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NEWSLETTER CZECH REPUBLIC

Issue: January 2021

Information on Law, Taxes and Economics in the Czech Republic

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Content:

→ Law

Stricter liability for members of statutory bodies

The amending bill to the Act on Business Companies that entered into force on 1 January 2021 brings a number of changes that members of a company's statutory body (i.e. authorized officers) will have to deal with. These changes have bearing on an authorized officer's liability and obligation to act with proper managerial care. Authorized officers will need to familiarize themselves with the changes and conduct themselves in accordance with the new requirements. One of the primary obligations of an authorized officer, an obligation that should not be taken lightly, is the obligation to review the legal steps by which a company was founded and to bring such legal steps into compliance with the law. If the provisions relating to the founding of a company were to be in conflict with the mandatory provisions set forth in the amending bill, such founding provisions would cease to be in effect as of 1 January 2021.

Pavlína Vondráčková
Rödl & Partner Prague

The amending bill to the Act on Business Companies primarily brings changes in the area of the liability of members of a company's statutory bodies (i.e. authorized officers). The changes also relate to the consequences of a breach of obligations by an authorized officer. Under the regulation of this issue that was in effect until 31 December 2020 it applied that a court may decide, even if no petition seeking such decision is filed, to expel a member of a company's statutory body (i.e. an authorized officer) from their office if it is discovered that during the previous 3 years such authorized officer breached in a serious manner and repeatedly the obligations associated with the performance of their office. Under such previous regulation, both conditions for expulsion must be met in order to expel the authorized officer from their office.

Under the new regulation, however, it suffices if the breach of obligations is either serious, albeit a one-time occurrence, or repeated, irrespective of how serious it is. This means that even less serious errors on the part of an authorized officer, provided they were repeated, can be grounds for disqualification of the authorized officer from the performance of their office. It should be emphasized that for the purposes of disqualifying an authorized officer from the performance of their office, it does not matter whether the breach of obligations by the authorized officer caused the company to sustain damage or whether the company became bankrupt as a result. Assessment of the matter of whether certain conduct constitutes a serious breach of obligations depends on the circumstances of a specific case and on the specific knowledge, abilities, skills and experience of the relevant authorized officer. A petition for commencement of expulsion proceedings may be filed by any person that has an important interest in the expulsion of the authorized officer from their office. Parties that have legal standing to file such a petition obviously include the company itself but can also include other authorized officers as well as members of the company's supervisory body and the company's shareholder/members.

The amending bill regulates the consequences facing authorized officers in situations where the business company becomes bankrupt. New, special obligations have been stipulated for the authorized officers of a business company in respect of which an insolvency petition is filed after 1 January 2021. Upon a request from the insolvency trustee, a court is entitled to order an authorized officer that, by a breach of their obligations, contributed towards the company's bankruptcy to surrender into the business company's assets (i.e. the bankruptcy estate) the benefits that such authorized officer obtained under their service contract, as well as to surrender any other benefits such authorized officer obtained during the two-year period before insolvency proceedings commenced. This means that the amending bill has shifted the point in time which is considered to be the starting point from which one counts the period for the surrender of the benefits obtained by an authorized officer to the time when the relevant insolvency petition is filed with the relevant court. Previously, such starting point had been the time when the court decision on bankruptcy become final and conclusive.

The new legal regulation has abandoned the previously-stipulated liability principle under which a court was authorized to decide, on the basis of a petition from the insolvency trustee, that an authorized officer (whether a current authorized officer or a former one) is liable for the

fulfillment of the liabilities of a business company in bankruptcy if such authorized officer knew or should and could have known that the business company was facing an imminent threat of bankruptcy and, in breach of the duty of due managerial care, failed to take all necessary and reasonably foreseeable steps to prevent the bankruptcy. The liability principle has now been replaced by a so-called motion for supplementing liabilities that is filed by the insolvency trustee. If a court declares bankruptcy upon the assets of a business company, the court may order the company's authorized officer to surrender into the company's assets (i.e. into the bankruptcy estate) performance in the amount stipulated by the court, which amount is limited to the difference between the sum total of the debts and assets of the business company. When determining the amount of performance to be surrendered, the court will take into consideration primarily the degree to which the breach of the authorized officer's obligation contributed to the fact that the company has insufficient assets. The motion for supplementing liabilities can also be filed against several authorized officers that contributed, by their conduct, to the business company's bankruptcy. Assets obtained from a business company's authorized officers on the basis of a motion for supplementing liabilities become part of the business company's assets (i.e. the bankruptcy estate) and are divided among the insolvency creditors in accordance with the rules stipulated in the Act on Insolvency. The liability of members of the company's statutory bodies (i.e. authorized officers) will be a solidary liability and such authorized officers will be ordered to render performance into the bankruptcy estate jointly and severally. However, if the insolvency court finds that the degree to which the authorized officers breached their obligations was not the same for all of them, or if the insolvency court discovers other circumstances, it will reflect this in its decision and will order each defendant to supplement the bankruptcy estate in a different amount.

As can be seen from the above-described cases, the new rules mean stricter liability for authorized officers, as well as more serious consequences for a breach of their obligations during the performance of the duties associated with their office. Accordingly, companies should not underestimate the impact of the new rules and should pay more attention to this area.

Contact details for further information

JUDr. Pavlína Vondráčková, Ph.D
advokátka
(Attorney-at-Law CZ)
Associate Partner
T +420 236 163 710
pavlina.vondrackova@roedl.com

→ Law

Social security in the context of Brexit

Under the Withdrawal Agreement concluded between the European Union (EU) and the United Kingdom, during the transitional period until 31 December 2020, Regulations (EC) No 883/2004 and (EC) No 987/2009 as well as (EC) No 859/2003 in conjunction with Regulation (EEC) No 1408/71 (hereinafter: Regulations on the Coordination of Social Security Systems) continued to apply in full (e.g. for tourists, pensioners, students, posted workers).

The transitional period of the Withdrawal Agreement ended on 31 December 2020.

For situations with a cross-border connection to the United Kingdom before 1 January 2021, the Regulations on the Coordination of Social Security Systems will continue to apply within the framework set out in the Withdrawal Agreement.

The EU and the United Kingdom were able to negotiate a Trade and Cooperation Agreement (Partnership Agreement) for future relations. The new agreement contains provisions on the coordination of social security systems that are essentially the same as those in Regulations (EC) No. 883/2004 and 987/2009. If all 27 EU member states give their consent to the new agreement, it can initially be applied provisionally from 1 January 2021

for situations which begin on or after 1 January 2021 and which previously had no cross-border connection between an EU member state and the United Kingdom. The European Parliament must then give its consent to the agreement by the end of February 2021 at the latest.

This means that the regulations on the coordination of social security systems will continue to apply to situations with a cross-border element before 1 January 2021, subject to the conditions set out in the Withdrawal Agreement, and for situations starting on or after 1 January 2021which did not previously have any cross-border connection between an EU Member State and the United Kingdom, under the conditions set out in the Trade and Cooperation Agreement between the EU and the United Kingdom (Partnership Agreement).

Contact details for further information

JUDr. Thomas Britz
thomas.britz@roedl.com

→ Taxes

Average wage for 2021

A decree published by the government contains information about the average wage for 2021. The average wage for 2021 is CZK 35,441.

The average wage for 2021 is the base that will be used for calculating the maximum assessment base for health insurance premiums and social security contributions, the threshold for the solidarity tax surcharge and the monthly employment income that gives rise to an obligation to register for the sickness insurance scheme and the pension insurance scheme.

For 2021, the maximum assessment base for health insurance premiums and social security contributions, and the annual threshold for the solidarity tax surcharge, i.e. the threshold above which one is obligated to pay the 7% solidarity tax surcharge, is CZK 1,701,168 (for 2020, this threshold was CZK 1,672,080). Pursuant to the Amending Bill to the Act on Income Tax (Parliamentary Document 910), CZK 1,701,168 will be the threshold above which a tax rate of 23% will be applicable.

The monthly employment income that triggers the obligation to register for the sickness insurance scheme and to register for pension insurance has been raised to CZK 3,500 for 2021. If an employee's monthly wage exceeds this threshold, the employee must pay social security contributions.

Contact details for further information

Ing. Martina Šotníková
martina.sotnikova@roedl.com

Ing. Miroslav Holoubek
miroslav.holoubek@roedl.com

→ Taxes

General Financial Directorate issues information on the VAT-related impacts of Brexit

It has been almost 4 years since the United Kingdom of Great Britain and Northern Ireland (Great Britain) decided to leave the European Union. On 31 December 2020, the so-called transition period ended. This means that as of 1 January 2021, Great Britain is no longer a part of the EU, which can have a significant impact on the VAT procedure when trading with Great Britain. Accordingly, the General Financial Directorate decided to issue Information on the VAT-Related Impacts of the U.K.'s Exit from the EU (Brexit) as of 1 January 2021 and to draw attention to the most important changes in the VAT area.

Michael Pleva
Rödl & Partner Prague

In the Information, the General Financial Directorate focused on three VAT-related areas that will be most affected by Great Britain's exit from the EU. These areas are cross-border trade with goods, supply of services and claims for VAT deductions.

Cross-border trade with goods

Now that the transition period has ended, we need to view Great Britain as a third country. During sales or purchases of goods, the same rules will apply with regard to imports and exports as those that apply to, for example, trading with the USA or China. It is quite clear that this regime could have an adverse impact on how smoothly orders can be processed, or that it may lead to additional administrative costs. However, we can also expect changes with regard to VAT.

This new regime, however, will not apply to Northern Ireland, which will continue to be treated as a member state of the EU. For the purposes of trade with goods, Northern Ireland will be using the VAT identification number XI. It is therefore necessary to strictly differentiate between Northern Ireland and the rest of Great Britain.

In situations where the transportation of goods commenced before the end of the year, but where the goods will not be physically delivered until 2021, the relevant transaction will be treated as the supply of goods within the EU. However, the entity supplying the goods will need to demonstrate to the customs authorities that the transportation of the goods commenced before the end of the 2020 calendar year.

The Information also deals with the issue where goods are re-imported (i.e. sent back) after the transition period has ended. If the goods are returned into the EU in their original condition and all the requirements stipulated by the relevant EU Directive are met, the transaction will be exempted from VAT.

Great Britain's exit from the EU also brings about the revocation of the special procedures that usually simplified the application of VAT for all parties involved in a particular transaction. From now on, it will no longer be possible to take advantage of using the regime called dispatching goods (which is used primarily when goods are sold to private individuals), or the simplified procedure for supplying goods via trilateral transactions, or the warehouse procedure, or the delivery and acquisition of new vehicles, and finally, the special procedure that can be used by parties that trade with used goods, works of art or antiques.

Supply of services

While it may be somewhat difficult to understand, for the purposes of supply of services, Northern Ireland will not be treated as an EU country. Consequently, all services supplied to or received from all of Great Britain will be treated as services from a third country. The point of supply of services will be determined in accordance with the basic rule (here there will practically not be any changes in comparison with the existing procedure). Nevertheless, we need to keep in mind the provisions of § 9a of the Czech Act on VAT. If the recipient of a service is registered as a VAT-remitting entity and the service is consumed in the Czech Republic, the standard procedure will not apply and instead the service will have Czech VAT applied to it.

Also, it will no longer be possible to use the special procedure for points of single contact, a procedure that had been used up to now during

the provision of telecommunications services, radio and television broadcasting and electronically-provided services to individuals and entities not registered for VAT. For individuals and entities that took advantage of this simplified procedure, Great Britain's exit from the EU will mean an obligation to register for VAT in Great Britain.

VAT refunds

In cases where a party paid VAT in Great Britain in the course of 2020, it will be possible to request a VAT refund through the Czech tax authorities. However, such requests can only be filed until 31 March 2021. It is not yet clear whether it will be possible to ask the relevant British authorities for a VAT refund after 1 January 2021. In the Information, the General Financial Directorate merely stated that with regard to VAT paid in the Czech Republic, parties will need to proceed in accordance with § 83 of the Act on VAT. This section of the Act on VAT states that VAT will be refunded on the basis of the reciprocity principle. In other words, if Great Britain allows Czech VAT payers to obtain VAT refunds, then foreign entities will also be eligible to receive VAT refunds.

In view of the foregoing, we would recommend checking your business transactions with Great Britain and assessing whether Great Britain's departure from the EU could have an impact on the existing procedure for the application of VAT. It would also be advisable to review your existing contracts and contractual covenants; all changes that follow from BREXIT should be taken care of contractually. Finally, we would also like to point out that on 24 December 2020, the EU concluded with Great Britain an agreement on future relations that establishes zero tariffs and zero quotas on all goods and products. This agreement, however, does not have an impact on the application of the VAT procedure as of 1 January 2021.

Contact details for further information

Ing. Michael Pleva
daňový poradce
(Tax Advisor CZ)
Senior Associate
T +420 236 163 232
michael.pleva@roedl.com

→ Taxes

New legislation regulating the preparation of expert opinions

As of January, a new Act on Experts, Expert Offices and Expert Institutions is in effect. The new act replaces the original act from 1967.

On 1 January 2021, Act No. 254/2019 Sb., on Experts, Expert Offices and Expert Institutions enters into effect and replaces Act No. 36/1967 Sb., on Experts and Interpreters.

The new act, together with the implementing decrees and associated laws, represents a new legislative treatment regulating the work of experts and is intended to primarily address the decline in public trust in the work performed by experts in general. Accordingly, the new act places emphasis on continual training and on penalties applicable to situations when experts make mistakes.

The act brings major changes to the area of the work performed by experts and should contribute towards greater transparency in this field, At the same time, however, it also contains several controversial provisions which have ended up being the target of criticism (primarily from the expert community itself). From the point of view of users of expert opinions, the new act will probably be viewed favorably, and it can be said that it represents a step in the right direction.

Contact details for further information

Ing. Martin Koldinský
martin.koldinsky@roedl.com

→ Taxes

Meal allowances during trips abroad

A decree issued by the Ministry of Finance sets forth the rates for meal allowances during trips to various foreign countries for 2021. In the case of the less exotic countries, the only countries with regard to which meal allowances changed are the following:

- Bulgaria (from 35 €/day to 40 €/day),
- Slovenia (from 35 €/day to 40 €/day),
- Sweden (from 50 €/day to 55 €/day).

Contact details for further information

Ing. Martina Šotníková
martina.sotnikova@roedl.com

Ing. Miroslav Holoubek
miroslav.holoubek@roedl.com

→ Economics

Interview with the Deputy Minister of Finance about the new Act on Accounting

In the previous edition of our Newsletter, we had informed our readers that on 5 October 2020, the Czech government approved a draft of the substantive aims of the new Act on Accounting. Rödl & Partner has been monitoring developments in this area diligently and is actively involved in the preparation of the new Act on Accounting. We are therefore presenting to our readers a part of our interview with the Deputy Minister of Finance, Stanislav Kouba. The interview was kindly granted by the Deputy Minister in order to inform the professional community about the substantive aims of the new Act on Accounting. The interview should therefore not be viewed as representing the binding opinions or interpretations of the Ministry of Finance of the Czech Republic.

Ladislav Čížek
Rödl & Partner Prague

CIZL: Ing. Ladislav Čížek
KOUS: Ing. Mgr. Stanislav Kouba, Ph.D.

CIZL: The submitted substantive aims of the new Act on Accounting provide for the possibility of expanding opportunities for the application of IFRS-EU. This would make it necessary to also amend the Act on Income Tax. Do you already have some information as to what would be the impact on the state's tax revenues if some companies migrated from Czech GAAP to IFRS-EU?

KOUS: Giving companies the ability to use IFRS for determining taxable income is something that the government had already been working on outside of the framework of the substantive aims of the new Act on Accounting. We should not, however, view these Substantive Aims as automatically meaning that from now on companies will be automatically using operating results calculated in accordance with IFRS for the purposes of Czech income tax. In reality, we expect that, just as in the case of the existing procedures for calculating taxable income on the basis of accounting information, certain elements of profits and losses will end up being corrected (i.e. adjusted) (for example, with a few exceptions, the impact of re-valuation to real value will be eliminated). These corrections (adjustments) are primarily intended to reduce excessive volatility in the taxable income of the companies that make use of this possibility, and to reduce the number of undesirable tax optimizations used by companies. For these reasons, we do not anticipate that there will be a long-term impact on taxable income in the corporate sphere, theoretically the impact could be confined to a certain change in cash-flow. We plan to manage this risk by phasing in the ability to use IFRS for calculating taxable income; the ability of companies to begin using the new system will be phased in, which means that any effect on cash-flow, whether positive or negative, will not only be spread out over time but we may in fact end up with a situation where the effects during individual phases end up cancelling one another out.

CIZL: Within the process of bringing Czech accounting legislation closer to IFRS, specifically in relation to the previously-declared requirement of

ensuring that accounting statements are comparable from an international point of view – are you planning to introduce such tools and categories as, for example, discounting, other comprehensive income, financial reporting in hyperinflationary economies, a separate regulation of liquidation basis accounting, or construction contracts? If not, can you tell us why not?

KOUS: A regulation of discounting and other similar practices leads to greater precision in the results reported in financial accounting. On the other hand, reporting in this manner is associated with an additional administrative burden. Due to the relatively low inflation environment that we have been operating in for quite some time, my personal view is that we should not be expanding the use of this aspect of accounting and reporting.

CIZL: The Substantive Aims plan to keep Czech accounting standards (Czech GAAP) but it should be pointed out, however, that at the National Accounting Board seminar in 2019, Mr. Bauer[1] stated that during the comment proceedings on the Substantive Aims, there is likely to be a discussion regarding the matter of the further existence of Czech GAAP. So what path will Czech accounting legislation take in this regard?

KOUS: Rather than engage in deliberations about the future existence of Czech GAAP, my view is that the more urgent task before us is to think about the character of Czech GAAP, i.e. to think about how these accounting principles can serve us in the future, taking accounting considerations, legal aspects and the manner in which Czech GAAP are used practice into consideration. My own view is that already at present, Czech GAAP are more like a methodology – they are issued by state authorities, they do not have the character of a law, solutions implemented in accordance with such principles are accepted by state administration authorities, and reporting entities can deviate from them. If this view of Czech GAAP as something that really has the character of a methodology is accepted in the future (for that matter, it is difficult to imagine that such a complicated material could be left without some sort of instruction manual), then this would also fit in with the standard concept of how state administration should function. But irrespective of whether the foregoing view materialises, it is certain that there some parts that are presently contained in Czech GAAP that should be transferred, in view of the character of such parts, into a law or decree.

CIZL: It is established in practice that, for example, when additions are made to operating accounting provisions, they are charged against Cost Account 554, which is then also mirrored on a separate line of accounting statements (F.4.) The release, i.e. allocation, of provisions is associated with the reverse account sequence. This significantly lowers the relevance of accounting information relating to individual types of costs. A part of wage costs – for example, the cost of annual bonuses – is "hidden" in just such line "F.4." This means that a user of financial statements often ends up trying in vain to determine in the notes to the financial statements what portion of the costs from line "F.4." pertains to particular types of costs. It is understandable that there will still be some discussions about the specific modifications to be made, but nevertheless, do you think that an effort will be made to ensure some convergence with International Accounting Standards in this area?

KOUS: The trend of convergence with International Accounting Standards has been underway for a number of years. This manifests itself in the fact that when changes are being made to accounting legislation, the drafter of the changes frequently draws inspiration from the solutions set forth in IFRS. The sentence that "no major changes are anticipated to the procedures that have been established in practice" is merely meant to indicate that insofar as concerns individual accounting operations, we will continue to emphasize "evolution" over revolution during the journey.

CIZL: So does this mean that, for example, the procedure for accounting recognition of provisions will likely remain the same as now?

KOUS: As was stated, there will be discussions on specific changes, meaning that this issue remains open. Nevertheless, the direction I have indicated we are proceeding in means that if there are two accounting procedures that are qualitatively the same, we will tend to lean towards the procedure that is closer to the present approach.

CIZL: Czech accounting practice has already managed to deal with a number of shortcomings in Czech accounting legislation quite well through interpretations issued by the Czech Accounting Board. Do you anticipate that the content (i.e. inherent meaning) of these interpretations will be contained in new accounting legislation or do you believe that these are "already resolved" issues

[1] Director of Department 28 – Regulation and Methodology of Accounting, Ministry of Finance

that there is no further need to address? Examples of these types of issues include the currently topical issue of Customer Loyalty Programmes (National Accounting Board Interpretation I-41) or the interpretation on Foreign Currency Translation Adjustments (I-42).

KOUS: The new draft is primarily about legislation and personally, I am not a supporter of the view that we need to necessarily stipulate in detail the regulations that follow from the new act in general. However, if the previous interpretation issued by the National Accounting Board filled a certain gap in the act, it is appropriate to ensure that such gap does not exist in the new regulation. Insofar as concerns other interpretations issued by the National Accounting Board, if such interpretations are still topical, the most fundamental of them should be reflected in the explanatory report to the new act. This would be an unequivocal declaration that the conclusions set forth in such interpretations continue to be valid, and also, such ideas would become a part of the so-called teleological interpretation, i.e. they would show what was the intent of the drafters/legislators that prepared the new act. This approach can also be used for other doctrinal opinions.

Rödl & Partner will continue to monitor the process of the preparation of the new Act on Accounting and we will keep you informed of the changes that this important act, the new Act on Accounting, can be expected to introduce.

This interview was provided for the purposes of the magazine Účetnictví (Accounting) and was abbreviated for publication purposes.

Contact details for further information

Ing. Ladislav Čížek
auditor
(Auditor CZ)
T +420 236 163 315
ladislav.cizek@roedl.com

→ Business consultancy

Outplacement – a support service provided to departing employees

The term outplacement was coined in the United States of America. Whereas a few years ago such career counselling was tailor-made specifically for experts and managers, today it caters for the needs of all professions. Outplacement is most common abroad, but the Czech Republic is not far behind.

Alena Spilková, Thomas Britz
Rödl & Partner Prague

More and more companies provide professional outplacement services to help former employees transition to new jobs. In return, departing employees are expected to sign an agreement terminating their employment. Outplacement is usually offered as an additional payment or alternative to severance pay.

Rödl & Partner have adopted the term Outsourcing Project Outplacement (OPO). As is the case with all of our other projects, we seek synergy with our consultancy offices and we effect custom contracts hand in hand with our legal and tax advisors. During the first phase, we prepare a precise time frame for the company. The second phase then sees us providing career counselling to former employees.

Generally, we deliver outplacement through individual one-on-one sessions or in group format to companies that need help and assistance in handling organisational changes linked to redundancy; both in terms of collective redundancies and individuals leaving the company.

Where collective redundancies are concerned, we are well experienced in communicating with trade union organisations. Our collective labour law specialists conduct negotiations with them on collective agreements, homing in on benefits that motivate employees to support the shutdown of the production process until the very end.

We teach departing employees how to conduct an effective search for new employment. We give them the necessary skills and knowledge. We help them produce a resume and other relevant documents. We show them how to navigate their way through information sources, how to develop a network of contacts, how to improve their communication skills and personal presentation and how to correctly disclose the necessary information.

So how then does the employer who dismisses his employees benefit from outplacement – that is apart from maintaining his brand image and preserving his reputation? By optimising personnel costs, without a doubt. And what risks does outplacement eliminate? Departing employees do not give bad or even lukewarm references and they do not torpedo their former employer's image. Outplacement combats negative reactions both inside as well as outside the company and reduces the risk of employee litigations or lawsuits.

The obvious question then is why purchase the service from a third party? An out-house consultant is impartial and unbiased. There are no personal ties or attachment between the employee and the departing employee. Out-house consultants have the necessary practical experience as they have already worked on outplacement projects in other companies.

Rödl & Partner can interconnect departing employees with companies that are looking to recruit new employees (replacement). Companies are prone to organisation changes not only during a financial crisis, now too is a time riddled with worries. And we are here to help you anytime, anywhere.

Contact details for further information

Alena Spilková
podniková poradkyně
(Business Consultant CZ)
Associate Partner
T +420 236 163 770
alena.spilkova@roedl.com

JUDr. Thomas Britz
advokát and Rechtsanwalt
(Attorney-at-Law)
Associate Partner
T +420 236 163 770
thomas.britz@roedl.com

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Editorial board:
Ing. Jana Švédová, Mgr. Václav Vlk,
Ing. Klára Sauerová, Ing. Jaroslav Dubský,
Ing. Ivan Brož

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