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NEWSLETTER CZECH REPUBLIC

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Information on Law, Taxes and Economics in the Czech Republic

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→ Law

Supreme Court on advances on profit share

If you are considering making (paying) an advance on a profit share, or have made (paid) an advance on a profit share in recent years, or have been affected by such a decision, you should also take into account the recent case law of the Supreme Court.

Petra Budíková
Rödl & Partner Prague

On 9 March 2022, the Supreme Court issued a decision under file no. 27 Cdo 3330/2020, in which it dealt with the legal aspects of advances on the profit share of a public limited company.

The decision of the company to advance a profit share to the shareholders must be taken by the body of the public limited company which has competence to do so. However, the law does not expressly entrust this to any specific body, and therefore, where the articles of association do not expressly provide for this, the matter falls to the board of directors (dualist system) or the management board (monist system). The Supreme Court has previously ruled that a company's decision to advance a share of profits does not fall within the business management of the company and is therefore not subject to the prohibition on the general meeting giving instructions concerning business management. It follows that the general meeting may instruct the board of directors (management board) to decide to grant the advance. An advance on the profit share can only be granted after the insolvency and balance sheet test has been carried out.

Prior to this decision, there was confusion as to the competence of the bodies of a public limited company to decide on the granting of an advance on the profit share. The Supreme Court stated that the decision to advance the profit share could be entrusted to the supreme body of the company, but left aside the question of whether such a solution was practical. Further, the Supreme Court held that, despite the decision to grant an advance on the profit share being entrusted to the general meeting, the board of directors remains obliged to assess whether the decision to grant an advance is in accordance with the law and whether it can be implemented, i.e. to grant the advance, in particular in the light of the insolvency and balance sheet tests.

The Supreme Court confirmed that the legality of the decision of the board of directors (management board) to grant the advance is not determined by whether or not the public limited company has free funds to grant the advance. What is decisive for this decision is the amount of resources calculated on the basis of the insolvency and balance sheet test as shown in the interim financial statements. The resources available limit any advance on profit share.

There was further confusion as to the nature of the decision of the general meeting to advance the profit share, since the articles of association do not confer this power on the general meeting. It could take on the form of instructions from the general meeting to the board of directors, a decision outside the competence of the general meeting or a one-off override of the articles of association. If the decision of the general meeting to grant an advance on a profit share were to constitute a decision on a matter outside the competence of the general meeting, it would be regarded as not having been taken. The Supreme Court stated that it is necessary to assess in each individual case what the nature of the decision of the general meeting of the company to grant an advance on the profit share is. In order for a resolution of

a general meeting to override the articles of association it (the resolution) must be certified by notarial deed and it must be passed by the majority of votes required for a corresponding amendment to the articles of association.

In light of the above conclusions of the Supreme Court, we consider it appropriate to mention the conclusions of the Supreme Court on the nature of the advance on the profit share. If the conditions provided for by law (or even by the articles of association) arise, the shareholders are entitled to an advance on the profit share, representing the shareholder's claim against the company and the company's corresponding obligation to provide the advance. These prerequisites include the decision of the competent body of the public limited company to grant the advance on the profit share. This decision constitutes a juridical act by the company and a legal basis for an obligation the content of which is the shareholder's (as creditor) right to receive the advance (claim) and the company's (as debtor) obligation to provide the advance (debt). The Supreme Court rejected the legal opinion according to which the decision of the competent body of the company to grant an advance on the profit share does not create a liability and it is only at the discretion of the board of directors whether, in what amount and to which shareholder, if any, to grant an advance on the profit share.

If the above is of concern to you and you need more information, in particular in regards to making decisions to grant an advance on a profit share, amending the memorandum or articles of association and reviewing previous decisions to advance to grant an advance on a profit share, please do not hesitate to contact us. Our Audit Department is also able to assist you in the preparation of insolvency and balance sheet tests.

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→ Taxes

Municipal waste management and the VAT procedure

The March Coordination Committee addressed the VAT regime for services provided by municipalities to authorised packaging companies and collection system operators[1]. The main issue was whether these services are subject to VAT.

Klára Sauerová, Markéta Čonková
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Packaging and waste management are regulated by many regulations and involve many different actors. We will take a look at what these entities are, how they interact, what laws they have to follow and how all this relates to taxation, using the story of a bottle of bottled water as an example.

A producer sells water in a plastic bottle to its customer. Under the Act on Packaging[2] and the Act on End-of-Life Products[3], the producer has an obligation to arrange for take-back and reuse of the waste. In the case of the plastic bottle with water, the producer must ensure that there is a place where the plastic bottle can be disposed of and it must ensure that the thrown-away bottle is reprocessed and made into, for example, a new t-shirt following recycling.

However, the producer of the bottle of bottled water does not have to fulfil all these obligations by itself. It can conclude a contract with

1 Contribution No. 591/23/03/22
2 Act No. 477/2001 Sb., on Packaging
3 Act No. 542/2020 Sb., on End-of-Life Products

one of the Authorised Packaging Companies and/or a Collection System Operator. The Authorised Packaging Companies and Collection System Operators will then take care of where to take the packaging and waste, ensuring that it is sorted with greater precision and further processed and recycled. The rights and obligations, as well as the services they provide, are governed by the Act on Packaging.

And what role do municipalities play in the above-described chain? Municipalities also have their statutory obligations in this area[4], obligations that they must fulfil. One such obligation is the obligation to establish a municipal waste management system and separated collection of municipal waste for its citizens (non-business persons). The customer in our example, who bought bottled water, can dispose of the waste bottle in the plastic waste container in the municipality where he lives.

At this stage it becomes much clearer what services are provided by municipalities to Authorised Packaging Companies and Collection System Operators. Municipalities are required by law to establish a place where waste and packaging can be taken back. Authorised Packaging Companies and Collection System Operators need such a place in order to meet their obligations to producers and to ensure that packaging and waste is re-processed. Therefore, a contract between municipalities and Authorised Packaging Companies and/or Collection System Operators to provide and service take-back, recovery of packaging waste and so on is the sort of solution that comes to mind.

VAT procedure

For VAT purposes, a municipality is considered to be a non-taxable person engaged in public administration, even if it collects a fee or other payment for the performance of public administration[5]. In the Ministry of Finance's information on the application of VAT to non-profit entities dated 28 January 2005, the operation of waste management by municipalities was identified as an activity not subject to VAT. These activities include services provided by municipalities to Authorised Packaging Companies or Collection System Operators. The municipality could not claim a VAT deduction on the supplies received in connection with the provision of these services, and the services were not subject to output VAT.

The submitter of the relevant topic to the March Coordination Committee did not agree with the interpretation that the services provided by municipalities to Authorised Packaging Companies and Collection System Operators fall into the category of public services, arguing that, among other things, EU case-law indicates otherwise.

When are these public law activities? According to the settled case law of the Court of Justice of the European Union, the following conditions must be met at the same time:

- the activity is carried out by an entity subject to public law,
- the entity carrying out the activity must be acting by virtue of public authority.

An entity is considered public if it is included within the structure of the public administration. A municipality fulfils this condition. But does it perform services in relation to Authorised Packaging Companies and Collection System Operators by virtue of public authority? According to European case law, an activity subject to private law is not an act of public authority. It is a public law regime if the activity is subject to public law and if the public authority can exercise public authority prerogatives (has decision-making power, can set a fee, for example).

The specific terms and conditions of a contract between a municipality and Authorised Packaging Companies or Collection System Operators are subject to private law[6]. The municipality may or may not enter into a contract with the companies (no law requires it to do so). At the same time, the municipality cannot determine and influence the terms of the contract (e.g. set the amount of remuneration). The conditions are the same for all municipalities. The municipality therefore does not act in a position of public authority.

According to the above, services provided by municipalities to Authorised Packaging Companies and Collection System Operators are subject to the normal VAT regime, where municipalities are considered to be taxable persons. The General Financial Directorate also concurs with this view. However, the General Financial Directorate adds that for some products for which the producers are not obliged to provide take-back, this obligation passes to the municipality and does constitute the performance of a public service (e.g. the take-back of newspapers, magazines). In such a situation, the municipality provides both a supply

4 Act No. 541/2020 Sb., on Waste
5 Section 5 (4) of Act No. 235/2004 Sb., on Value Added Tax
6 Services are regulated by Act No. 89/2012 Sb., Civil Code

that is not subject to VAT and a supply that is subject to VAT. The municipality can only claim a proportionate deduction of input VAT in accordance with section 75 of the VAT Act. The information on the application of VAT mentioned at the beginning of this article is superseded by the conclusions of the aforementioned Coordination Committee.

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→ Taxes

Proposed tax changes regarding the use of motor vehicles

The new proposed tax bill brings tax changes in the use of motor vehicles. These include a change in the procedure applied to determine an employee's non-cash income when using a low-emission company vehicle for private purposes, a reduction in the depreciation period for wallboxes and a new road tax regulation.

Martina Šotníková
Rödl & Partner Prague

The government drafted a bill aimed at promoting low-emission mobility and reducing transport costs. At the same time, the road tax bill responds to the current crisis triggered by Russia's aggression against Ukraine. The law is currently in the legislative process, so the text may be amended.

The tax-related part of the proposed law brings changes in income and road tax.

Treatment of non-cash income when using a company car for private purposes

It is a well-established practice that when a company vehicle is used for private purposes, a non-cash income of 1% of the original cost of the vehicle, including VAT, is added on the employee's side. In order to promote low-emission mobility, the Government proposes to reduce the non-cash income from 1% to 0.5% of the original cost of the vehicle for so-called low-emission vehicles.

The concept of a low-emission vehicle is currently undefined, pending a draft law on the promotion of low-emission vehicles through public procurement and public passenger transport services. Until this law comes into force, low-emission vehicles will be defined by the Income Tax Act as a category M1, M2 or N1 vehicle that does not exceed a CO_2 emission limit of 50 g/km and 80% of the emission limits for air pollutants in real traffic. The reduction in non-monetary income will already apply for the 2022 tax year.

Depreciation of charging stations

Currently, charging stations are depreciated in depreciation category 3, i.e. over a period of 10 years. The Government proposes to reduce the depreciation period from 10 years to 5 years by reclassifying charging stations/wallboxes to depreciation category 2. The change is intended to apply to recharging stations acquired after the Act has entered into force. For previously acquired charging stations, it may be possible to opt for reclassification from depreciation category 3 to depreciation category 2.

New regulation of road tax

Until now, the Road Tax Act could be considered a stable law, not subject to change. However, the current situation brings changes also in this law.

The subject of the road tax is being made less broad, with only heavy goods vehicles (N2 and N3 and their subcategories), which are now required by the Eurovignette Directive, being subject to the tax. According to the Eurovignette Directive, heavy goods vehicles are vehicles intended for the carriage of goods with a maximum permissible weight of more than 3.5 tonnes, i.e. also trailers of categories O3 and O4. The subject matter of the tax will be defined more broadly than the set of vehicles that are actually subject to road tax, i.e. a zero rate will be set for some of these vehicles. Passenger cars and buses will be outside the scope of the tax.

In this context, we would like to remind you of the decision of the Minister of Finance to waive the advance payment of the road tax due in 2022. If you have nevertheless paid the advance payment of the road tax and according to the draft law and the vehicle will no longer be subject to the road tax, we recommend that you apply for a refund of the advance payment.

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→ Taxes

Have the judges of the Supreme Administrative Court decided to duel?

In tax law, the simplified rule is that every taxable income also corresponds to a (tax deductible) expense. Nevertheless, taxpayers often find themselves in a situation where they are unable to prove the amount of expenses incurred in the course of a tax audit, even though there is no dispute as to their existence. In such cases, it may be possible to claim so-called essential expenses, i.e. the minimum necessary expenses.

Jakub Šotník, Michal Gola
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The Supreme Administrative Court has addressed essential expenses on numerous occasions and one of its most recent judgments on the subject is the judgment of 6 April 2022 under Case No. 8 Afs 296/2020. This judgment, however, is different from what we are normally used to. Instead of unifying case-law, the Supreme Administrative Court draws attention to its fragmentation by pointing out the divergent approaches adopted by various SAC panels towards awarding essential expenses.

Essential expenses are expenses that must have been logically incurred in order to generate income, but their actual amount has not been reliably proven by the taxpayer. Accordingly, they are the minimum necessary expenditure. A typical area in which essential expenditure can be claimed is the construction sector. If, for example, a building is constructed, it is logical that the construction work must have been carried out by someone (unless the taxpayer did it himself) and the building materials must have been supplied by someone. However, in such cases, it is often the extent to which the construction work was provided and the amount of the construction material supplied that is in dispute, not the existence of the expenditure itself.

According to some judges of the Supreme Administrative Court, essential expenses should then be awarded when a substantial part of the total expenses is excluded by the tax authority, i.e. when a substantial part of the accounting is questioned. However, there are also decisions in which the judges of the Supreme Administrative Court allow essential expenses to be awarded

even when only a marginal part of the total expenses (for example, vehicle operating costs) has been questioned, or only a marginal part of the taxpayer's accounting has been questioned.

The eighth panel of the Supreme Administrative Court therefore turned to the extended panel of judges in matters concerning the criteria for awarding essential expenses, i.e. whether essential expenses can be awarded in cases where a specific expense is called into question without the accounts as a whole being called into question. If the extended panel of judges does indeed allow essential expenditure to be admitted even in those cases, it will substantially increase the chances of success for taxpayers in tax proceedings in which they are unable to provide sufficient evidence of their declared expenditure. Whatever the outcome, be sure to read about it in future editions of our Newsletter.

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→ Taxes

The VAT-related aspects of sale and lease back transactions have been changed

From the point of view of value added tax, a sale and lease back had been previously considered as two transactions consisting in the purchase of the leased item by the leasing company directly from the future lessee and in the financial lease of this item to the lessee by the leasing company. However, the situation has been significantly altered by the judgment of the Court of Justice of the European Union in Case C-201/18 Mydibel, which treats a sale and lease back as the provision of a financial service by the leasing company in certain circumstances and not as two separate transactions. Due to the uncertainties prevailing with regard to this CJEU judgment, this topic was discussed at the most recent meeting of the Coordination Committee of the Chamber of Tax Advisors and the General Financial Directorate.

Klára Sauerová, Johana Cvrčková
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Under certain circumstances, sale and lease back transactions may be treated as the provision of a service consisting of financing.

Three basic scenarios (situations) were discussed at the Coordination Committee, namely standard financial leasing, sale and lease back and equipment sale and lease back. It was further agreed that these conclusions would be applied in practice no later than the publication date of this Coordination Committee meeting.

A standard finance lease involves the leasing company buying the leased asset from a third party, i.e. the supplier of the leased asset is not the future lessee. In such a case, it was agreed at the Coordination Committee that this would continue to be considered as a purchase and subsequent financial leasing of the goods by the leasing company. Although the leased item is purchased by the leasing company, in practice it is usually physically delivered directly to the future lessee. However, this does not affect the above approach.

A sale and lease back differs from a standard finance lease in that the leasing company buys the leased item directly from the future lessee, who owns and uses the item. The difference between a standard lease back and an equipment sale and lease back is that in an equipment sale and lease back the lessee already owns the leased item but has not yet put it into use and will not do so until it is sold to the leasing company.

In the case of both a sale and lease back and an equipment sale and lease back, it was concluded that if the right to dispose with the leased item as the owner does not pass to the leasing company from the future lessee, then the purchase of the leased item and the subsequent financial leasing of that item cannot be viewed as a purchase of the leased item from a VAT perspective. Thus, this only constitutes the provision of a financing service by the leasing company to the future lessee, so the conclusions of the C-201/18 Mydibel judgment will apply domestically. However, it should be clarified that in order for it to be certain that there is no transfer of the right to dispose with the leased item as the owner, certain characteristics must be fulfilled, e.g. the leasing company does not physically take over the leased item, it is continuously held by the lessee, the leasing company does not bear any liability or risks associated with the leased item such as liability for its defects or liability associated with its operation, etc.

The situations listed at the meeting of the Coordination Committee are defined quite precisely. In practice, however, we are unlikely to encounter such explicitly defined situations. In practice, we therefore recommend examining each individual sale and lease back agreement and assessing whether or not the right to dispose with the leased item as the owner has actually been transferred and applying the relevant VAT regime accordingly. Our VAT specialists will be pleased to assist you in this regard.

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→ Taxes

Cryptocurrencies from a VAT perspective

The General Financial Directorate has issued information on tax obligations (i.e. VAT obligations) in transactions with cryptocurrencies. What value added tax obligations arise from mining cryptocurrencies, buying and selling goods and services with cryptocurrency or exchanging cryptocurrencies?

Klára Sauerová, Dominika Havrdová
Rödl & Partner Prague

For VAT purposes, cryptocurrencies are alternative means of payment that are used in a similar way to legal tender. This concept is based on the case law of the Court of Justice of the European Union[1] (CJEU), according to which the exchange of bitcoin for regular currency (so-called fiat currency) is an exchange activity which is exempt from VAT, without the right to claim a VAT deduction.

One way to obtain cryptocurrency is by mining it[2]. According to the General Financial Directorate, the mining of cryptocurrency is done primarily to obtain cryptocurrency for one's own purposes, and not on the basis of a contractual arrangement. As there is no direct link or contrac-

1 Judgment C-264/14 Skatteverket v. David Hedqvist

2 According to the General Financial Directorate, mining cryptocurrency is understood to mean: "a specific activity consisting, in simple terms, of using a given amount of computing power to verify operations on a network by means of a technique that is connected to the network and, as a result, obtaining a certain number of new cryptocurrency coins".

tual relationship between the person mining the cryptocurrency and the recipient, it is not an economic activity from a VAT point of view and the mining of the cryptocurrency is not subject to VAT. The mere mining of cryptocurrency does not make a taxable person liable for VAT. If the cryptocurrency is mined by a VAT payer, such VAT payer is not entitled to deduct input tax on the taxable supply received (e.g. purchase of technical equipment, electricity consumption).

For VAT purposes, cryptocurrencies are alternative means of payment.

If the technical equipment for cryptocurrency mining (or part or all of its computing power) is leased to another person for a fee, it would constitute a supply of services (taxable supply), which may be linked to the obligation to register as a VAT payer or an identified person. The place of supply in the case of the rental of cryptocurrency mining equipment is, according to the information from the General Financial Directorate, governed by the relevant basic rule depending on who is the recipient of the supply.

The cryptocurrency obtained can be used to purchase goods or services. In the event that the taxpayer makes a supply of goods or services and receives payment for this supply in the form of cryptocurrency, the tax base will be the normal price without tax (within the meaning of section 36(14) of the VAT Act). The recipient of a supply which has been wholly or partly paid for in cryptocurrency (or a virtual asset) is liable for any unpaid tax on that supply.

Last but not least, cryptocurrency can be exchanged for fiat currency or for another cryptocurrency. As mentioned above, according to the CJEU, this is an exchange activity. This activity, within the meaning of the VAT Act, can be carried out by any legal or natural person (e.g. traders and so-called cryptocurrency exchanges) and is exempt from tax (i.e. VAT), without entitlement to a VAT deduction. With regard to the person who has mined or purchased cryptocurrency and wishes to exchange it, the exchange is not subject to VAT. However, if a taxable person trades in cryptocurrencies for the purpose of obtaining a regular income (for example, by speculating on the potential profit on sale through cryptocurrency exchanges), such activity is deemed an economic activity. According to the General Financial Directorate, this is a financial activity (operations involving money), which is also exempt from VAT, without the right to claim a VAT deduction. Unless it is an ancillary activity carried out on an occasional basis, the consideration for such a transaction enters into the calculation of turnover.

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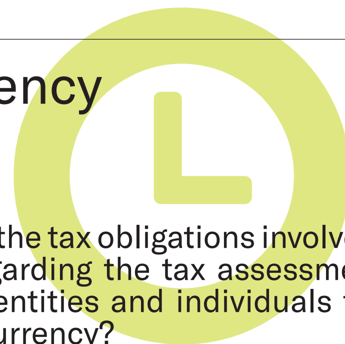
→ Taxes

Taxation of income from cryptocurrency transactions



Wishing to familiarize tax entities using cryptocurrency with the tax obligations involved, the General Financial Directorate released information regarding the tax assessment of transactions using cryptocurrencies. How should legal entities and individuals tax income derived from, for example, the exchange of cryptocurrency?

Josef Krátký, Dominika Havrdová
Rödl & Partner Prague

The Income Tax Act (ITA) does not specifically address cryptocurrencies. For income tax purposes, general legislation should be followed according to which cryptocurrencies are intangible, movable and fungible. The CNB's interpretation implies that cryptocurrencies cannot be classified as money or electronic money or investment instruments. According to the GFD, correct accounting is crucial for the taxation of income arising from transactions involving cryptocurrencies. The Ministry of Finance recommends that cryptocurrencies be accounted for as a stock "of a kind" [1].

For income tax purposes, cryptocurrencies are intangible, movable and fungible.

Corporate income tax

The mining of cryptocurrency is treated for income tax purposes as own production. The mining itself does not generate taxable income. The mined cryptocurrency is booked as self-generated stock in the relevant asset account at cost. Taxable income is generated only when exchanged for fiat currency[2], other cryptocurrency or goods and services.

The purchase and sale of goods or services for cryptocurrency is an exchange under the ITA. The transaction is viewed as a purchase and sale of an item (or service). The exchange of one cryptocurrency for another cryptocurrency is treated similarly.

From the ITA perspective, the sale of a cryptocurrency (i.e. the exchange of a cryptocurrency for fiat currency) is the sale of an intangible movable item. The value of the cryptocurrency recorded in books of account is a tax deductible expense upon sale. The purchase of cryptocurrency for fiat currency is accounted for as purchase of inventory.

Cryptocurrencies are not measured at fair value at the balance sheet date. A valuation allowance may be created in the event of a temporary decrease in the valuation of a cryptocurrency. However, these are not statutory valuation allowances and the provision will therefore be a non-tax deductible expense, while the dissolution will reduce the tax base.

Personal income tax

Cryptocurrency mining does not generate taxable income for an individual. Business units follow a similar procedure as legal entities (see above). In the case of a natural person who is not a business unit, it is an acquisition of an asset through their own activity.

Taxable income only arises when the cryptocurrency is monetised or exchanged for other cryptocurrency, goods or services. The purchase and sale of goods or services in exchange for cryptocurrency and the exchange of cryptocurrency for other cryptocurrencies are also exchanges of non-cash transactions for personal income tax purposes. The exchange of these non-monetary transactions constitutes taxable income for both parties. This income is valued in accordance with the Valuation Act. The exchange of cryptocurrency for fiat currency (sale of cryptocurrency) is taxed as income from the sale of intangible movable property. The purchase of cryptocurrencies for fiat currency is an expense that will be claimable depending on what the income is (see below for details).

Income derived by individuals from cryptocurrency transactions is taxable, not ex-

1 See Ministry of Finance Notice on accounting and reporting for digital currencies of 15 May 2018
2 Common currency, e.g. the US dollar

empt and subject to taxation in one of the following categories:

a) income from self-employment under Section 7 of the ITA,
b) income from the rental of movable or immovable property paid for with cryptocurrency pursuant to Section 9 of the ITA,
c) other income under Section 10 of the ITA.

The decisive factor for distinguishing between income under Section 7 and Section 10 is whether the person carries out the activity in question with the intention of doing so consistently, for profit, on his own account and at his own risk (he is an entrepreneur). If so, it is income from self-employment (Section 7 of the ITA). In other cases, it is income from the transfer of another thing for consideration (Section 10 of the ITA). The following table summarises the possibility of claiming related expenses.

Income	ITA	Tax deductible expenses
Income from self-employment carried out under a trade licence	s 7	Actual expenditure, or expenditure as a percentage (60%) of income
Income from self-employment carried out without a trade licence (albeit a legal obligation)	s 7	Actual expenditure, or expenditure as a percentage (40%) of income
Income from rent of movable or immovable property included in business assets paid in cryptocurrency	s 7	Actual expenditure, or expenditure as a percentage (30%) of income
Income from rent of movable or immovable property not included in business assets paid in cryptocurrency	s 9	Actual expenditure, or expenditure as a percentage (30%) of income
Other income	s 10	The price at which the item was acquired

The value of the cryptocurrency must be expressed in Czech crowns at the time of the transaction. Conversion via a third currency (e.g. US dollar) will be used, as cryptocurrencies are not listed in the CNB exchange rate list.

Last but not least, the General Financial Directorate indicates that an individual may be obliged to file a personal income tax registration or tax return in connection with income from cryptocurrency transactions.

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→ Economics

Exchange rate differences on advances – yes or no? We have a decision!

The Accounting Act requires that assets and liabilities that are denominated in foreign currency be converted into Czech currency at the balance sheet date at the foreign exchange market rate announced by the Czech National Bank (Section 24(6)(b) of Act 563/1991 Sb., on Accounting). The question is should advances made also be converted in accordance with this provision?

Ladislav Čížek
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Back in October 2020, the National Accounting Council (NAC) made the previously ambiguously perceived and interpreted treatment of foreign currency advances clearer when it approved its interpretation of I-43 Advances Provided in Foreign Currency. The interpretation provided a clear conclusion that advances made when the subject matter of the contractual arrangement in connection with which they were made is expected to be delivered are not subject to translation at the balance sheet date rate. According to the interpretation, these advances do not represent foreign currency receivables, but are already part of the total cost and there is no foreign exchange risk associated with them because the cash flow has already occurred and is not expected to be settled other than through a non-cash transaction.

The Supreme Administrative Court confirmed the interpretation of the National Accounting Council – foreign currency advances should not be subject to exchange rate conversion.

In April 2021, the Regional Court in Ústí nad Labem agreed with this view of the exchange rate risk for the advances provided (15 Af 84/2017). The defendant (tax authority) filed a cassation complaint against the judgment, and the Supreme Administrative Court (SAC) decided on the case. In February this year, the Supreme Administrative Court confirmed the interpretation of the Regional Court, inter alia, also referring to the conclusions and reasoning set out in the interpretation of the National Accounting Council I-43 (Supreme Administrative Court judgment 4 Afs 170/2021). The solution according to the interpretation and now also according to the case law of the Supreme Administrative Court is also compatible with IFRS.

It should also be stressed that there may still be a number of refundable advances that are logically and necessarily subject to exchange rate conversion, as the exchange rate risk remains associated with them. These are typically, for example, so-called security interests in leases, which are refundable at the end of the lease term. The practical implication of the foregoing is therefore that advances made that are expected to result in the delivery of the contractual arrangement in respect of which they were made should not be translated at the CNB rate at the balance sheet date. The (dis)translation of advances has a direct impact on the income tax base and therefore the reasoning behind the assessment of the exchange rate risk in relation to the advances and the decision to (dis)translate the advances at the

current CNB rate at the balance sheet date should be properly documented.

For the sake of completeness, it should be added that the litigation in question concerned advances for the acquisition of fixed assets. The principle of exchange rate risk, which is explained in Interpretation I-43 and on which the judgment of the Supreme Administrative Court is based, is the same for all types of advances (it applies to advances granted for the acquisition of fixed assets, advances for inventories and ordinary operating advances). It should also be noted that at the end of January this year, the National Accounting Council also issued interpretation "I-47 Advances Received in Foreign Currency", which is based on the same idea and applies to advances received.

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