

INTANGIBLE ASSET TAX DEPRECIATION IN THE CZECH REPUBLIC

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Abstract

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This paper aims to familiarize readers with the legislative development of intangible asset tax depreciation in the Czech Republic since 1993. The paper is divided into several basic chapters, of which the main chapter describes and analyzes the development of legislation in three thus-existing legal modes regulating intangible asset tax depreciation (the periods 1993–2000; 2001–2004; 2004–2011). A separate sub-chapter deals with each of these three modes, which fundamentally differ in the concept of determining tax depreciations. For better clarity, changes in the legislation in question are described using tables.

Over the first mentioned mode, i.e. the mode valid for assets acquired in the period 1993–2000, intangible asset tax depreciations were determined by the same manner as tangible asset tax depreciations. This period is characterized by gradual establishment (specification) of legislation that may be partially attributed to the stormy development of social conditions and the need for them to be reflected in law. For the period 2001–2003, standard amendments were contained in accounting regulations. The Income Tax Act (hereinafter ITA) did not contain an amendment of intangible assets and its depreciations. It merely determined that accounting depreciations of intangible assets were a tax expense. Nevertheless, changes also occurred in this short time period, which this paper will later address. Effective from 2004, legislation on intangible assets and their tax depreciations returned to the ITA. Changes came in this mode of determining depreciations as well; nevertheless, one may consider the current legislative regulation to be stabilized.

Later in this paper for the selected category of intangible assets (software), the authors describe and assess the dependence of the portion of the entry price entering tax expenses in the form of tax depreciations on the year of acquiring intangible assets.

To achieve the stated objectives, the comparative method was applied (used mainly to describe and assess how legislation developed) and the modeling method (establishing models describing the impact of legislative regulation on the tax expenses of taxpayers). When elaborating this paper, the authors also chose to use so-called paired logic methods.

tax burden, intangible assets, depreciations, legislative regulation *de lege lata*, development of legislative regulation

As Víték states (2001, page 64), tax legislation itself is among the most frequently changing parts of the legal systems. There are undoubtedly several factors at play here. The mentioned author considers the political preferences of the government relating to the voting cycle to be one of the main exogenic factors influencing the tax system. Other tax

experts support this conclusion, see for example Vančurová – Láčová (2010, page 12). Based on the opinions of the authors of this paper, the last mentioned is valid in higher measure also for Act No. 586/1992 Coll. on Income Taxes, as amended (hereinafter ITA), which represents the fundamental substantive regulation for natural person and legal

entity income taxation. Since January 1, 1993, when this legal standard took effect, an entire series of more or less meaningful changes have come and gone¹, which have also affected the regulation of tax depreciations of both tangible and intangible assets. The legislative regulation of tax depreciations, i.e. tangible and intangible asset tax depreciations, represents a major part of the common provisions of the ITA, or a major part of the ITA itself. Proof of the importance and scope of this issue is the existence of a number of specialized monographs and papers in series publications dealing in the area of tax depreciation. Nevertheless, it may be said that these publications basically focus on describing the current legal status, or comparison with the status that had immediately preceded.

1.1 Objective and methodology

There are several reasons for exploring the development of the legislative regulation of individual institutions of tax law. One of the most important reasons is its importance as a basis for comparative analysis. This analysis need not limit itself to comparing the actual amendments based on the Czech ITA in time, but may form comparisons with legislation in other countries. The authors are of the opinion that if in this aspect a longer time period is assessed, it is possible to derive conclusions in a more qualified manner on the convergence or growing differences of legislation between individual countries. Besides this, the acquired results may be used for assessing the appropriateness of the actual legal regulation and considerations of the legal legislation *de lege ferenda*. The frequency and scope of changes in the monitored period enable a more qualified assessment of fulfilling the right of the taxpayer to stable tax law, a concept ever more frequently mentioned though mainly in theory².

This paper, despite its differing thematic focus, links strongly to the previous article by the authors, which discussed tangible asset tax depreciations (see Brychta – Svirák (2010)). The objective of this paper is to familiarize readers with the development of legislative regulation of intangible asset tax depreciations in the period since 1993 to present according to Czech law. The legal status valid and effective to December 31 of the applicable year was taken into consideration; for the current year this

meant the legal status valid and effective to July 31. Information on the applicable legal regulation has been drawn from the computerized system of legal information ASPI. Tables were used for the actual description of development of Czech legislative regulation in an effort to provide greater clarity. In the modeled example for the chosen category of intangible assets, the authors also analyze the development of legal regulation in the context of impacts on the tax base of tax payers. For the elaborated models, the *year of acquiring intangible assets* (the authors chose software³) represents the independent variable, the dependent variable is represented by the *portion of the entry price entering tax expenses in the form of depreciations in individual years of depreciation*.

Methods were derived from the above-defined objective, the use of which required fulfillment of specified aims. First applied was the method of comparison, which along with other relevant methods served to describe and assess the development of legal regulation. Another applied method was the modeling method, used mainly to describe the development of the entry price entering tax depreciations in relation to the year of acquiring the intangible assets. For understandable reasons, the authors also approached the use of so-called paired logic methods.

2 Intangible assets, their definition and depreciation

In relation to intangible asset tax depreciations, thus intangible asset tax depreciations determined by the ITA, it is necessary at the very beginning to point out the fact that depreciating intangible assets was a part of the ITA until the end of 2000, and further during the period from 2004 to the present. From 2001 to 2003, *de facto* depreciations of intangible assets were not regulated by this act (ITA did not determine the categorization limit, depreciation period, etc.). Accounting regulations took on this role for the period 2001–2003. The ITA established, with reference to accounting regulations and rules contained therein, that accounting depreciations are a tax expense⁴. Despite the differing “tax” mode, this paper also discusses the regulation of intangible asset tax depreciations in the years 2001–2003 with the aim of describing the complete time line. The authors consider the designation *tax depreciations* to

1 Today critical voices resound, speaking of the obsolescence of a series of provisions and exceptions that make this act a standard that is unclear.

2 This right, derived from generally defined rights of taxpayers, does not have a normative nature for understandable reasons. It only represents a certain idealization, whose factual fulfillment in the tax area, at least within the conditions of the Czech Republic, is rather unimaginable. For more on the actual issue of rights of taxpayers, see for example WŁODZIMIERZ, N., MAŁGORZATA, S. (eds.) (2009).

3 The authors chose software for the performed analysis, which in their opinion may be considered to be the most common category of intangible assets owned by entrepreneurial subjects.

4 In principle, this mode was valid in the aforementioned period as is valid today for accounting depreciations of “low-value” tangible and intangible assets, which are a tax expense according to the diction of Sec 24 paragraph 2) letter v) of the ITA.

also mean intangible asset tax depreciations in this time period determined on the basis of accounting regulations. It has applied since 2004 that the ITA again contains regulation over tax depreciation, namely in the separate provisions of Sec 32a ITA. But it is necessary to point out that since 2004, the method of determining intangible asset tax depreciation fundamentally differs from that which had been applied in the years 1993–2000. It is thus

possible to summarize that three differing modes of determining intangible asset tax depreciations may be distinguished over the course of the monitored period, namely the modes valid in 1993–2000, in 2001–2003 and since 2004. This separation has been respected upon structuring the article (see below).

Just as with tangible assets, changes also occurred in the actual definition of this asset category as seen in Table I.

I: Definition of intangible assets over the period 1993–2011

Period	Category	Attributes	Limit of entry price
1993–1994	Objects from industrial property rights, projects and program equipment and other provided technology or other economically viable knowledge.	<ul style="list-style-type: none"> operational and technical functions lasting longer than one year acquired by purchase or by personal activity in order to trade with them 	over CZK 20,000.--
	Incorporation expenses	X	over CZK 20,000.--
1995–1997	Objects from industrial property rights, projects and program equipment and other provided technology or other economically viable knowledge.	<ul style="list-style-type: none"> operational and technical functions lasting longer than one year acquired by purchase or created by personal activity for the purpose of trading said assets or as a partner deposit (member of a collective) 	over CZK 20,000.--; starting with tax period 1996 over CZK 40,000.--
	Incorporation expenses		over CZK 20,000.--
1998–2000	Objects from industrial property rights, projects and program equipment and other provided technology or other economically viable knowledge.	<ul style="list-style-type: none"> useful life over one year acquired by purchase or created by personal activity in order to trade with them or received as a partner deposit (member of a collective), a gift or inheritance 	over CZK 60,000.--
	Incorporation expenses, intangible results of research and development, software, valuable rights, low-value long-lived intangible assets and other long-lived intangible assets.	<ul style="list-style-type: none"> useful life over one year (i.e. period during which the property is viable for the current period or maintainable for further use or may serve as a basis or part of more perfect or other procedures or solutions including the period of practical verification or acquisition of intangible results) the property was acquired by purchase by the taxpayer or on own account for the purpose of trading or was acquired by deposit, conversion (with the exception of change in legal form), inheritance or receipt as a gift 	value determined by the entity, but necessarily from an amount exceeding CZK 60,000.--
2001–2003			
2004–until now	Incorporation expenses, intangible results of research and development, software, valuable rights and other assets recorded in accounting as an intangible asset defined by the Accounting Act	<ul style="list-style-type: none"> acquired by purchase, by deposit of a partner or silent partner or a member of a collective, by conversion, gift or inheritance, or created by personal activity in order to trade with them or repeated provision useful life over one year; whereas the useful life is understood as the period during which the asset is viable for current activity or maintainable for further activity or can serve as a basis or component of improvement or other procedures and solutions including the period of practical verification of intangible results 	the entry price is higher than CZK 60,000.--

Source: author's own elaboration using relevant legal standards (listed alphabetically).

- Measure No. 281/84 064/2000, of November 10, 2000, Regulating the Chart of Accounts and Accounting Procedures for Entrepreneurs
- Measure No. 281/89 759/2001, of November 13, 2001, Defining the Chart of Accounts and Accounting Procedures for Entrepreneurs
- Measure of the Federal Ministry of Finance No. V/20 100/1992, of July 15, 1992, Defining the Chart Accounts and Accounting Procedures for Entrepreneurs
- Decree No. 500/2002 Coll. Implementing Certain Provisions of Act No. 563/1991 Coll., on Accounting, as amended, for entities that are businesses maintaining double-entry accounting
- Act No. 563/1991 Coll., on Accounting, as amended
- Act No. 586/1992 Coll., on Income Taxes, as amended

The ITA has contained a definition of intangible assets for the purposes of tax depreciation since 1993. This is understandable, since the absence of a definition of intangible assets for the purposes of tax depreciations according to the ITA would damage the principle of legal certainty. The actual content of the term intangible assets has undergone meaningful changes during the course of the monitored period. It is possible to state that during the course of the monitored period, there occurred (if we are speaking of the regulation contained in the ITA) a gradual expansion (specification) of the actual content of the term *intangible assets* and attributes, which intangible assets must fulfill to be considered intangible assets for the purposes of the ITA. Besides rather important changes, insignificant cosmetic changes occurred as well⁵.

In 1998–2003, the ITA did not contain any regulation of incorporation expenses, thus the legal regulation contained in accounting regulations was fully valid⁷. Effective in 2004, intangible assets for the purpose of the ITA and method of determining tax depreciations of intangible assets is defined in the separate provision Sec 32a ITA (see separate text later in paper).

3 Intangible asset tax depreciation

As stated above, the monitored period may be divided into three basic phases, which the following sub-chapters will discuss further.

3.1 Intangible asset tax depreciation in the years 1993–2000

During the first phase (1993–2000), intangible asset tax depreciations were determined by the same method as with tangible asset tax depreciation. The provision of Sec 26 ITA was termed *Depreciations of tangible and intangible assets*. The procedure for determining tax depreciations for property acquired during this period was as follows. First assets were classified according to *Annex No. 1*, which contained a list of tangible and intangible assets with a listing of depreciation groups for the given asset⁸. Consequently, the taxpayer chose whether to depreciate the property by straight line (Sec 31 ITA) or accelerated (Sec 32 ITA) depreciation. Table II lists the basic classification of intangible assets into individual depreciation groups.

Partial changes performed in *Annex No. 1* ITA in the period 1993–2000 have more of a cosmetic nature. This basically concerned a simple different arrangement arising from the differing conception

II: Classification of intangible assets into depreciation groups during the period 1993–2000

Period	Category	Depreciation group
1993–1994	Intangible assets, of which:	2
	● computer programs and know-how, possibly experience of a similar nature	1
	● patents	3
1995–2000	computer programs (software) - only magnetic media with instructions for computers and know-how, or experience of a similar nature (<i>since 1998</i> the category has been called <i>SOFTWARE</i>)	1
	licenses, subjects of intellectual property, etc., technical or other commercially viable knowledge	2
	Patents	3

Source: authors' own elaboration utilizing the ITA (*Annex No. 1* ITA)

III: Intangible asset tax depreciation period in the years 1993–2000

Period	Number of years of depreciation in depreciation group		
	1	2	3
1993–1997	4	8	15
1998–2000		6	12

Source: authors' own elaboration utilizing the ITA (Sec 30)

⁵ Effective from 1994, the original short version of the Czechoslovak Crown, Kčs, was replaced with Kč (CZK) (Czech Crown).

⁶ In relation to entrepreneurial subjects accounting, one may consider as important the coming into effect of Decree No. 500/2002 Coll. (effective from January, 01, 2003). This subordinate legal standard has undergone several amendments and remains in force.

⁷ Originally the appendix was classified according to the asset category with the stipulation that a depreciation group was listed for the applicable category and consequently an exhaustive list of assets was included, for which a different depreciation category applied. From 1995, classification based on depreciation group was key, and not according to type of asset.

IV: Annual depreciation rates (in %) for straight-line intangible asset tax depreciation

Depreciation group	Period	1st year of depreciation	further years of depreciation	For increased entry price
1	1993–2000	14.2	28.6	25
2	1993–1997	6.2	13.4	12.5
	1998–2000	8.5	18.3	16.7
3	1993–1997	3.4	6.9	6.7
	1998–2000	4.3	8.7	8.4

Source: authors' own elaboration utilizing the ITA (Sec 31 ITA)

V: Coefficients for accelerated depreciation of intangible assets

Depreciation group	Period	1st year of depreciation	further years of depreciation	For increased depreciated price
1	1993–2000	4	5	4
2	1993–1997	8	9	8
	1998–2000	6	7	6
3	1993–1997	15	16	15
	1998–2000	12	13	12

Source: authors' own elaboration utilizing the ITA (Sec 32)

of *Annex No. 1* from 1995. Nevertheless, this was not the case of the actual depreciations at that time. In 1993–2000, changes occurred at the time of depreciating, which had an understandable influence of higher annual depreciation rates (straight line-depreciation), as well as coefficients (accelerated depreciations). Table III lists these changes.

From Table III it is evident that a change (shortening) occurred of the depreciation period only for the second and third depreciation group effective from 1998. This change by law had to be projected into other related provisions of the ITA, namely Sec 31 ITA (annual depreciation rate for straight-line depreciations) and Sec 32 ITA (coefficients of accelerated depreciation). Tables IV and V show the mentioned changes.

For coefficients of accelerated depreciation (see Table V), it is worth mentioning the fact that the depreciation coefficient for the first year is the number of depreciation years valid for the applicable depreciation period.

In relation to the period 1993–2000, one may conclude that the legislation in question was relatively stable. Towards the end of the monitored period (effective from 1998), a single positive change occurred from the taxpayer's viewpoint – shortening of the depreciation period for intangible assets included in the second and third depreciation group.

The authors consider it appropriate to point out the fact that knowledge of this legal regulation may also be important in the present time, since as it

arises from temporary and closing provisions of the ITA, intangible assets acquired and classified as commercial assets are depreciated according to these rules⁸.

3.2 Intangible asset tax depreciation in the years 2001–2003

Intangible assets acquired and classified in the years 2001–2003 were not depreciated according to the ITA because the legislation of intangible assets was missing in the ITA itself (effective from January 01, 2001 the provisions of Sec 26 and other provisions in the ITA do not speak of *depreciation of both tangible and intangible assets*, but only of *tangible asset tax depreciation*). The absence of the actual legislation amending intangible asset tax depreciations was resolved by legislators by an amendment in provisions of Sec 24 paragraph (2) letter v) point 2., which stipulated that intangible asset tax depreciations are a tax expense defined by special legal regulations (meaning accounting regulations) under the conditions that: ... *the assets were acquired by purchase by the taxpayer or on own account for the purpose of trading or was acquired by deposit, conversion (with the exception of change in legal form), inheritance or receipt as a gift*. Of course this provision also stipulated further specifying conditions, under which it would be possible to consider accounting depreciations of intangible assets as tax effective (this mainly concerned specific (and less common) modes of acquiring intangible assets as acquisition by transformation, etc.).

⁸ This fact is understandable considering that it would have been extremely difficult legislatively and technically to resolve the transformation of depreciations between individual modes.

Playing the decisive role in this period, aside from Act No. 563/1991 Coll. on Accounting, as amended (hereinafter AA), were subordinate legal standards⁹, which defined and specified the actual content of the concept of *long-lived intangible assets*¹⁰. In this area of the accounting regulations though, in this relatively short time period, partial changes occurred, some of which are listed in Table VI.

A part of the class of long-lived assets of the category explicitly listed in 2001 was the category *low-value long-lived intangible assets*¹¹. For this group of assets, it was also valid that these assets could be depreciated at once under the stipulation that it would not have any strong effect on accruals of costs and revenues.

The actual accounting depreciation of long-lived intangible assets (which were also a tax effective expense during the period 2001–2003), were determined according to the depreciation plan,

whereas the entity determined the accounting depreciation rates itself. It also took into consideration (based on type of assets) the aspect of time, useful life or relationship to performances¹². A certain specific situation applied towards goodwill, to which straight line depreciation was applied for a period of five years from acquiring the enterprise or part thereof from the decisive day of transformation into expenses. For incorporation expenses in 2003, general rules also did not apply, because the maximum period of their depreciation was determined for them, which is a maximum period of 5 years.

Partial changes also occurred in defining the content of individual categories, which arises from the comparison of the years 2002 and 2003 as listed in Table VII.

From the performed comparison it is clear that the amendments performed in the first four listed

VI: *Long-term intangible assets from the aspect of accounting regulations in the years 2001–2003*

Period	Long-term intangible assets	Attributes	Valuation of an entry
2001	● Incorporation expenses	● useful life over one year (the period during which the property is viable for the current period or maintainable for further use or may serve as a basis or part of improvement or other procedures or solutions including the period of practical verification or acquisition of intangible results)	Over CZK 60,000.--
	● Intangible results of research and development		
2002	● Software		Valuation determined by the accounting entity, but necessarily from an amount exceeding CZK 60,000.--
	● Valuable rights		
	● Other long-lived intangible assets		
2003	● Incorporation expenses		The amount of valuation established by the entity (excluding goodwill). Requirement placed on respecting the principle of materiality and accurate and honest portrayal of assets.
	● Intangible results of research and development		
	● Software		
	● Valuable rights		
	● Goodwill		
	● Technical assessment of intangible assets from limit determined by the ITA (i.e. from CZK 40,000.--)		

Source: authors' own elaboration using relevant legal regulations.

1. Measure No. 281/84 064/2000, of November 10, 2000, Regulating the Chart of Accounts and Accounting Procedures for Entrepreneurs
2. Measure No. 281/89 759/2001, of November 13, 2001, Defining the Chart of Accounts and Accounting Procedures for Entrepreneurs
3. Measure of the Federal Ministry of Finance No. V/20 100/1992, of July 15, 1992, Defining the Chart Accounts and Accounting Procedures for Entrepreneurs
4. Decree No. 500/2002 Coll. Implementing Certain Provisions of Act No. 563/1991 Coll., on Accounting, as amended, for entities that are businesses maintaining double-entry accounting
5. Act No. 563/1991 Coll., on Accounting, as amended

⁹ It is worth mention again that on January 01, 2003, Decree No. 500/2002 Coll. took effect, which is the performance regulation of the AA and still remains in effect.

¹⁰ Whereas the ITA used and effective from January 01, 2004 again uses the category *intangible assets*, the accounting regulations use the term *long-lived intangible assets*.

¹¹ Low-value long-lived intangible assets were determined by the accounting entity as asset entries of intangible assets, if their useful life was longer than one year and valuation of a single entry did not exceed an amount of CZK 60,000.--.

¹² The use of performance criteria for determining the size of an accounting depreciation can be expected rather when determining the accounting depreciations of tangible, and not intangible assets.

VII: Comparison of the content of selected categories in 2002 and 2003

Category	Year	
	2002	2003
Incorporation expenses	Expenses relating to creation (founding) of a new accounting entity (such as court and administrative fees and other official expenditures, business travel expenses, wages, agency fees and rent). Incorporation expenses are also such expenses that the newly formed accounting entity paid to another entity (such as a parent company) in relation to its creation.	The sum of expenses invested on founding an accounting entity until the moment of its creation, mainly court and administrative fees, business travel expenses, agency and consultancy fees and rent.
Intangible results of research and development	Results of successfully performed works, which are not the subject of industrial and other valuable rights, which are acquired separately, i.e. are not part of acquired long-lived assets and its valuation, or are created by internal activity in order to trade with them, or repeated sales (not concerning results for a job or part of a supply of long-lived assets).	Intangible results of research and development and software are such results and software that are either created by internal activity for trading with them or are acquired from other entities.
Software	Software was acquired separately, i.e. not as part of acquired hardware and its valuation or was created by internal activity for the purposes of trading with them, but this does not include contracted software or part of the supply of hardware. It is not important whether it is the subject of copyright or not.	
Valuable rights	Mainly know-how, licenses, subjects of industrial rights and other results of intellectually creative activities that are the subject of valuable rights, either acquired or provided.	
Goodwill	not listed	The positive or negative difference between valuation of an enterprise or part thereof in the wording of the Commercial Code, acquired mainly by purchase, deposit or valuation of assets and commitments within the framework of transformation changes in society, with the exception of a change in legal form, and a sum of its individually overvalued components of assets decreased by the acquired commitments.

Source: authors' own elaboration using relevant legal standards.

1. Measure No. 281/89 759/2001, of November 13, 2001, Defining the Chart of Accounts and Accounting Procedures for Entrepreneurs
2. Decree No. 500/2002 Coll. Implementing Certain Provisions of Act No. 563/1991 Coll., on Accounting, as amended, for entities that are businesses maintaining double-entry accounting
3. Act No. 563/1991 Coll., on Accounting, as amended

categories do not inherently concern the actual content; *de facto* only a different (shorter) expression of the same thing occurred.

3.3 Intangible asset tax depreciation since 2004

As mentioned above, effective from 2004, intangible assets and determining tax depreciations of intangible assets was reinstated in the ITA. This concerned a "newly" inserted provision Sec 32a of the ITA. For the purposes of the ITA effective since 2004, depreciation has been applied to

incorporation expenses, intangible results of research and development, software, valuable rights and other property, which is listed in the accounting as intangible assets as defined by accounting regulations. Since 2004, three basic cumulative conditions are given, which must be fulfilled:

- a) the assets were:
 1. acquired by purchase, by deposit of a partner or silent partner or member of a collective, through transformation, gift or inheritance, or

13 The limit for technical assessment of intangible assets is CZK 40,000.-- (technical assessment for intangible assets has the form of expenditures for completed expansion of furnishing or applicability of intangible assets or interventions that lead to a change in the purpose of the intangible assets).

2. created by personal activity in order to trade with them or for repeated provision and
- b) at an entry price exceeding CZK 60,000.--¹³ and
- c) useful life over one year¹⁴.

On the contrary, since 2004 a positive or negative difference between valuation of an enterprise or part thereof, forming an independent organizational component, acquired mainly by purchase, deposit or valuation of assets and commitments within the framework of the transformation of society, and the sum of its individual overvalued components of assets decreased by acquired commitments is not considered to be intangible assets (goodwill). Effective from 2006, in the taxative sum of assets, which are not considered as intangible assets for the purpose of the ITA, there are also listed allowances for emissions of greenhouse gases or a preference limit, which is mainly an individual reference quantity of milk, an individual production quota and individual limits of premium rights according to a special legal regulation¹⁵.

The method for determining tax depreciations of intangible assets develops from the fact of whether intangible assets were acquired for a definite or indefinite period. The depreciation period in the case of intangible assets acquired for a definite period is given by just this period negotiated by agreement. For this category of intangible assets, the tax payer has the option of determining depreciations with accuracy to within days¹⁶.

For intangible assets acquired for an indefinite period, or intangible assets whose period of use is not limited by an agreement, only a single partial change came, which was shortening the depreciation period for software from 48 months (2004) to 36 months.

Nonetheless, the provision itself of Sec 32a ITA underwent a series of changes. The most important and extensive of these changes were those concerning technical assessment of intangible assets. Effective from 2006, Sec 32a of the ITA contains a special clause concerning depreciation of technically assessed intangible assets¹⁷. This also determines the minimum depreciation period of the applicable intangible assets after the performed technical assessment. For an audio-visual work it is minimally 9 months, for software 18 months and for other intangible assets it is 36 months.

4 Assessment of the impact of legislative changes in intangible asset tax depreciations on the tax base

One of the partial aims of this paper using a model example is to assess the impact of legislative changes on taxpayers' tax base. To achieve this, certain simplification and defining of initial requirements for determining models describing the impact of legislative changes on taxpayers' tax base have been applied.

4.1 Simplifications and starting points of determined models

For describing and analyzing legislative changes, one category of intangible assets was chosen – software. The reason that leads the authors to this choice was that with the highest probability, this concerns the most common intangible asset owned by entrepreneurial entities (taxpayers).

After brief consideration, the authors arrived at the conclusion that regarding the lengthy monitoring period (1993–2011), it would make no sense for the created model to consider software acquisitions in individual years for an unchanging amount. When considering the same price (or price adjusted by inflation), this would be comparing the incomparable¹⁸. The development of IT products and their prices (either hardware or software) has indeed undergone a robust and stormy development, just like the “utility” that the given products provide to their users. For this reason authors decided that the impact on the tax base would be assessed with the help of a portion of the entry price of assets falling into tax expenses in individual years of depreciation.

VIII: *Changes in the intangible asset tax depreciation period of 2004–2011*

Category	Depreciation period
Audio-visual work	18 months.
Software	36 months (48 months in 2004)
Incorporation expenses	60 months.
Other intangible assets	72 months.

Source: authors' own elaboration using ITA Sec 32a.

14 Useful life over one year; whereas the useful life is understood as the period during which the asset is viable for current activity or maintainable for further activity or can serve as a basis or component of more perfect or other procedures and solutions including the period of practical verification of intangible results)

15 This special legal regulation is understood as Act No. 256/2000 Coll., on the State Agricultural Intervention Fund and on Changes to Certain other Acts, as amended.

16 Otherwise, a general rule listed in Sec 32a paragraph 5 is the determination of depreciations with accuracy to full months, beginning on the following month after the day in which conditions for depreciation were fulfilled. Depreciations are rounded off, just like with tangible assets, up to the next whole Czech Crown.

17 Until that time it was valid for similar rules to be used for depreciating tangible assets.

18 Even for software one may see the growing trends in the proportion of performance (benefit)/price, which is utterly clear in terms of hardware.

IX: Starting points and simplifications of configured models

Starting points and simplifications of configured models

Software fulfills all requirements for classification into the category of intangible assets according to ITA (for the periods 1993–2000 and 2004–2011), and all requirements for classification into the category of long-lived intangible assets (period 2001–2003).

Software licenses are not limited by time.

Technical assessment was not performed for software.

Software depreciation is not interrupted (*understandable in the case that the applicable legal standard even allows for this*).

Software was acquired in January of the applicable year.

The results of the configured model is determining a portion of the entry price, which falls into tax-effective costs in the first and following years (*this fact enables better assessment of the impact based on taxes in individual years*).

In the years 1993–1998, software was in the first depreciation category, and was depreciated for 4 years (rates of straight line depreciations: 14.2/28.6/25.0; coefficients of accelerated depreciation: 4/5/4)

In 2001–2003, accounting depreciations were a tax expense. In the applied models, we stipulated a determined depreciation period of 24 months. Accounting depreciations are determined over time with accuracy¹⁹ to months.

For 2004, the period of depreciation of intangible assets according to Sec 32a of the ITA is 48 months, and 36 months as of 2005.

Tax depreciations pursuant to Sec 32a of the ITA are determined with accuracy to full months, beginning on the following month after the day in which the conditions for depreciations were fulfilled.

Source: author's own elaboration

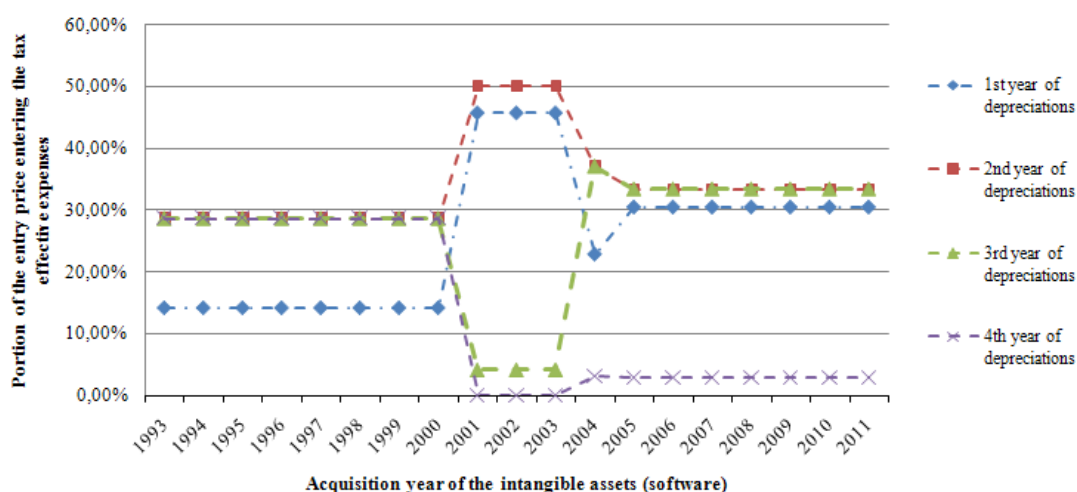
The configured models arise from certain starting points and simplifications, based upon which the authors worked and which are listed in Table IX.

4.2 Outputs of the configured mathematical models

The results of configured mathematical models are presented in the form of graphs, where the *independent variable* is represented by the acquisition year of the intangible assets and the portion of the entry price entering the tax effective expenses in the first to fourth year of depreciations represents the *dependent variable*.

Graph I below indicates the situation where in 1993–2000, the taxpayer chose straight line depreciation.

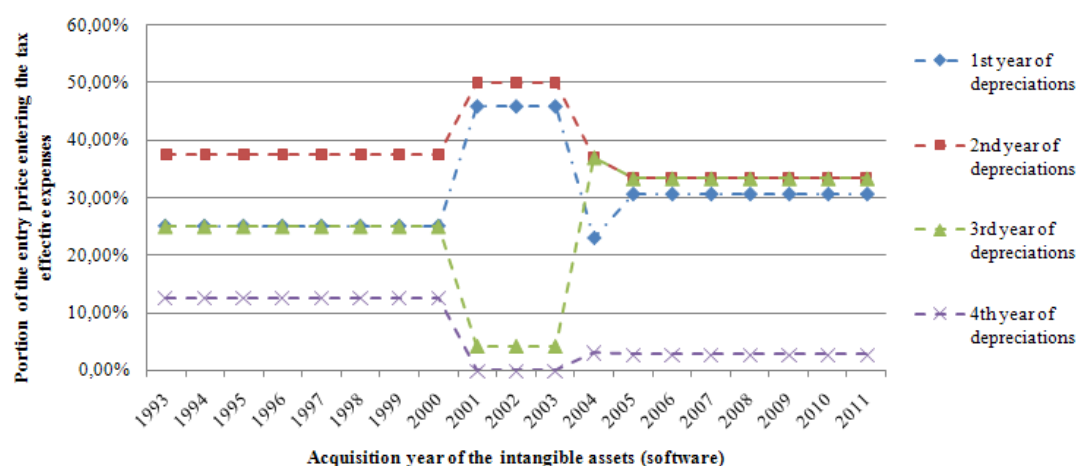
Concerning the speed of depreciating intangible assets in tax effective expenses, under the given conditions the most advantageous mode was the one valid in 2001–2003 (the period, when accounting depreciations of intangible assets were a tax effective cost). This conclusion of course cannot in any way be generalized, since the advantage of this mode is dependent on depreciation period determined by the taxpayer (accounting entity).



1: The portion of the entry price entering tax expenses in individual years of depreciation when choosing straight line depreciation for assets acquired in 1993–2000

Source: authors' own elaboration

¹⁹ In the case of this type of asset, the impression of determining depreciation in relation to performances is hard to fathom. Besides this in regards to intangible assets, taking into account their character, there "only" occurs technological obsolescence, and not physical wear (aging).



2: The portion of the entry price entering tax expenses in individual years of depreciation when choosing accelerated depreciations for assets acquired in 1993–2000

Source: authors' own elaboration

In this regard, the taxpayer (accounting entity) has relatively significant freedom, which of course is not without limitations (see above). Concerning the period 1993–2000 (or assets acquired in this period), the amount of depreciations for the second to fourth year is depreciated in the same manner. This conclusion may be made on the basis of knowledge of the principles and fundamentals of straight line depreciation. For software acquired in the period 2004–2011, there is an apparent influence of accuracy of depreciation as stipulated in the ITA. In the first year the depreciation is lower due to fact that the annual tax depreciation is the aliquot part of the entry price falling over 11 months (month of acquisition in the given case is January, which is not included in the applicable period). When comparing software acquired in 2004 and the years following, the influence of the depreciation period is apparent. For software acquired in 2004, a lower amount goes to depreciation in the first year. This conclusion is understandable, since the depreciation period for this year was set by the legislature at 48 months (*since 2005 this period is 36 months*).

The only change in comparison with the previous graph is the conception of tax depreciations for assets acquired in 1993–2000 as accelerated depreciations. As opposed to straight line depreciation, where in the event of absence of technical assessment, a change does not occur in the amount of depreciations in the second year and the years following, the amount of depreciations for accelerated depreciation fundamentally differs in individual years (the exception in the given case of concordance of depreciations for the first and third year of depreciations; this is the amount that is the result of the amount of coefficients and the concept of determining the amount of accelerated depreciation).

5 DISCUSSION

It is generally possible to begin from the stipulation that the taxpayer's aim is to project as fast as possible in the form of tax depreciations the entry price of assets into tax effective expenses. However, this conclusion cannot be generalized in any way, since optimizing the tax burden does not necessary mean achieving the lowest tax burden in the current year or short time period. But if we are to accept the aforementioned proposition, the most advantage period in terms of achieving this goal was the period 2001–2003, when intangible asset "tax" depreciation was governed by accounting regulations. This statement however has certain weaknesses, since the taxpayer (accounting entity) had to respect certain limitations with regard to the fundamental principles of accounting (in the given case, especially the principle of importance and accurate and honest portrayal of assets). The options of free consideration thus had to differ naturally for variously large entities. In terms of this mode, the gradual projection of the entry price of the acquired intangible assets into tax expenses, it is appropriate to point out the fact that this is a mode that can be found in a number of legal regulations of other nations. One example may be the legislation in *Slovakia*, which partially corresponds to the current legislation²⁰ contained in the ITA. The provisions of Sec 22(7) Act No. 595/2003 Slovak Collection of Laws, on Income Taxes, as amended (hereinafter SITA) stipulate that intangible assets for the purpose of this Act have long-lived intangible assets according to the Accounting Act, whose entry price is higher than EUR 2,400, and the applicability or operational and technical functions are longer than one year including long-lived intangible assets accounted by the legal successor of the taxpayer

20 This concerns definition of the attributes of intangible assets in the ITA.

terminated without liquidation separated from goodwill or negative goodwill according to the Accounting Act, only upon validation of realistic values. The provisions of Sec 22(8) of the SITA stipulate that assets are depreciated in accordance with accounting regulations, at the highest to the amount of the entry price with the exception of goodwill and negative goodwill (for which a special depreciation mode applies). Legislation in *Hungary* also stipulates that intangible assets may be depreciated according to accounting rules (Široký, 2010). Even the legislation in *Poland* shows certain similarity that determines the minimum period of depreciation for individual categories of intangible assets (ex. for software it is a minimum of 24 months; i.e. the annual depreciation is 50 %) (Brzeszczyńska *et al.*, 2009).

Regarding results of configured mathematical models illustrating the relationship of the *portion of the entry prices of intangible assets entering tax effective expenses in individual depreciation years to the year of acquiring the given assets*, the authors believe it is necessary to emphasize that models are configured for only one category of intangible assets (software). The attained results cannot in any consequence be assessed as valid for other categories of intangible assets as well; in fact for the years 1998–2000, a shortening of the depreciation period occurred for intangible assets included in the second and third category. Despite this fact, upon overall assessment of the development of legislation (with an accent placed mainly on the determined period of depreciating intangible assets), one may conclude that legislative development has taken on a positive direction in the eyes of taxpayers. During the period 1994–2000, intangible asset depreciation was nevertheless bound by provisions of Sec 26(8) of the ITA, where it states that depreciating of the assets need not be commenced and that asset depreciation may be interrupted. This represented an important element of tax optimization available to taxpayers. From the current legislation contained in Sec 32a(4) of the ITA, it arises that it is not possible to interrupt intangible asset tax depreciations. This last stated provision stipulates that: *...intangible assets shall be depreciated by straight line depreciation without interruption, ...*

6 CONCLUSION

The authors consider as *fundamental changes* in the legislation in question the *changes in the mode of determining intangible asset depreciations* for the purposes of the ITA. Knowledge of these differing tax modes is also nothing to underestimate even today. That is because from transitional and final provisions of the ITA, it arises that assets acquired and classified in the applicable period (1993–2000;

2001–2003; 2004 and subsequently), are continually depreciated according to the rules valid at the time of asset acquisition and classification. So even today the possibility exists that taxpayers depreciate intangible assets according to “old” modes²¹.

The actual legislation in individual time periods underwent an entire series of changes. Part of them concerned definition of intangible assets. Over the course of time when legal regulation of individual categories of intangible assets was established in applicable legal standards, necessary changes occurred also in the ITA, or possibly the AA. Nevertheless, despite the important expansion of the number of types of intangible assets listed in legal standards, the enumeration remains demonstrative. Regarding attributes of intangible assets, three elements have stabilized. These concern entry price, useful life and defined method of acquiring the given asset.

During the first mode (1993–2000), intangible asset depreciations were determined by the same mode as tangible asset depreciation. During the monitored period, intangible assets were classified into the first to third depreciation groups, whereas for the second and third depreciation groups, shortening of the depreciation period came into effect in 1998. This legally projected into the amount of annual depreciation rates of straight line depreciations and accelerated depreciation coefficients.

In the period 2001–2003, the main legal regulation of intangible assets was contained in accounting regulations (*this situation is not unknown even to tax systems of other nations – such as Hungary or Slovakia*). Effective from 2003, the amount of valuation for including assets into the category of *long-lived intangible assets* is determined by the accounting entity (taxpayer) itself. In 2001, the limit for valuing an entry was “over CZK 60,000.--”; in 2002 entities were given the option of determining the amount of valuation by themselves, nevertheless required from amounts exceeding CZK 60,000.--.

Effective from 2004, the standard for determining intangible asset tax depreciations was again the legislation contained in the ITA (namely in Sec 32a). This provision too saw many changes of which the most important and most extensive concern technical assessment of these assets. For the period of intangible asset depreciation, only one change occurred – the shortening of the period for depreciating software (from 48 months in 2004 to 36 months in 2005).

One of the most important criteria for appropriateness of legislation from the taxpayer perspective may most probably be considered the period of depreciating intangible assets and the option of tax optimization, such as due to the existence of a legal institute of interrupting

21 This is even more valid if the intangible assets were regularly technically assessed

depreciation. If we first assess the development of the intangible asset depreciation period, one may state that if we look from the period 2001–2003, when the entity itself determined the duration of depreciation, while respecting accurate and truthful portrayal of assets in accounting that it is possible to see a certain positive trend in the form of shortening the intangible asset depreciation period. This is undoubtedly desirable, since intangible assets reach relatively fast technical obsolescence. On the other hand, it is necessary to point out the differing conception of determining intangible asset tax depreciation. According to the current legislation, the depreciation period is indeed shorter, but depreciations are determined with accuracy to months and for the tax period, only the aliquot part applies²².

In terms of the possibilities of tax optimization, the legislation governing intangible assets acquired

and categorized in 1994–2000 enabled interruption of depreciations, which current legislation disallows. This may be negatively perceived by taxpayers who do not achieve a positive tax base and are deepening their tax loss caused by the current mode of intangible asset tax depreciations. This is an entry deductible from the tax base (see Sec 34 ITA), but is limited by time (can be depreciated at the latest in the following 5 years). To the benefit of positive assessment of legislative development, this does not even concern a relatively frequent legislative changes during the course of the monitored period. The necessity to adjust to new legislation evokes undesirable administrative costs on the part of taxpayers. The current intangible asset depreciation legislation can still be considered by now as a relatively established system not affected by major changes. But the question remains as to whether this will continue to be the case.

7 SUMMARY

The purpose of the paper is to familiarize readers with developments in legislation of intangible asset tax depreciation in the Czech Republic since 1993. The legal status valid and effective to December 31 of the applicable year was taken into consideration; for the current year this meant the legal status valid and effective to July 31. Tables were used for the actual description of development of Czech legislative regulation in an effort to provide greater clarity. Besides rendering description of the development of legislative regulations, for the modeled example for the chosen category of intangible assets, the authors also analyze the development of legal regulation in the context of impacts on the tax base of taxpayers. The independent variable for the elaborated models is represented by the year of acquiring intangible assets (the authors chose software), the portion of the entry price entering tax costs in the form of depreciations in individual years of depreciation represents the dependent variable.

To achieve the stated objectives, the comparative method was applied (used mainly to describe and assess how legislation developed) and the modeling method (establishing models describing the impact of legislative regulation on the tax expenses of taxpayers). Upon elaborating this paper, the authors decided to use so-called paired logic methods (analysis – synthesis; abstraction – specification; induction – deduction).

In relation to the description and analysis of the legislative regulation, it is necessary first to state that during the course of the monitored and assessed period (1993–2011), it is possible to identify three basic modes of intangible asset tax depreciations (1993–2000; 2001–2003; 2004–2011), which fundamentally differ mainly in the method of determining these tax depreciations. During the periods 1993–2000 and 2004–2011, the ITA determined intangible asset tax depreciations, which specified the category itself as well as the method and amount of intangible asset tax depreciations. In the period 2001–2003, intangible assets depreciations were regulated solely by accounting depreciations. The paper discusses each of these three modes and performs their comparison in terms of a number of criteria (ex. the amount of entry prices, depreciation period, the actual material notion of the term *intangible asset*). One may state that just as it is with tangible assets and their depreciations, during the course of the monitored period, gradual specification occurred of the actual material notion of the term *intangible asset*, as well as attributes that these assets must fulfill. One may consider the current legal regulation in many aspects to be stable. Changes may be monitored mainly in the first decade of the monitored period, which may be explained by social changes to which they related in relation to the transformation to a market economy in the Czech Republic.

Regarding the established model describing the dependence of the size of the portion of the entry price of intangible assets (namely software) forming the tax base in individual years of depreciation to

22 For intangible assets acquired in the period 1993–2000, it did not matter when the assets were acquired during the course of the year. The taxpayer was entitled to the entire annual tax depreciation under the stipulation that it had the asset in its business property at the end of the tax period (if this of course did not concern a legally determined exception such as the situation when the taxpayer only continued in depreciation, etc.).

the acquisition year, one may say that under the given conditions, the most advantageous mode was the one valid in the years 2001–2003. This conclusion of course may not be generalized in any way, because the advantageousness of the tax mode is determined by the period of depreciation determined by the taxpayer (accounting entity). Differences in the amount of tax depreciation are clear during the periods 1993–2000 and 2004–2011. These arise in part from the differing depreciation periods and the accuracy of determining depreciations, followed by the different conceptions of determining tax depreciations.

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