

BDO NEWS

JANUARY 2022 - ISSUE 1

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EDITORIAL



Dear Readers,

On behalf of BDO, I would like to welcome you to 2022 and wish you a healthy and prosperous business year ahead. In this edition of the newsletter, we bring you tax and legal insights, as well as other interesting news.

In the first article, Lukáš Toman, a tax advisor and lawyer, shares with you his experience with taxes in 2021 and news for 2022. I highly recommend you familiarise yourself with the content of the article.

In the next article, Monika Lodrová and Adam Hussein discuss employee stock ownership programmes. Although in the Czech Republic these programmes may not be as advantageous from the point of view of taxes and levies as they are in the USA, for example, it is certainly worth learning about this option, which can motivate employees and company management alike.

In his article, Vít Křivánek discusses the topic of the declared supplier. He will introduce you to the conditions for claiming the VAT deduction.

Finally, together with Kamil Vaniš, we will look at the issue of the strategic, operational

and financial management of companies in today's turbulent economic environment. Now let me conclude with a practical piece of advice. From 1 January 2022, the "fiction of delivery" will also apply to data messages delivered between private entities, i.e. between citizens or companies. Until now, the fiction of delivery has applied exclusively to data messages sent between a private party and a public authority. Currently, if you do not open a data box for more than 10 days, any data message will be deemed to have been delivered, regardless of whether you have seen the content of the message. For this reason, I recommend that you set up the appropriate processes so that you have control of your mailbox and avoid inconveniences. Like last year, you can look forward to a wide range of seminars. You will find an overview of these at the end of this issue. Once again, we wish you a successful 2022. We at BDO will be fully available to support you and your business and help you achieve your goals.

Lukáš Regec
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

THE 2021 TAX EXPERIENCE AND NEWS FOR 2022

The end of 2021 was a very atypical year from a tax perspective: no major last-minute amendments to laws effective immediately from 1 January were adopted. The change of government therefore brought much needed stability in tax law for once. Below is a summary of the key lessons learned from last year's tax changes, along with an overview of what to watch out for in 2022.

CORPORATE INCOME TAXES

Property under the Income Tax Act

- ▶ Change in the entry price threshold for tangible movable property from CZK 40,000 to CZK 80,000 from 1 January 2021.
- ▶ The same CZK 80,000 threshold also applies to technical improvements of tangible movable property.
- ▶ Deletion of the definition of intangible assets from the Income Tax Act as of 1 January 2021. Intangible assets are still defined only by accounting regulations.
- ▶ In view of the changes to tangible and intangible assets mentioned above, we recommend reviewing the internal accounting guidelines regarding the amount of the entry price of fixed assets to see if the thresholds are still in line with the company's current requirements.
- ▶ Intangible assets classified up to 31 December 2020 are amortised in accordance with the wording of the Income Tax Act effective 31 December 2020. This also applies to the technical appreciation of such intangible assets.
- ▶ For tangible assets in depreciation group 1 or 2 acquired between 1 January 2020 and 31 December 2021, extraordinary depreciation may be used to fully depreciate the asset over 12 or 24 months.

Notification of exempt foreign income

- ▶ Monthly notifications are no longer required for the full year 2021.
- ▶ Annual notices for 2021 must be filed by 31 January 2022.
- ▶ The annual notification does not include income that does not exceed CZK 300,000 within a calendar month and the individual type of income.

Lump sum meal allowance

- ▶ Different tax setup compared to meal vouchers; for example, this will be reflected in 12-hour shifts and the provision of higher than tax-optimal amounts.
- ▶ On the employee's side, this is exempt income up to CZK 82.60 (from 1 January 2022).
- ▶ On the employer's side, it is a fully tax-effective expense with no limit on the amount.

Expenditure on COVID testing

- ▶ Expenditure on testing which is carried out for the purpose of occupational health protection is tax effective.

- ▶ The Department of Health generally considers SARS-CoV-2 testing to be part of occupational health and safety.

Reimbursement of home office expenses to the employee

- ▶ The employer has a legal obligation to reimburse the employee for their expenses.
- ▶ Reimbursement must be supported by actual expenses or a calculation from actual expenses.
- ▶ An exception to this may be lump sum reimbursement of costs for wear and tear on the employee's own tools and equipment in the amount of hypothetical tax depreciation.

Tax rebate for foreclosures that have been stopped

- ▶ The new tax credit effective 1 January 2022 is directly related to the change in the Enforcement Code.
- ▶ The tax rebate is equal to the amount of the compensation awarded by the executor for the unsuccessfully recovered debt.
- ▶ The claims in question are claims of no more than CZK 1,500 that have been unsuccessfully pursued for at least three years.

ACCOUNTING

Publication of financial statements through the tax administrator

- ▶ A new option for publishing financial statements.
- ▶ It can be used for financial statements with an end of the accounting period not earlier than 31 December 2021.
- ▶ Technically, the disclosure is made by attaching the financial statements as an annex to the tax return and indicating the extent to which the financial statements are to be submitted to the Commercial Court.

Adopted interpretations of the National Accounting Council

- ▶ Recognition of a Contribution to a Not-for-Profit Entity in the Assets of the Contributor (I-44).
- ▶ Impairment of Tangible and Intangible Fixed Assets - Testing and Reporting (I-45).
- ▶ Accounting treatment of a released and settled interest in an LLC and a settled interest in a cooperative (I-46).

PERSONAL INCOME TAX

- ▶ Increase of the discount per taxpayer from 1 January 2021 to CZK 27,840, from 1 January 2022 to CZK 30,840.
- ▶ Increase in the tax benefit for the second and additional dependent child and abolition of the limit for the payment of the tax bonus from 1 January 2021. For 2021, it can be claimed through the annual settlement made by the employer or the tax return for 2021.
- ▶ The minimum wage (and consequently the guaranteed wage) will rise to CZK 16,200 from 1 January 2022.
- ▶ Abolition of the super gross wage from 1 January 2021.
- ▶ Introduction of an increased tax rate of 23% instead of the solidarity surcharge, extension of the scope of income to be taxed

INTRODUCTION TO CLOUD COMPUTING

The first in a series of articles on the principles of cloud technologies with a focus on their security

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at the higher tax rate as of 1 January 2021 (newly applied also to non-exempt income from the sale of securities, sale of immovable property or rental income, for example).

- ▶ Exemption of income from bonds issued by an EU Member State - effective from 1 January 2021.
- ▶ Introduction of a flat-rate scheme for self-employed persons with a minimum flat-rate tax from 1 January 2021. The new government plans to increase the turnover limit for the use of the scheme from CZK 1 million to CZK 2 million. The change will take place in connection with the planned increase of the turnover limit for mandatory VAT registration to CZK 2 million.
- ▶ Extension of the time test for the exemption of income from the sale of immovable property from five to 10 years for the sale of immovable property acquired from 1 January 2021.
- ▶ Limitation of the amount of the non-taxable part of the tax base for interest on a loan from a construction savings account or a mortgage loan from CZK 300,000 to CZK 150,000 for residential property acquired from 1 January 2021.
- ▶ Increased limit for the non-taxable part of the tax base for gifts to 30% of the tax base for the calendar years 2020 and 2021.

VALUE ADDED TAX

One-Stop Shop („OSS“) for E-commerce

- ▶ The Czech law was implemented late compared to the European Directive. This amendment concerning cross-border business-to-consumer („B2C“) trade came into force on 1 October 2021.
- ▶ An aggregate limit of EUR 10,000 has been set for distance selling of goods and cross-border TBE (telecommunications, radio, electronic) services. The taxpayer can fulfil the VAT obligation in another EU Member State through the OSS in the Czech Republic.
- ▶ Quarterly tax period, the tax administrator is the Financial Office for the South Moravian Region, Territorial Office for Brno I.

Import One Stop Shop („IOSS“) pro E-commerce

- ▶ A new institute from 1 July 2021 (or 1 October 2021) for distance sales of imported goods to final consumers (B2C).
- ▶ Possibility to declare European VAT by the supplier via IOSS when importing goods from third countries with a value of up to EUR 150 that are directly shipped to a buyer in the EU.
- ▶ Monthly tax period, the tax administrator is the Tax Office for the South Moravian Region, Territorial Office for Brno I.

Changes to VAT on travel services from 2022

- ▶ As of 1 January 2022, travel services providers can no longer determine the taxable amount in aggregate for the entire tax period but must determine it individually for each customer.
- ▶ Travel service providers must now also tax advances received (if the tax rate and the place of supply of the travel service are known). The tax base is the surcharge calculated as the consideration received times the coefficient for calculating the surcharge.
- ▶ The exemption for air passenger transport to third countries has been narrowed. The entire transport is no longer exempt from VAT, but part of the transport within the EU is subject to a surcharge.

Abolition of the exemption for imports of low-value goods

- ▶ Imports of goods with an intrinsic value not exceeding EUR 22 are no longer exempt from VAT from 1 October 2021.
- ▶ The exemption for goods with a value of up to EUR 150 remains.

VAT exemption for energy

- ▶ VAT on the supply of electricity and gas or their acquisition from another EU Member State or import.
- ▶ Applied to VAT from 1 November 2021 to 31 December 2021.
- ▶ It also applied to consideration received before the taxable supply took place, provided the statutory conditions for the declaration of tax on the amount received were met on the date of receipt of the consideration.

VAT exemption for protective equipment

- ▶ The Ministry of Finance decided not to extend the VAT remission on filtering half-masks and respirators of protection class FFP2 and higher.
- ▶ This waiver expired on 31 December 2021.

Intrastat

- ▶ Effective as of 1 January 2022, i.e. it applies for the first time to the January 2022 declaration.
- ▶ Significant simplification for reporting units with a turnover for Intrastat between CZK 12 and 20 million (each direction considered separately) if they do not trade in selected commodities. Only one report per year with limited data.
- ▶ Extension of the scope of data to be reported for exported goods to include TIN and country of origin.
- ▶ Change of transaction nature codes.
- ▶ Increase of the limit for small consignments to EUR 400.
- ▶ And other changes.

TAX CODE

New tax information box, the so-called „DIS+“

- ▶ The original tax information box will be discontinued on 28 February 2022.
- ▶ Existing authorisations for tax advisors or employees are not transferred to DIS+. DIS+ must therefore be activated and set up completely anew.
- ▶ Significant login problems are experienced by foreign members of statutory bodies who are not allowed to log in via data box. So far, the only reliable method in these cases is to collect the special login details in person from the tax office.

Deadline for filing the tax return

- ▶ If a tax return is filed within three months of the end of the tax year, from 2021 the tax is assessed at the end of this period, regardless of whether the filing is made by a tax advisor or an audited company.
- ▶ In addition to the earlier payment of tax liability, this also results in an earlier refund of overpayments.
- ▶ Earlier determination of the tax liability also consequently changes the advance payments of tax. For the tax year, which is a calendar year, the advance tax payments are changed as early as 15 June compared to the practice of 15 September.
- ▶ In our experience, the tax authorities have noted these changes and tax obligations are being determined in accordance with the law.

REGISTRATION OF BENEFICIAL OWNERS

- ▶ There have been significant changes to the Register of Beneficial Owners as of 1 June 2021.

- ▶ A new definition of beneficial owner has been established. This has a major impact especially on Czech companies that have previously had their statutory body registered as the beneficial owner.
- ▶ In addition to a monetary penalty, the main sanction for non-compliance is a prohibition on the payment of profit shares.

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EMPLOYEE STOCK PROGRAMMES

In today's times of skilled labour shortages, employers are looking for ways to make their positions more attractive or retain key employees. To this end, there are a number of employee incentive and benefit programmes. One interesting motivation option may be so-called employee stock programmes. In the following article, we introduce you to their basic aspects.

When we talk about employee share schemes, we usually mean employee participation programmes. Simply put, this is a scheme that allows employees to acquire a stake in a company, typically in the form of shares, on more favourable terms than the market. Such a system can also be established in other business corporations (e.g. limited liability companies), but public limited companies are best placed to take advantage of it.

The advantage of employee participation schemes is the significant long-term incentive component, the so-called ownership mentality. It is in the employee's financial interest for the company to prosper in the long term, and so the employee is motivated to stay with the company to maximise the benefits received.

Examples of employee participation programmes in practice include: například:

1. option plan;
2. direct sale of shares;
3. shadow shares.

As employee share ownership plans often involve considerable sums of money, it is essential that they are set up correctly from the point of view of taxation and social and health insurance contributions. Benefits accruing to employees from such schemes are always treated as employment income in the first instance. This is because they are clearly linked to employment.

In the second phase, income from the holding or sale of shares is classified as capital and other income, i.e. outside employment. It is only here that the possibility of exempting income comes into play.

To set up the tax scheme correctly, it is then necessary to identify the moment of taxation and to determine the amount of income to be taxed. This will depend especially on the type of employee scheme, which we comment on in more detail below.

Finally, the method of taxation of the income (through tax paid on wages or through a tax return) and whether such income is subject to social security and health insurance contributions are assessed. This involves a detailed analysis of the setup of the plan and the relationship between the entity to which the shares are acquired, the legal employer and the employee.

Option plan

The essence of the option plan is the option right, which means the right to buy back the company's shares at a pre-agreed (discounted) price in the future. However, this is only a right; the employee is not bound by the obligation to buy back the shares. Employees generally acquire the right to buy back shares gradually during the course of their employment.

In the normal setup of an employee stock option plan, taxation and any social security and health insurance contributions are usually due upon exercise of the option, at the time the shares are credited to the employee's investment account. Income is taxed at the difference between the market value of the stock at that time and the purchase price paid by the employee.

Direct sale of shares

Unlike an option plan, where the employee has only the right to exercise the option, the parties may also agree to sell shares outright at a pre-agreed (discounted) price. This option usually comes at the beginning of the employment relationship or soon after it, but a gradual release of shares is not excluded.

In this participation scheme, taxation and possible social security and health insurance contributions are due when the shares are credited to the employee's investment account. Income is taxed at the difference between the market value of the share at that time and the purchase price paid by the employee.

Shadow shares

Shadow shares operate similarly to an option plan, except that the employee is gradually entitled to a cash award corresponding to the appreciation of the share from an agreed point in time, based on an internal or contractual mechanism. Thus, employees never become shareholders. The company is only contractually obliged to pay them the amount corresponding to the share appreciation at a certain point in time as a bonus on top of their salary.

In the case of a shadow share scheme, employees do not actually acquire securities; the value of the cash award is merely derived

WAIVER OF ADMINISTRATIVE FEES LINKED TO NOVEMBER AND DECEMBER 2021

Decision to waive the administrative fee due to an exceptional event

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from them. The income and any social security and health insurance contributions are taxed at the time of settlement or payment of the full amount of the cash award.

If a company decides to apply an employee participation scheme, it is prudent to bear in mind some basic conditions that define the rules under which the scheme will be implemented. In particular, our recommendations are:

- ▶ Limit the volume of shares that will be used for the programme (10-15%).
- ▶ Reserve the right to unilaterally change certain parameters of the programme.
- ▶ Define what shareholder rights are attached to the shares (profit share x voting rights).
- ▶ The right of the company to buy back the shares acquired from the employee at market price, e.g. in a bad leaver situation.
- ▶ Restrict (or completely prohibit) the transfer of shares to third parties or encumber them (e.g. pledge).
- ▶ Assess the tax implications of the scheme in detail and communicate them appropriately to employees.

While participation programmes are not and cannot be the only way to attract motivated and valuable employees, they can be an attractive benefit that such employees will want. However, the programme needs to be carefully tailored to the specific company.

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CONDITIONS FOR CLAIMING VAT DEDUCTION: DOES THE BUSINESS HAVE TO PROVE THE SO-CALLED DECLARED SUPPLIER?

Every VAT payer is well aware of the basic conditions that must be met to qualify for a VAT deduction. He or she must receive the supply from another VAT payer and subsequently use it for his or her taxable economic activity. In both cases, the VAT payer bears the burden of proof. For the last few years, there has been talk of an additional condition without which the recipient of the supply is not entitled to claim a VAT deduction. This is proof of the so-called declared supplier, i.e. the person named on the invoice. This condition is the subject of the following article.

As I already indicated in the introduction, the right to deduct VAT arises for the taxpayer at the moment the so-called substantive conditions of entitlement are fulfilled. These include: (i) the supplier of the supply is another VAT payer; (ii) the supply in question actually exists (it is not a fictitious supply); and (iii) the supply received is used by the recipient of the supply within the scope of their taxable economic activity.

The view of the tax authorities, which has persisted for many years, is that the above conditions also include the condition of a so-called declared supplier. And since the burden of proof is on the recipient of the supply, the burden of proving this fourth condition is also on the VAT payer. At first glance, it might seem that in practical terms this is not so fundamental, but the opposite is usually true. A prudent business (the recipient of the supply) will usually have evidence (probably

contractual documentation and other documents) which will prove the actual existence of the goods or services received. At the same time, it should not be difficult to prove that it was used in the course of their business. In the overwhelming majority of cases that I encounter in my practice today, these archived documents can no longer reliably prove that the person named on the invoice as the supplier of the goods or services has provided the supply in question. The essence of the fourth substantive condition is precisely to prove that the goods or services were actually supplied by the payer named on the invoice and by no one else (e.g. another payer). In practice, it is extremely difficult to bear the burden of proof of this fact. It should be added that the tax authorities are also aware of this, and most VAT inspections today are focused on proving the so-called declared supplier.

The dispute between the legal opinion of the Czech tax administrators (under the methodological control of the General Financial Directorate) and domestic VAT payers had to logically end up before the Court of Justice of the European Union, which is the only authority providing a binding interpretation of the harmonised value added tax system in the EU. The Court of Justice addressed this burning issue in its judgment of 9 December 2021 in Case C-154/20 Kemwater ProChemie s.r.o. The decision of the CJEU leads to the following conclusions:

- ▶ the mere inclusion of the supplier's name on the tax document is not a substantive condition;
- ▶ on the contrary, the status of the supplier is already a substantive condition.

According to the Court of Justice, it is crucial for maintaining the principle of neutrality of value added tax that a situation does not arise where the actual supplier of goods (service provider) is a non-taxable person (in this case a tax non-payer), but the recipient of the supply deducts VAT because another VAT payer is indicated on the invoice, but the supply is not actually made. Therefore, the Court of Justice clearly concludes that the recipient of the supply is entitled to deduct VAT only if the supply was actually made by the taxable person (in Czech terms, the VAT payer), regardless of who is indicated on the invoice.

At the same time, it can be inferred from the judgment that the burden of proving the actual supplier (the taxable person) is on the recipient of the supply. However, if it is apparent from all the circumstances of the case that the nature (technological complexity) or the price (more than EUR 1 million once, or for repeated performance over 12 consecutive months) had to be supplied by a taxable person (a VAT payer), then the Court of Justice clearly adds that in such a case this condition for entitlement to deduct VAT is deemed to be satisfied.

So, what about proving the so-called declared supplier for the Kemwater decision? The onus will still be on us to ensure that we take the utmost care to provide the tax authorities with evidence to prove, if necessary, that we have received the supply from a VAT payer. However, the tax authorities will no longer be entitled to deny us a deduction if it turns out that the supply was actually provided by a VAT payer other than the one shown on the invoice. This is a big plus!

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MANAGING A COMPANY IN A TURBULENT ECONOMIC ENVIRONMENT

The business environment is currently characterised by turbulent economic changes that will affect the future direction of many companies. Manufacturing companies and others are under pressure to increase their own costs and under the weight of this avalanche must increase prices for customers. This situation is putting pressure on companies to change suppliers and redefine many supplier-customer relationships. When negotiating prices and future business relationships, the internal efficiency of business partners and their processes are facing increasing scrutiny from buyers and financing partners.

The enormous upward pressure on customer prices, for example for manufacturing companies, has been significantly compounded by the increase in energy prices, with the price of electricity rising from EUR 52/MWh in January 2021 to up to EUR 273/MWh in December 2021. We also saw price increases for most industrial metals in 2021 (copper +26%, aluminium +41%, steel +10%, zinc +19%), with the price index for plastic materials increasing by 49% (includes LD/LLDPE, HDPE, PP, PVC, PS, PET, ABS, PA, PC, PMMA, POM). In addition to rising input prices, companies are facing volatility in demand or a shortage of skilled workers in executive, middle management, etc. In terms of the cost of financing, the three-month PRIBOR rate has risen from 0.36% in January 2021 to 4.05% in December 2021. In contrast, the three-month EURIBOR rate was -0.545% in January 2021 and -0.588% in December 2021.

Given the economic realities, the environment cannot be expected to return to the pre-pandemic situation. Those that adapt to the new conditions will continue to develop, not stagnate or disappear.

In such an economic environment it is appropriate to focus on:

- ▶ **Forward-looking financial models** - preparation of forward-looking models and assessment of various scenarios, whether it is a cash flow forecast, open currency position, framework capacity plan, alternative organisational arrangement, fixed cost utilisation, etc. CRM data related to sales/key accounts and its systematic use for business strategy and reporting plays an indispensable role in this respect. The processing of regular agendas must be supported by automated processes.
- ▶ **Change project management** - multi-disciplinary projects that have not been handled within the companies' standard processes are thus more frequent. These targeted transformation projects will require coordination across the existing organisational structure, or dedicated project managers, or a project-oriented organisational structure.
- ▶ **Strategic sourcing** - alternative suppliers will need to be approached more frequently to diversify risks of non-delivery, excessive price increases, changes in financial terms of the business relationship, etc. Having the process of selecting a new supplier managed by an independent entity allows a wider range of suppliers to be approached and verifies any habitual practices within the purchasing relationship.
- ▶ **Strategic partnerships** - to expand the customer portfolio and increase the use of fixed costs, situations will require new strategic partnerships, either in the form of alliances or capital injections.

For a more detailed consultation of your specific situation, please

do not hesitate to contact us. We will be happy to help you with issues related to improving company performance through purchasing processes, business operations, financial management and transformation projects.

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MARK IN YOUR CALENDARS: EVENTS AND SEMINARS

Also in 2022, we have prepared a series of training courses on the modern opportunities in responsible business, cybersecurity and digitalisation, as well as an overview of new legislation. The seminars are held in person and as online webinars. Check out the current overview of BDO seminars:

SEMINAR: NEW DEVELOPMENTS IN WHISTLEBLOWER PROTECTION: CURRENT RISKS AND OBLIGATIONS FOR COMPANIES AND THE PUBLIC SECTOR

- ▶ 24 February 2022
- ▶ 28 April 2022
- ▶ 19 May 2022

The Whistleblower Protection Act, which transposes the EU Directive, was due to come into force on 17 December 2021. But the draft law was not passed and the Directive was not implemented on time. What does this mean for businesses and organisations? This seminar will propose effective solutions to manage these challenges and minimise the regulatory and reputational risks outlined above. We will also describe how to make the most of the new obligations for the benefit of the company or how to link whistleblower protection with existing ESG frameworks.

Lecturer

- Stanislav Klika, Head of Risk Advisory Services

SEMINAR: DIGITALISATION IN FINANCE

- ▶ 22 March 2022

We cordially invite you to a seminar where we will introduce you to the possibilities of automation and digitalisation in the field of financial processes in companies. At the seminar, we will show you what activities can be processed using robots and machine learning. Based on practical experience, we will explain how the use of robotics and automation will affect the processing of economic agendas. We will look at what technologies are helping in finance today, what the return on investment is for such solutions, and we will also touch on the main pitfalls in their implementation.

Lecturers

- Tomáš Kubiček, Partner
- Ondřej Beránek, Consultant

SEMINAR: HOW TO NAVIGATE THE NEW "GREEN" OBLIGATIONS AND MAKE THEM A COMPETITIVE ADVANTAGE

▶ 23 March 2022

▶ 11 May 2022

Green Deal, Fit for 55, Taxonomy, NFRD, CSRD, SFRD, ESG... Have you heard these terms before but aren't sure what they mean? Would you like to know how these new obligations will affect your business? Are you wondering how to make the most of them? Or would you just like to do business responsibly and are considering what approaches to take?

Lecturers

- Lucie Johaníková, Partner
- Stanislav Klika, Head of Risk Advisory Services

