

BDO NEWS

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EDITORIAL



Dear Readers,
Exactly a year ago, when I was writing the editorial for our newsletter, I did not in the slightest anticipate that at the time of writing our country would be in partial lockdown, our employees confined to home office, and mandatory testing of employees implemented. I firmly hope all this will soon be a thing of the past.

The state is now explicitly obliged by law to compensate for actual damage caused to businesses in connection with the anti-epidemic law. You can also read about how to make a claim.

In the area of employee support, an exceptional contribution of CZK 370 per day was approved in the case of quarantine or isolation due to an infectious disease, and a new law on a compensatory bonus was published in the Collection of Laws, which we will examine in more detail in a separate article.

The financial administration has launched the MY TAXES internet portal – the “online tax office” we have been waiting for. I very much welcome this portal, as I believe it is the right way forward and that it will be further developed, supplemented and modified in the direction of 21st century simplicity and user-friendliness. When filing an income tax return through the portal it is already possible to use the extension of the deadline until 3 May 2021. You will find more on other deadlines, as set out in the new tax code, in a separate article.

For most companies, the 2020 tax period is the first when it will be necessary to apply the new rules resulting from the implementation of the EU anti-avoidance directive (ATAD directive) into the Czech legal system. We provide you with a short summary of what to be on the lookout for.

In conclusion, let me wish us all good health,

Michal Daňša
Partner

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ATAD ISSUES IN CORPORATE INCOME TAX RETURNS

When compiling a tax return for 2020, you must remember four new provisions that were implemented into the Czech tax legislation already in 2019 at the initiative of the Organisation for Economic Cooperation and Development. Aimed at preventing the erosion of the tax base and the transfer of profits, the provisions were created in accordance with the EU Council Directive (ATAD) and set rules for:

- ▶ limitation of the eligibility of excessive borrowing costs;
- ▶ taxation on the transfer of property without change of ownership;
- ▶ taxation of a controlled foreign company;
- ▶ addressing the consequences of different legal qualifications.

In line with the implementation of the ATAD Directive, new lines 63 and 163 have been added to the model of the tax return for 2020.

What's the difference? Under the conditions stipulated by law, the economic result can be reduced by these amounts in the following periods.

Frequent ambiguities in the interpretation of the new provisions have led the Directorate-General for Finance to issue information on their application. Some of the Directorate-General for Finance's replies concern situations that may have realistically occurred in 2020. And it is these situations that we would like to draw your attention to.

The reduction of excessive borrowing costs will apply to large investment groups for which the set cost limits of CZK 80,000,000 (or 30% EDITDA) may have been exceeded. You may recall that when quantifying excessive borrowing costs, the total amount should also include exchange rate losses related to contractual interest, as well as **interest applied in 2020** in the context of tax depreciation of tangible assets as a tax-effective cost, provided that, in accordance with accounting regulations, they became part of the **valuation of assets put into use after 17 June 2016**.

Taxation of transfers of assets without change of ownership applies to foreign permanent establishments established by Czech tax residents, permanent establishments of tax non-residents located in the Czech Republic, and situations where the tax residency was transferred from the Czech Republic abroad in 2020. The provision applies to events that occurred from 1 January 2020, while inventories and low-value tangible assets are also regarded as assets. Therefore, if in 2020, in connection with the cross-border transfer of assets, a permanent establishment or its founder registered the transferred assets in another item of the accounting of assets, we remind you to regard such a situation as if the transfer of assets took place at market value. Then it is necessary to examine whether the Czech Republic loses the right to tax income

from the subsequent transfer for a consideration. If so, the result of the transaction must be recorded on a separate line of the tax return. We recommend having functional and risk analyses prepared for these situations, which are a necessary part of the transfer pricing documentation.

Taxation of controlled foreign companies applies to companies that have established a subsidiary or a permanent establishment in a jurisdiction with a tax liability half as much as would be imposed in the Czech Republic. Please note that **the income of the controlled company is deemed to be the income of the controlling company. The expenses of the controlled company must be assessed in accordance with Czech law for the purposes of determining the tax base.**

The application of the new provisions may not always be completely clear when drawing up the tax return. We will therefore continue to inform you in more detail about further developments in this area.

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COMPENSATION: IS THERE HOPE ON THE HORIZON FOR BUSINESSES?

Is your business shut down due to government anti-epidemic measures? The first promising answers to the question of damages are provided by the anti-epidemic law.

The so-called anti-epidemic law (available [here](#)) was announced in the Collection of Laws. Its primary objective is to establish anti-epidemic powers for a number of state and local authorities, without the need to declare a state of emergency. However, the law also addresses the much-anticipated issue of damages, which we will briefly summarise for you.

According to the law, the state is obliged to compensate so-called real damages. These are mainly costs incurred in vain, i.e. costs which the company could not objectively avoid, but which, due to the limitation of its operations, did not lead to the achievement of any income. **In practice, according to the anti-epidemic law, companies could claim compensation for employees' wages paid, rent for their premises or energy payments.** However, the actual damages do not include lost profits, i.e. profits that the company probably would have made had its operations not been restricted. We must point out that the amount of compensation is reduced by subsidies, non-repayable financial assistance or other support received by the company in connection with the pandemic (e.g. compensation packages). The costs of acquiring protective, cleaning or disinfecting agents are also not regarded as damages. But the question remains whether the cost of testing

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employees can be considered as damages.

The claim must be made to the Ministry of Finance within 12 months from the moment the company became aware of the damage, otherwise it expires. The application must contain an indication of the amount of the damage, a detailed description of how it occurred, and which specific measure caused the damage. Above all, the damage must be substantiated by reliable evidence. In addition, proof of the aid received must also be provided so that the Ministry can assess the amount of the claim.

If the applicant's legitimate and duly substantiated claim is not satisfied within six months of the application, the applicant may go to court. If successful, the state will be obliged to reimburse the costs of legal proceedings. If the state grants the request only in part, only the remaining part can be enforced in court. We expect that the state will defend itself by all means and that its most common defence will be that the damage was not sufficiently proven, that insufficient steps were taken to prevent or mitigate the damage, or that the claimant has not exhausted all available compensation.

We must emphasise that under the anti-epidemic law, only damages caused by these specific measures are compensated. According to this law, it is not possible to claim compensation for damages caused in previous waves of the pandemic or due to existing measures issued based on a state of emergency declared by the government (however, we will see how the Constitutional Court assesses the current state of emergency). For damages caused by the government's existing crisis measures, the Crisis Act and the general liability of the state for damages apply.

If you want to assess what damages you have incurred and whether you are entitled to compensation, please contact us.

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EXCHANGE RATE DIFFERENCES AND SUBSIDIES IN FINANCIAL STATEMENTS

Proper accounting for grants, state aid and exchange rate differences in financial statements carries significant risks. Accountants, tax advisors and auditors are paying close attention to it right now. New interpretations of I-42 and I-43 on the topic of exchange rate differences for receivables and advances in foreign currency issued by the National Accounting Council have given rise to some controversy in professional circles.

State support provided to businesses in 2020 is relatively broad. Probably the largest group of state aid is direct operating subsidies, which can include the Antivirus programme or compensatory subsidy titles such as COVID-Rent or COVID-Culture. All these programmes (except for the Antivirus C programme, which I will discuss in the following paragraph) ultimately represent the revenue and income of the recipient of the subsidy. It is characteristic of these subsidy titles that the subsidised cost must first be paid by the entity from its own resources and only then will be reimbursed in the form of state aid / subsidy. Especially at the turn of the accounting period, doubts arise

about when the income from the subsidy should be reflected in revenues. On the one hand, it is necessary to comply with the factual and temporal connection with the costs for the payment for which the subsidy is provided. On the other hand, there is a basic principle of accounting, namely the principle of prudence. **This is supported by the interpretation of the National Accounting Council I-14, according to which the income from the subsidy should be reported in the accounting period when the acquisition of the subsidy becomes unquestionable.** If you are unsure about which period to include the revenue from the Antivirus programme that subsidises December wages, ask yourself whether as at 31 December 2020 you had any doubts that the cost of the subsidy would be paid out from this programme. If you apply for a subsidy from this programme repeatedly and know from experience that they have been granted to you without any complications, you can safely account on the proceeds from the subsidy until December 2020. **If you still have any doubts, you can refer to another interpretation, namely I-24, which deals with subsequent events. If, after the balance sheet date, but before the preparation of the financial statements for the year 2020, it can be confirmed that you have been granted a subsidy for the December costs, we again recommend recording the revenue from the subsidy until 2020.**

The specificity of the Antivirus C programme was that instead of paying subsidies, the state proceeded to a **general reduction in social security contributions for employees**. Employers thus saved personnel costs on this component. In this case, it is not income from the operating subsidy, but a **real reduction in the employer's costs, and we recommend that you also account for this fact in this way.**

The second topic now widely discussed is the exchange rate conversions of receivables and payables as at the balance sheet date. **The solution to this problem is aided by two recent interpretations of the National Accounting Council, namely I-42 and I-43.** While I-42 describes a new approach to accounting for exchange rate differences on foreign currency receivables for which accounting adjustments have been made, I-43 changes the established rules for the so-called overdraft of advances paid due to the acquisition of fixed assets, inventories or services. According to I-42, exchange rate differences at the balance sheet date should be calculated not according to their gross value but according to the net value. Under I-43, advances provided that are not expected to be repaid in cash should not be translated at the closing exchange rate at all at the balance sheet date. I believe that many of you have already come across these new interpretations and formed your own opinion on whether it is appropriate to apply them in practice. **Personally, I agree with the conclusions in these interpretations and see them as a step in the right direction.** But I draw attention to the need to consider the process/technical impacts, the possibilities of our accounting software, the need to modify them and, finally, the tax implications. To date, we do not know of any official opinion of the Financial Administration on this matter. **In my opinion, however, the accounting treatment should be fully respected for the purposes of determining the income tax base, and we recommend a prudent approach to the release of accounting adjustments and not to forget to make an adequate adjustment of the tax base.**

If you agree with the idea of a different approach to exchange rate differences on monetary and non-monetary receivables contained in the two above-mentioned interpretations, you may have wondered why I-43 deals only with advances granted and not with advances received when the same principle can be applied to both groups of

advances. Unfortunately, I do not have the answer to this question, but I can perhaps reveal that a separate interpretation will most likely be prepared for advances received in the near future and that it will apply the same principles as the already valid I-43.

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DEADLINES FOR FILING TAX RETURNS

The largest ever amendment to the Tax Code also introduced new deadlines for filing tax returns. To which returns will they be applied, by when, and how will we file these returns starting in the 2020 tax period? **They will affect everyone who files a tax return for personal and corporate income tax.**

Under the previous rules, there were basically two deadlines for filing tax returns: (i) three months after the end of the tax period (usually the end of the period fell on 1 April), or (ii) six months after the end of the tax period (usually the end of the tax period 1 July). Within the „basic“ three-month period, tax returns (natural and legal persons) were filed by all those whose returns were not processed by a tax advisor or who were not compulsorily audited by law. On the contrary, the law allowed these entities to file a return in an extended period, just until 1 July.

What is changing about these rules?

In the first place, the basic three-month period, which has been in force until now, is maintained. The current three-month extension of the deadline also applies (with certain changes, which I write about below) if the tax return is submitted by a tax advisor or is a compulsorily audited entity.

A novelty is the possibility to file a tax return **within an extended period of one month** from the basic three-month period, i.e. **by 1 May** (if the tax period is a calendar year). This option can be used by all businesses that file tax returns **without a tax advisor** and are **not required to be audited**, if they also file their tax returns in an **extended period** (from 2 March to 1 April) in **electronic form** (e.g. using a guaranteed electronic signature or data box). If these conditions are met, the deadline for filing the return will be extended, and the tax administrator will assess the tax liability by 1 May. If the taxpayer files a return in paper form (it may occur with entrepreneurs of natural persons), the unchanged basic period of 3 months applies to him.

Another change, which we evaluate positively, and which also applies to the new four-month period, is based on the possibility for each taxpayer **to choose** (by filing a tax return) whether the tax will be **assessed at the end of the basic three-month period or only during the extended period** (one month or three months). **The right to choose is not only held by a compulsorily audited entity**, which in

any case has a deadline for filing a tax return six months after the end of the tax period (whether filing electronically or through a tax advisor). **Earlier assessment of the tax return can mean a faster refund for businesses of prepaid tax. It will not be necessary to wait until 1 July.** For the tax administrator to assess the filed return by 1 April (within the basic three-month period), **the tax return must be filed** (either by the taxpayer itself or by its tax advisor) **by 1 April at the latest.** In that way, the tax administrator receives a signal that the taxpayer wishes to assess its return within the basic (non-extended) period. If the return is submitted after the expiry of the basic three-month period, the tax administrator will automatically assess the tax within an extended period (either on 1 May or 1 July).

The extension of the basic deadline by one month to all those who communicate with the tax administrator electronically (file a tax return in this way), as well as the choice of the moment of assessment of the tax return are the two main novelties of the new legislation. However, the new possibilities are connected with the above-mentioned conditions, which must be fulfilled for the desired result to be achieved.

Besides the amendment to the Tax Code, the deadline for filing a tax return for **road tax** for the 2020 tax period and **real estate tax** for the 2021 tax period was postponed due to the decision of the Minister of Finance within the framework of tax measures related to government measures in the fight against COVID-19. Tax returns can be filed **without penalty** (fines for late filing of returns and interest on arrears for late payment of tax) **until 1 April 2021.**

And currently for this year, on 8 March 2021, the government approved the release of the 16th General Pardon by the Minister of Finance, which postpones the deadline for filing a tax return and paying income tax by one month. The pardon also extends the VAT waiver for respirators of protection class FFP2 and higher by another two months until 3 June 2021.

Through the waiver of interest on arrears and the fine for late tax returns for income tax, **the deadline for paper filing is effectively postponed to 3 May 2021, and for electronic filing until 1 June 2021.**

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NEWS IN RELATION TO THE RIGHT TO A COMPENSATION BONUS

The compensation bonus represents **direct support for businesses affected not only by the effects of government measures, but also by the pandemic as such.** At the end of February, a new law passed the legislative process that builds on the current form of this support. In addition to other minor changes, the

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amount of support was increased from CZK 500 to CZK 1,000 per day. The approved legal regulation of the new compensatory bonus is in many respects similar to the current regulation under Act No. 461/2020 Coll., but it should be a simpler and clearer tool for a wider range of applicants.

Compensation bonus under Act No. 461/2020 Coll.

According to the current legislation, to assess the existence of the claim itself, it is necessary to determine whether more than 50% of the applicant's income came from a specific activity in the period from 1 June to 30 September 2020. If so, then to be entitled to a compensation bonus, it is essential that this dominant activity be prohibited or at least 80% restricted.

How can I claim a bonus?

To obtain a compensation bonus under this original legal regulation, it is necessary to fill in the [application for a compensation bonus](#) either [online](#) or via a [printed form](#). The completed application is submitted to the locally competent tax office, by e-mail, data box, via the Electronic Filing for Financial Administration (EPO) application, by post or in person at the registries. The following deadlines must be met:

Designation	Bonus period	Application deadline
5th bonus period	25 December 2020 - 23 January 2021	Can be submitted by 24 March 2021
6th bonus period	24 January 2021 - 15 February 2021	Can be submitted by 16 April 2021

"New" compensation bonus under Act No. 95/2021 Coll.

The "new" law on the compensation bonus assumes that the compensation bonus will be paid at least in February and March retroactively (the bonus period here is one calendar month). The government may subsequently set additional calendar months in 2021 as a bonus period, provided that crisis measures continue in these months. However, it is no longer necessary for a state of emergency to be declared.

The "new" compensatory bonus, like the existing compensatory bonus, represents a refund of income tax to be paid by the tax authorities. Already during the legislative process, the Ministry of Finance stated that it will again be in a similar form as in the case of the current compensation bonus.

In addition to a higher amount of the bonus, i.e. CZK 1,000 per day, the new legislation introduces a different way of verifying the condition for entitlement. The drop in income from the sale of goods or services will now depend on the calendar month preceding the given bonus period. This month's revenue will be compared with the monthly average revenue for the quarterly comparison period from before the restrictive measures were introduced. If the comparison shows that the income drop has reached at least 50%, the applicant will be entitled to a compensation bonus. The method of verification is clearer in a specific case: in relation to the application for the compensation bonus for the month of February 2021, it will be necessary to compare the income for January 2021 with the monthly average for the period of November 2019, December 2019 and January 2020.

Overlapping bonus periods

If the applicant submits an application according to the current rules for the 6th bonus period (from 24 January 2021 to 15 February 2021), for which it receives CZK 500 per day, and at the same time also applies for a "new" compensation bonus, then both bonuses will be mutually offset. In other words, the applicant will be able to receive a total of CZK 1,000. The amounts of both bonuses are not added (the business does not receive CZK 1,500 per day), but there is also no situation where the business would lose the right to the remaining part up to the total amount of CZK 1,000 after the previous payment of the CZK 500 bonus.

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MARK IN YOUR CALENDARS: EVENTS AND WEBINARS

We regularly prepare for you a wide range of professional trainings in the fields of taxes, legislation and new legal obligations, the use of technology in your company and other news and updates. Join our webinars - online, securely and from anywhere. You can complete the training anywhere from your computer or mobile device.

For spring/summer 2021 we have prepared for you:

WEBINAR BDO: WHISTLEBLOWING AND NOTIFIER PROTECTION: OBLIGATIONS AND IMPLEMENTATION

▶ 15 April 2021

We cordially invite you to a webinar at which we will introduce you to the new obligations regarding the introduction of channels for reporting infringements and the protection of whistleblowers. As part of the training, we will explain what the new obligations mean in practice and propose an effective solution for managing them without the threat of sanctions. We will also describe how to make the best use of these new responsibilities for the benefit of the company and how to obtain information on risks or even fraud, and how to quickly respond to them.

Lecturer

▶ Stanislav Klika, Director – Risk Advisory Service

WEBINAR BDO: CONTINUOUS MONITORING AND ITS PRACTICAL USE

▶ 20 May 2021

Continuous auditing consists in the continuous monitoring of selected areas or processes and their ongoing analysis. In this webinar, we will introduce you to the possibilities of streamlining inspections and ongoing audits using technology to automate the control of irregularities and real-time data verification in a 100% sample. At the webinar, you will learn how to better understand the potential risks by automatically checking large amounts of data and how to streamline internal controls, all efficiently and without the need for a large budget.

Lecturer

▶ Stanislav Klika, Director – Risk Advisory Service

WEBINAR BDO: GDPR IN ACCOUNTING, FINANCIAL STATEMENTS AND TAXATION: FROM IMPLEMENTATION TO PRESENT DAY

▶ 9 June 2021

The General Data Protection Regulation (GDPR) has been in force for almost three years. What has changed in that time and what have we learned? We invite you to a webinar where we will introduce you to important experiences, lessons learned, and common problems that have occurred with the implementation of the GDPR in companies since its introduction. We will present them using specific examples with suggestions for taking corrective actions.

Lecturer

▶ Stanislav Klika, Director – Risk Advisory Service

IN COOPERATION WITH 1. VOX A.S.

WEBINAR 1. VOX A.S.: E-COMMERCE: NEW RULES FOR THE IMPORTATION OF SMALL SHIPMENT GOODS, FOR THE SHIPMENT OF GOODS AND FOR THE PROVISION OF ELECTRONIC SERVICES TO END CUSTOMERS IN THE EU FROM 1.7.

▶ 4 June 2021

You will get acquainted with significant changes in VAT not only for sending goods to final consumers both within the EU and from third countries for shipments of small value up to 150 EUR. You will also learn about other parts of this amendment. On specific examples, we will present the new VAT regimes from 1 July 2021 for the shipment of goods.

Lecturer

▶ Petr Linx, Tax Manager

WEBINAR 1. VOX A.S.: PARTIAL ENTITLEMENT TO DEDUCT VAT AND RELATED ADJUSTMENTS TO ACQUIRED PROPERTY

▶ 7 May 2021

On specific examples, you will deepen your knowledge regarding the exercise of the right to deduct VAT, both in full and, above all, in part. You will be able to discuss problematic examples with the lecturer and other participants.

Lecturer

▶ Petr Linx, Tax Manager