ only in Czech

The payer becomes unreliable:

- By law:

The unreliable payer status is assigned automatically by law on registration of the unreliable person for VAT in accordance with a provision of Section 106a(4) of the VAT Act. So, if an unreliable person becomes a payer, it shall also become an unreliable payer at the same time. The moment of registration for VAT (payer) is decisive.

- By a decision of a tax administrator:

The entity in question gains the unreliable payer status by a decision of a tax administrator based on a provision of Section 106a(1) of the VAT Act. For making a decision on the unreliable payer in case of a serious violation of obligations relating to tax administration it is sufficient if there is fulfilled any point of the below mentioned criteria.

2. Criteria for the payer's unreliability

For the purpose of the application of the concept of unreliable payer the serious violations of fulfilment of the payer's obligations are considered to be situations when the public interest on the proper collection of VAT is jeopardized because

a) the payer breached his legal obligations which resulted in a tax assessment in accordance with aids or in an additional tax assessment in accordance with aids compared to the last known tax. The public interest is jeopardized in the above-mentioned cases if there is an assessment or additional assessment of value added tax at least CZK 500,000 in a payment order. The minimum amount does not comprise possible tax attribution.

When deciding on the unreliability of payer, only the breach of obligations encountered in proceedings or in respect of proceedings commenced after 1. 1. 2013 may be taken into consideration.

b) the payer carried out activities or was engaged in such transactions, from which, according to a reasonable concern, VAT will not be paid. Therefore a tax administrator issued a securing order at this payer after 1. 1. 2013 and this order was not paid in due period.

c) there are recorded cumulative VAT arrears at the taxpayer in the minimum amount of CZK 500,000 without tax attribution during the period of at least three consecutive calendar months. These cumulative VAT arrears arose from tax liabilities assessed or additionally assessed after 1. 1. 2013, and this situation persists at the moment of the issuance of a decision on the unreliable payer.

When deciding on the unreliability of payer in this case, an unpaid amount of tax from the day of the expiry term for paying the tax, or more precisely additional term for payment, mentioned in a payment order, is considered to be the arrears.

If the term for payment or additional term for payment occurred in this way from 1. 10. 2014 onwards, the amount of the arrears in accordance with the previous paragraph is assessed based on text of "Informace GFŘ k aplikaci § 106a zákona č. 235/2004 Sb., o dani z přidané hodnoty, ve znění pozdějších předpisů (nespolehlivý plátce) a souvisejících ustanovení" (Information of the General Financial Directorate on the application of Section 106a of the Act No. 235/2004 Coll., on Value Added Tax, as amended by later regulations (unreliable payer) and related provisions), Ref. No.: 38461/14/7001-21002-012287. In case it occurred before 1. 10. 2014, the decisive amount of the cumulative arrears is assessed in compliance with an original version of the Information of the General Financial Directorate, Ref. No.: 101/13-121002-506729.

d) the payer breached his legal obligations, which resulted in disallowing the payer's claim on tax deduction and assessment or additional assessment of tax in another way than the payer declared in his VAT return or additional VAT return. The public interest is jeopardized if in the above mentioned cases the tax deduction claimed by the payer is decreased minimally by CZK 500,000 and related assessed or additionally assessed tax is not fully paid in an additional term for payment determined in a payment order.

When deciding on the unreliability of payer, only the breach of obligations encountered in proceedings or in respect of proceedings commenced after 1. 1. 2013 may be taken into consideration in this case. They will take effect in decisions issued by the tax administrator after 1. 1. 2014.

e) the payer breached his legal obligations, which repeatedly resulted in a tax assessment in accordance with aids or in an additional tax assessment in accordance with aids compared to the last known tax. The consequences are considered to be "repeated" in this case if this situation occurred in at least two taxation periods out of six consecutive taxation periods.

When deciding on the unreliability of payer, the breach of obligations encountered in proceedings or in respect of proceedings commenced after 1. 1. 2013 may be taken into consideration where a decision on the assessment of tax in accordance with aids was issued after 1. 10. 2014.

f) the payer does not cooperate as it is needed, i.e. he does not react properly to a call or calls of a tax administrator or does not submit required data necessary for proper administration of tax without proper justification.

When deciding on the unreliability of payer, only the breach of obligations, or more precisely failure to provide required cooperation, encountered after 1. 10. 2014 may be taken into consideration in this case.

g) the payer seriously hinders/hindered or obstructs/obstructed administration of tax in such a way that he repeatedly did not submit a tax return or statement or extract from records for tax purposes, neither within the period determined by a tax administrator in a call nor in an additional period determined directly by the law. The consequences are considered to be “repeated” in this case if this situation occurred at least twice in the period of twelve consecutive calendar months.

When deciding on the unreliability of payer, it is possible to take into account in this situation exclusively those cases when the period determined by the tax administrator or additional period determined directly by law expired after 1. 10. 2014.

h) during VAT registration the payer stated untrue or incomplete information which is necessary for proper administration of tax. The public interest is jeopardized especially if the payer did not add registration data, not even within the period determined by a tax administrator, did not revise invalid data or filled in untrue or unrealistic data about the actual registered office that is defined for VAT purposes in a provision of Section 4(1)(i) of the VAT Act as the address of the place of management of a taxable person which is the place where fundamental decisions relating to the management of the taxable person are adopted or the place where the management of such person meets to ensure actual performance of an economic activity.

When deciding on the unreliability of payer in this case, it's possible to take into account exclusively the breach of obligations encountered after 1. 1. 2015.

i) the payer breached his legal obligations which resulted in an assessment of output tax by a tax administrator in another way than the payer declared in his submitted VAT return or additional VAT return. The public interest is jeopardized if in the above mentioned cases there is increased output tax declared by the payer minimally by CZK 500,000 and related assessed or additionally assessed tax is not fully paid in an additional term for payment determined in a payment order.

When deciding on the unreliability of payer, only the breach of obligations encountered in proceedings or in respect of proceedings commenced after 1. 1. 2013 may be taken into consideration. They will take effect in decisions issued by the tax administrator after 1. 1. 2018.

Each individual breach of tax obligations in terms of letters a) to i) is considered by a tax administrator with respect to a payer and existing experience with this payer. When considering the breach of legal obligations, the tax administrator always takes into account also objective reasons worthy of special attention which resulted in non-fulfilment of legal obligations of the payer. It may be for example natural disasters, serious health reasons and reasons for insolvency or other objective impediments that prevented the payer from proper fulfilment of tax obligations. Similarly, the tax administrator takes into consideration a permitted deferral on the tax payment/division of the tax payment into instalments, for example in case of tax arrears.

3. Decision on assigning the unreliable payer status

The decision on the fact that a payer is unreliable is issued by a tax administrator in compliance with a provision of Section 106a(1) of the VAT Act based on considering the breach of obligations as well as other circumstances specified in point 2 of this information. Facts of the case and conclusions regarding this judgment are given by the tax administrator in a justification of his decision.

An appeal against this decision may be filed within 15 days from the day it was served. The appeal has a suspensive effect (Section 106a(2) of the VAT Act).

The tax administrator may exclude the suspensive effect of the appeal for reasons worthy of special attention (Section 106a(3) of the VAT Act). This procedure is used in very rare cases when the taxpayer is significantly involved in a threat to the public interest on the proper collection of tax.

Unless provided otherwise in the VAT Act, the general provisions of Section 109 and following of the Act No. 280/2009 Coll., the Tax Code, as amended by later regulations, are applied to the procedure of appeal.

4. Decision on the status change

An unreliable payer may request a tax administrator to issue a decision stating that he is no longer unreliable (Section 106ab(1) of the VAT Act). This request may be filed by the payer no earlier than after the expiration of 1 year from the day of the full force and effect of the decision:

- that the payer is unreliable,
- by which the tax administrator dismissed a request for the issuance of a decision stating that the payer is no longer unreliable, or
- that the group of which the entity (applicant) was a member is an unreliable payer.

For consideration of compliance with the set period for submitting a request the whole time for which the given entity was unreliable in accordance with the VAT Act is counted, i.e. unreliable payer + unreliable person.

Based on the properly and correctly submitted request, the tax administrator shall decide that an unreliable payer is no longer unreliable, provided that he does not seriously violate his obligations relating to VAT administration for the period of 1 year (§ 106ab(3) of the VAT Act), or more precisely if he does not comply with any of the defined facts specified for an unreliable payer in point 2.

If the payer does not fulfill the condition given in the provision of Section 106ab(3) of the VAT Act, the tax administrator declines the request. The payer may then submit a request again no earlier than after the expiration of 1 year from the day of the full force and effect of the decision by which the tax administrator dismissed the original (previous) request (Section 106ab(1)(b) of the VAT Act).

5. Publication of the payer's unreliability

In a manner allowing remote access, a tax administrator is obliged to publish the fact that the given person is an unreliable payer due to a provision of Section 106ab(4) of the VAT Act. This information is accessible in the VAT Register under the following internet address:

http://adisreg.mfcr.cz/cgi-bin/adis/idph/int_dp_prij.cgi?ZPRAC=FDPHI2&poc_dic=2

6. Taxation period of the unreliable payer

The taxation period of the unreliable payer is a calendar month. If a payer whose taxation period is a calendar quarter becomes an unreliable payer, a calendar month shall be his taxation period from the calendar quarter following the calendar quarter when he became unreliable (Section 99a(4) of the VAT Act).

A payer who becomes unreliable is not allowed to decide in terms of a provision of Section 99a of the VAT Act that his taxation period for the respective calendar year is a calendar quarter instead of a calendar month.

7. Liability for tax unpaid by the unreliable payer

A recipient of a taxable transaction shall be liable for any unpaid tax for such transaction if, at the moment of carrying out the transaction or providing the consideration for such transaction, the fact that the provider of the taxable transaction is an unreliable payer is published in a manner allowing remote access (Section 109(3) of the VAT Act). The date of publication of the fact that the payer is unreliable is the deciding factor for a possibility of applying the liability concept (see the reference to the VAT Register stated in point 5 of this information).

Therefore, dealings with a payer on whom it was decided in this sense that he was unreliable carries a risk of liability, or more precisely an obligation to settle tax possibly unpaid by the unreliable payer.

The risk of liability and obligation to pay tax for an unreliable payer can be fully avoided by using a possibility given in a provision of Section 109a of the VAT Act. Therein stipulated special method for securing the tax basically says that a recipient who pays VAT to a tax administrator on behalf of the provider (here for the unreliable payer) concerning a taxable transaction received from the given risky payer can never get into the position of a surety in relation to this transaction. Therefore, if a payer wants to avoid the liability for VAT unpaid by the unreliable payer, he can pay VAT directly into an account of the tax administrator.