

PHOTOVOLTAIC POWER - LEVY  
NEWS ALERT APRIL 2011

**I. Proceedings held before the Czech Constitutional Court**

The Czech Constitutional court recently ruled on a case which related to the imposition of an extraordinary levy on construction savings. The case in question is not directly related to any issue in the Photovoltaic industry but may have far reaching implications for it. In the construction savings case the Constitutional Court held that the law violated the constitutional principle of legal certainty and legitimate expectation, and also reversed the necessity to enact the law summarily. The conclusions of the Constitutional Court's ruling may serve as a founding principle for future rulings on the unconstitutionality of laws introducing levies on photovoltaic power and which abolished tax allowances.

On 11 March 2011, the Czech Constitutional Court received a proposal submitted by a group of senators requesting the abolition of several provisions of the law relating to the so-called 26% taxation of the levy for the power generated from PV facilities. The Senators' objective is to have the law introducing the levy declared unconstitutional and abolished. If the Constitutional Court admits the proposal, the law would not be abolished retroactively but as of the date of the publication thereof in the Collection of Laws at the earliest.

Therefore, an eventual favorable ruling of the Constitutional Court itself would not result in returning the levies collected in connection with the power generated from PV plants, provided that they were collected before the promulgation of the Constitutional Court's ruling.

**II. Filing a claim to have the levy on power generated from PV plants refunded**

As a reminder following the seminar we organised in December 2010, we would like to inform you again about proposals to arrange the return of the levies on power generated from PV plants before the promulgation of the Constitutional Court's ruling, i.e. through a procedure held before the Czech authorities and courts. We should point out, however, that the action and decision of the Constitutional Court in this matter cannot be predicted; this is just a proposal as to how to secure your title to have the levies refunded in case that the law will be actually abolished.

**1. Request for explanation**

The tax payer, i.e. the operator of the solar power plant which generates power encumbered by the levy, may file a request for explanation with the respective distribution company no later than **60 days from the date on which the levy for the feed-in tariff was paid** (or from the date on which the payer learned of

this fact). In the request, the tax payer should state the grounds on which he considers the levies unconstitutional. The distribution company must respond to the tax payer in writing within 30 days.

**2. Complaint of the practice of the distribution company filed with the tax collector**

If the solar plant operator disagrees with the explanation provided by the distribution company, it may file a complaint relating to the practice of the distribution company with the respective tax collecting authority of local jurisdiction within 30 days from the date on which the solar plant operator received the explanation from the distribution company.

Should the distribution company fail to respond to the request for explanation mentioned under clause 1, the solar plant operator may file the complaint with the tax collecting authority within 60 days from the deadline on which the distribution company should have provided the solar plant operator with an explanation.

**3. Appeal against the decision of the tax collecting authority**

The solar plant operator may appeal the decision of the tax collecting authority within 30 days from the receipt thereof, and the appeal will be considered by the office of the Financial Directorate (FD).

**4. Petition filed with the Administrative Court**

In order to have a ruling passed on the appeal, a petition may be filed with the Administrative Court. The petition must be filed within two months from the date of service of the decision of the FD. The Administrative Court may discontinue the proceedings on the grounds of a pending hearing concerning the constitutionality of the levy held before the Constitutional Court, or it may submit to the Constitutional Court its own motion to review the issue; in such case, the proceedings will be discontinued until the Constitutional Court passes its judgment. If the Administrative Court fails to do so and dismisses the petition filed against FD, the tax payer may still address the Supreme Administrative Court and file a complaint proposing that the case be referred to the Constitutional Court. If the tax payer fails in the proceedings before the Supreme Administrative Court, he may file a constitutional complaint directly with the Constitutional Court.

To conclude, this procedure must be repeated every month in order to maintain the title to have the collected levy refunded, i.e. once for each levy from the power generated from solar radiation is paid. The court fee of the proceedings held before the Administrative Court in the amount of CZK 2,000 is to be paid only for each petition and CZK 3,000 for each complaint instead of the regular court fee amounting to 4% of the claimed amount.

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