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## Information for clients

Czech Republic

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# Formal Requirements for Triangular Transactions and Social Security in case of Cross-Border Telework (home office)

*According to the case law of the Supreme Court of the European Union, formal errors in triangular transactions cannot be subsequently repaired.*

*The Czech Republic has concluded new framework agreements with Austria and Germany regarding social security in connection with cross-border telework (home office).*

### Formal requirements for triangular transactions

A triangular transaction is a situation in which three entities from three different EU countries - the seller, the intermediary and the end buyer - are involved in a transaction. The goods are first sold by the seller to the intermediary and then resold by the intermediary to the final buyer. The goods are transported by the seller or the intermediary directly from the seller's country to the end buyer's country.

Under normal sales VAT rules, the intermediary would have to register in the country of the ultimate buyer. However, the simplification rule for triangular transactions allows this registration to be avoided under certain conditions.

The fulfillment or non-fulfillment of these conditions was the subject of the dispute before the Supreme Court of the European Union in Case C-247/21 (Luxury Trust Automobil). An Austrian company purchased a car from the United Kingdom (then still an EU member state) and sold it to a Czech company. The car was transported directly from the UK to the Czech Republic. The Austrian company reported the sales as a triangular transaction and indicated on the invoice that it was a triangular transaction, but the invoice **lacked the indication that the Czech buyer had to pay the VAT**. This missing information was objected by the Austrian tax authorities. The consequence of this missing information on the invoice was that, according to the Austrian tax authorities, the simplified procedure of the triangular transaction could not be applied and VAT on the purchase of the vehicle was subsequently assessed on the Austrian VAT number without deduction of input tax.

The Supreme Court of the European Union confirmed this practice. It also confirmed that this **missing requirement cannot be added subsequently and therefore the error cannot be corrected.**

If you are involved in a triangular transaction as an intermediary, we recommend that you check whether the invoices issued meet all the requirements. Otherwise, you expose yourself to VAT risk both in the Czech Republic and in your customer's country.

### **Social insurance for cross-border telework (home office) with Austria and Germany.**

At the time of the COVID pandemic, cross-border telework (home office) had an exception to the rules for determining social security affiliation. Now that the COVID regulations have expired, the **Czech Republic has concluded new bilateral framework agreements with Austria and with Germany** for social insurance in connection with cross-border telework (home office).

The regulations apply to situations where the employer is based in one country and the employee is based in the other country and works there part-time. (e.g. an employee resident in the Czech Republic is employed by a company in Austria and works partly at the company's headquarters in Austria and partly in the home office in the Czech Republic).

In principle, the following rule applies: if the activity takes place in the employee's country up to a maximum of 25% of the working time (and remuneration), the employee continues to be subject to the social security system of the employer's country. If this limit is exceeded, the employee is subject to the social security system of the state in which he or she resides, and the employer must register and pay contributions there.

Based on the above-mentioned framework agreements between the Czech Republic and Austria respectively the Czech Republic and Germany, the **threshold will be raised from 25% to 40%**. However, this increase is subject to the **following conditions**.

- The employee must apply for an exemption to the social security institution in the state of the employer.
- The employee must have only one employer.
- The work must be the same type of work as the work performed in the employer's state.
- The work must be performed using information technologies.

An EU-wide exemption for cross-border telework is scheduled to take effect on July 1, 2023. The Commission has initially proposed 49.9% as the maximum limit, but it is very likely that the final conditions will eventually be approved in a modified form. We will inform you in this regard as soon as there are new details.

If you have any questions, we are happy to help you.

Your AUDITOR Team

**ING. MARTIN KOHLÍK**  
Tax advisor  
T: +420 224 800 449  
[martin.kohlik@auditor.eu](mailto:martin.kohlik@auditor.eu)

**ING. et ING. MARTIN STONIŠ**  
Tax advisor  
T: +420 224 800 433  
[martin.stonis@auditor.eu](mailto:martin.stonis@auditor.eu)