

ISSUE NO. 4 / SEPTEMBER 2021

TAX FRESH



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Dear business partners,

In this issue of our Tax Fresh, we would like to introduce you to the latest developments in the field of taxation and transfer pricing.

Should you have any questions, don't hesitate to contact our office, we would be glad to assist you.

Best regards



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FILING OF FINANCIAL STATEMENTS IN THE COLLECTION OF DEEDS



We would like to draw your attention to the new sanctions and requirements resulting from the amendment to Act No. 304/2013 Coll., on the Public Registers of Legal and Natural Persons and on the Register of Trust Funds, which entered into force on 1 January 2021.

There is a tightening in the case of non-publication of financial statements by companies in the Collection of Deeds, where the Registration Act allows for the imposition of a sanction in the form of dissolution of the company without liquidation if certain conditions are met.

For the dissolution of a company without liquidation, the amendment to Act on the Public Registers sets out 2 criteria (in short).

The first criterion is failure to file ordinary or extraordinary financial statements in the Collection of Deeds for at least two consecutive accounting periods. The second criterion is the inability to contact the business corporation.

Thus, after failure to file the financial statements in the Collection of Deeds for at least 2 consecutive accounting periods, the Registrar Court shall request the company to submit the missing financial statements for filing in the Collection of Deeds within 1 month from the delivery of the request.

Failure to comply with the request may result in a fine of up to CZK 100,000. However, if the notice cannot be served, the registry court will initiate proceedings to dissolve the corporation. The Registrar Court may then issue a decision on the dissolution at the earliest after 1 year from the date of entry of the commencement of the dissolution proceedings in the Commercial Register.

The one-year period is mainly used to prove to the Registrar Court whether the company has property. If it turns out, in the course of the proceedings, that the property of the company exceed the costs of liquidation, then the Registrar Court decides to dissolve the company with liquidation. Otherwise, the Registrar Court will decide to dissolve the company without liquidation.

With regard to the above information, in conclusion, we recommend that you consistently comply with the obligations related to the filing of financial statements and other statutory documentation in the Collection of Deeds and always respond to the requests of the Registrar Court.

KURZARBEIT



As of 1 July 2021, an amendment to the Act on Employment comes into force, the content of which is the so-called "Kurzarbeit", officially known as the "Allowance during shortened working hours".

This allowance is intended to preserve jobs in times of severe economic crises. It is a systemic tool that can be used in times of economic recession, natural disasters, cyber attacks or pandemics, which we have now been facing.

Employers can use the support for a maximum of 12 months, at which point they are obliged to pay the employee a minimum of 80% of their average earnings. The employer then receives a contribution of 80% of the costs for wage replacement and insurance contributions. The maximum contribution per employee is limited to 1.5 times the national average wage. The condition for using the aid is that only 20-80% of the work is allocated to employees. Employers' premises must therefore not be entirely closed. Companies that use Kurzarbeit will not be able to pay dividends in the same year or in the following year.

Please note that although the amendment to the Act on Employment has already entered into force, this does not mean that it is already possible to use the Kurzarbeit allowance. The allowance must first be activated. Its provision is determined by the Government after discussion in a tripartite meeting, on the basis of a serious threat to the economy of the Czech Republic or its particular sectors. A government decree then determines which territory, sector or group of employers will be affected by the Kurzarbeit. The duration of the drawing up of the allowance may be set by the government decree for a maximum of 6 months for the first time and then repeatedly extended for a maximum of 3 months. However, they shall not exceed twelve calendar months in total.

CHANGES IN THE AREA OF E-COMMERCE



As of 1 July 2021, an amendment to the European VAT E-Commerce Directive came into force, which concerns electronic commerce or e-commerce. Due to delays in the legislative process, this amendment was not implemented in the Czech Republic in time. However, the General Financial Directorate has issued an information that in most areas it will already be possible to take advantage of the direct effect of the European Directive.

In other words, from the effective date of the amendment to the European Directive, it is possible to proceed either according to the current wording of the law or to apply the direct effect of the Directive.

Currently, until the amendment to the Czech VAT Act comes into force, the tax exemption for imports of goods up to EUR 22 is still valid. Despite this, the suppliers of goods are already entitled (by virtue of the direct effect of the Directive) to charge value added tax on these goods regardless of the currently effective wording of the VAT Act. So if the supplier charges VAT tax on goods with a value up to EUR 22, the Czech customer can apply the supplier for a refund.

One-Stop-Shop Regime, the OSS, which is applied to B2C (not B2B) transactions, is already fully functional regardless of the effectiveness of the amendment to the VAT Act. In short, it is an electronic system that allows the registered user (the supplier of the goods) to collect VAT on cross-border sales. The user does not have to register for VAT in each EU country individually after exceeding the aggregate limit of EUR 10,000 from cross-border sales, but has the option of registering just for the OSS scheme.

The Ministry of Finance informs in the Financial Bulletin No. 30/2021, that the current users of the special one-stop shop, a MOSS (mini one stop shop) regime, are automatically transferred to the special OSS regime from 1 July 2021, and will be able to continue to use the relevant regime in the OSS extended by the import regime.

TRANSFER PRICES - LATEST NEWS



For a long time, there is no doubt about the importance of transfer pricing in the inspection practice of tax authorities. This is also evidenced by the following communication and statistics published by the Financial Administration at the beginning of this year's summer holiday:

"In 2020, the Financial Administration carried out 249 audits focused on transfer prices between related parties, which resulted in additional income tax assessments of CZK 1.4 billion and increase in the tax base of audited entities by CZK 7.9 billion. A total of 2,431 audits were carried out between 2014 and 2020, resulting in additional tax assessments of CZK 4.5 billion and the tax base was increased by CZK 46.9 billion. Transfer pricing is the setting of prices for transactions between associated persons where their setting does not correspond to market conditions and leads to an incorrect determination of the tax base."

Year	Additionaly Assessed Tax (CZK million)	Increase in the tax base including loss reduction (CZK million)
2014	59	504
2015	446	2 823
2016	886	13 286
2017	189	1 264
2018	1 216	18 038
2019	356	3 130
2020	1 362	7 861

Although the obligation to document transfer pricing is not yet enacted in the Czech Republic, companies that are part of groups and have significant relationships with associated persons can only be recommended to prepare a document addressing the issue of transfer pricing.

According to our experience from price controls, the existence of such a document is a clear advantage and an important "psychological" factor when initiating a tax inspection.

In the context of the pandemic years 2020-2021 (and perhaps beyond?), the question of the impact of the pandemic on the expected profitability of businesses is certainly gaining importance.

In a situation where a significant part of the Czech economy is made up of companies that are referred to as so-called routine entities, according to transfer pricing theory, i.e., entities with limited functions and risks (typically custom or contract manufacturers, sales agents or distributors), the question is how the tax administrator will deal with the requirement for low but stable profitability of this group of taxpayers in crisis years.

The solution was outlined at the end of 2020 by the OECD with the Guidance on the Impact of the COVID-19 Pandemic, to which the Czech Financial Administration responded in spring 2021 with publishing of its own Information. According to this Information, the Czech tax administrator will expect a thorough documentation of the impact of the pandemic on the deterioration of the company's performance.

Also interesting is the announced approach of the financial administration to the already existing comparative analyses (so-called benchmarks, which the financial administration likes to apply to routine entities). Since the benchmark data are based on pre-pandemic years (usually a 3-5 year time frame), it is logical to expect scenarios where the controlled entity will not be able to deliver the expected profitability in crisis years.

The likely preferred approach of the tax administrator, particularly for long-term contracts, will be not to reflect the impact of the loss in the existing benchmark and to "dilute" the impact in subsequent years when the impact of the crisis is already reflected in the benchmark. The expected profitability according to the benchmark will thus decrease, while the actual profitability will (hopefully) already be at the level of the pre-crisis years.

Last but not least, your attention should not miss the OECD report on financial transactions (typically intra company loans, guarantees or cash-pool), with which the Czech Financial Administration is familiar in detail. Very interesting is, for example, the clear rejection of offers from external banks as a means of evidence to defend the chosen interest rate. The new emphasis is to be on functional and risk analysis of the debtor and the creditor and on the credit rating of the debtor. This data will then be used to calculate the financing costs. There is therefore an obvious analogy with the valuation of financial instruments on financial markets.

With the above information, we would like to remind you that the topic of transfer pricing is still with us. As you know, luck favors the prepared. Therefore, we also want to appeal to your preparedness in relation to this tax discipline. Do keep in mind, that anything you disclose to the tax authorities in good faith, while being subject to transfer pricing audit, can later be used against you.

STUDENT'S NOTIFICATION OBLIGATION TO THE HEALTH INSURANCE COMPANY



With regard to the post-holiday return of students and pupils to school, we would like to briefly draw your attention to the student's notification obligation to the health insurance company. According to the Public Health Insurance Act, the health insurance company must be notified and documented within 8 days of the occurrence or termination of the state's obligation to pay premiums on behalf of the insured, which applies in particular to the commencement and termination of studies at secondary and higher education institutions or the interruption and resumption of studies. Although most schools supply insurance companies with these notifications, they are not required to do so. Therefore, it should be in the interest of students and, where appropriate, their legal guardians to check whether notifications have been made by the relevant school and, if not, to make such notifications in person. Please note that failure to comply with the notification obligation may result in a fine of up to CZK 10,000.

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