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Czech Republic—Implementation of DAC 6 and Quick Fixes



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Implementation of DAC 6

[EU Directive 2018/822](#) of May 25, 2018 (DAC 6) introduces a new range of automatically exchanged information on cross-border arrangements and defines conditions under which the arrangement must be reported to the tax authority. The national implementation of reporting obligations under DAC 6 was originally due by July 1, 2020. However, like many EU countries, the Czech Republic experienced a delay in the implementation process due to the Covid-19 pandemic. DAC 6 obligations were implemented into Czech law by Act No. 343/2020 Coll., amending the Act on International Cooperation in Tax Administration, with effect from August 29, 2020.

The Czech Republic has adopted the full scope of DAC 6 as defined by the EU Directive and has not introduced any additional reporting obligation beyond DAC 6. As a result, no domestic arrangements fulfilling the hallmarks are subject to reporting; only cross-border transactions are to be reported.

Generally, cross-border arrangements that carry the risk of either (i) tax evasion; (ii) circumvention of reporting standards; or (iii) prevention of the identification of beneficial ownership are subject to the reporting obligation. The obligation could arise for both the user

of the arrangement and the intermediary if the specific hallmarks defined by the legislation are met. Violation of the obligation to report, notify, and/or retain documentation is subject to a penalty of up to 500,000 koruna (\$22,522).

At the same time, the Czech Republic waived the reporting obligation for intermediaries in a cross-border arrangement where such obligation would breach their professional privilege. The waiver is granted to lawyers, tax advisers, notaries and auditors. Intermediaries who are bound by professional privilege are only obliged to notify the user of the cross-border arrangement that the reporting obligation arose for that user.

The Czech Republic has opted for a six-month delay for DAC 6, granted by the European Council, and has postponed the original deadline given by the DAC 6 legislation. The government regulation published on September 7, 2020 states the following deadlines for reporting obligations in the Czech Republic:

- Reportable cross-border arrangements whose first steps were taken between June 25, 2018 and June 30, 2020 must be reported by February 28, 2021.

- Reportable cross-border arrangements made available, ready for implementation or whose first steps were taken between July 1, 2020 and December 31, 2020 must be reported by January 30, 2021.

- Reportable cross-border arrangements made available, ready for implementation or whose first steps were taken after January 1, 2021 must be reported within 30 days of the relevant event.

The Czech Ministry of Finance is currently preparing electronic reporting forms that should be published in

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October 2020. In addition, explanatory notes are being prepared to provide further guidelines regarding the DAC 6 reporting obligations.

Implementation of Quick Fixes [Council Directive \(EU\) 2018/1910](#) and [Council Implementing Regulation \(EU\) 2018/1912](#) changing the rules for the movement of goods between EU member states (so-called 2020 Quick Fixes) is one of the most fundamental changes in VAT law in recent years. All member states were obliged to implement the 2020 Quick Fixes by January 1, 2020. The Czech Republic is one of the member states that missed the deadline due to the prolongation of the legislative process, which was subsequently slowed down in spring by the Covid-19 pandemic. The 2020 Quick Fixes entered into force in the Czech Republic as of September 1, 2020 by Act No. 343/2020 Coll.

For the transitional period from January 1, 2020 to August 31, 2020, the General Financial Directorate of the Czech Republic confirmed that taxpayers may proceed in accordance with the EU legislation by applying the direct effect as of January 1, 2020. In practice, two regimes were allowed during this transitional period: the approach based on the “old” wording of the Czech VAT legislation, or the approach based on the 2020 Quick Fixes.

As of September 1, 2020, the 2020 Quick Fixes rules are obligatory for all taxpayers. The Czech Republic fully implemented the amendment to the EU VAT Directive without any significant deviation, nor did the country set any additional rules that go beyond the scope of the EU legislation.

The 2020 Quick Fixes addresses four areas:

(i) New Substantive Conditions for a VAT Exemption for Intra-Community Supplies of Goods

The 2020 Quick Fixes introduces new substantive conditions for the application of a VAT exemption for intra-community (IC) supplies of goods, namely the following:

- the acquirer of the goods shall be identified for VAT purposes in the member state other than the state in which the dispatch or transport begins;
- the acquirer has indicated his VAT number to the supplier;
- the supplier declares the supply in his recapitulative statement (EC Sales List).

The first condition regarding the acquirer being identified for VAT purposes has already been implemented in the Czech VAT legislation prior to the 2020 Quick Fixes.

(ii) Call-off Stock Simplification

Czech VAT legislation already introduced the call-off stock simplification in 2004. However, the 2020 Quick Fixes completely changes the VAT treatment of the consignment arrangements in the Czech Republic and introduces new conditions.

In the past, the call-off stock simplification could be used under the conditions that the supplier was not registered for VAT in the Czech Republic and that he knew the customer to whom he will sell the goods in the Czech Republic. Based on the 2020 Quick Fixes, sellers

will have to comply with stricter rules as of September 1, 2020: for example, the taxpayers can benefit from the simplification only if the stock is pulled out of storage within 12 months.

The call-off stock scheme simplifies the administrative burden of the supplier if several conditions have to be fulfilled, otherwise the supplier is obliged to follow the general VAT rules that would require him to be registered in the member state of the destination. However, under the strict rules of 2020 Quick Fixes it is questionable how often it will be used by businesses in practice.

(iii) Rules for Chain Transactions

The 2020 Quick Fixes rules for chain transactions have an impact on the supply chain setups where the goods are directly transported from the first supplier to the final customer and the transport is organized by an intermediary who is involved in the chain transaction both as a customer and as a seller.

Based on the settled jurisprudence of the ECJ, the VAT exemption on the IC supply of goods can be assigned only to one supply within the supply chain setup. This supply will be considered the one that is linked with the transportation. The question that had arisen frequently in the past was which supply within the chain should be the one assigned with the transportation (and thus benefit from VAT exemption on the IC supply of goods).

Based on the 2020 Quick Fixes, where the intermediary operator dispatches or transports the goods himself or by a third party on his behalf, the transportation (and thus the VAT exemption on the IC supply of goods) will be assigned to the first supply from the seller to the intermediary. Alternatively, if the intermediary provides the seller with his VAT identification number issued by the state where the transport originates, the transport (and thus the VAT exemption on the IC supply of goods) can be allocated to the second supply from the intermediary to his customer.

(iv) Proof of Transportation

The 2020 Quick Fixes, and in particular Council Implementing Regulation (EU), introduces the new presumption for proving the transportation of goods to another EU member state.

Based on the presumption, the transport has been proven if the taxpayer claiming the VAT exemption in the Czech Republic is in possession of at least two items of non-contradictory evidence (such as documents relating to the transport, bank statements, documents issued by the public authority, receipt of the warehouse keeper, etc.). The Council Implementing Regulation (EU) stipulates additional rules regarding the required documentation that taxpayers should possess.

We would like to mention that if the documents stipulated in the Council Implementing Regulation (EU) are not in the taxpayer's possession, it should not lead to an automatic refusal of a VAT exemption. The taxable person applying the VAT exemption on the IC Supply of goods to another EU member state can provide other means of proof. This interpretation was confirmed in the Czech Republic in the Explanatory Memorandum to Act No. 343/2020 Coll.

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