Tax&Legal Highlights

Czech Republic

New Notification Duties for Tax Payers

The Government of the Czech Republic is preparing an amendment to the Income Taxes Act, with anticipated effect from 2019, which still has to undergo the readings in the ParliamentThe amendment primarily aims to implement the ATAD directive of the EU as well as other significant modifications which were added to the amendment subsequent to the standard consultation procedure.

These modifications include an **introduction of the new notification duty for tax payers with respect to income exempt from tax or income non-taxable in the Czech Republic pursuant to international Double Taxation Treaties**. However, this relates to income generated by tax non-residents from sources in the Czech Republic which are subject to withholding tax.

Form and manner of notification

- Notifications should be made in a similar manner as in the case of income which is currently subject to withholding tax. The payer thus

has to **identify the income recipient and report data concerning the income paid.**

- Audited entities and entities with a data box will have to make the filing via a data box. Unaudited entities may use a printed form issued by the Ministry of Finance of the Czech Republic or its own output including all statutory requisites.
- Notifications should be made **until the end of the month following the one in which the income was paid**. A payer's failure to comply with this non-monetary duty may result in a penalty of up to CZK 500,000, or higher if the filing was not made in electronic form where the payer was required to do so.

Exceptions

- The above-specified income of the same type not exceeding CZK 100 thousand in a calendar month is to be exempt from this duty.
- For serious reasons, the tax administrator may release a payer from the notification duty for a period of up to five years.

Practical implications of the new duty

Among other things, the notification duty will predominantly apply to dividends, interest and licence fees paid by Czech businesses to foreign parent companies or other foreign entities.

The tax administration was already able to obtain the majority of required data; nevertheless, additional administrative burden is placed upon payers, including the accurate interpretation of Double Taxation Treaties.

The data received by the tax administration should also be used for international information exchange with other jurisdictions.

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Record in the register of beneficial owner data

Starting from 1 January 2018, all legal entities and trust funds have been obliged to record information of their beneficial owners in a public register – register of beneficial owner data. This obligation is newly imposed in connection with the amendment to Act No. 253/2008 Coll., on Certain Measures against Money Laundering and Terrorism Financing ("AML Act") and Act No. 304/2013 Coll., on Public Register of Legal Entities and Natural Persons.

Who is the beneficial owner?

Pursuant to Section 4 (4) of the AML Act, a beneficial owner is the natural person who has, de facto or de jure, the **possibility to directly or indirectly exercise control over a legal entity**, trust fund or another legal organisation without legal personality. **The beneficial owner is always a specific natural person.** The AML Act also states which facts may indicate the beneficial owner. However, the meeting of these criteria does not necessarily have to mean that the person is the beneficial owner. It is always necessary to assess whether this person has the possibility to exercise control.

Companies are obliged to identify their beneficial owner and record current data to discover and verify the identity of the beneficial owner including information about the fact that serves as a basis for being in the position of beneficial owner or another justification why this person is considered to be the beneficial owner.

Register of beneficial owner data

The register of beneficial owner data is a **non-public register.** Information about the beneficial owner is not provided together with a copy of the record in a public register and it is not disclosed. An extract from the beneficial owner data may be obtained by the recorded person. An extract from the beneficial owner register in a limited scope may be obtained by a person who proves interest in terms of preventing criminal acts of handling stolen goods, money laundering, their source criminal acts, and the criminal act of a terrorist attack.

Remote access to the register will be available for courts, law enforcement authorities, tax authorities, the Financial Analytics Office, the Czech National Bank and other state authorities. Remote access will also be available to obliged entities as per the AML Act that will be able to use the data recorded in the register of beneficial owner data as part of customer identification and due diligence.

Record in the register of beneficial owner data

Legal entities recorded in the Commercial Register must record their beneficial owner in the register by 1 January 2019. Other entities obliged to record their beneficial owner in the register must meet this obligation by 1 January 2021.

The following information about the beneficial owner is recorded in the register:

a) Name and address of permanent residence (as well as temporary residence if applicable);
b) Date of birth and personal number, if assigned;
c) Nationality; and
d) Information about the fact that serves as a basis for being in the position of beneficial owner.

Information about the fact that serves as a basis for being in the position of beneficial owner is supported by the relevant documents. Such a document

may be, for example, an extract from a record in a public register or foundation documents.

The record in the register of beneficial owner data is not subject to a fee until 1 January 2019; after this date the fee will amount to CZK 1,000.

What are the consequences of the failure to record the beneficial owner in the register?

Legal regulations do not set a direct sanction for the failure to comply with the obligation to record data on the beneficial owner in the beneficial owner register, but such a conduct may have **a negative impact on the company's business activities.** The failure to record the beneficial owner in the register may lead to the impossibility to participate in public tenders or to obtain a grant from EU funds, and make obtaining bank financing more difficult.

Based on the announcement published on the website of the Ministry of Industry and Trade, the management body of the Operational Programme Enterprise and Innovation for Competitiveness anticipates that calls announced from June 2018 will include a condition that **the applicant for a programme grant cannot be an entity whose beneficial owners are not recorded** in the register of beneficial owner data as of the day of filing the application.

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CbC Reporting: The First International Exchange of CbC Reports is Approaching

The first international exchange of Country by Country ("CbC") Reports will be performed by tax offices in June 2018 for the first time. The Czech tax administration will have available a new instrument to review transfer pricing.

In 2017, an amendment to the Act on International Cooperation in Tax Administration introduced a new notification duty in the Czech Republic as part of the international information exchange, referred to as Country by Country Reporting. This amendment stipulates a duty for groups of companies with consolidated global income exceeding EUR 750 million to file the Country by Country Report to tax administrations on an annual basis, summarising financial information of this group. The duty to file the CbC Report, which is subsequently subject to automated information exchange between individual countries, to the tax authority is usually carried out by the ultimate parent company in the state of its residence on behalf of the entire group.

Groups of companies in the Czech Republic and in cooperating countries most frequently filed the first CbC Reports in December 2017 for the 2016 taxation period. As CbC Reports are filed pursuant to legislation in the relevant country, deadlines as well as the respective taxation periods may vary.

A list of jurisdictions to which the automated information exchange with the Czech Republic applies was published in the February issue of the Financial Bulletin (02/2018): https://www.mfcr.cz/cs/legislativa/financni-zpravodaj/2018/financni-zpravodaj-cislo-2-2018-30918. The first exchange of CbC Reports between those jurisdictions should take place in June 2018. From this date, tax administrations will have available another tool for the monitoring of international group transactions.

In the CbC Report, multinational groups of companies must publish especially the following information:

- In which countries (jurisdictions) the group operates;
- The amount of revenues generated by the group with related and unrelated parties in individual countries;
- The group's profit or loss before tax in individual countries;
- The amount of tax paid;
- The amount of the group's registered capital and number of employees in individual countries; and
- The amount of the group's tangible assets other than cash and cash equivalent in individual countries etc.

For each country, the group must provide a list of entities operating therein, specifying the character of their business activities.

What are the potential implications of exchanging CbC Reports for Czech companies?

Pursuant to available information, the tax administrator will combine data from the CbC Report with information included in the transfer pricing annex to the tax return and other information available to it. Based on this information, the tax administrator will select entities, or transactions, exposed to risk for a possible in-depth analysis.

Various combinations of reported data may be considered exposed to risk: high payments for licence fees, interest and management services to countries in which companies have a low number of assets/employees while reporting high revenues vs. low taxation rate. Tax administrations will certainly focus on situations in which the group's production plants (for which a similar activity may be anticipated) report in individual countries different profitability levels under similar turnover, in consideration of the aggregate taxation rate etc.

In order to eliminate risks, we recommend that companies which are subject to CbC reporting give sufficient attention to the CbC Report. Unless it is available to them, companies should require the CbC Report from the Group well in advance and verify the information included therein. We recommend analysing the report from the viewpoint of the tax administration – how the reported data may be interpreted by the tax administration and what other issues may possibly arise.

Subsequently, we recommend assessing the outcomes of the analysis in view of the supporting documentation used by the company to prove, during tax audits, the pricing in group transactions, along with transfer pricing documentation if available. Such review may indicate potential areas for debate with the group that may clarify some issues, or a need to provide additional documents or promptly address the situation. Such actions should certainly be performed prior to an audit by the tax office.

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Cancellation of super-gross wage recalled

The Ministry of Finance withdrew its original proposal to cancel super-gross wage and the related conceptual changes in the personal income tax calculation. The proposal was part of an amendment to the Income Taxes Act with the proposed effective date from January 2019, which will now contain only the implementation of the Anti Tax Avoidance Directive (ATAD).

The income of natural persons will therefore continue to be taxed at 15%, with a solidarity tax surcharge of 7% for income exceeding the 48th multiple of the average wage per year. Since the work on the new act on income taxes (which we informed you about several months ago) has been suspended, employers and taxpayers can enjoy legislative peace. It is impossible to rule out last-minute surprises in the form of parliamentary draft proposals during the discussion of the tax amendment for 2019, but they are not expected.

However, we recommend paying attention to the changes in interpretation by the Financial Administration, especially with respect to personal income tax prepayments of tax non-residents and residents working abroad. Tax authorities complicate the reimbursement of amounts overpaid and challenge the method of calculation of tax prepayments, the correct calculation of prepayments therefore becomes a difficult task where it is worth contacting tax specialists for assistance.

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