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PERFORMANCE OF THE FUNCTION
OF A MEMBER OF A STATUTORY
BODY AS AN ECONOMIC ACTIVITY

MORE ON PAGE 2

DIGITAL PLATFORMS AND NOTIFICA-
TION OBLIGATION ACCORDING TO
DAC 7

MORE ON PAGE 3

MY TAXES AND DIS+

MORE ON PAGE 4

EDITORIAL



Dear Readers, Dear Friends,

This autumn will be different than usual. So far there have been only modest changes to tax laws in 2021, and thanks to the elections, we are unlikely to see further changes this year. We will be able to enjoy a quiet transition of the year, without the need to update accounting programs and change settings. Some changes have been brought about by the courts. In the first article, we focus on the position of a member of the statutory body and their remuneration in terms of VAT. Thanks to the Supreme Administrative Court, this matter is rather clear-cut.

In the next article, we tell you about a new obligation for employers: whistleblower protection. Companies and organisations with 25 or more employees must establish procedures and channels for receiving complaints from whistleblowers, who are primarily employees, but can also be jobseekers, members of the board of directors or supervisory board, and others.

Digitisation is also advancing in our country, slowly but steadily. One of the products is the MY TAXES portal, launched by the Ministry of Finance in early March. We have already informed you about the portal itself in our [January newsletter](#); now we mainly describe the possibilities of setting up access to the portal and activating DIS+ (the new tax information box).

This year, the financial administration confirmed its focus on the issue of transfer pricing, especially for multinational companies. In 2020, approximately CZK 1.5 billion was additionally measured, which is a jump compared to previous years. I recommend you have a look at the [seminar](#) we are preparing about this issue on 5 November 2021. Let's hope that in the autumn we will not have to deal with another wave of COVID and that we will be able to devote ourselves to work, families or ourselves. I wish everyone good health and lots of energy. Let's enjoy the last days of the Indian summer.

Tomáš Klíma
Partner

CONTENT

- ▶ Performance of the function of a member of a statutory body as an economic activity
- ▶ Digital platforms and notification obligation according to DAC 7
- ▶ What helped companies successfully manage the COVID-19 crisis and why whistleblower protection played an important role
- ▶ MY TAXES and DIS+
- ▶ ICT and shared services – v. subsidy call Digital Enterprise
- ▶ Mark in your calendars: events and seminars

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PERFORMANCE OF THE FUNCTION OF A MEMBER OF A STATUTORY BODY AS AN ECONOMIC ACTIVITY

The Supreme Administrative Court followed its previous case law¹, when in judgments 3 Afs 82/2019 – 38 and 2 Afs 76/2019 – 33 of 21 June 2021 or of 15 July 2021 it defined performance of the function of a member of a statutory body as an economic activity.

In the judgments, the SAC assessed the performance of the function of the chairman of the board of directors of the company and came to the conclusion, similarly to the previous case law on the executive directors of companies, that the performance of the function can be considered an independent economic activity.

At the same time, the SAC also concluded that the Czech Act on Value Added Tax (VAT) conflicts with the EU Council Directive on the Common System of VAT (the Directive), stating in Section 5 (3) that performing the function of the statutory body of the company is considered a non-economic activity from the point of view of VAT. This is because the remuneration for this performance is subject to tax on income from dependent activity according to Section 6 of the Income Tax Act². The tax administrator denied the applicant the right to deduct VAT on supplies made to them by a member of its board of directors under a mandate agreement on the grounds that those supplies were not provided by a taxable person.

The SAC referred to [2 Afs 100/2016 – 29](#), when it did not find any relevant differences that would justify a different assessment of the performance of the function of the chairman of the board of directors of a joint stock company from that of the managing director of a limited liability company.

It follows from the case law of the Court of Justice that two aspects of the activity pursued are decisive in determining whether a particular economic activity is independent. This is the autonomy of the function and the associated responsibilities.

In the SAC's opinion, the required aspect of the autonomy of office and the responsibilities associated with it can be seen in the nature of the activities of the executive director of a limited liability company or chairman of the board of directors of a joint stock company under Czech law. Based on this conclusion, it found the similarity of the performance of the function of the statutory body with the case assessed by the CJEU in C-202/90³ Recaudadores.

The SAC therefore concluded that if the executive director or chairman of the board of directors works for a fee, it must be regarded as an independent economic activity within the meaning of Article 9 (1) of the Directive and not be excluded from the system on the basis of Article 10 of the same Directive.

As regards compliance of the VAT Act with Article 10 of the VAT Directive, the court found that Section 5 (3) of the VAT Act, by excluding natural persons from the VAT system on the grounds of their income taxation, constituted an inadmissible inequality arising from the legal

form of the business. This is due to the fact that the executive director can also be a legal entity, to which the exclusion from the circle of taxable persons does not apply, although the nature of the executive director's function is still the same.

The provisions of the Directive, in particular Articles 9 and 10, must therefore be given direct effect in the present case, i.e. the capacity for direct application to the case before the national authority. In practice, the cited conclusion of the SAC means that the executive director or member of the board of directors (and probably also other persons in a similar position) may consider their remuneration for the performance of their function as performance subject to VAT. In such a case, they issue an invoice for their remuneration, which is taxed at the statutory VAT rate, and the recipient of the performance is entitled to deduct this tax. This procedure applies in the case of performance within the Czech Republic.

Surely you are wondering why it would be more advantageous for the executive director – the taxpayer – to apply the above-mentioned taxation?

Let me give an example:

The executive director of the XY company is also a self-employed taxpayer. He buys a personal vehicle as a self-employed person and applies a VAT deduction to it. He also uses the vehicle for his activities as the company's executive director. He is faced with the question of whether he is entitled to claim the full right to deduct VAT when acquiring the vehicle. If he evaluates the activity of the executive director according to Section 5 (3) of the VAT Act as a non-economic activity, then his right to deduct is limited to Section 75 of the VAT Act. The ratio between his economic activity (self-employed activity) and performance as the company's executive director (e.g. the ratio of income from individual activities is offered) must be determined. And with this „ratio coefficient“ the right to deduct tax from the purchased car is reduced. You can imagine what other services received will reduce the right to deduct (e.g. fuel, vehicle repairs, etc.).

If he uses the direct effect of the Directive and assesses the activity of the executive director in accordance with Article 9 of the Directive as an economic activity, then his deduction will not be limited in any way due to the performance of the function of the statutory body.

In conclusion, I note that the tax administrator is not entitled to dispute the procedure that the statutory body of the company chooses when applying or not applying VAT to his remuneration.

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¹ Judgment NSS 2 Afs 100/2016-29 of 22 November 2016

² Section 5 (3) of the VAT Act – self-employed economic activity is not the activity of employees or other persons who have a contract with the employer, on the basis of which an employment relationship is established between the employer and the employee, or the

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activities of persons which are taxed as income from dependent activity.

³ Judgment SDEU C – 202/90 Recaudadores of 25 June 1991

DIGITAL PLATFORMS AND NOTIFICATION OBLIGATION ACCORDING TO DAC 7

The extraordinary period associated with the wave of the pandemic, widespread reductions in personal contact and closures suggested that the digitalisation trend was more than desirable and practically necessary from the point of view of maintaining operations in certain market segments.

Digital platforms represent an online space, a kind of online marketplace within which supply and demand meet remotely. It is an online environment that allows you to easily establish contacts from anywhere, even outside the narrower community of the vendor (for example, outside the circle of regular customers or outside the geographical boundaries of the region or state). **It is the operators of digital platforms that are the focus of the draft DAC7 Directive.**

What is the DAC7 Directive?

In March 2021, the Council of the European Union adopted rules to revise the Tax Administrative Cooperation Directive 2011/16/EU (through the so-called „DAC7“) in order to extend the scope of automatic information exchange in the EU to operators of digital platforms. The aim of this measure is to increase the tax transparency of the digital space, to ensure the proper payment of taxes on income from the sale of goods or services through digital platforms, while ensuring that EU Member States can easily exchange information on this income. Member States are required to implement DAC7-based obligations in their national legislation by 31 December 2022.

Who does the DAC7 Directive apply to?

For the purposes of DAC7, the platform means any software, including websites or parts thereof, and applications, including mobile applications, accessible to users and enabling vendors to connect to other users to perform targeted activities for those users, directly or indirectly.

In this respect, **it does not matter where the digital platform is located**, but it depends on whether the revenue is generated by vendors established in one of the Member States. The rules introduced by the DAC7 Directive will therefore apply to digital platforms inside and outside the EU.

The obligation for digital platforms consists in **identifying certain vendors and reporting information on revenues** generated by vendors from selected activities. These activities include, for example:

- ▶ rental of real estate;
- ▶ sale of goods;
- ▶ vehicle rental; or
- ▶ personal services (e.g. legal, accounting, management consulting, investment banking, etc.).

On the other hand, the above reporting obligation according to DAC7 does not apply to digital platforms that only process payments, place advertisements or redirect customers to other electronic interfaces.

Scope of reported information

DAC7 will require digital platforms to collect certain information from

users who offer goods or services on the platform and to report it to tax authorities.

Digital platforms will be required to report details about vendors and their location, as well as information on service fees paid to the platform. If the vendor does not provide the required information even after reminders from the platform, the vendor is entitled to limit the vendor's activities on the platform after 60 days. Until the vendor provides the required information, the platform may close access to the vendor's registered account on the platform or stop payments to it.

The platforms must forward the specific information to the tax administrations of the Member States concerned by 31 January of the following calendar year at the latest. In the case of a platform outside the EU, this can be the tax office of any EU Member State.

The obligation to report information according to the draft DAC7 excludes those vendors who make less than 30 sales of goods on the platform per year for a total amount of less than EUR 2,000.

Once the entity reports this information to the tax office, the tax administrations of all 27 EU Member States will be able to share and pass this information to each other. Subsequently, the information will be stored in a central register to which all Member States' tax authorities will have permanent access.

In addition to digital platforms, DAC7 also introduces measures to contribute to better cooperation between Member States. It regulates, for example, the legal framework for conducting joint audits between two or more Member States or the international exchange of information on licence fees between individual tax authorities.

What does the Directive mean for you?

It will be essential for digital platform operators to properly assess the scope of their responsibilities and then prepare in time for these newly imposed obligations in order to avoid possible sanctions. It is also possible to introduce processes in advance, which the platform operator can only extend in 2023 to meet the requirements of DAC7 from 1 January 2023.

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WHAT HELPED COMPANIES SUCCESSFULLY MANAGE THE COVID-19 CRISIS AND WHY WHISTLEBLOWER PROTECTION PLAYED AN IMPORTANT ROLE

Every year, BDO conducts an international survey on the risks that move the world. Top company representatives from all over the world are thinking about these risks. This year's Global Risk Landscape largely focused on the management of the COVID-19 crisis

The main message of this year's survey is that companies that are not afraid to take risks did much better during the pandemic. Take a risk during a pandemic? Easier said than done. What did the companies that took on greater risk and successfully managed it have in common? Success factors included the ability to look at things from a different perspective, open communication, process flexibility and the care of people – employees, partners and the general public. The loyalty gained helps to overcome various crises.

Important mechanisms for responsible business also include

whistleblower protection. It offers stakeholders the opportunity to communicate safely and easily about what is bothering them. It therefore helps to build trust in relationships, which supports long-term cooperation.

Whistleblower protection

As we informed you earlier, from next year, Czech companies and organisations will also have to [establish procedures](#) and channels for receiving complaints from whistleblowers. Companies are worried about what the new obligation will mean for them. This year's BDO Risk Landscape confirms that those who care about their people and surroundings can handle crises better. I am convinced that many companies and owners like this approach, despite otherwise not being partial to European Union jargon.

My goal is to support our clients in seizing opportunities and managing the risks associated with the new regulation. There are many new responsibilities. I have therefore prepared an overview of the most important ones for you.

Who is affected by the new obligations?

The new obligations will not only affect state organisations or large multinational corporations. An internal reporting system will have to be set up by all companies and organisations with 25 or more employees, as well as public contracting authorities, except for municipalities with less than 5,000 inhabitants. The new obligation will affect most companies and organisations.

What is an internal reporting system or ethics line?

Companies and other entities will be obliged to introduce a so-called internal reporting system or ethics line. The purpose of the ethics line is to allow whistleblowers to use an internal channel instead of passing information on to external control bodies. The company can thus detect fraudulent behaviour in a timely manner, prevent it and avoid further damage, including reputational damage or the imposition of a sanction. Based on the notifications received, the company should implement corrective measures to prevent similar adverse events in the future. The system must conceal the identity of whistleblowers and protect them from retaliation.

Who can submit a report?

The circle of whistleblowers, i.e. persons protected by law, is very wide. In addition to employees, they can also be jobseekers, interns, members of the board of directors or the supervisory board. However, suppliers or those interested in a contract may also report. It is therefore important that the possibility to submit a report is easily accessible to all those entities. An effective solution is, for example, a secure internet form on the company's website.

How can a report be submitted and by when must it be processed?

It must be possible to report in writing, by telephone and in person. The whistleblower will have the right to know the findings of the investigation within 30 days of the report. In justified cases, this period

may be extended.

Internet applications can make the operation of the internal reporting system easier. Today's technologies enable the quick and easy implementation of an ethics line, which serves for submitting reports and at the same time as a helpdesk or communication platform. The application will help monitor deadlines, whether the report was submitted via the application or, for example, by telephone and subsequently registered in the application by the administrator. This degree of centralisation also contributes to the protection of whistleblowers' personal data. The tool will allow them to draw attention to problems and risks in the company through a secure form. Both whistleblowers and companies themselves will benefit by having more control over their risks.

What are the risks associated with whistleblower protection?

Failure to comply with the obligations arising from the Whistleblower Protection Act should result in heavy fines – up to CZK 1 million or 5% of net turnover for the last completed accounting period. The whistleblower will also be able to contact the Ministry of Justice directly. For this reason, too, it is in the interest of companies that their internal reporting system be credible and simple.

The goal of BDO is to bring pragmatic and affordable solutions. I will be happy to set up and manage whistleblower protection for you.

Stanislav Klika

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MY TAXES AND DIS+

In March, the financial administration launched the MY TAXES portal – a platform that also includes the so-called online tax office and a new tax information box (DIS+). This portal is intended to simplify and streamline the interaction of taxpayers with the tax office. Taxpayers using its services can communicate with the tax office through this portal, file tax returns, use the options of the tax calendar, which monitors all deadlines, or check the status of payments and balances of individual tax accounts. All in one place without having to visit the tax office physically. The individual forms are interactive and already pre-filled with the taxpayer's personal data, which should reduce the frequency of formal errors on tax forms. A great novelty is also the possibility to entrust the administration of tax accounts to third parties, such as accountants or tax advisors. The scope of credentials can be easily set directly in the portal.

Another novelty is that it is no longer necessary to have a data box set up for online communication with the tax office. You can log in to the portal with a wide range of verification methods, e.g. bank identity, e-national identity card, eGovernment Mobile Key, access data assigned

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Seminar in cooperation with BDO Germany, 5 November 2021 - Pilsen

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by the Financial Administration of the Czech Republic or just by logging in to the data box. For example, banking identity was automatically acquired in 2021 by all clients of many leading Czech banks using online banking or smart banking.

One of the most important things for companies is the new tax information box. The existing DIS will be available only until 28 February 2022; from this date it will not be possible to log in to it and it will be possible to work only within DIS+. If a legal entity wants to set up DIS+, its statutory body must set up access to the MY TAXES portal and activate DIS+. If interested, it can then entrust access to DIS+ to other entities. The „entrusted“ tax information boxes will appear in their own profile, so they can access them by logging in to the portal. Statutory bodies of companies log in to the portal in the same way as natural persons – by means of the individual identities and approaches already mentioned above. As such, a legal entity cannot log in to the portal – it must always be a natural person (statutory body) who logs in with their own identity.

In practice, we have not yet experienced major problems with the registration and activation of DIS+ in Czech entities (or in entities whose statutory bodies are natural persons residing in the Czech Republic). **However, we have already encountered problems with foreign entities that only have a VAT registration here and want to have a tax information box set up.** Until now, a power of attorney was enough to set up the old tax information box, and a tax advisor could set up and operate a DIS with the tax administrator. However, it is now necessary for the statutory body of a foreign company (e.g. an executive director) to set up access to the MY TAXES portal and then authorise the relevant tax advisor (or other entity) to access its DIS+. For an executive director to be able to access the portal, they need to use one of the authentication methods. Some forms of e-identity (such as bank identity or International ID Gateway) can also be used by foreign persons, but their use is very limited (this only applies to some banks, and therefore some countries). Without a data box or e-identity, the only way left is to set up access to the portal – with access data assigned by the Financial Administration of the Czech Republic. This method works as follows: the applicant requests access data to the system. Then the generated username is sent to them and subsequently they must physically go to any branch of the tax office, where they will be identified. Some foreign entities will not be allowed to set up access to the portal remotely.

The employees of the tax authorities are aware of this and have told us unofficially that, regrettably, this is a situation which the legislation did not intend, but which is in fact quite common. The current practice, therefore, is as follows: the foreign natural person is asked for access data and then, instead of physically identifying themselves at the tax administrator's branch, an identity card scan is sent to an employee of the relevant tax office, who identifies them „remotely“. Unfortunately, this method does not conform to the legislation, but so far it is the only one that can avoid the need to visit the Czech authorities physically.

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ICT AND SHARED SERVICES – V. SUBSIDY CALL DIGITAL ENTERPRISE

The Digital Enterprise call for small and medium-sized enterprises with implementation outside Prague aims to support increasing the digital level of companies operating on the Czech markets by supporting the purchase and introduction of advanced non-production digital technologies. These technologies should ensure a fundamental change in the overall production process, the establishment of a new facility, expansion of a facility, expansion of the capacity of an existing facility, expansion of the production range of an existing facility or a combination of the above activities by supporting automation, data digitisation and more efficient interconnection and management of business processes.

As part of the call, it is possible to apply for subsidies of up to CZK 10 million to support the digitisation of company processes. The minimum amount provided is CZK 1 million. The level of support is defined by the size of the company and the region of implementation in the range of 30 to 60% of the total project. The deadline for the completion of the project is 31 March 2023. Subsidies can be applied for from 15 September 2021 to 15 November 2021. Applications will be collected continuously, and those who apply earlier have a better chance of obtaining a subsidy.

Support will be given to activities whose main task must be investment or acquisition of ICT products and services (e.g. investment in SW, HW and other machinery and equipment directly related to ICT or the use of ICT solutions provided in the form of services, including expert consulting services for design, implementation and ICT management in the organisation, including interrelated processes), which are classified as „initial investments“ and thus related to a fundamental change in production process, establishment of a new facility, expansion of the capacity of an existing facility, expansion of the production range of an existing facility or a combination of these categories.

Analysing the options for support and processing and submitting application documents are complex tasks, where it is appropriate to use the knowledge of experienced consultants. We have extensive experience and a high success rate in this regard, and therefore we will be happy to advise you on submitting the Call.

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MARK IN YOUR CALENDARS: EVENTS AND SEMINARS

We cordially invite you to our traditional autumn professional training seminars in the areas of taxes, wages, legislative changes and finance. Join BDO for face-to-face seminars across the Czech Republic or trainings we prepare with external partners.

SEMINAR: NEW WHISTLEBLOWER PROTECTION LAW: HOW TO PREPARE FOR IT?

- ▶ 6 October 2021 - Pilsen
- ▶ 11 November 2021 - Prague

The year 2021 sees the introduction of a new Whistleblower Protection Act. Under the Act, companies with 25 or more employees and contracting authorities will have to establish procedures for receiving and processing reports, train employees and ensure that whistleblowers' personal data is protected by the end of March 2022. We cordially invite you to the BDO seminar, where we will present a brief and practical overview of what the obligations are, how to meet them and not drown in paperwork and regulations. We will provide you with practical knowledge about the impact on businesses and the benefits of introducing effective reporting channels.

Lecturer

- Stanislav Klika, Head of Advisory Services

SEMINAR: TRANSFER PRICING IN CZECH-GERMAN BUSINESS

- ▶ 5 November 2021 - Pilsen

In cooperation with BDO Germany, we have prepared a seminar for you on the issue of transfer pricing for companies operating simultaneously in the Czech and German markets. We will draw your attention to the specifics, differences and requirements for the preparation of documentation on transfer pricing in the Czech Republic and Germany. Throughout the lecture we will show examples from practice and discuss our current experience of tax audits in both countries. We will talk about the effects of the pandemic on the comparative analysis of profitability. At the same time, we will present to you the recommendations of the procedure for additional adjustments to transfer prices for related-party transactions and the possibility of a tax refund when assessing it in another country.

Lecturers

- Lenka Lopatová, Partner
- Arwed Crüger, Partner
- Věra Jankovcová, Guest of Honour
- Nikola Jandečková, Senior Consultant

SEMINAR: NEWS IN WAGES IN 2022, WORK FROM HOME AND EMPLOYMENT OF FOREIGNER

- ▶ 23 November 2021 - Pilsen
- ▶ 24 November 2021 - Domažlice
- ▶ 26 November 2021 - Brno
- ▶ 29 November 2021 - České Budějovice
- ▶ 30 November 2021 - Prague

As in previous years, we have prepared a seminar for you this year summarising the basic salary and personnel changes that will affect both you personally and your company. At the seminar we will discuss the most important changes in payroll accounting for 2021 and upcoming news for 2022. We will talk about what changes await us in the field of labour law, personal income taxes, health insurance and social security premiums, changes in deductions from wages and

specifics of employment of foreigners.

Lecturers

- Veronika Sovová, Manager
- Monika Lodrová, Manager, Head of Personal Income Tax
- Michaela Tydlačková, Senior Consultant

SEMINAR: EXPERIENCE WITH 2021 TAXES AND NEWS FOR 2022

- ▶ 23 November 2021 - Brno
- ▶ 30 November 2021 - Pilsen
- ▶ 1 December 2021 - Domažlice
- ▶ 2 December 2021 - Prague
- ▶ 3 December 2021 - Tábor
- ▶ 6 December 2021 - České Budějovice

Like we do every year, we have prepared a tax seminar for you, the aim of which is to provide an explanation of all the main amended provisions for 2022 concerning income tax and value added tax. We will also draw your attention to the most important changes in connection with the filing of tax returns for 2021. In addition, you will learn about this year's news in the area of financial statements, and we will tell you about the planned changes for 2022.

Lecturers

- Zenon Folwarczny, Partner, Head of Tax
- Tomáš Klíma, Partner
- Igor Pantůček, Partner, Head of VAT
- Ivan Kovář, Partner
- Martin Tuček, Partner
- Petr Vondraš, Manager
- Petr Linx, Manager
- Michaela Srpová, Manager
- Jan Tuček, Manager

SEMINAR: FINANCIAL STATEMENTS FOR 2021 AND NEWS FOR 2022

- ▶ 7 December 2021 – Prague
- ▶ 14 December 2021 – Brno

We have prepared a traditional seminar for you, the aim of which is to provide you with an explanation of all the novelties that the year 2021 brought to us in accounting and to remind you of the steps that need to be implemented within the year end work of business entities. We will also introduce you to the planned changes in accounting and related tax regulations for 2022.

Lecturer

- Jiří Pospíšil, Manager, Accounting Methodologist

Further training in cooperation with partners can be found on our [website](#).