Rödl & Partner

NEWSLETTER CZECH REPUBLIC

Issue: March 2022

Information on Law, Taxes and Economics in the Czech Republic

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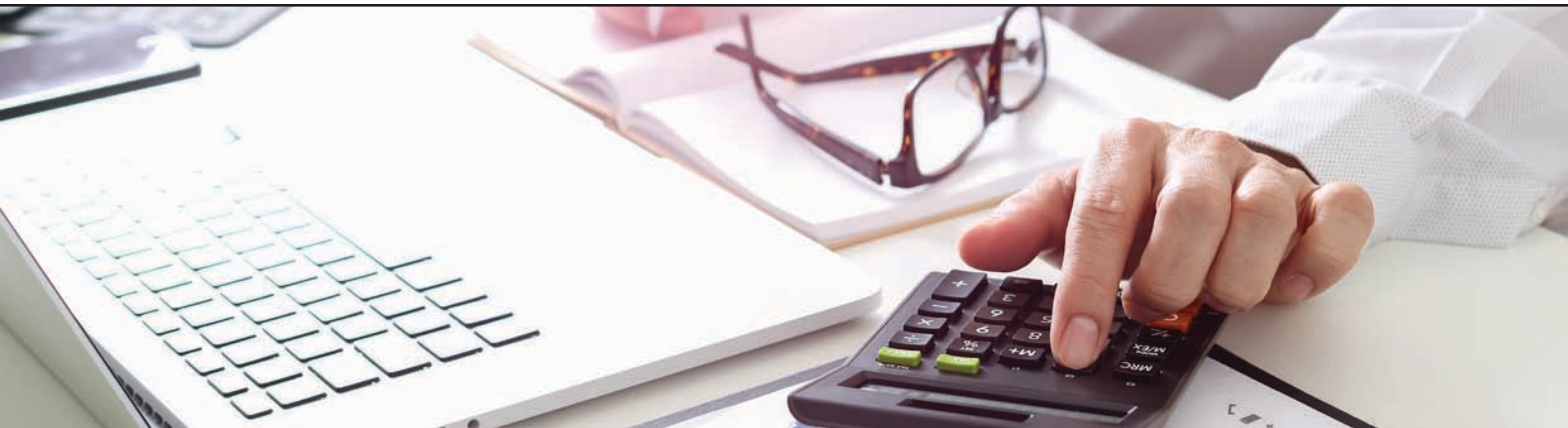

→ Law

Different region, different pay?

Recently, court decisions have attracted the general public's attention as they have addressed the issue of whether an employer may pay employees doing the same type of work different wages depending on the region in the Czech Republic that they work in. Read on to find out how the courts have ruled.

Václav Vlk
Rödl & Partner Prague

So what's this all about?

The basis of the lawsuit was the employee's demand that his employer pay him back wages. The employee argued that his colleagues, who did the same work as he did, were being paid more by their mutual employer because they worked in a different region of the Czech Republic. According to the employee, such conduct is contrary to s. 110(1) of the Labour Code, according to which "all employees are entitled to the same wage for the same work or for work of equal value". Same work or work of equal value is defined as "work of equal or comparable complexity, responsibility and exertion, performed under equal or comparable working conditions, with equal or comparable work performance and results" (s. 110(2) of the Labour Code). Working conditions are assessed "depending on the complexity of the working schedules due to the distribution of working time, for example, in shifts, rest days, night work or overtime, depending on the harmfulness or difficulty due to the effects of other negative influences in the working environment and depending on the hazards the working environment" (s. 110(4) of the Labour Code). The employer justified its action on the grounds that the employees' costs of living in different regions are not the same and that it is therefore fair for their wages to reflect the differences in those costs.

The courts have ruled: Equal pay for equal work. Everywhere.

So how did the Supreme Court rule?

After concluding from the evidence produced that the content of the applicant's work was essentially the same as that of his colleagues in other regions, the courts held that the employer's conduct was contrary to the law. In its judgment of 20 July 2020, Case No. 21 Cdo 3955/2018, the Supreme Court emphasised that "from the point of view of the principle of equal remuneration under the provisions of s. 110 of the Labour Code, the socio-economic conditions and the corresponding level of the cost of living in the place where the employee performs work for the employer on the basis of an employment contract are not relevant to the assessment of whether the work is the same or of equal value in a particular case".

And what does the Constitutional Court say on the topic?

The employer turned to the Constitutional Court, but to no avail. The Constitutional Court also sided with the employee. In its ruling of 31 August 2021, Case no. I. ÚS 2820/20, it stated that "it is primarily the legislator's task to reflect the functioning of

the labour market and socio-economic differences between regions (and differences in real wage levels), and that it is not the task of the general courts or the Constitutional Court”. If the legislator considers that the legislation should “also take into account, in an appropriate manner, the socio-economic differences between regions and their impact on the development of the labour market [...] nothing prevents it (if it finds sufficient political consensus to do so) from adopting such legislation”.

Where does this leave us?

Current legislation does not give employers the right to grant different wages to employees who perform the same work for him, but who work in different regions of the Czech Republic, on the grounds that the cost of living in the regions differs or that the situation on the labour market requires such different treatment.

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→ Taxes

Information from the General Financial Directorate on the procedure for claiming tax losses

In December 2021, the General Financial Directorate of the Czech Republic issued information on the application of a special provision on claiming tax losses as an item deductible from the tax base in accordance with s. 38zh of Act 586/1992 Sb., on Income Taxes, as amended.

Robert Němeček, Filip Straka
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This seemingly relatively short provision, comprising a total of 3 sentences, which was incorporated into the above-mentioned legislation by a long-awaited amending bill, introduced, with effect from 1 July 2020, the legal fiction of the date of filing an additional income tax return in which the taxpayer claims a tax loss as a deductible item from the tax base in situations where the date of filing such supplementary tax return precedes the final assessment of the relevant tax loss. By means of this legal fiction, the additional tax return is in principle deemed to have been filed on the same day as the final assessment of the tax loss claimed by the taxpayer. There is therefore essentially a time shift.

In practice, this will basically apply to the situation where the taxpayer wishes to claim the tax loss immediately after filing the tax return on the basis of which the tax loss was incurred against the positive tax base reported in another tax year, namely through an additional tax return. However, since the claiming of the tax loss as a tax deductible item is conditional on the final assessment of the tax loss by the tax authority, the aforementioned legal fiction has been introduced by means of the aforementioned provision. Such legal fiction effectively shifts the date of filing the additional tax return, shifting it to the date of the final assessment of the tax loss. The additional tax return is therefore deemed to have been filed on that date. The date shown on the form is disregarded for these purposes, thereby eliminating the risk of possible penalties.

The possibility to use this seemingly taxpayer-friendly tool is limited to tax years ending on or after 30 June 2020. This is due to the effective date of the related amending bill to the Income Tax Act. At the same time, we would like to point out that this provision also broadens the concept of inadmissible submissions as set forth in Act 280/2009 Sb., Code of Tax Procedure, as amended. For example, additional tax returns filed during the period from the date of filing the first additional tax return (meaning the additional tax return in which

the tax loss is retroactively claimed) to the date of the final determination of the tax loss by the tax authority will be considered inadmissible, while the data from such tax return may concurrently be used for supplementary tax assessments.

Despite this possibility provided for in law, it is of course still possible to proceed in this area as if the above provision had not yet come into force, namely to voluntarily claim the tax loss as a deductible item from the tax base only after the final assessment of the tax loss. If you decide to use the procedure under s. 38zh, we recommend examining this area of tax law in greater detail.

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→ Taxes

Does the price determined by an expert opinion include VAT?

The answer to this question can be found in new documents published by the Ministry of Finance. The Ministry tries to answer basic questions about prices determined according to the Act on the Valuation of Property.

The Valuation of Property Act does not regulate VAT. It is therefore up to each individual expert to decide whether their expert opinion on transfer price will be inferred from prices including VAT or prices excluding VAT. The expert should, however, never compare prices including VAT with prices excluding VAT. So the transfer price is determined at the expert's discretion. The same applies to market value. Here too, it is up to the expert whether or not to take VAT into account.

Things are different when it comes to prices determined under the Valuation Ordinance, for which the case law of the Supreme Administrative Court states that they should always exclude VAT. It also follows that all basic prices mentioned in the Valuation Ordinance are prices excluding VAT, since these prices constitute the basis for determining the observed price.

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→ Taxes

Does VAT apply to fines for non-compliance of car park rules?

Recent CJEU case law is moving towards extending the application of VAT to payments which at first glance may seem to be more of a punitive nature. So does VAT apply to a charge levied by a car park operator when its customers break the rules it has laid down? The Court of Justice of the European Union dealt with this very situation in its recent judgment C-90/20 Apcoa Parking Danmark A/S.

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Danish-based Apcoa Parking operates car parks on private land on a commercial basis. It charges customers a fee for using the parking facility, with the amount of the fee being based on the length of time the customer has left their vehicle in the parking facility. Customers are obliged to comply with the rules set by the car park when parking; for example, not to park the vehicle outside the designated space, to respect the maximum parking time, to place the parking ticket in the vehicle in the prescribed manner, etc. If a customer breaks any of the rules, the customer is additionally charged a fixed fee for such violation. It was this fee for non-compliance with the rules that was the subject of a dispute between Apcoa Parking, which felt that the fee was not subject to VAT, and the tax authority, which considered the fee to be consideration for the parking service provided.

In its decision, the Court of Justice of the European Union pointed out that one of the basic conditions for a supply to be subject to VAT is the existence of a legal relationship between the parties on the basis of which the supply is rendered and, at the same time, that the supply must be rendered for consideration which is directly related to it. In the present case, the legal relationship between Apcoa Parking and its customers is based on the provision of parking for which the customer pays. The CJEU further concluded that the payment of a fee for a breach of the terms and conditions stipulated by the car park did in fact constitute part of the consideration for the provision of parking, since by accepting the terms and conditions of the car park the customer has also accepted the fact that a fee could be charged for a breach of the car park rules. It seems likely, therefore, that this fee is directly related to the parking service, since without the provision of that service the fee could not have been charged in the first place. In such a case, therefore, the charge forms an integral part of the price which the customer has undertaken to pay and is therefore subject to VAT. The Court of Justice of the European Union also held that the fact that the charge in question is regarded as a penalty under Danish national law does not alter in any way the validity of the above arguments.

> Penalties may be subject to VAT if they are directly related to the performance rendered.

The CJEU's decision does not depart from previous case law dealing with penalties such as liquidated damages, severance pay or damages. If you charge your customers any penalties, fines or fees of a similar nature, and if they are of a higher value, we recommend that you verify whether VAT applies to them. Our VAT specialists would be pleased to assist you.

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→ Taxes

The list of tax cooperation countries has been updated

On 20 January 2022, the Ministry of Finance of the Czech Republic published the current list of countries exchanging country-by-country reports in the Financial Bulletin in accordance with selected provisions of the Act 164/2013 Sb., on International Cooperation in Tax Administration, as amended. The Act constitutes the key norm regulating international cooperation in taxes, not only across the European Union, and has been amended several times since its adoption, given that this topic is becoming increasingly important. Most of these amendments have been adopted in order to make the system more transparent and efficient, and to accomplish full alignment with the legislation governing this area in relation to the United States of America.

Under this law, the Ministry of Finance of the Czech Republic is obliged to publish a list of treaty countries that have committed themselves to the automatic exchange of information and generally closer cooperation in tax issues.

The list, which is regularly updated by the Ministry of Finance every six months taking into regard the relevant changes, currently includes the following countries for reporting periods beginning on or after 1 January 2021:

Andorra, Anguilla, Argentina, Australia, Azerbaijan, Bahamas, Bahrain, Belize, Bermuda, Brazil, British Virgin Islands, Curaçao, China, Gibraltar, Guernsey, Hong Kong, Chile, India, Indonesia, Iceland, Japan, Jersey, South Africa, Cayman Islands, Canada, Qatar, Kazakhstan, Colombia, Republic of Korea, Costa Rica, Liechtenstein, Macau, Malaysia, Man, Mauritius, Mexico, Monaco, Nigeria, Norway, New Zealand, Oman, Panama, Pakistan, Peru, Russian Federation, San Marino, Saudi Arabia, Seychelles, Singapore, United Arab Emirates, United States of America, Switzerland, Turkey, Turks and Caicos Islands, Uruguay, United Kingdom Uruguay.

The official list replaces in its entirety the one last published by the Czech Finance Ministry on 22 December 2021, and remains in effect as amended until further notice. In addition to expansions related to newly concluded treaties, the list may also be narrowed, typically when a treaty country ceases to meet a key condition for international cooperation.

In addition to the list of countries mentioned above, all EU Member States, including the Czech Republic, are automatically included among the countries that are obliged to cooperate to a given extent under the legislation.

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→ Taxes

New EU directive draft aimed at shell entities

At the end of 2021, the European Commission published a draft directive targeting companies without sufficient economic substance. The draft legislation should make it more difficult for these and similar entities with a tax residence in the European Union to benefit from double taxation treaties and European legislation.

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According to the latest draft, this directive will mainly affect those companies that will be considered shell entities from a tax perspective. Such companies, which will also be subject to the automatic exchange of information between the individual member states of the European Union, or their tax administrations, will be entities that meet certain criteria. Such criteria are expected to be, in particular, the structure of turnover and assets, the degree of participation in cross-border transactions and the way they are managed. In the European Commission's view, the companies that are deemed to be such high-risk companies, which will be subject to certain reporting obligations, will be those entities that generate more than 75 per cent of their turnover from passive income, or whose asset structure is made up to the extent of more than 75 per cent of low-liquidity assets. At the same time, these will be companies whose management is outsourced and which are significantly involved in cross-border transactions.

Such entities will have a reporting obligation to their tax administration, which will consist of being required to prove that they have sufficient economic substance. For these purposes, the company should be able to provide evidence, together with its tax return, that it has premises at the location where its economic activity is actually carried out. This means, among other things, that the manager, or other responsible person, or other employees, if any, are actually physically present in those rented or owned premises when carrying out their work. One of the important prerequisites is the need to have a bank account in an EU country.

If an entity falls within any of the above criteria and at the same time is unable to meet the burden of proof towards its tax authority in proving sufficient economic substance, it will be seen as a shell entity throughout the entire EU. In principle, this may represent a significant obstacle for such a company to enjoy the benefits it had enjoyed to date under the double taxation treaties in force, which may ultimately translate into a disproportionately higher level of taxation for the entity. If such an entity also fails to comply with the notification obligation or any other related obligation under this legislation, it can be assumed that the last resort will be a penalty the size of which will most likely depend on the turnover achieved.

According to the information available so far, it seems that the envisaged entry into force of the described legislation is early 2024. However, a number of steps still have to precede its full adoption, the most important one being the approval of the submitted draft in the present wording. At the same time, it can be assumed that in the future the European Commission will in some way also focus its attention on shell entities based outside the European Union.

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→ Economics

A new alternative for financial statement disclosure in practice

"New" provision s. 21b(2) has been in place under the Accounting Act for more than a year, but only now has it become possible to actually make use of it in practice. Let us therefore take another look at what this provision offers.

Ladislav Čížek
Rödl Partner Prague

The aforementioned new provision of the Accounting Act gives reporting entities that are business corporations, and are not already doing this through the CNB, the option to publish (disclose) their financial statements in the Collection of Documents by filing them with the tax authority. A reporting entity that takes advantage of the above-described option will not need to make duplicate submissions of the same financial statements. It will not need to separately file its tax return (together with its financial statements as an integral part of the submitted tax return) and concurrently submit its financial statements directly to the Commercial Register as a separate filing designated for the Collection of Documents. Under the new option, it will suffice if a company files its tax return with the tax authority together with its complete financial statements as an attachment, and the tax authority will ensure that the financial statements are published in the Collection of Documents. Many companies will be thereby relieved of the administrative burden associated with having to send their financial statements to several public authorities at the same time.

> Many companies will be relieved of the administrative burden associated with having to send their financial statements to several public authorities at the same time.

The option to publish financial statements by filing them with the tax authority (together with the tax return) has been in the Accounting Act since the beginning of 2021. However, in accordance with the transitional provisions applicable to this provision, it was not possible to use the provision earlier than for the accounting period of the calendar year 2021 – i.e. now – when filing a tax return.

However, it should also be noted that this alternative for publishing financial statements is not suitable for all business corporations. If they have a legal obligation to have their financial statements audited, this disclosure method can no longer be used to meet all the legal disclosure requirements. Only the financial statements themselves can be published through the tax authorities – without the annual report and without the auditor's report. Since both the auditor's report and the annual report are mandatory disclosures (s. 21a of the Act on Accounting), the advantage of a single filing is lost.

In connection with the publication (disclosure) of financial statements, it is worth reminding our readers of the amended s. 18(1) of Government Regulation 351/2013 Sb., which is effective as of 1 February 2021 and which states that documents that are sent to the Commercial Register (for example, financial statements, auditor's report, annual report), if sent in a Portable Document Format (PDF extension), must contain a so-called text layer or must be in Extensible Hypertext Markup Language format (XHTML extension). A text layer means (stated in simplified terms) that the PDF in question is automatically searchable (technically, the document contains automatically readable text, not just a scanned document).

> Now only in Portable Document Format (PDF extension) with so-called text layer or in Extensible Hypertext Markup Language format (XHTML extension)

If you have any questions about the relevant obligations, the process or the publication format, we would be glad to be of assistance.

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