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EDITORIAL

Dear Readers, Friends,

It's not just the weather that's been playing an April Fool's joke on us these past few weeks, but above all the overall situation in our country. Promises made, promises broken. A PES that is no longer valid, but with no replacement. An endless cycle of new ministers. Prohibitions without legal basis. Were a private company to go through CEOs the way the Czech Republic's been going through ministers of health, it would most likely collapse. Capable people would have headed for the exit a long time ago.

It is now one of the most beautiful seasons of the year, when everything is blooming and waking up to life. Let us not allow the current tragic situation to poison it. Let us remain optimistic, despite all the difficulties that many of us have experienced in the past year. In the April Newsletter, we take a closer look at two implementations of European directives. The first concerns the registration of beneficial owners, the second the protection of whistleblowers.

The amendment to the Business Corporations Act, effective from 1 January 2021, brought some changes to the rules for company shareholders, executives and statutory bodies, including amended rules for profit distribution. General meetings will be held in the coming period, which is an opportunity to reflect these changes in the company's memorandum or articles of association.

Currently, the financial statements and tax returns are also being finalised. For some companies, 2020 may be a loss-making year. The amendment to the Income Tax Act brought a new way to deduct the tax loss in the two previous periods. This is a very topical issue, so we have prepared a more detailed description of how to proceed.

I would also like to refer to the very topical issue of accounting for subsidies under the COVID programmes. There is the sensitive question of the date by which these refunds are to be recognised and included in revenue. Read the Covid-19 Compensation and Reporting Guide on our website.
I wish everyone good health, but also much strength to tackle everything that lies ahead.

Tomáš Klíma
Partner

CONTENT

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

CHANGES INTRODUCED BY THE ACT ON THE REGISTRATION OF BENEFICIAL OWNERS FROM 1 JUNE 2021

With effect from 1 June 2021, a new Act No. 37/2021 Coll., on the Registration of Beneficial Owners, was promulgated to implement European regulations into Czech law. The Act primarily aims to streamline and simplify the registration of beneficial owners, which was introduced into the Czech legal system in early 2018. Compared to the original regulation, the law introduces several important changes for companies and their owners.

The term beneficial owner (formerly regulated by the so-called AML Act) is newly defined as a natural person who is either the final recipient of funds (and thus can directly or indirectly obtain up to 25% of the total property benefit from the company's activities or liquidation) or a person with ultimate influence (especially the controlling entity within the meaning of the Business Corporations Act).

Above all, the law allows anyone to obtain an extract from the Register of Beneficial Owners. **Publicly accessible data now include the first name, surname and address of residence of the beneficial owner, the name and ID number of the company concerned, information on the nature of the beneficial owner's position and the size of his direct or indirect share, and information about whether the person is or was the beneficial owner.** In addition, the data on the facts establishing the position of the beneficial owner, a description of the structure of relations and other data specified in Section 13 of the new Act are also entered in the records. It will also be possible to obtain confirmation that no information about the beneficial owner of the legal entity is registered in the records. **Disclosure of this data at the request of the beneficial owner will be extremely difficult.** The law allows this only in cases worthy of special consideration and if it is not contrary to the public interest.

Another change introduced by the new law is the possibility of imposing fines for non-disclosure of data. These can be imposed, for example, for breach of the obligation to register the beneficial owner in the register, failure to ensure the registration of new data, or failure to provide the necessary cooperation to the registrant.

The company's obligation is to ensure that the valid data in the records always correspond to the actual state. As soon as there is any change, the company is obliged to immediately submit a proposal to initiate the registration procedure. The application is submitted electronically, and it is necessary to document the facts entered in the records, if the court cannot determine these facts by remote access from the registers. In addition to the information contained in the public register, from which an extract may be provided, **other documents submitted include the founding legal proceedings, the list of shareholders, the authority's decision to pay dividends, the shareholders' declaration of concerted action or the beneficial owner's consent to certain other recorded facts.** If the position of the beneficial owner or the structure of the relationship cannot be documented otherwise, or are not based on legal facts, it is necessary to document at least the statement of the company or the beneficial owner about his position.

In the case of a foreign beneficial owner, it is also necessary to provide an identity document, an extract from the foreign population register or from an equivalent of the public register or foreign registration of the beneficial owners.

The law introduces a number of offences. These can be committed not only by the beneficial owner, but also by a company that does not provide registration. In addition to fines, the main type of sanction is the impossibility of paying a share of the profit to the beneficial owners. The same sanction can be imposed on a business corporation that has no owner registered. **In addition, unregistered beneficial owners will not be able to participate in a co-decision, for example to vote at the general meeting!**

A pleasant change, on the other hand, is the introduction of automatic registration of the benefical owner from the Commercial Register and other records. It is therefore not necessary to register natural persons who are partners in a limited liability company with a share of more than 25%, or partners in companies which themselves participate in the business of other companies with at least the same share. The same applies to the sole shareholders of joint-stock companies and to other beneficial owners of legal entities who are registered in public registers and meet the conditions for the given type of legal entity.
Of course, beneficial owners have the option of requesting the entry of different data if the automatically entered data does not match the real situation. In addition to automatic registration, there is still the possibility of registration on application, either in court or through a notary.

In order to implement a functioning sanctions mechanism, we recommend that you verify that you have a registered beneficial owner and that this registration is accurate. The same recommendation can be given to the beneficial owners themselves. This obligation now applies not only to business corporations, but also to other legal entities, such as foundations, trust funds or institutions.

Due to the introduction of the above-mentioned sanctions, it will now be necessary to examine the records in detail also within M&A transactions. Due diligence should include a determination of whether your company complies with the legal requirements, as a breach of these obligations could lead to the threat of fines, which neither the transferor nor the transferee may be aware of at the time of the transaction. This, of course, does not affect the already existing obligation to provide data on final owners for companies applying for subsidies or public support.

If the data in the records of beneficial owners are incorrect or even completely missing, we recommend that you enter them no later than 31 May 2021. Your BDO advisors will be happy to help you with this.

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THE WHISTLEBLOWING ACT

At its meeting on 1 February 2021, the government took another step towards the adoption of a law on the protection of whistleblowers (the Whistleblowing Act). The new law is intended to transpose into Czech law Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report violations of Union law. However, there is no time to waste. According to European law, the law must enter into force by 17 December 2021 at the latest!

What are the laws and directives about?
The aim of the Directive is to provide legal protection to persons who report damage to the public interest that they become aware of at work or in connection with it. According to the Directive, harm to the public interest consists in infringing the law in predefined areas in which the institutions of the European Union exercise their competence. These include public procurement, financial services, money laundering and terrorist financing, environmental protection and more.

It should also be possible to report an infringement based on facts indicating that the infringement is yet to be committed. In this context, the law should therefore act as a kind of prevention of undesirable behaviour.

However, I would like to point out here that the principle of whistleblower protection and the possibility to report infringements are not intended for employee complaints against employers or for resolving ordinary disputes between employees.

What are the obligations?
Under the new legislation, organisations will have to **establish procedures and secure channels for receiving and investigating reports – a so-called internal reporting system.** These procedures must also include measures to protect the identity of whistleblowers. Organisations will also need to designate a person responsible for receiving and investigating reports. The choice of the form of reporting is basically up to the whistleblower himself; the organisation must accept reports in writing or orally or even in person. The whistleblower also has the right to be informed of the findings of the investigation within 30 days of the date of receipt of the report.

We do not think that this law is intended only for multinational corporations or state-owned enterprises. The internal notification system **must be set up by companies with at least 25 employees, contracting authorities (except for municipalities with a population of up to 50,000) and companies operating in areas sensitive to Act No. 253/2008 Coll.**, on Certain Measures against Money Laundering and Terrorist Financing (AML Act), in the field of transport safety, transport and road traffic, environmental protection, veterinary protection and consumer protection. It therefore concerns a large portion of the companies in our country.

It will also be possible to submit the report outside the organisation itself, at the Ministry of Justice. The Ministry will also act as an intermediary between whistleblowers and the competent authorities, which can review the report of illegal activity. For this reason, too, it is in the interest of companies that their internal notification system be credible and simple. Because otherwise the whistleblowers will probably not use it and turn directly to the Ministry, which can turn the matter over to the police.

As the title of the law and the directive itself suggests, the main goal is clearly to enable employees to report infringements while avoiding any direct or indirect retaliation against. This means conduct directly caused by the report, which the whistleblower (in the case of an indirect measure also another person) may consider as an interference with his or her rights or legitimate interests, such as bullying, termination of employment or threat of an action for breach of confidentiality or criminal notification, etc.

Failure to comply with the obligations arising from the law should result in heavy fines - up to CZK 1 million or 5% of net turnover for the last completed accounting period. However, it is also possible to underline the benefits and positive motivation. By meeting the standard, companies will gain an effective means of receiving information about possible risks or even fraud and will be able to respond to them in a timely manner.

Solutions for companies
An effective way to facilitate the receipt of reports and motivate whistleblowers to use the organisation's internal reporting system is an easily accessible and user-friendly internet application that companies can hire an external company to implement and manage.

Such a whistleblowing tool will allow whistleblowers to report issues through a secure form or telephone line. This centralisation will help companies have more control over individual notifications, make it easier to keep deadlines and protect whistleblowers' personal data.

Solutions in the form of an internally secure system will prevent organisations from dealing with their reports directly through government agencies or the media. However, the protection of the whistleblower is still ensured. Today's technologies enable quick and easy implementation of the so-called ethics line, which provides more functions, acts as a place for filing reports, as a helpdesk or communication platform. In our experience, many large companies are already implementing this mechanism.

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REMEMBER THE AMENDMENT TO THE BUSINESS CORPORATIONS ACT?

Issue 9/2020 of our Newsletter drew attention to the changes that will be introduced by the amendment to Act No. 90/2012 Coll., on Business Corporations (the „BCA"). On 1 January 2021, this amendment came into force and, as a result, the need arose for many companies to change their memorandum or articles of association.

The transitional provisions of the amendment, which stipulate that those parts of the memorandum or articles of association that go against the meaning of the new legal provisions are automatically devoid of binding effect, also directly force the implementation of these changes. Therefore, we prefer to remind you of these changes once again and recommend that you check your memorandum or articles of association to avoid unwanted surprises at general meetings.

Our write-up does not contain all the changes made – we are simply reminding you of the most fundamental ones. For more detail, we refer primarily to the effective wording of the BCA.

A legal entity that is a member of an elected body must be represented by a natural person (Section 46 BCA)
If a member of the elected body of the corporation is a legal entity, it must authorise a single natural person to represent the legal entity. The registration of a natural person in the Commercial Register must take place within three months, otherwise the function of the legal entity will expire by law.

Distribution of profit and other equity (Sections 34 and 35 BCA)
The conditions for profit distribution and distribution of other equity were unified. The conditions for the distribution of other equity have been tightened.

Prohibition of the provision of gratuitous benefits to shareholders and persons close to them (Section 40 (5) BCA)
It is forbidden for the company to provide gratuitous services to a shareholder or a person close to them, even with the consent of the general meeting. This does not apply to legal exceptions (e.g. occasional gifts).

Report on relations (Section 82 (5) and (6) BCA)
The report on relations does not contain confidential information. However, the report must state that it is incomplete. Furthermore, the report on relations should contain the subject of trade secrets in a reasonable degree of generalisation.

Decision-making by letter (per rollam) and notarisation (Section 175 (3), Section 419 (2), Section 654 (2) BCA)
If the law requires that the decision be certified by an authentic instrument (notarial deed) and such a decision is to be taken by letter (per rollam), the draft decision must take the form of an authentic instrument. A copy of the public deed containing the draft decision is therefore sent to the shareholders. An officially verified signature will then suffice on the subsequent statement of the shareholder. The amendment concerns limited liability companies, joint-stock companies and cooperatives.

Special rights for shares and stocks (limited liability companies: Section 194a (1) BCA; joint-stock companies: Sections 438a (1), 448a (1) and 458 (1) BCA)
At present, it is relatively common in the founding documents to regulate various types of shares or stakes. The law now sets out how far we can go, especially with regard to unequal regulation of rights. This is an opportunity to transfer the rules from the shareholder agreements to the founding documents. You will therefore achieve uninterrupted binding obligations for the legal successors of the original owners of the shares.

Simultaneous participation of a shareholder and a third party in the meeting of the highest body (limited liability companies: Section 168 (3) BCA, joint-stock companies: Section 399 (2) BCA)
It is possible for a joint shareholder and a third party designated by him (for example, a lawyer or another advisor) to participate in the meetings of the company's highest body. This provision is dispositive and can be modified in or excluded from the memorandum or articles of association.

Changes in the monistic system of a joint-stock company (Section 456 et seq. BCA)
The institute of the statutory director is abolished. The new statutory body is only the board of directors, which can also be single-member. Monistic joint-stock companies must amend their articles of association and change the data in the Commercial Register.

Report on business activities (Section 435 (5), Section 456 (6) BCA)
If the joint-stock company does not prepare an annual report, the obligation to prepare a report on business activities is maintained. The report on business activities must be entered in the Collection of Documents at the Commercial Court.

Have these amendments affected your business and have you made the necessary changes? If you are unsure or wish to seek advice, do not hesitate to contact your lawyer or us directly. We're here for you.

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RETROACTIVE APPLICATION OF TAX LOSS

As part of the so-called coronavirus package, an amendment to the Income Tax Act came into force, which introduced a complete novelty to Czech tax law: the retroactive application of a tax loss. Until 2020, the tax loss could be deducted from the tax base in the periods that follow. Until 2003, it was possible to deduct a tax loss in seven tax periods immediately following the period for which the tax loss is assessed. Since 2004, this period of claiming losses has been reduced to five tax periods immediately following the period for which the tax loss is assessed. However, the basic principle in applying a tax loss was that in order to be able to use the loss, the tax entity had to make a profit in the following years. If it

was unable to generate a profit in the next five tax periods, it lost the possibility of claiming a tax loss.

Thanks to the coronavirus crisis, taxpayers have been given a completely new opportunity to claim a tax loss retroactively. The retroactive application of the loss is not limitless, but is limited by two previous tax periods and, above all, by the amount of the tax loss that can be claimed retroactively, i.e. CZK 30 million. Detailed conditions are described below. However, the recovery of a loss is a very positive change in favour of taxable persons. And not only now, when companies are hit by the economic crisis and may incur losses, but also in „normal" times, when there may be an extraordinary loss in the economy.

As the government of the Czech Republic wanted to provide tax subjects with a quick tool to improve cash flow, the possibility of applying the tax loss retroactively applies from 1 July 2020. This date is important for two reasons.

1. For the first time, it is possible to claim a loss retroactively for a tax period that ended after the entry into force of the amendment, i.e. after 1 July 2020. Thus, it is possible to deduct in real terms the tax loss incurred, for example, for the financial year August 2019 - July 2020.

2. Immediately after 1 July 2020, the amendment allowed taxpayers to estimate the expected loss for the first period ending on 1 July 2020, but a maximum of CZK 30 million, and to claim this expected loss for one previous period. This allowed taxpayers to improve their financial situation more quickly without waiting for the tax administrator to assess the loss. This special option is valid only for the first tax period ending on 1 July 2020. In subsequent periods, the retroactive application of the loss will work as standard, as described below.

General conditions for loss recovery

The basic condition for the possibility of retroactive application of a tax loss is its assessment by the tax administrator. If we consider the standard tax period - a calendar year, then the application of the tax loss for the previous period comes into consideration:

- only after filing the tax return for the current year;
- recognition of a tax loss in this return;
- assessment of the tax loss by the tax administrator.

The retroactive application of the tax loss will be made by filing an additional tax return for the previous tax period. The taxable person must therefore actively recover the loss himself by filling in an additional tax return and submitting it to the tax administrator.

The tax loss can be claimed for a maximum of the two previous tax periods, while the taxpayer can choose whether to claim it for one, the other or both. The actual decision on how to proceed is solely up to the taxpayer and will certainly be decided according to the amount of the tax base reported in these periods and the size of the current tax loss.

A maximum of CZK 30 million in tax losses can be claimed retroactively.

Together with the retroactive application of the tax loss, another important change was adopted, namely the possibility to waive the right to claim a tax loss in the years following the period in which the loss arose. This possibility comes into consideration precisely when the entity uses the retroactive claim of a loss.

Example:

Tax loss assessed for 2020	CZK -15 million
Tax base for 2019	CZK 8 million
Tax base for 2018	CZK 8 million
Additional declaration and retrospective claim for loss for 2019	CZK -8 million
Additional declaration and retroactive application of the loss for 2018	CZK -7 million

In this case, it makes sense for the taxable person to waive his right to claim a tax loss in subsequent years, as he no longer needs this option. However, this step must be carefully considered in light of the resulting circumstances described below.

Why does it make sense to give up the right to deduct a loss in the years to come?

There is one reason and it is extremely important. With the assessment of the loss and the possibility of deduction in the following years, the so-called preclusive period is extended, which is the period during which the tax administrator can check the subject and possibly measure the tax. In fact, this period, which is generally three years, will start to run, both for the period in which the loss arose and for all periods in which the loss can be deducted, with the period for the last year in which the loss can be deducted.

For example, if the loss occurs for the year 2020, it is possible to deduct it for the years 2021 - 2025, and the preclusive period for all these years will start to run from 1 April 2026 (or 1 July 2026 according to the deadline for filing tax returns) and will run until 1 April 2029 (or 1 July 2029). So we see that the tax administrator can start the tax audit for 2020 at the beginning of 2029. And this is very unpleasant due to the considerable time lag. Hence, recovering the loss makes it possible to avoid this problem.

If the tax subject waives the right to deduct the tax loss in subsequent periods, the period for additional assessment of the tax will not be extended.

The waiver of the right to deduct a tax loss in subsequent periods must be made actively, in the form of a notification to the tax administrator, which must be made within the deadline for filing the tax return for which the tax loss is assessed. Submission after the deadline has no effect, so it is not possible to decide subsequently. It is also not possible to withdraw this notification. In fact, the subject decides forever. This is the case even if, for example, he files an additional tax return after some time or if the tax administrator initiates a tax audit and a different amount of loss occurs.

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MARK IN YOUR CALENDARS: EVENTS AND WEBINARS

Get the latest information on legislative changes, related legal obligations, tax updates and the use of technology to your advantage. Join our webinars - online, securely and from anywhere. We have prepared for you:

WEBINAR BDO: CYBERSECURITY - MEASURES AND PREVENTION

▶ 18 May 2021

We invite you to our online seminar where you will learn how to protect your data, networks, communications and devices from the dangers of the digital world. At the webinar, we will explain key concepts and introduce the most common threats and risks using practical examples and case studies. We will offer you a few recommendations for prevention and selected measures on how to protect your company from risks effectively and in the long term.

Lecturer

▶ Martin Hořický, Partner

WEBINAR BDO: CONTINUOUS AUDITING AND ITS PRACTICAL USE

▶ 20 May 2021

The concept of 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. 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 Services

WEBINAR BDO: CYBERSECURITY - CURRENT TRENDS AND CHALLENGES

▶ 2 June 2021

Dynamic development, the increasing volume of technology in our daily operations and advancing digitisation are putting more and more pressure on security in the online world. According to experts, cyberattacks are currently the second-biggest threat to business after a pandemic. How will cybersecurity develop and what are the most pressing issues and trends in this field in the Czech Republic? Join our webinar to find out how the pandemic has affected cybersecurity management in companies and what its prospects are for the near future. At this online seminar, we will present the results of a survey of the cybersecurity situation in more than 200 Czech and international companies and suggest possible solutions to minimise these threats.

Lecturer

▶ Martin Hořický, Partner

WEBINAR BDO: GDPR IN ACCOUNTING, FINANCIAL STATEMENTS AND TAXATION: FROM IMPLEMENTATION TO THE 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 in which 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 specific examples with suggestions for solutions and corrective actions.

Lecturer

▶ Stanislav Klika, Director – Risk Advisory Services

MORE TRAINING IN COOPERATION WITH PARTNERS:

CAFIN WEBINAR: NEW RESPONSIBILITIES FOR COMPANIES: ARE YOU READY?

▶ 28 April 2021

In cooperation with CAFIN, the Czech Association for Financial Management, we have prepared a webinar on the new responsibilities for companies. Whether it is the amendment to the Anti-Money Laundering Act or the new Whistleblower Protection Act, the year 2021 brings new obligations for most companies. We have prepared a brief and practical overview of what these obligations are, how to meet them and how not to drown in paperwork and regulations.

Lecturer

▶ Stanislav Klika, Director – Risk Advisory Services

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

▶ 7 May 2021

In cooperation with 1. VOX a.s. we have prepared a webinar for you on the topic of the partial entitlement to deduct VAT and related adjustments to acquired property. Through specific examples, you will deepen your knowledge about how to exercise the right to deduct VAT, both in full and, above all, in part. You will have the opportunity to discuss problematic issues with the lecturer and other participants.

Lecturer

▶ Petr Linx, Manager

TRAINING 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 JULY

▶ 4 June 2021

Learn about significant changes in VAT not only for sending goods to end customers within the EU and from third countries for small value shipments up to EUR 150. You will also learn about other parts of this amendment, including the abolition of the VAT exemption for the import of consignments up to EUR 22 intended for end customers and the extension of the Mini-One-Stop-Shop - now only the One-Stop-Shop regime for other services intended for final consumers (currently only radio, television and electronic services). Using specific examples, we will present the new VAT regimes from 1 July 2021 for the shipment of goods, i.e. One-Stop-Shop and Import-One-Stop-Shop.

Lecturer

▶ Petr Linx, Manager

WEBINAR KB: HOW TO SELL OR BUY A COMPANY WELL?

- 19 May 2021

What do M&A transactions look like in practice and what are the difficulties to overcome? At a joint seminar of Komerční banka and BDO, we will introduce you to the current situation of mergers and acquisitions on our market, the possibilities of their financing, we will explain further the tax specifics of the sale of companies, and also the legal difficulties of M&A transactions.

Lecturers

- Zenon Folwarczny, Partner
- Jiří Šmatlák, Partner