Rödl & Partner

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Content:

→ Law

The Czech Republic as an attractive country for qualified personnel

Despite its strict norms of immigration law the Czech Republic is an attractive country for qualified personnel.

Thomas Britz, Alena Spilková
Rödl & Partner Prague

In recent years, many foreigners, mainly from France, Spain and other countries, have decided to leave their native countries and move to the Czech Republic. Not surprisingly, there are quite interesting opportunities for foreigners here.

Despite the strict norms of immigration law, which regulate the residence and employment of foreigners in the Czech Republic, it is possible to find quality employment in our territory after meeting all bureaucratic requirements. Moreover, foreigners who are EU citizens can apply for permanent residence from the very beginning of their stay in the Czech Republic. The legislation is also kind to close family members of EU citizens who live together with the EU citizen in the Czech Republic on the basis of temporary residence. For them, the application for permanent residence can be approved after two years.

The Czech Republic is seventh in the list of countries according to the „strength“ of the passport

EU nationals can apply for Czech citizenship after three years of permanent residence. For foreigners from third countries, the minimum length of permanent residence is set at five years. The advantage for citizens holding a Czech passport is the “strength” of the personal document, which guarantees visa-free entry to 185 countries worldwide. The Czech Republic is thereofre seventh in the list of countries according to the “strength” of the passport.

1. Japan, Singapore (192 countries)
2. Germany, South Korea (190 countries)
3. Finland, Italy, Luxembourg, Spain (189 countries)
4. Austria, Denmark (188 countries)
5. France, Ireland, Netherlands, Sweden, Portugal (187 countries)
6. Belgium, New Zealand, Switzerland (186 countries)
7. Czech Republic, Greece, Malta, Norway, United Kingdom, United States of America (185 countries)
8. Australia, Canada (184 countries)
9. Hungary (183 countries)
10. Lithuania, Poland, Slovakia (182 countries)

If we take into account that the general unemployment rate of 15-64 year-olds (the ratio of the unemployed to the economically active, i.e. the sum of the employed and unemployed), adjusted for seasonal effects, reached 2.7% in September this year and decreased by 0.2 percentage points year-on-year in the Czech Republic, looking for new sources of employment of foreigners is a possible alternative. LMC s.r.o.’s latest survey identified, among other

things, labour market reserves and untapped potential of people. It lists several barriers that limit the employment of some of the unemployed and economically inactive. These are the skills barrier, the commuting barrier, the time allocation barrier, the equal treatment barrier and the prejudice barrier. Recruiting workers without stereotypes would help open up corporate cultures to new job seekers from abroad.

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→ Law

Amendment to Act 165/2012 Sb. on Supported Energy Sources will take effect on 1 January 2022

– Reintroduction of operating support for new installations.
– An increase in the solar levy.
– New legal framework for examining the adequacy of support for existing installations.

After controversial debates, the long-awaited amendment to Act 165/2012 Sb. on Supported Energy Sources was approved by both chambers of the Parliament of the Czech Republic at the end of September 2021 and will come into force on 1 January 2022.

Olaf Naatz
Rödl & Partner Prague

The amendment concerns both support for existing installations and support for new projects.

The amendment reintroduces operational support for new installations by means of an auction and an hourly green bonus for smaller wind energy installations with an installed capacity of less than 6 MW and composed of no more than six electricity sources, and for other energy sources with an installed capacity of less than 1 MW. It was only after the Senate intervened that the amendment included support for photovoltaic power plants (PV plants). This support applies only to electricity produced in PV plants that are not located on agricultural land of Class I or II protection. However, the new support has yet to be notified to the European Commission, whose approval is necessary.

In addition to the reintroduction of support for renewable energy sources, the amendment lays down a legal framework for the Czech Republic to fulfil its obligations towards the European Commission, specifically, to check whether excessive support has been granted, in particular to installations put into operation between 2006 and 2010. Whether excessive support has been granted or not depends on the internal rate of return (IRR) on investment in the installation. According to the amendment, support is appropriate if the IRR does not exceed values between 8.4% and 10.6%. The specific values for each type of renewable energy will be set by a government regulation.

The amount is verified by means of a sector inquiry, which was already partially carried out in previous years before the adoption of the legal standard. Selected plant operators were asked to provide economic data. Using the data,

the Ministry of Industry and Trade calculated the average IRR for each sector. The amendment does not specify the methodology for calculating the IRR. The calculation method will be the subject of an implementing decree.

The result of the sector inquiry for plants put into operation before 2011 will be known in the first calendar quarter of 2022.

If, on the basis of the sector inquiry, the sector is found to be at risk of excessive support, the support will be reduced through pricing decisions so that the IRR is not exceeded for the duration of the support. The plant operator may nonetheless apply for individual conditions for the granting of support through individual measures if it can demonstrate that its IRR at the original support level does not exceed the established IRR or that the established IRR can no longer be achieved at the new support level. In the first case, the plant operator may apply for the support to be granted at the original level. In the second case, the plant operator may apply for the support to be granted at the original level for a certain amount of electricity. Furthermore, the plant operator may voluntarily waive the right to the support from the beginning of the twelfth calendar year following the year in which the electricity source was put into operation.

The amendment increases the levy on solar electricity by 10% from the next year for operators whose PV plants were commissioned in 2010. PV plants commissioned in 2009 will be subject to a levy of 10% on the purchase price and 11% on the green bonus. If, by paying the levy, the IRR of a given PV plant falls below 6.3%, the plant operator may request that a certain proportion of the electricity produced be exempted from the levy.

Even though it is a positive thing that the Czech Republic is reintroducing operational support for renewable energy sources for the first time since 2014, thus supporting new projects, the amendment unfortunately represents another retroactive intervention by the Czech legislator in supporting existing PV plants, as it increases or reintroduces the solar levy. If a sector inquiry finds excessive support in a given sector, this may mean a blow to support for other existing installations.

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→ Taxes

Minimum wage to increase from January 2022

The minimum wage will increase to CZK 16,200 from January 2022 (the minimum wage in 2021 is CZK 15,200). Where taxes are concerned, the minimum wage will be reflected in the following, for example:

- The maximum amount of the tax rebate for the placement of a child (the so-called nursery fee), which will thus be up to CZK 16,200 in 2022

- Entitlement to the child tax bonus. Payment of the tax bonus for 2022 is conditioned upon an income of at least CZK 97,200, i.e. CZK 8,100 in terms of the monthly bonus.

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→ Taxes

VAT on travel services from 1 January 2022

As of 1 January 2022, the part of the amendment to the VAT Act concerning the special regime for travel services will come into force. The amendment mainly implements the judgments of the Court of Justice of the European Union in the field of travel services and, after a long time, this is a very substantial amendment to this special regime, which brings a number of substantive changes. The remainder of the amendment came into force on 1 September 2020 and implemented changes to intra-community trade known as "Quick Fixes".

Klára Sauerová, Johana Cvrčková
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Calculation of the surcharge

The first change introduced by the amendment is how to calculate the tax base in the case of provision of travel services. The tax base for such services is determined from the so-called surcharge of the travel service provider. Until now, the VAT Act has allowed this surcharge to be determined in two ways, either by calculating the surcharge for the individual travel service provided or by determining the surcharge in aggregate for all travel services provided over the entire tax period. The travel service provider could voluntarily choose how to calculate the surcharge. However, this will not be possible from 1 January 2022. The amendment to the VAT Act implements the judgment of the Court of Justice of the European Union CJEU C-380/16 Commission v. Germany, in which the CJEU ruled that the calculation of the surcharge in aggregate for the entire tax period is not in line with EU law and the only permissible option is to calculate the surcharge for the individual travel service provided.

The surcharge can only be calculated for the individual travel service, not for the tax period

Obligation to pay VAT on received advance payment

Another very important change is the obligation to pay VAT on the advance received before the travel service is carried out, provided that the travel service for which the advance was received is known with sufficient certainty. This change is again based on the case law of the CJEU, in particular judgment C-422/17 Skarpa Travel. Where an advance is received for a sufficiently known and certain travel service, the provider of the service is liable to pay VAT on the surcharge on the advance received, on the date of receipt.

The surcharge will be calculated by multiplying the amount of the advance received by a special coefficient. The coefficient for these purposes can be calculated in two ways. The first way of calculating the coefficient will take account of all the costs incurred by the provider to date in purchasing the various services and goods which will make up the resulting travel service for which it received the advance. However, this coefficient will not take into account costs that the provider has yet to incur in relation to the travel service. The second way of calculating the coefficient, on the other hand, also takes into account an estimate of the costs which the provider has not yet incurred at the time of receipt of the advance but expects to do so. However, it must be an estimate which corresponds as closely as possible to reality and is supported by an appropriate calculation of the travel service. Only one method of calculating the coefficient may be used for a single travel service for a single customer. If the surcharge calculated according to the chosen coefficient is negative, the provider is not liable to pay VAT on it and the taxable amount of the advance received will be zero.

Air transport exemption

Under the current rules, air transport from the European Union which is part of a travel service and which ends in a third country (including the return journey) is considered to be a service which takes place entirely in a third country and is therefore exempt from Czech VAT. This provision, however, contradicts the VAT Directive, which states that only the part of the transport which physically takes place in a third country may be exempt rather than the entire transport. The amendment to the VAT Act therefore brings this rule into line with the VAT Directive and abolishes the original simplifica-

The exemption for air transport will only apply to the part of the transport that takes place in a 3rd country

tion. This complicates the situation considerably, as the VAT Act also provides no guidance on how to determine the relevant part of the exempt transport. The travel service provider will therefore have to choose its own algorithm, which will have to be economically justifiable and relevant in the event of an inspection by the tax authorities.

All of the above changes to the special scheme for travel services are quite substantial and significantly affect the current mechanism for calculating and charging VAT on the supply of travel services. All entities affected by those changes will be forced to reconfigure their accounting systems to comply with the new requirements, which may be both time and cost consuming given the extent of the changes.

If you are affected by the changes and have not yet looked at implementing them, we recommend you start as soon as possible. If you are unsure about their interpretation or don't know if the changes will affect you in any way, please contact us and we will be happy to discuss the situation with you and help you choose the most appropriate solution.

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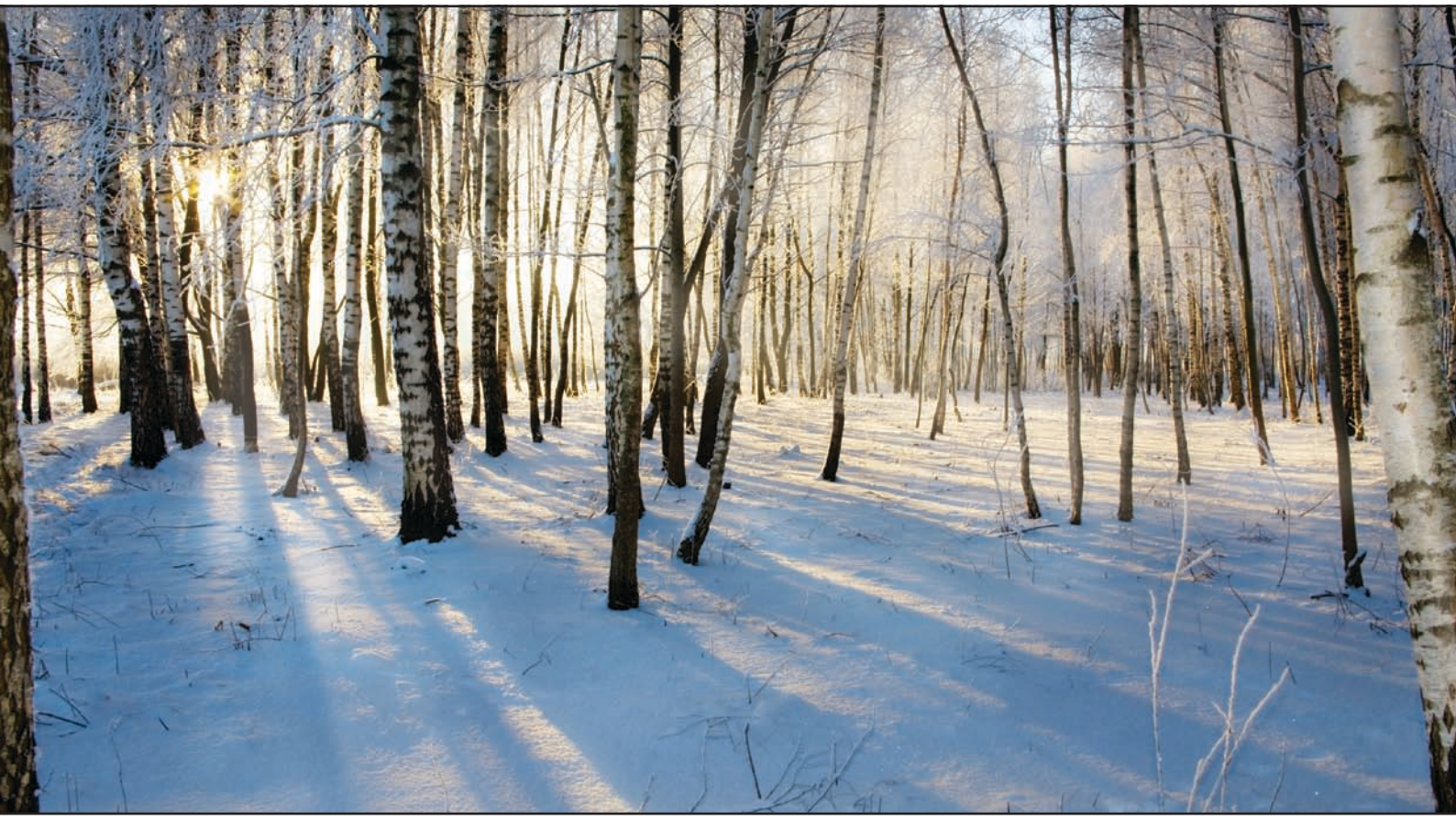

→ Taxes

Rödl & Partner has succeeded once again, this time before the Metropolitan Court in Prague

The Metropolitan Court in Prague ruled in favour of Rödl & Partner in VAT refund proceedings when it ruled that the delivery of the tax authority's documents to the client's e-mail address is not in compliance with the findings of the Constitutional Court.

Jakub Šotník, Michal Gola
Rödl & Partner Prague

Have you ever come across a Czech tax authority rejecting a claim for a VAT refund lodged by a person registered for tax in another Member State, for example one of the companies from your group? And did the tax authority do so because it kept delivering its documents to the e-mail address of the foreign person, but the foreign person never received the documents and therefore could not respond? If so, be sure to read the following story. It happened to a client of ours, who is registered for tax in another Member State.

In the context of the VAT refund proceedings, we were contacted by a client to whom the tax authority sent notices and eventually the decision not to grant the VAT refund. The tax authority sent these documents to the e-mail address provided by the client. From the tax authority's point of view, this settled the whole matter, but the client was not aware that the tax authority had delivered the documents to him in this way, let alone that the tax authority had not granted him the requested refund. Therefore, when the VAT had not been refunded for several months, the client decided to seek legal assistance and turned to us for help.

After agreeing to represent the client, we looked at his file and discovered (as did the client) the relevant notices and the decision not to grant the VAT refund. We therefore lodged an appeal against the decision not to grant the VAT refund, which was dismissed by the appellate authority on the basis of the date of "delivery" of the contested decision, due to the alleged late filing of the appeal. The tax authority relied on the so-called fiction of service, according to which the client was served with the individual documents (the notices and the decision itself) at the moment they were sent to the client's e-mail address.

Given the situation, we focused on the delivery to the e-mail address itself, as the law considers documents sent in this way to have been delivered upon their being sent to the e-mail address (s. 82b(2) of the VAT Act). The key issue is the effects that are associated with this method of service. In particular, it concerns the start of the time limits, the missing of which can have adverse effects for taxpayers, and this was exactly the case for our client. We therefore challenged the above-mentioned decision on the appeal with an administrative action in which we argued that, in view of the case law of the Constitutional Court and European Union law, the documents in question were not delivered to the client in the manner pre-

scribed by law, since delivery by e-mail does not guarantee 100% certainty that the relevant documents will reach the client.

This reasoning was subsequently shared by the Metropolitan Court in Prague, which, among other things, referred to a recent ruling of the Constitutional Court, which stated that the provision of the VAT Act, which provided for the effects associated with the service of documents to the client's e-mail address, was contrary to the constitutional order. The Metropolitan Court in Prague therefore referred the whole case back to the appellate authority, which is to reassess the timeliness of the appeal we have filed. This reopens the way to claim a VAT refund.

So if any foreign persons are in a similar position and have not been refunded VAT by the Czech tax authority and at the same time are not aware that they have been served with the decision (or any other document), please know that nothing is lost. There is always room to fight back!

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→ Taxes

Global minimum tax rate endorsed by G20

In our last issue, we reported that the member states of the Organisation for Economic Co-operation and Development (OECD) had reached an agreement that would, among other things, ensure that large multinational companies will be subject to a minimum 15% income tax rate from 2023 onwards. The introduction of new rules for a more stable and fair international tax system, including the introduction of a 15% global minimum tax rate by 2023, was already endorsed by G20 leaders at their summit in Rome on 30-31 October 2021.

The agreement also includes the introduction of measures to ensure a fairer distribution of income and the countries' right to tax. According to current estimates, the agreement could bring the Czech state budget up to six billion Czech korunas a year.

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→ Taxes

The deadline for filing a report under Section 38da of the ITA anew is approaching

Section 38da of the Income Tax Act imposes an obligation on taxpayers to file a report on income arising abroad. With effect from 1 January 2021, this provision has been amended and the rules for filing this report have changed. The deadline for filing reports under the "new" rules is 31 January 2022.

Josef Krátký, Dominika Havrdová
Rödl Partner Prague

Current notification rules

Effective from 1 April 2019, the provisions of section 38da of the Income Tax Act require taxpayers who pay income from sources within the Czech Republic to a non-resident taxpayer on which tax is withheld at a special tax rate to file a report on income arising abroad. The reporting obligation also applies to tax-exempt income and income that is not subject to taxation in the Czech Republic under an international treaty (e.g. a double taxation treaty).

If the taxpayer pays an income that is subject to withholding tax, he is obliged to submit a report on foreign income within the deadline for paying the tax, i.e. by the end of the calendar month following the calendar month in which he was obliged to withhold tax. Until 31 December 2020, reports on income exempted or not subject to taxation in the Czech Republic under an international treaty were also filed within a similar time limit (i.e. by the end of the calendar month following the month in which the payer would have been obliged to pay the tax if the income had been subject to tax). However, the amendment to the Income Tax Act has brought certain simplifications effective as of 1 January 2021 and taxpayers are now obliged to file a report on foreign income only once a year, by 31 January of the calendar year immediately following the calendar year in which the taxpayer would have been obliged to withhold tax if the income were subject to tax. Thus, for the calendar year 2021, taxpayers will, for the first time, file annual reports on foreign income by the deadline of 31 January 2022.

The information that the tax payer is required to report in relation to the payment of income abroad is set out in section 38da(5) of the Income Tax Act. In addition to the general details of the filing, the identification details of the payer and the recipient and the details of the income and the tax withheld or collected on that income must be provided.

Exceptions

Exempt income or income not subject to taxation under an international treaty is exempt from the reporting requirement if the value of that type of in-

come paid to the non-resident in a calendar month does not exceed a specified limit. With effect from 1 January 2021, this limit is CZK 300,000. Furthermore, the exemption from the reporting obligation applies to income under section 6(4) of the Income Tax Act or income subject to the reporting obligation under the International Cooperation in Tax Administration Act.

The taxpayer is still able to apply to the tax administrator for a waiver of the obligation to report foreign income for up to 5 years.

If the taxpayer fails to submit the report, he may face a penalty of up to CZK 500,000.

Does the obligation to report foreign income concern you? Not sure what payments should be reported? If you have any questions or are unsure, please do not hesitate to contact the authors of the article or your tax advisor.

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→ Taxes

CNB rate increases and the impact on intra-group financing

The Czech National Bank decided to fight inflation and unexpectedly increased interest rates. How will this increase affect intra-group transactions?

Martin Koldinský
Rödl Partner Prague

At its meeting on 4 November 2021, the Czech National Bank's Bank Board increased the announced interest rates to 2.75% for the two-week repo rate, 1.75% for the discount rate and 3.75% for the Lombard rate. From the perspective of intra-group financial transactions, the Lombard rate is particularly important, as it essentially tells commercial banks at what interest rate they can borrow funds from the central bank, which mainly affects mortgage and consumer loans. It is the lending facilities provided by commercial banks that are often used by businesses as comparable, market-based variables on which the interest rate between related parties is set. In essence, the cost of money to borrowers has increased and the yield to lenders has increased also, which should also be reflected among related parties.

So, if you are currently setting the interest rate between related parties, stay alert and take the increase in the announced interest rates into account, as this intervention by the Czech National Bank significantly impacts market interest rates and financial market developments.

Having said that, even those companies that have been providing funds in the form of financial instruments to related persons for a longer period of time and are seemingly unaffected by the current developments because they have contracts (e.g. loan agreements) concluded earlier, i.e. under different market conditions, should not be at ease.

The current OECD methodology governing intra-group financial transactions essentially requires that market developments are always monitored and any exceptional situation affecting intra-group financial transactions is reflected in the financial relationships already entered into. In principle, the methodology in force should thus require an evaluation of the contracts already concluded and their possible adjustment. In principle, the methodology in force should thus require an evaluation of the contracts already concluded and their possible adjustment. Otherwise, companies that fail to reassess their existing contracts could face problems with the tax authorities, who could

claim the missing interest income, increase the tax base and impose tax (including penalties and interest on late payment).

It is particularly during the next wave of the coronavirus pandemic, when some businesses may be expected to struggle to survive and it may be necessary to move funds within groups of related persons to where they are most needed, that it will be vital to keep the current interest rate trend in mind as it is always easier to get the interest rate right at the start of a transaction.

Should you need assistance with setting market-based interest rates, our team of dedicated experts is fully available to evaluate your existing contracts and their terms, as well as to calculate market-based interest rates.

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→ Taxes

Summary of property tax changes

With the end of the year approaching and, for most income taxpayers, tax returns, we present a summary of the most important changes concerning asset accounting and depreciation. We would like to remind you that these changes might optionally be applied to property acquired after 1 January 2020, but they will become mandatory after 1 January 2021.

Martina Šotníková, Miroslav Holoubek
Rödl Partner Prague

Retirement of intangible assets

The definition of intangible assets has once again been abolished in the Income Tax Act. After years of separate tax treatment of intangible assets, we are now back to the pre-2004 situation, when accounting rules were used for tax purposes.

Thus, the category of intangible assets acquired after 1 January 2021 is defined only by the accounting rules and the accounting treatment of these intangible assets will be adopted for income tax purposes.

Transitional provisions apply the treatment of intangible assets in force until 31 December 2020 to intangible assets acquired before 2021. The same applies to upgrades and improvements of such assets, regardless of when the improvements were or will be completed.

If the taxpayer has already chosen to apply the new treatment to intangible assets acquired in 2020, i.e. to follow the accounting treatment, it must continue to do so for those assets.

Thus, when registering intangible assets for tax purposes, care must be taken as to which depreciation regime may be applied to the assets. Since, for example, software is registered and gradually appreciated by taxpayers over several years, in practice a situation may arise where a taxpayer would apply different procedures to individual intangible assets. For this reason, the recording of intangible assets requires close attention and the automated adjustment of amortisation of intangible assets often poses problems.

Increase in the entry price limit for tangible assets

For many years, the entry price limit for tangible assets was set at CZK 40,000. This value has now increased to CZK 80,000. In practice, this means that movable assets acquired in 2021 and onwards, whose valuation exceeds CZK 80,000, must be treated as tangible property as defined in the Income Tax Act. For movable property with a valuation below CZK 80,000, the tax treatment is based on the accounting treatment, i.e. the relevant accounting directive. The tax expense is thus the accounting depreciation or the entire purchase price

if the property is charged directly to expenses. In this case, the earlier application of this change was also made possible for movable property acquired in 2020.

Increase in the limit for technical evaluation

The limit for the technical appreciation of tangible property has also been increased to CZK 80,000, and this change applies to technical appreciation regardless of how "old" the tangible property is. Along with the change in the limit, a minor change in the definition of technical appreciation has been made. Whereas until the end of 2020 the limit was defined in the context of expenditure in "aggregate for the tax year", from 1 January 2021 technical appreciation is defined only as expenditure in "aggregate". This change can be interpreted as meaning that now the expenditure having the qualitative characteristics (extension, extension, modernisation, reconstruction...) is not aggregated over the tax year, but the limit is tested for individual completed "actions" without these "actions" being aggregated over the tax year. Nonetheless, tax authorities deny such a change of interpretation.

Even in the case of the change in the technical appreciation limit, an earlier application was made possible and the increased limit could already be applied to technical appreciation completed in 2020.

Extraordinary depreciation

The last significant change relating to property is the "reactivation" of extraordinary depreciation, which, for new property acquired from 1 January 2020 to 31 December 2021, allows the first depreciator to write off property in the first depreciation group in 12 months and property in the second depreciation group in 48 months. However, a taxpayer should consider two important limitations on this option before using extraordinary depreciation.

Extraordinary depreciation cannot be interrupted and thus cannot be used for possible tax optimisation. The second significant negative is the special treatment of the technical appreciation of assets that have been extraordinarily depreciated. If technical appreciation is subsequently carried out on such assets, such technical appreciation is obligatorily a separate tangible asset. In practice, this causes a number of problems, as accounting software often cannot handle this limitation, and errors arise.

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→ Taxes

Transfer pricing adjustment

As the end of the calendar year draws closer, which for most taxpayers also means the end of the tax year, taxpayers will have to address, among other things, whether their tax base is determined in accordance with the arm's length principle. One of the tools to achieve such consistency is the so-called transfer pricing adjustment, i.e. the adjustment of profitability or prices in group transactions to bring them to their market level.

Martin Koldinský, Petr Tomeš
Rödl Partner Prague

The transfer pricing adjustment mainly applies to companies that have a certain limited functional and risk profile (most often salaried or contract manufacturers) and are remunerated during the year according to predetermined rules, which are often based on planned cost or revenue values and are not adjusted during the year. The actual development will be reflected no sooner than at the end of the tax year, in the form of a TP adjustment that adjusts the profitability of the company by the related persons with a full functional and risk profile to the market normal level, or in reflecting the actual economic indicators achieved against the planned values (revenues, costs, quantities sold, etc.). In most multinational groups, the end of the year brings an increase in the volume of invoices and credit notes issued, through which the profitability of the companies belonging to the group of related parties is adjusted.

Lately, a specific type of TP adjustment has been around, whereby the adjustment of profits is made by invoicing fees for management services or licences for the use of intangible assets, rather than by compensation for insufficient or excess profits. It is therefore a relatively new way of determining the pricing methodology for these transactions, but it is not necessarily accepted by the tax authorities.

The TP adjustment should ideally be carried out according to contractually regulated rules and on the basis of benchmarking, i.e. comparing the profitability of the tax entity with the profitability achieved by independent companies carrying out broadly comparable economic activities.

Naturally, this year has brought major events affecting the economic activity and profitability of Czech tax entities. These include primarily the impact of the ongoing covid-19 pandemic, but also the dramatic increase in raw material and energy prices. This is especially true about companies with a limited functional and risk profile. The question then arises to what extent should these companies bear the increased costs. The answer is not at all straightforward and must be assessed on a case-by-case basis with a view to the company's specific functional profile and intra-group relations. The actual behaviour of the parties involved is always the primary consideration, but

the contractual setting of liability for such specific losses or gains must also be examined. In general, companies with a limited functional and risk profile should make relatively low but stable profits. They should not bear losses that they cannot control.

Regardless of how such sharing of reduced profitability or loss is done (through a TP adjustment or through other forms of compensation), it must be supported by a robust analysis and sufficiently conclusive evidence.

Czech tax entities carrying out related party transactions and showing lower profitability or, worse, losses, will have to prove to the tax authorities that such reduced profitability was not caused by incorrect transfer pricing. Nonetheless, they will have very limited possibilities to substantiate such claims. Moreover, the tax authorities can be expected to be less than benevolent.

If this concerns you, we recommend contacting your transfer pricing specialists who will be happy to assist you with the correct TP adjustment.

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