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EDITORIAL

Dear Readers,

The end of the calendar year is approaching and this is a good time to recapitulate what it has brought us.

It has not been an easy year. I sincerely hope that after such a difficult two years, the new one will be closer to normal. Many thanks to all who have helped others to get through it.

On the other hand, every step out of your comfort zone is also an opportunity to examine your work, business and regular activities from a fresh perspective, to look for novel ways of doing things and to think about how to handle the new situation and, if possible, use it to your advantage. Some companies have had an easier time of it given their line of business; others have been hit harder.

Similarly, as in times of economic downturn or crisis, healthy and stable companies coped better. For others, it was a more challenging ordeal that highlighted even minor problems and allowed them to focus on becoming more resilient.

Many companies found that what once was unimaginable could in fact work in practice. A typical example is the use of modern tools for teamwork and remote communication. I believe this experience will also help further innovation, the broader adoption of digitalisation and other ways of working efficiently.

We will be here with you in the year ahead, ready to support you with our knowledge and experience in the areas we understand best. We will continue to keep you informed of new developments and changes that affect your business, provide you with practical explanations and recommendations, and share our experience and best practices with you.

May the year ahead be marked by stability, optimism and success. Let's keep our fingers crossed, and let's help each other.

On behalf of all BDO partners in the Czech Republic, I wish you a Merry Christmas, good fortune and dreams come true in 2022.

Miroslav Jandečka
Managing Partner

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BDO CZECH REPUBLIC

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

BDO

TAX AND ACCOUNTING CHANGES FOR 2021: WHAT TO LOOK OUT FOR BEFORE PREPARING YOUR FINANCIAL STATEMENT

The year 2021 did not see many amendments to tax and accounting regulations. However, some changes made in 2020 will be applied for the first time this year. In this article, we'll take you through the changes in more detail:

Fixed assets

One of the changes for 2021 brought about by the tax package approved just before the end of 2020 is **an increase in the entry price threshold for the classification of fixed assets** for the purposes of the Income Tax Act **from the original CZK 40,000 to CZK 80,000.** This provision applies to all acquired tangible property and all technical improvements completed and brought to a condition suitable for normal use from the 2021 tax year. However, the change could also be applied to property acquired and technical improvements completed from 1 January 2020. The use of this change in 2020 was optional, being left to the taxpayer's decision.

This transition is purely a tax and does not automatically give rise to a change in the fixed asset limit in the accounting. If an entity modifies its internal rules for classifying assets (and increases the limit under the Income Tax Act), it is still necessary to assess whether the „small assets" charged to expense significantly affect the profit or loss and whether the requirement for a true and fair view remains satisfied. Otherwise, the costs need to be accrued.

Furthermore, **for the purposes of the Income Tax Act, the intangible assets category is abolished**, the term „intangible assets" having been completely removed from the Act. This change is also purely tax-related; intangible assets remain unchanged in the accounting regulations. The abolition of the intangible assets category does not mean that accounting units can expense any amount. Accounting rules and principles must always be respected. Items that would significantly distort the economic result must therefore be accrued.

According to the transitional provisions, the old wording will continue to apply to intangible assets acquired before the entry into force of this Act, including technical improvements to such assets. As with tangible assets, the provisions on the cancellation of intangible assets could already be applied to assets acquired between 1 January 2020 and 31 December 2020.

Extraordinary depreciation

Another novelty is extraordinary tax depreciation for assets classified in depreciation groups 1 and 2 (Section 30a). **The exceptional depreciation option applies to assets acquired between 1 January 2020 and 31 December 2021.** Assets acquired during this period and classified in these categories may be depreciated as follows:

1. OS = equal monthly depreciation over 12 months up to 100% of the entry price;
2. OS = straight monthly depreciation, first 12 months up to 60% of the entry price, next 12 months up to 40% of the entry price.

Depreciation must be determined to the nearest month, not year. The same length will also apply to the minimum finance lease term (12 or 24 months) for the same defined assets.

Interpretation of the National Accounting Council

We would like to draw your attention to the interpretation of SIC I-42 **regarding exchange differences on foreign currency receivables covered by an allowance.** This interpretation was already approved in autumn 2020, but it is still a point of debate among experts.

I-42 states that the exchange difference on a foreign currency receivable arises only from the value of the receivable less the related valuation allowance (expressed in the foreign currency), i.e. the net value of the receivable, which is a representation of the expected future cash flow. In terms of accounting, this transaction does not affect the profit or loss, but in the case of accounting provisions (not tax provisions under the Provisions Act), the application of this interpretation will affect the tax base.

A similar conclusion is reached in Interpretation I-43, which deals with foreign currency advances. According to this Interpretation, advances made in a foreign currency should not be recalculated at the balance sheet date at all, because the amount is already spent. The purpose of foreign exchange translation is that an entity is exposed to foreign exchange risk in respect of foreign currency transactions when the accounting for the foreign currency transaction involves a future cash payment. In the case of prepaid advances, the funds are already paid and have been issued, so there is no point in remeasuring them.

The interpretations of the National Accounting Council are not legally binding; they are only recommendations of a group of experts. The tax administration does not fully agree with the wording of the interpretation and states that if a taxpayer wants to follow it, it must properly justify this procedure by referring to a true and fair view of the financial statements.

If you want to use the procedure recommended by the interpretations in practice, you need to justify it well and, above all, as accounting methods change, you need to do so systematically for all items and consistently in the future.

As noted above, the interpretations have not met with the full approval of the state administration, which has taken a reserved approach. On the other hand, representatives of the accounting profession and auditors in particular agree with the texts of the interpretations and recommend their use. However, if an entity follows the „old way" and continues to convert all items in foreign currency, there is no risk of tax overstatement.

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MANDATORY TESTING OF EMPLOYEES AND OTHER ANTI-COVID MEASURES

From 29 November 2021, due to the worsening epidemiological situation, employers will be obliged to test their employees again. The frequency of testing is at least once a week and if the employee is not present at the workplace on the day of testing, they must be tested on the day of their arrival at the workplace.

The exemption from testing applies to:

- employees and self-employed persons who do not meet third parties at the workplace, except persons in the same household;
- persons vaccinated against Covid-19 if at least 14 days have elapsed since the completion of the vaccination schedule (proof of vaccination is provided by a vaccination certificate);
- employees and self-employed persons who have contracted Covid-19 in the last 180 days (evidenced by a record in the Infectious Disease Information System);
- employees and self-employed persons who have undergone

a PCR test for Covid-19 in the last 7 days with a negative result (evidenced by a certificate from the health service provider);

- employees and self-employed persons who have undergone a rapid antigen test for SARS-CoV-2 antigen by a healthcare professional within the last 7 days with negative results (to be evidenced by confirmation from the healthcare provider);
- employees and self-employed persons working from home.

If an employee refuses the test, the employer has the following obligations:

1) report this fact to the locally competent hygiene station;
2) allow the employee to enter the workplace only with respiratory protection of at least 94% effectiveness;
3) ensure that the employee maintains a distance of at least 1.5 m from others;
4) ensure that the untested employee eats their meals separately from other persons;
5) take such organisational measures to limit as far as possible the untested employee's contact with other persons in the workplace.

Asking employees about vaccinations / illnesses / previous testing

The employer does not have to ask employees if they have been vaccinated, had Covid-19 or have been tested by a healthcare provider. It is sufficient if it instructs the employee to take the test, with the understanding that this instruction does not apply to those employees listed in the exceptions above. It is then up to each employee whether to voluntarily submit any of the documents demonstrating that they are covered by the testing exemption or whether they do not want to disclose this information and take the test.

If the employee tests positive, the employer must:

1) ensure that the employee who tests positive leaves the workplace immediately;
2) pay the employee wage compensation in the amount of the average earnings due to an impediment on the part of the employer for the period between the positive result of the self-test and the result of the confirmatory PCR test, when the employee is not admitted to the workplace and when no work is performed (i.e. provided that the employer does not agree with the employee on work from home or on the taking of leave).

An employee who tests positive is instructed to:

1) leave the workplace immediately and notify the employer of the planned absence;
2) immediately notify either the company doctor (if so instructed by the employer) or the employee's GP; if this is not possible (e.g. due to the doctor's illness), then any other doctor or hygienist;
3) immediately undergo a confirmatory examination based on a doctor's request.

Employers who test their employees and self-employed persons are also ordered to keep a record of the tests carried out for control purposes, including information on the date of testing and the name of the person tested.

Employers and self-employed persons can receive financial compensation for the tests, similar to the spring, in the amount of CZK 60 per self-test. The allowance will be paid by health insurance companies up to a maximum of CZK 240 incl. VAT per month (maximum of four tests per calendar month) for the purchase of tests listed either in the list of antigen tests permitted by the State Institute for Drug Control purchased after 1 January 2021 or for tests listed in the list of antigen tests for which the Ministry of Health of the Czech Republic has issued an exemption for lay use and which were purchased between 1 January 2021 and 31 July 2021. It will be possible to apply for the allowance retroactively for the previous month, except for the tests from November 2021. For these, it will also be possible to apply in January 2022 after the launch of the application on the above-mentioned website.

The employer has the option to require testing of vaccinated employees, for example, by including this obligation in an internal regulation. Given current scientific knowledge, this is a reasonable approach. However, in this case the employer is not entitled to a contribution for the test carried out, as this procedure is not included among the obligations laid down by the emergency measure.

In addition to the aforementioned allowance for self-testing and the ongoing Antivirus subsidy programme, the members of parliament approved further compensation to support those affected by Covid-19. On 1 December 2021, the government passed a proposal for a crisis care allowance, a wage replacement allowance during the quarantine period (the so-called isolation allowance) and a compensation bonus. These three proposals still have to pass the Senate and be signed by the President, so we can expect their publication in the Collection of Laws in the second half of December.

Exceptional allowance for an employee in the event of quarantine: the „isolation allowance"

The government's original proposal for the so-called isolation allowance, which employees receive in addition to wage compensation for the period of ordered quarantine, has been limited by parliament to 28 February 2022 (instead of the original validity until 30 June 2022) and the range of employees who are entitled to it has been narrowed. The isolation allowance will be paid only to those employees for whom quarantine was ordered after 30 November 2021 (instead of 30 October 2021) and for whom the quarantine will last until the effective date of the law, i.e. the date of its publication in the Official Gazette (probably the second half of December 2021). As in the past, the isolation allowance will be paid by the employer, who will then reduce the social security contributions by the relevant amount. This allowance is intended to motivate employees not to avoid quarantine after an encounter with an infected person due to concerns about loss of earnings. Up to a gross salary of approximately CZK 35,000 per month, the employee will retain a net income during the quarantine period, while employees with higher incomes will receive an allowance of CZK 370 per day.

Crisis care

The parliament also approved the restoration of the so-called crisis allowance of 80% of the daily assessment base (instead of the normal 60%) for the entire period of school or class closure or when an individual quarantine is ordered for a child. The new crisis allowance will amount to at least CZK 400 per day and can be paid retroactively from 1 November 2021. As with the so-called isolation allowance, the crisis allowance is limited in time until the end of February 2022.

The amendment extends the range of persons who can benefit from the crisis allowance. Other relatives of a child up to the age of 10 years will be able to care for the child, even if they do not live in the same household, provided they are properly insured employees.

Compensation bonus

The last of the approved proposals is the 2022 compensation bonus. This is covered in more detail in the article at the end of the newsletter.

You can follow further developments in Covid-19 measures and government support on our website www.bdo.cz, where the information is regularly updated.

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ADJUSTMENT OF VAT DEDUCTION ON RENTED PROPERTY INTENDED FOR RESIDENTIAL USE

From 1 January 2021, the tax regime cannot be applied to the rental of selected real estate. This situation will often lead to a mandatory refund of part of the VAT deductions claimed. For the first time, this obligation will arise already for the last tax period of 2021!

An amendment to the VAT Act of 1 April 2019 introduced a provision limiting the possibilities of applying the tax to the rental of listed real estate. This provision was postponed to 1 January 2021.
From the beginning of this year, the lessor can no longer choose to apply the tax to the following properties when renting to another taxpayer for the purpose of carrying out their economic activity:
a) the construction of a residential house according to the legislation regulated by the Land Register;
b) living space;
c) a unit which does not include non-residential space other than a garage, cellar or storage room;
d) a building in which at least 60% of the floor area of that building, or part of the building if that part is rented out, consists of living space;
e) a plot of land of which a residential house, living space or building referred to in point (d) with which that plot is leased;
f) the building right of which the house or the building referred to in point (d) with which the building right is leased.

For the purposes of VAT, the term residential premises means a flat or another set of rooms, or a single occupied room, which corresponds to the requirements for permanent housing and is intended for this purpose.
It is clear from the above that the lease of a property registered as a flat in the Land Register can no longer be taxed, even if the lessee is, for example, a law firm (payer) that has adapted the premises for its business. The same applies to various villas where there are rooms for business, but the villa is registered as a residential house in the Land Register. From 2021 onwards, the landlord's activity is an exempt activity without any tax deduction.
There are some doubts about properties or parts of properties that have not been formally relicensed but whose layout can no longer be demonstrably used for housing. An example of this is the cellar space in a rented apartment building used as a wine storage room.

This is a major inconvenience especially for the above properties where:

- VAT was deducted on acquisitions after 1 January 2012; and/or
- a VAT deduction was claimed for technical improvements carried out after 1 January 2012.

In VAT, in the event of a change of regime, i.e. from taxation to exemption, it is necessary to make an adjustment to the VAT deduction on the property each year until the end of the deduction adjustment period. In the case of immovable property and its technical improvements, this period is 10 years. So, if the property is acquired or the technical improvement is carried out in 2012, the period ends in 2021. The adjustment is always made at the rate of 1/10 in the last tax period of the year.

Example:
In 2012, you carried out a technical evaluation of the apartment in the amount of CZK 1 million. The apartment has been and continues to be used for the purpose of renting office space for a design agency (VAT payer). You claimed a deduction of CZK 140,000 under the domestic reverse charge regime and received a tax credit of CZK 140,000. Tax was claimed for this lease until the end of 2020. As this rental must be exempt from 2021 onwards and 2021 is still within the period for adjusting the deduction for this technical improvement, you are obliged to repay one tenth of the CZK 140,000. Thus, you will have to pay CZK 14,000 in the last tax period of 2021.

Probably the worst situation is a property acquisition or technical improvement that took place in 2020. If the VAT deduction has been claimed and the property is used for rental purposes, which must be exempt from 1 January 2021, the obligation to repay one tenth of the deduction claimed may last until 2029.
There is some hope for mixed-use properties. If the deduction factor from all the taxpayer's activities (not just renting) comes out to at least 95%, no adjustment to the deduction is required. Property used for mixed purposes is defined as property that is used, for example, for both taxable activities and exempt activities without entitlement to a deduction. An example is an apartment building that is not divided into units, used partly for long-term rentals and partly for short-term accommodation.
We will be happy to discuss this issue with you and to help you set up your VAT reporting system in such a way as to minimise the risk of VAT being charged by the tax authorities.

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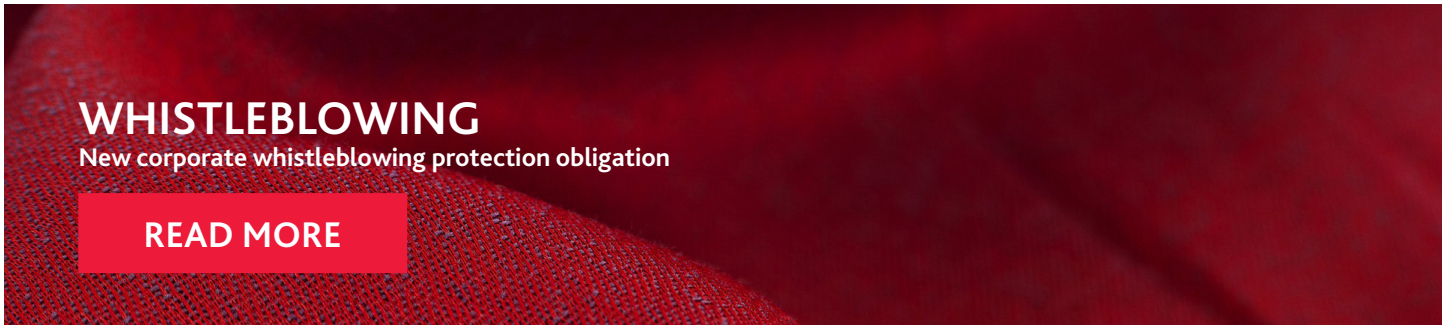

DEFINITION OF THE LINE OF BUSINESS IN THE DEED OF INCORPORATION

One of the mandatory elements of the company's deed of incorporation (memorandum or articles of association) is the definition of the company's line of business or activity. In addition, the company must obtain the appropriate trade or other authorisation for its business. As a rule, a significant part of a company's business activities belong to the so-called reporting free trade. Since the 2008 amendment of the Trade Licensing Act, the free trade is defined in the Act residually, i.e. by reference to other annexes to the Trade Licensing Act: „production of trade and services not listed in Annexes 1 to 3 of the Trade Licensing Act". In practice, it has gradually become established that companies state this designation as their line of business in the deed of incorporation.

It came as a great surprise to the business community when after many years the Supreme Court, in a May decision, concluded that the above wording was no longer sufficient and caused the company's deed of incorporation to be considered vague. Companies that do not have a sufficiently precise definition of their line of business in their articles of association should add this information without undue delay. If they fail to do so, the Commercial Court will invite them to remedy the situation. Failure to comply with the court summons may result in a fine of up to CZK 100,000. However, the Commercial Court may also decide to dissolve the company and order its liquidation without further delay after the summons is ignored. This decision is then very difficult to reverse.
The point is not that the definition of the line of business or activity in the deed of incorporation must literally coincide with the fields of free trade, the list of which is contained in Annex 4 of the Trade Licensing Act. Nevertheless, the actual line of business should be sufficiently described. We recommend that the designation in the incorporation document should at least roughly correspond to the individual fields of activity, as this will subsequently make it much easier to register the correct trade.
I consider it appropriate for companies to check their deed of incorporation. If the document still contains an indeterminate definition of the line of business or activity, this should be rectified as soon as possible, otherwise the company will expose itself to the unnecessary risk of sanctions or even forced dissolution. A resolution of the general meeting or the sole shareholder is required to amend the deed of incorporation accordingly. The decision must be legally drawn up by a notary public.
If you are in doubt as to whether your company's deed of incorporation is sufficiently specific, please do not hesitate to contact us. We will be happy to help you.

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IMPORTANT CHANGE IN THE TIMETABLE FOR THE ADOPTION OF NEW WHISTLEBLOWER PROTECTION LEGISLATION

In previous editions of the newsletter we informed you that the Whistleblower Protection Act, which transposes the EU Directive, was due to come into force on 17 December 2021. Due to the new Chamber of Deputies, the bill has to be renegotiated and it is already clear that it will not be passed by that date

What does this mean for companies?
As of 17 December 2021, private sector whistleblowers will also be able to file notifications with the Ministry of Justice, which will deal with the notifications. The Ministry will examine the submissions received and may refer them to other public authorities, such as the tax administration or the police.
Whistleblowers will also be able to make their notifications public, subject to certain conditions. In the event of a legal dispute between the whistleblower and the employer, the whistleblower will be protected under the EU Directive.

We therefore **recommend the introduction of an ethics hotline on 17 December 2021** so that whistleblowers can contact you and you are the first to know about potential breaches and risks and keep them under control.

What does this mean for the public sphere?
As the Directive will not be transposed within the deadline, its provisions will become directly binding on the State and the public sphere. By 17 December 2021, public institutions, including ministries, regions, municipalities and the organisations they set up, will have to establish secure channels and procedures for receiving, managing and investigating notifications, and to set up ‚competent persons' to deal with such notifications.
We will be happy to present the possibilities of the ethics hotline and follow-up processes. Please contact us and together we will work out the best solution for you.

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„REVIVAL" OF THE COMPENSATION BONUS

In November, the Czech government approved a draft law from the Ministry of Finance on the compensation bonus. This is a continuation of the support that already existed in previous waves of the pandemic, which, as before, is aimed at compensating self-employed persons and partners of small, limited liability companies (these are companies with a maximum of two partners or family businesses).

Under this bill, the compensation bonus will be paid in the amount of CZK 1,000 for each day for self-employed persons or partners of limited liability companies. Sole traders in quarantine or isolation should always be entitled to at least CZK 500 per day. Workers on an agreement outside employment can also apply for the same amount.
As before, the business must be the main source of income for the bonus claimant.
The Ministry of Finance has planned two bonus periods so far. The first from 22 November 2021 to 31 December 2021, and the second from 1 January to 31 January 2022. The government may subsequently set further bonus periods by regulation, for one calendar month at a time, in view of the spread of the pandemic.
Those whose income falls by at least 30% in the bonus period compared to the average monthly income in the comparison period

will be eligible for a compensation bonus. The comparison period is any three consecutive calendar months from June through October 2021. For seasonal businesses that do not operate over the summer, income in the bonus period will be compared to income from the period of 1 November 2019 through 31 March 2020 (i.e. the comparable winter period before the pandemic began).
As before, this compensation bonus will be a refund of income tax on employment income, which will be paid by the tax authorities upon request.
The government bill provides that applications can be submitted at the earliest after the end of the bonus period, i.e. in the period when it will be possible to accurately quantify the drop in the amount of sales. Applications will be submitted within two months after the end of the relevant bonus period, and applicants will be able to use a specially set up website, submit an application by e-mail, data box or mail, or apply in person at the tax office.
All further information on the compensation bonus can be found on the website of the Ministry of Finance here.

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In the first half of November, the globally anticipated COP26 conference in Glasgow brought together representatives from nearly 200 countries to discuss a common approach to climate change and to keeping global warming at 1.5°C. BDO representatives also followed the conference and you can read about the programme in detail on the BDO website.

BDO provides comprehensive sustainability/ESG services, among which is preparing for mandatory non-financial reporting under the forthcoming EU Corporate Sustainability Reporting Directive (CSRD). Aimed at communicating in a strategic context the impact of companies on the environment and society, the annual report of mid-sized companies for 2023 will be required to include this non-financial data. We will therefore also focus on ESG and non-financial reporting in our services in the Czech Republic.

ESG links the environmental (E), social climate (S), governance and corporate policy towards employees and business partners (G). It thus brings a holistic approach to considerate and sustainable business and investment.

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