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Newsletter 06/2026 Czech Republic

Information on Law, Taxes and Economics in the Czech Republic

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Can a Breach of a Shareholders' Agreement Invalidate a General-Meeting Resolution?

Can you have a general meeting's resolution set aside if voting rights were exercised in breach of a shareholders' agreement? The Supreme Court of the Czech Republic has given a clear answer in its recent case law.

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A shareholders' (or members') agreement, commonly known as an SHA, is a contract among a company's members or shareholders that governs the mutual rights and obligations arising from their participation in the company, beyond what statute and the memorandum or articles of association already provide. It typically sets out, among other things, how voting rights are to be exercised. The instrument is widely used in practice; until recently, however, the legal community was divided on one question: can a breach of an SHA render a resolution of the company's general meeting invalid?

The High Court in Prague took up this question in its ruling of 20 June 2025, Case No. 7 Cmo 23/2025, which concerned a shareholders' agreement. The court held, among other things, that a SHA governs the relationships between shareholders arising from their participation in the company, so that its arrangements concern only the contracting parties and bind only those shareholders who have signed up to it. Where such an agreement exists, a breach may, though not automatically, justify declaring a resolution of the relevant company body invalid, but only in respect of a decision in which the parties to the agreement took part, that is, on which they voted.

The Supreme Court of the Czech Republic addressed the same issue in its ruling of 30 April 2026, Case No. 27 Cdo 2390/2025. In its view, neither the legal relevance of SHA's nor the binding force of the arrangements they contain is open to doubt; even so, a failure to honour them when a general-meeting resolution is adopted, will not, as a rule, justify declaring that resolution invalid. This holds all the more where the constitutional document and the SHA address the same question differently and the resolution follows the rules agreed in the constitutional document. Where a member of a limited liability company votes at the general meeting in line with a rule in the memorandum of association but contrary to the SHA, that breach will, in principle, not render the resolution invalid as being contrary to good morals.

The conclusion is therefore clear: on the conflicting exercise of voting rights under the memorandum of association and the SHA, the Supreme Court of the Czech Republic has taken a more restrictive approach than the High Court in Prague, and such a conflict will, as a rule, not justify declaring a general-meeting resolution invalid.

Against this backdrop, it pays to look closely at the sanction mechanisms in the SHA and to align the memorandum (or articles) of association with the SHA as far as possible. Since a breach of the SHA will not invalidate a general-meeting resolution, well-designed sanction provisions, such as contractual penalties or other security instruments, are decisive.

We would be glad to advise you on your members' or shareholders' agreement and to help shape its content so that it best fits your needs and the current case law.

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When Does Intermediary Commission Qualify as a Tax-Deductible Expense?

On 23 April 2026, the Supreme Administrative Court (SAC) handed down judgment ref. no. 4 Afs 204/2025 on the tax deductibility of commission paid to a business partner.

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In 2015, ACR Design (ACR) won a tender for a contract with Škoda Auto (Škoda), with decisive help from Motorsport, the company for which ACR had until then worked as a subcontractor. Motorsport handed over its know-how, gave Škoda positive references about ACR, and helped put the parties' business relationships in place. Crucially, it also undertook not to enter the tender itself, clearing the field for ACR. In return, ACR agreed to pay Motorsport a commission of 5 per cent of the revenue earned under the contract. The tax administrator recognised the commission paid on contracts won under the 2015 agreement as a tax-deductible expense: without Motorsport's involvement, ACR would probably not have secured the Škoda contract, so the test of an immediate connection between the expense (the commission) and the taxable income from Škoda was satisfied.

Škoda ran a further tender in 2018. ACR won again and kept paying Motorsport the 5 per cent commission. The tax administrator took a different view of what followed: the revenue earned from 2019 onwards stemmed from the 2018 tender, by which point Motorsport no longer had any meaningful influence over whether ACR would win the Škoda contract. The commission paid out of 2019 revenue therefore failed the test of a direct substantive and temporal connection with the income earned, and the tax administrator classified it as non-deductible.

In its first-instance judgment ref. no. 31 Af 2/2025, the Regional Court ruled against ACR and upheld the tax administrator's approach. Like the tax office, it found that there was no longer any direct and immediate relationship between the post-2018 revenue from the Škoda contract and Motorsport's intermediary services. Škoda by then had three years of its own experience with ACR, which the court considered a far weightier factor in its decision-making than the reference Motorsport had originally brokered. The court accepted that the original cooperation with Motorsport bore some connection to ACR's renewed award of the Škoda contract in 2018. In its view, however, the 2018 tender broke the immediate link. A connection between the commission expense and the 2019 income did exist, but not the immediate connection that existing case law demands. The SAC upheld these conclusions, adding that the parties had not even agreed, for instance, a non-compete clause under which Motorsport would have stayed out of the 2018 tender.

The lesson is clear: however freely taxable entities may strike commercial agreements as a matter of private law, that alone does not guarantee that the resulting payments will be treated as tax-deductible for income-tax purposes.

If you have any doubt about the direct and immediate relationship between commission payments, or other expenses, and the revenue you earn, do not hesitate to consult your tax advisor.

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When Managing Directors Matter: Liability and the International Hire of Labour

A recent judgment of the Supreme Administrative Court (SAC), case ref. no. 8 Afs 229/2024-97, does more than advance the case law on so-called hypothetical transactions. It also puts a spotlight on the role of foreign managing directors and seconded management in the international hire of labour. The message is clear: what counts is who actually exercises decision-making functions, and who really carries responsibility when a company's functional and risk profile is set.

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The case concerned Futaba Czech, s.r.o. The tax authority challenged the company's persistent losses and concluded that the Czech entity operated as a routine manufacturer with limited functions and risks, performing complex manufacturing for its parent under the parent's direction and control. Tellingly, the company's senior management consisted of staff seconded by the parent, who answered to no local management within the Czech company.

The SAC inferred a hypothetical transaction, namely the acceptance of a loss without matching compensation from the parent. It drew that inference chiefly from the structure of relationships within the group and the personnel links between the companies. Its focus is on how group relationships actually work, not merely on whether a specific instruction from the parent exists. The concept of a hypothetical transaction therefore moves away from the search for a particular instruction towards a broader assessment of economic reality and the real design of the group's business model.

For the SAC, one fact was material: members of the Czech company's senior management were, at the same time, employees of the parent seconded to the Czech Republic. A hire-of-labour contract on paper, or the role of the managing director as the formal authorised officer, do not by themselves prove that the Czech company truly exercises strategic management and controls its risks.

The deciding factor is not the formal title of managing director, nor how the contracts are framed. It is whether the person genuinely acts autonomously, in the interests of the Czech company, or whether they are in reality delivering the group's strategy.

The SAC looks to economic reality and to the actual exercise of decision-making functions. A local authorised officer, or a secondment contract, does not in itself prove that the Czech company manages its own risks. That said, the presence of foreign managing directors or seconded management does not automatically reduce a company to a routine manufacturer or distributor. In many multinational groups, seconded management enjoys real decision-making autonomy, despite a formal link to the parent. What should decide the matter are the specific facts and the actual exercise of decision-making functions, ideally backed by a detailed functional and risk analysis.

Conclusion

The judgment confirms a clear principle: in transfer pricing, neither the formal position of managing directors nor the existence of secondment contracts under an international hire of labour is decisive. What truly counts is the economic substance of the relationships and the way group management actually works.

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The First Top-Up Tax Deadline Is Approaching

The clock is ticking. By 30 June 2026, in-scope groups must file the top-up tax information return, the GloBE Information Return (GIR). Alternatively, they must tell the tax authority which group entity will file it. This applies to multinational groups with consolidated revenue above EUR 750 million.

The top-up tax rules, known as Pillar Two, have applied in the Czech Republic since the end of 2023. Their aim is straightforward: to secure a minimum 15 percent level of taxation in every country where a group operates. The first step is this very filing, together with any notification to the tax authority of the notifying entity, for tax periods beginning after 31 December 2023.

The ultimate parent entity (the parent company) files the information return.

The constituent entity (the subsidiary) has a different task: it must tell the Specialised Tax Office who will file the return on its behalf.

The logic mirrors Country-by-Country reporting. We therefore recommend checking that every change has been properly captured in your CbCR, since Country-by-Country reporting covers the same companies as the top-up tax.

The 30 June 2026 deadline applies to taxpayers whose reporting period is the calendar year. As a rule, the information return is due 15 months after the reporting period ends. For the first period (the so-called entry period), that window extends to 18 months.

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Is a TP Adjustment Subject to VAT?

In a recent judgment, the Court of Justice of the European Union (CJEU) tackled a deceptively simple question: does a TP adjustment that fine-tunes a distributor's target profitability amount to consideration for a warranty-repair service? The case is a reminder that the contractual documentation and the true substance of the legal relationship must always be examined. The CJEU's answer is clear: invoicing a TP adjustment does not automatically mean a supply of services for consideration.

Michael Pleva, Veronika Dudková
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The case concerned a trading company in Portugal, originally part of the General Motors group. On the Portuguese market it acted as the entity responsible for distributing vehicles locally, or in other words, as a distributor. It bought vehicles from the manufacturer and supplied them to authorised dealers, who in turn sold them to end customers. When a vehicle proved defective, the dealers dealt with the customer in the first instance: they arranged the repair under the warranty service and passed the related costs on to the distributor.

The distributor reported its results to the manufacturer, and those results captured both its operating costs and the costs of remedying warranty defects in the vehicles sold. Under the contract with the manufacturer, the distributor was to reach a defined target profitability. To keep it on track, the manufacturer monitored the distributor's financial position on an ongoing basis and, whenever the figures drifted, issued credit notes or debit notes. This was the so-called TP adjustment: a correction to the distributor's profitability that took into account both its own operating costs and the warranty-repair costs it bore.

The Portuguese tax authorities saw the transfer-pricing adjustment as consideration for a vehicle warranty-repair service, and therefore as subject to VAT.

The CJEU disagreed. The contract between the distributor and the manufacturer showed that the manufacturer guaranteed the distributor a predetermined profit margin. On that basis, the manufacturer adjusted the transfer prices of the vehicles concerned, the TP adjustment. The calculation drew on all of the distributor's costs, including its warranty-repair costs, but for the CJEU these were merely one factor in working out the specific amount of the adjustment.

The CJEU reiterated a settled principle: there must be a direct link between the supply of a service and the consideration actually received, and that consideration must be more than purely incidental. Here the Court found nothing in the TP-adjustment arrangement that, in the absence of additional factors, obliged the distributor to carry out warranty repairs while obliging the manufacturer to pay an agreed price for them. The TP adjustment therefore could not be treated as remuneration for a warranty-repair service.

One final point: the CJEU left the ultimate assessment to the referring court. Even so, it clearly flagged the link between the TP adjustment and the original supplies of goods.

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Who Counts as a Related Party for the Thin-Capitalisation Test?

The thin-capitalisation test has been with us for a long time. One of its effects is that interest on credit financial instruments received from related parties, among other costs, may be non-deductible. Recent case law of the Supreme Administrative Court (SAC) makes clear that, for the purposes of this test, related parties include not only those affiliated through a holding in capital or in voting rights, but also the category known as parties related by other affiliation.

Veronika Dudková
Rödl Prague

In April this year, the Supreme Administrative Court examined the tax deductibility of interest on bonds subscribed by the original shareholders themselves as part of a fairly extensive group restructuring. The SAC held that the thin-capitalisation test applies even to persons holding less than 25 per cent of the voting rights or of the registered capital. It treated as related parties even shareholders whose individual holding fell short of 25 per cent. In the court's view, these shareholders coordinated with one another and so, in practice, jointly exercised actual influence over the running of the group, making them parties related by other affiliation.

The case turned on how the concept of control is defined. According to the SAC, control is to be read broadly, as the actual and genuine ability to influence the tax-relevant conduct of the company concerned. Such influence may be exercised through voting rights coupled with coordinated action, whatever the formal arrangement. The thin-capitalisation test therefore calls for an examination of the wider circumstances as well, including mutual coordination, economic interconnection, and real influence over decision-making. The upshot was that financial relationships with persons who in fact took part in controlling the company concerned fell within the thin-capitalisation test.

There is a positive side to the judgment. The SAC held that, for the purposes of the thin-capitalisation test, the definition of related parties must be re-assessed separately for each tax period. In other words, what matters for this test is not whether the relevant contract was historically concluded between related parties, but whether the relationship is genuinely one between related parties in the tax period in question. That requires looking at any changes that may have occurred since the contract was concluded. This is a fairly fundamental shift, because in transfer pricing the general rule is that the related-party question is examined only at the moment the legal relationship is concluded, and later changes ultimately make no difference.

Two conclusions follow. First, a great many persons may be regarded as related parties across a wide range of conceivable situations, whatever the formal arrangement; what counts is actual influence over the course of events. Second, for the purposes of the thin-capitalisation test, changes over time must be taken into account. It is not enough that the parties were related at the outset.

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The National Accounting Council's New Interpretation I-54 and Draft NI-75

In May 2026, the National Accounting Council published Interpretation I-54 on how to measure a financial investment in a contribution and in a division by separation. The new interpretation responds largely to the amendment to the Act on Transformations, which introduced a new form of transformation, the division by separation. Economically, this form sits close to a contribution: the company being divided, or the contributor, transfers part of its assets and liabilities and receives an ownership interest in return. Until now, however, the accounting rules had no comprehensive answer for the contributor, or for the company being divided, on how to measure the financial investment thus acquired.

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The interpretation rests on a simple principle: the acquired interest should be measured at the net carrying amount of what is being contributed. In other words, the value of the financial investment reflects not only the net balance of the assets but also the related liabilities, value adjustments, accumulated depreciation and amortisation, and provisions.

In practice, this means revisiting, before the contribution is made, whether the value adjustments and provisions relating to the subject of the contribution remain adequate.

If the net carrying amount of the contribution is negative, the interpretation requires the interest to be recognised at nil and the negative difference to be taken to equity. This marks an important departure from the current wording of Czech Accounting Standard No. 014, under which a negative difference is recognised through income.

The measurement of the financial investment also reflects the related deferred tax assets and liabilities. An even greater impact may come from draft Interpretation NI-75, "Determining the timing of revenue recognition", now open for comments. The draft addresses a real gap: Czech accounting rules contain no express comprehensive guidance on when an entity should recognise revenue from the sale of products or goods, or from the provision of services. We will return to this draft separately in a forthcoming issue of our newsletter.

In the Czech setting, NAC interpretations have long served as an important interpretative guide, and the case law of the Supreme Administrative Court is one example. That is why it is worth following not only the interpretations already adopted but also those still in draft. The comment stage is precisely where one can shape how particular accounting questions will be read in the years ahead. At Rödl, we follow these developments closely and take an active part in the professional debate, so that we can help you reflect the new interpretations in your accounting practice correctly and in good time.

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