

# BDO NEWS

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## EDITORIAL



Dear Readers,

About a year ago, when I had the honour of participating in the preparation of our newsletter, I never expected that the coming year would be so complicated. With the passing of the year, when I was again given the opportunity to contribute to the introductory issue of the new year, our personal contacts are limited to the necessary minimum. However, with modern technology we have managed not to lose our contacts completely and thanks to these progressive possibilities we are still close in a way. Nevertheless, we are all definitely looking forward to a more "normal" time and our personal contacts will be completely normal again.

But time goes on unstopably. It is necessary to adapt to new challenges and requirements not only at home but also globally. At home, last year we fought with many legislative innovations brought not only by the COVID-19 pandemic and we have kept you informed of significant changes. In addition to the crisis measures related to the pandemic, there were, for example, major changes in the tax code, VAT, and at the last minute, significant changes in the Income Tax

Act were approved.

Not only smaller businessmen will certainly welcome the possibility of introducing the possibility of advance payments for tax deductions, the larger ones may be glad of the setting of a higher limit for the depreciation of tangible assets, even with retroactive effect for 2020. All taxpayers will be eager to view "an online tax office", which will hopefully meet expectations.

What will probably not please most of us so much is the final departure of the United Kingdom from the EU on 31.12.2020 and related issues not only in the field of taxation, but also, for example, a novelty in the field of the mandatory reporting of tax optimization schemes (DAC6). Along with other matters, we will focus more on these topics on this issue of the newsletter.

Friends, I wish you good health, good luck and much joy not only in 2021.

Jiří Janděčka  
Partner

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## BDO CZECH REPUBLIC

- ▶ Audit, Tax, Accounting & Payroll Advisory, IT and Valuation
- ▶ 450 specialists
- ▶ 35 Certified Tax Advisers, 30 Certified Auditors, 5 Certified Appraisers
- ▶ 6 offices in the Czech Republic

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## THE GFR PUBLISHED THE FIRST ANSWERS TO DAC6-RELATED QUESTIONS

**D**uring the previous year, the sixth amendment to the EU Directive on Administrative Cooperation in Tax Administration, which regulates the mandatory notification of tax optimization schemes, was implemented into Czech law. It establishes this obligation towards the intermediaries of these arrangements, or the taxpayers themselves. The tax administration seeks to gain a better overview of such arrangements that are potentially aggressive tax planning and whose main or one of the main reasons is to obtain a tax advantage.

As a result of the COVID-19 pandemic, the deadlines for fulfilling the notification obligation were postponed. However, even these deadlines are slowly being met these days ([more HERE](#)). Last year, the Financial Administration also published an electronic form on the tax portal ([HERE](#)).

At the end of the year, the General Finance Directorate (GFD) issued the expected document ([more HERE](#)), which contains answers to certain questions related to the application of Act No. 164/2013 Coll., On International Cooperation in Tax Administration in the Reporting Obligation DAC6). Unfortunately, this document did not meet the expectations of both intermediaries and users themselves. Nevertheless, it is appropriate to mention some points in the information provided.

The liaison administrator will be the Specialized Tax Office.

Communications can be made in Czech or English. However, the tax administrator will be able to request a translation of the free text fields. Important information was provided on the so-called historical cross-border arrangements. These are arrangements that were made available for implementation in the period from 25 June 2018 to 28 August 2020, but the first step towards their implementation has not been taken.

**On this point, the GFD states that if a cross-border arrangement is established by 28 August 2020 inclusive, but the first step in its implementation is not taken, the arrangement will not be the subject of a notification. The arrangement would then be announced if the first step in its implementation were taken.**

With a few exceptions, the GFD describes in general in the information what types of cross-border arrangements there are, who exactly is the user of the arrangement, what is meant by the term arrangement at all. However, all this could already be read, for example, from the explanatory memorandum.

However, the GFD further describes, for example, the use of the so-called A-ID and D-ID identification numbers. Layout Identification Number (A-ID) - this is a unique layout identifier that is automatically created after the processing of a new notification (ie the A-ID is assigned to a cross-border arrangement that is first notified within the EU). Submission Identification Number (D-ID) - This is a unique submission identifier that is automatically created after processing a new notification or a subsequent non-corrective notification. The GFD recommends that obliged entities include an e-mail address in the contact information as part of the Notification. An e-mail address is necessary for sending the identification numbers A-ID and D-ID after the processing of the Notification and also for possible communication by the tax administrator in case of incorrect submissions.

In the information, the GFD also outlines possible preconditions for the notified cross-border arrangement. In the Communication, the GFD assumes that someone should design or offer a cross-border arrangement, there must in principle be a concurrence of these facts. There must be someone proposing such an arrangement (intermediary, taxpayer or employee) and at the same time there must be a proposal intended to provide the taxpayer with a tax advantage, including

concealment of income or assets or circumvention of the common OECD reporting standard described in Section II, Article D, Annex No. 3. If the above-mentioned concurrence does not occur, it is not a cross-border arrangement which is subject to the notification obligation. If a basic concurrence exists, the fulfillment of at least one of the characteristics must be verified (or, where appropriate, with the application of the MBT main benefit test).

The GFR further describes situations where a obliged entity is not obliged to notify a notified cross-border arrangement if it has submitted a notification containing the same data in another EU Member State or if another obliged entity has notified in relation to this arrangement in one of the EU Member States, which contained the same data. **In case the notified cross-border arrangement has been notified by another obligated person or the arrangement has been notified in another EU Member State, we recommend keeping the A-ID and D-ID identification numbers, which can serve as proof of compliance with the notification obligation.**

The GFR also touched on professional secrecy in the information. In the case of tailor-made arrangements that are tied to a specific user, the intermediary is not a liable person in this case (linked to professional secrecy) and the obligation passes either to another intermediary, or if the arrangement does not already have another intermediary, the notification obligation passes to the user of the arrangement. The intermediary of the notified cross-border arrangement, who is not at least partly a liable person in relation to this arrangement due to professional secrecy, is obliged to inform the other intermediaries of this arrangement known to him and the user of this arrangement in good time. In the case of a standardized arrangement (it could be compared to „boxed software“), professional secrecy applies to the user and not to the arrangement as such. In this case, the broker shall report other information about the arrangement, in addition to the user of the arrangement. In a given situation, it is desirable that the intermediary also communicates to the user the identification number of the so-called A-ID arrangement, which he receives after processing his notification.

The information includes a number of other announcements.

These could already be derived, for example, from the explanatory memorandum. Other information in the communication includes, for example, what is meant by the value of the arrangement, how to make corrections to notifications already submitted, whether signing a contract is already the first step in implementing the arrangement, etc. Unfortunately, we lack more practical examples in practice. It is often impossible to imagine where the line is between what needs to be reported and what does not. However, one very important issue appeared in the information in connection with the payment of dividends from subsidiaries to parent companies. In the given situation, according to the information of the GFD, it is a question of fulfilling the requirements listed in Annex 3, Section 2, Article C, paragraph 1, letter c) and mentions at the same time the need to assess the main benefit test. Unless one of the main advantages is a tax advantage, cross-border arrangements are not subject to notification. In specific arrangements, the fulfillment of other requirements cannot be ruled out.

**Not only in the Czech Republic, but also in other EU member states, it will probably be a long time before a long range of interpretive ambiguities is clarified.** In many cases, the case law of the EU SD will probably decide. Until then, we can only hope that the tax authorities will be instructed to apply mild sanctions rather than those allowed by law in the event of a possible breach of the notification obligation. The Chamber of Tax Advisers makes every effort to ensure that at least the basic practical situations we may encounter are clarified and described in practice as soon as possible. Intensive exchanges of information on these issues between representatives of the Chamber of Tax Advisers and the GFD have taken place and are still ongoing.

You will be continuously informed about the final approaches not only on the website ([HERE](#)), but certainly in the case of questions, please contact your BDO advisor, with whom you will assess the specific situation together.

Jiří Janděčka  
jiri.jandacka@bdo.cz

## THE UNITED KINGDOM IS A THIRD COUNTRY IN TERMS OF VAT

**A**t midnight on New Year's Eve, the transitional period ceased to apply after the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, and Great Britain became a third country in terms of value added tax. When selling to the UK, the customs administration will increase, but paradoxically, this will make it easier to prove the VAT exemption. Deliveries will no longer be reported in the recapitulative statement and all EU acknowledgments of receipt of goods will in principle replace the customs office's decision to exit the goods from the EU, at least where the goods will go under the customs export procedure.

When compiling the tax return for December or January, we may come across deliveries that were started in December, but the customer did not receive the goods until January. In these cases, the correct delivery will be reported according to the EU rules for the movement of goods, ie outside the import and export regime, even in a situation where the goods will cross the border of the European Union only in January.

- ▶ Example: A customer from Great Britain ordered the delivery of parts for production from a Czech payer. The payer handed over the parts to the carrier in Pilsen on December 29, 2020. The delivery did not enter the United Kingdom until January 4, 2021. It met all the requirements normally required for the exemption of intra-EU supplies.

Third country status for the United Kingdom is not just about confusing the supply of goods for export and the acquisition of goods for import. More fundamentally, it concerns the impossibility of applying the simplifications that apply between Member States. **As of January 1, it is no longer possible to use the simplification for tripartite trade, the warehousing regime, the EU rules for the supply and acquisition of new means of transport or the shipment rule, which allowed the Czech Republic to tax these supplies until the limit for shipments to the UK is exceeded.** Since January, trade with the United Kingdom has been governed by the same VAT rules as other non-EU countries, such as the United States, China and Russia.

The exception remains trade with Northern Ireland, which is still an EU Member State for the delivery of goods after 1 January and will therefore use a tax identification number prefixed with „XI“. However, this exception does not apply to the provision of services where

Northern Ireland will be considered a third country.

In cases where the Czech taxpayer has annually applied for a refund of VAT paid in the United Kingdom, it is necessary to take into account the shortened deadline for applications for 2020. Instead of the standard deadline of 30 September 2021, which applies to tax refunds for 2020 from EU countries, there can be a request for a refund of the UK tax for 2020 only until 31 March 2021.

Petr Vondraš  
petr.vondras@bdo.cz

## VOLUNTARY TAXATION OF RENTS HAS BEEN SIGNIFICANTLY REDUCED

**W**ith the onset of the new year, landlords who do not currently own production halls or warehouses should check how their property is registered in the land register. If the building is registered as a family or apartment house, the continuation of the lease with tax will be impossible or at least limited. The absence of taxation means a major impact on the possibility of applying a deduction related not only to repairs or technical improvements, but also the acquisition of real estate itself.

From 1 January 2021, it is not possible to subject to tax the lease of a building that is registered in the real estate register as a family house, regardless of how the house is used. From this year, in the case of a family house, the landlord must also exempt the lease without the right to deduction even to a payer who has offices in this house, small production or leases it to another payer providing accommodation services in the house. The same applies to renting an apartment (living space). „If the subject of the lease is a living space which should be located in a building with a descriptive or registration number, which is an apartment, then the lease of such living space (apartment) will be exempt from tax from 1 January 2021 in all circumstances without the right to deduct tax, „according to the Directorate-General for Finance, published in the second half of December.

An important group that will be affected by this change are landlords of apartment buildings. These are often made up of apartments, offices and a shop on the ground floor. **It will not be possible to tax the lease of the building as a whole, in which at least 60% of the leased floor space consists of living space.** The insidiousness of the connection to the living space lies in its definition, according to which it is a set of rooms which, with their construction and technical layout and equipment, meet the requirements for permanent living and are intended for this purpose. The living space is therefore determined by the construction and technical layout, not the purpose of use. Therefore, the floor area formed by the living space also includes a company headquarters, which is in the space originally approved as an apartment. At the same time, the land register registers as an apartment building, buildings consisting of more than half of the living

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space, therefore without re-approval it will not be practically possible to get the lease of the apartment building as a whole into the voluntary taxation regime. When renting part of the premises, such as the ground floor, which serves as a shop and has been newly approved for this purpose, voluntary taxation will be able to be applied to the payer.

**Payers who have been placed under the exemption regime without the right to a deduction by changing their lease from 1 January must also take into account the adjustment of the deduction for real estate acquired before the amendment came into force.**

► Example: In 2018, a payer bought an apartment building from another payer in the transfer tax regime, in which more than 60% of the floor area is living space. The house is registered in the land register as an apartment building. The payer immediately started leasing it in its entirety to another VAT payer, Prague rentals s.r.o., which then sublets it to the final tenants. The lessor claimed the full deduction from the payer during the purchase. As this is real estate, the deduction is subject to adjustment within 10 years. For apartment building owners, this means that with the current wording of the law in force in the future, from 2021, it will always return 1/10 of the originally applied deduction in the tax return for December, most recently in 2027. In total, it will return 70% of the deduction. If the investment was 15 million crowns and 21% VAT on it amounted to a total of 3,150,000 crowns, the owner will lose an amount exceeding 2.2 million crowns

If you are in the situation of landlords who voluntarily taxed the lease last year and whose property may have something to do with housing according to the land register, I or my colleagues Petr Linx and Igor Pantůček from our VAT team will be happy to verify the taxation possibilities in 2021.

**Petr Vondraš**  
petr.vondras@bdo.cz

## MY TAXES - REALLY MODERN AND SIMPLE?

**P**robably in the first weeks of 2021, the General Finance Directorate will launch the MY TAXES project, the so-called „online tax office“, on the basis of an amendment to the Tax Code. The online tax office should bring simplification, acceleration and greater comfort of electronic communication with tax authorities, without the physical presence of taxpayers in the buildings of the tax administrators. Through a special portal, it will be possible not only to file tax returns. The taxpayer will be able to obtain a personal tax calendar, monitor their upcoming tax obligations and control the fulfillment of existing ones. Tax forms should be offered pre-filled and with a logical link to the electronic submission and payment of the tax, for example by means of a QR code.

The new, clear and intuitive interface should replace the existing tax information box, which should still be in operation for approximately another year.

**Through this project, it should be possible to gradually obtain information from the taxpayer's file. Furthermore, simple informal communication with the tax administrator should be allowed.**

Logging in to this interface should be easy and electronic verification of identity should take place via an electronic ID card with a chip, in the form of MojID. Login will also be possible via a data box, via the Citizen's Portal, authorized data from the checkpoint or via login data issued at the tax office. The registration will also include a new Sonia banking identity project (so-called BankID). Banking identity has the potential to offer easy electronic login to millions of Internet banking clients during 2021.

Within the online tax office, it will be simple to entrust electronically with the administration of your tax obligations, for example, your tax advisor or anyone else.

Paper declarations will definitely not disappear completely. Citizens who will continue to prefer paper filing, either in person or by post, will retain this option (unless the law requires them to file returns electronically only in the case of a legally established data box). Whether this form of digitalization of tax administration will be successful will only be seen in time. It will certainly be necessary that the portal should offer to be more varied and easy to work with. Let's hope that this will not be just a new form of the existing tax box, which has put on another coat.

**Jiří Jandečka**  
jiri.jandeka@bdo.cz

## CYBERSECURITY SERIES: NOT ONLY A GOOD PASSWORD CAN SAVE YOU A LOT

**T**oday, each of us has a lot of passwords for different services. One for the computer, the other for the e-mail box, for logging in to social networks or various websites. Of course, it is almost impossible to remember them all, so a large percentage of people use the same password wherever possible. For example, you know that according to the latest surveys, the winner among passwords in the Czech Republic is: „username or family member's name“ with more than 22% among other passwords. With more than 45% of users using the same password for multiple services, we can only imagine the potential impact in this one example.

A good example is my wife. She uses the same password for the website where she buys clothes, the same for buying books and food over the internet and on facebook. What threatens her? Someone can post an inappropriate video on her Facebook profile, or publish opinions that my wife does not share. Quite simply, they steal her identity, she will never get her profile back. On the payment portal, where she has stored cards, the attacker will use this information to his advantage... Fortunately, my wife was persuaded and changed her password and set



up a multifactor login wherever she could. In IT security terminology: she minimized the risk.

Can you guess the consequences of your stolen passwords?

Due to the nature of our work in the field of cyber security, we still monitor various password leaks and their publication on public or „non-public“ (darkweb) parts of the Internet. If we look at the current numbers, the total number of stolen passwords is in the tens of millions and of course it is possible to find these also in the Czech environment. Of course, this is also monitored by large players, and they also monitor and integrate these resources into their services. For example, in Chrome you are notified of a compromised password.

The solution to this problem is certainly not pleasant for every user. It is impossible to remember hundreds of passwords and it is also not appropriate to use passwords written in the calendar. From my own practice, I can recommend using different passwords for different services. Store these passwords in services that allow them to be stored securely. Nowadays, a large number of services can send a forgotten password. Yes, you're waiting tensely at your computer for your password to run out, but it's worth the wait.

Another very good solution is, of course, to use multifactor login. And preferably wherever possible. Using multifactor login for example in a corporate environment, private email or profiles on social networks is not much different than, for example, login to a bank. The only difference is that the second factor is not always required, but only at a certain interval. This means not only addressing access to the corporate environment, but also reducing the risk of, for example, the unauthorized transfer of a profile on a social network and the possibility of impersonating someone else.

Finally, I add recommendations to observe the following points:

- ▶ The password should not be shorter than 8 characters.
- ▶ The password should contain uppercase, lowercase letters, numbers and special characters.
- ▶ Do not use the same passwords in multiple services.
- ▶ Use multifactor login wherever technically possible.
- ▶ If possible, do not use passwords that can be associated with your person or the environment.
- ▶ Check the password against the lists of leaked passwords.

**Martin Hořícký**  
martin.horicky@bdo.cz

## MARK IN YOUR CALENDARS: EVENTS AND WEBINARS

Also this year, we bring you news from the field of taxes, transfer pricing, audits and legislative changes in the form of online seminars. We have prepared several online seminars this year in cooperation with the Czech Institute of Internal Auditors.

Join the training online and safely. You can complete the training anywhere from your computer or mobile device. We also make recordings of BDO webinars, so you can look up the training retrospectively or if the selected date does not suit you.

### BDO WEBINAR: CURRENT CHANGES IN TRANSFER PRICING

▶ 26. 1. 2021, 9:00 – 10:30

In cooperation with the General Financial Directorate we have prepared a webinar where we will discuss the main factors and recommended changes in the contractual documentation you need to consider in the area of transfer pricing. In the context of the economic changes related to the COVID-19 pandemic, with companies in all tax jurisdictions facing its effects, large multinational groups can be expected to report consolidated losses. This is an exceptional situation, but even so, it can be expected that the financial administration will check whether Czech producers have covered all costs and generated the usual market profit. Given that because of local government measures producers may not be able to cover all fixed costs, let alone generate profit, it will be especially important to analyse the reasons that led to such an outcome. Only those companies having contracted responsibilities for intra-group default risks and having well-documented the effects of the government policies on their operations will be able to argue that they have faced risks that were not transferable to the group.

### WEBINAR ČIIA (CZECH INSTITUTE OF INTERNAL AUDITORS): END OF UNCERTAINTY WITH GDPR OR WOULD YOU COPE WITH A CONTROL BY THE DATA PROTECTION OFFICE?

▶ 4. 2. 2021, 13:00 - 15:00

What is the situation regarding GDPR two years after the introduction of the regulation? What are the controls focused on and how to avoid unnecessary errors and possible sanctions? What sanctions have already been imposed for breaches of the GDPR and what is the most common mistake? You will find the answers to this and much more at this seminar.

### WEBINAR ČIIA: CARRYING OUT AN INTERNAL AUDIT SELF-ASSESSMENT WITH SUBSEQUENT INDEPENDENT VALIDATION

▶ 17. 2. 2021, 9:00 - 12:00

The aim of the seminar is to acquaint participants with the reasons and benefits of conducting an evaluation of internal audit activities and a framework for conducting self-evaluation of internal audit. Learn how to acquire skills for preparing and successfully conducting an internal audit self-assessment followed by independent validation.

### WEBINAR ČIIA: AUDIT OF CAMERA SYSTEMS (CCTV)

▶ 5. 3. 2021, 9:00 - 11:00

The aim of the seminar is to acquaint participants with the main steps in the audit of camera system (CCTV) settings. You will get practical tips on how to proceed with a CCTV audit. You will learn about GDPR requirements for camera setup and operation, including security requirements and CCTV documentation.

### WEBINAR ČIIA: GDPR AUDIT

▶ 24. 3. 2021, 9:00 - 15:00

At the webinar, you will learn about the legal framework for personal data protection. You will acquire skills for the preparation and successful implementation of a GDPR audit in the company.