Rödl & Partner

NEWSLETTER CZECH REPUBLIC

Issue: June 2022

Information on Law, Taxes and Economics in the Czech Republic

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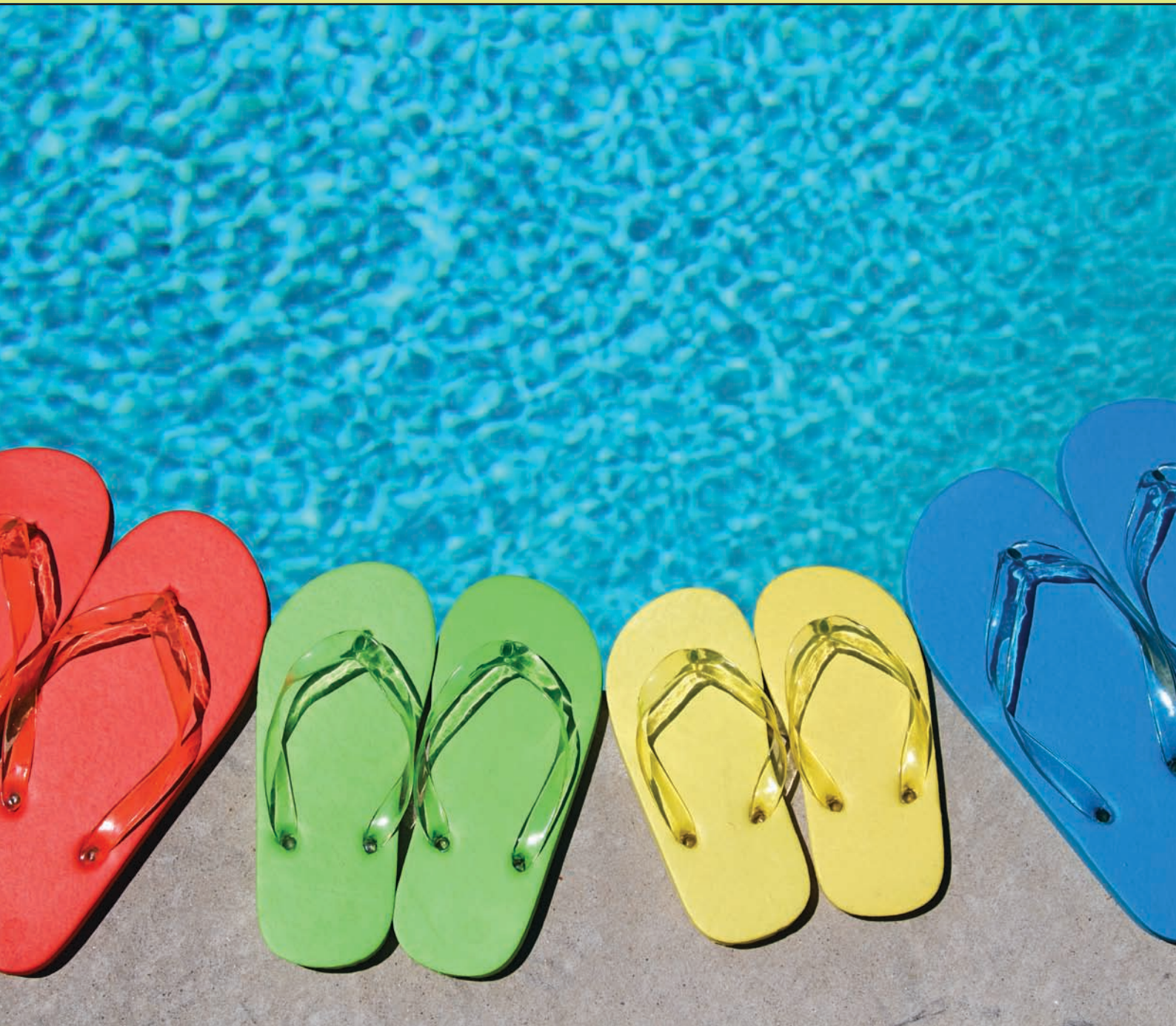

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Content:

→ Law

What's up with the amendment to the Copyright Act?

According to the EU Copyright Directive (European Directive on Copyright in the Digital Single Market No. 2019/790), the Czech Republic and all other EU Member States were obliged to transpose the Directive into their legal system by 7 June 2021 at the latest. The Czech Republic did not meet this deadline. What is the state of the transposition process today and what can we expect from the new legislation?

Lucie Brostíková
Rödl & Partner Prague

Transposition of the EU Copyright Directive into Czech law

The previous Government's efforts to approve the transposition of the EU Copyright Directive were not successful. Nevertheless, in November 2021, the Government managed to submit to the Chamber of Deputies of the Parliament of the Czech Republic a draft amendment to the Copyright Act[1] which takes into account the transposition of the EU Directive. The Chamber of Deputies endorsed the proposal in March 2022 and it is now up to the Science, Education, Culture, Youth and Sports Committee to debate and comment on the bill. There are a number of amendments to the amendment on the table and it is therefore still a question of what the final form of the amended law will be. Further information could be available in June 2022 There are a number of amendments to the amendment on the table and it remains to be seen what the final form of the amended law will be. Further information could be available in June 2022.

The Czech Republic has failed to meet the 7 June 2021 deadline for transposition of the EU Copyright Directive but the legislative process has at least begun.

What should the amendment to the Copyright Act bring?

Copyright law can look forward to more changes. The main ones include, among others, the creation of new obligations for providers of online content sharing services. In practice, this means that information society service providers[2] will be obliged to pay royalties to authors of downloaded content. The aim of the change is to ensure proper licensing of rights on the internet and to provide authors with greater protection for their works. It's now quite common for people to copy and use other authors' content and to link their own advertising (or other monetization) to their content without the authors receiving any royalties for such use of their works. However, it is not clear from the proposed amendment to the Copyright Act what negotiations between the entities regarding royalties should look like in the future, and this topic can be expected to be the subject of further debate.

Another interesting change is the extension of the types of statutory licences. There will be a statutory licence for caricature, parody and pastiche[3], for digital teaching[4] or for reproducing works for the purposes of automated text and data analysis[5] (text and data mining).

But there are many more changes in the pipeline. Contact us if you want a comprehensive overview of what changes in copyright law will affect you and your business.

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1 Act 121/2000 Sb., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts.
2 The specific scope of these providers is not yet clearly identifiable under the proposed amendment, as the draft wording of s. 87b of the Copyright Act is rather vague in this respect. However, it is likely that these will include, among others, multinational companies such as Google, Meta, etc.
3 Proposed provisions of s. 38g of the Copyright Act.
4 Proposed provisions of s. 31a of the Copyright Act.
5 Proposed provisions of s. 39c of the Copyright Act.

→ Law

End of the point system for occupational injury compensation?

Same injury, same health consequences, disproportionately lower compensation for personal injury for employees compared to other individuals. The Constitutional Court seeks to eliminate the inequality between compensation for injury under employment law and under general civil law.

Thomas Britz
Rödl & Partner Prague

In principle, the Labour Code is considered to be a legal regulation which comprehensively regulates compensation for damage to property and personal injury incurred in the performance of work tasks or in direct connection with it, including compensation for an employee in the event of a work accident or an occupational disease. Therefore, the Civil Code does not apply in the case of compensation for injury sustained as a result of an accident at work or occupational disease and an injury in a civil relationship is subject to different legal rules. Nonetheless, the different rules, including the method of determining the amount of compensation for personal injury, still create inequality between persons in comparable situations.

The Decree of the Ministry of Health on compensation for pain and social impairment ("Compensation Decree") was in force until the end of 2013. It regulated the amount of compensation for personal injury without distinguishing whether the injury or illness occurred in connection with the performance of work tasks. However, the new Civil Code repealed this Decree and the method of calculating compensation as set forth in employment law diverged from how it was calculated in the civil law regulation. In response to the repealed Decree, the Civil and Commercial Law Collegium of the Supreme Court adopted the Supreme Court Methodology for Compensation for Personal Injury, which was developed by the Supreme Court together with the Medical Law Society and representatives of insurers and other legal and medical professions. Although it is not binding legislation, the Supreme Court urges judges to follow the Methodology, as it is a comprehensive and sufficiently detailed basis that attempts to reflect all factors that should be considered in determining the amount of compensation, and also reflects the current economic situation by incorporating gross monthly nominal wages into the resulting amount.

Constitutional Court paves the way for higher compensation for work injuries and occupational diseases.

With regard to employment law and thus, inter alia, compensation for injuries caused by a work accident or an occupational disease, the Ministry of Labour and Social Affairs rejected the Supreme Court's Methodology. Instead, the government issued Decree No. 276/2015 for compensation for pain and social impairment caused by a work accident or an occupational disease, which conceptually reverts to the repealed Compensation Decree. The decree sets out the method of calculating compensation for injury in a points-based manner. A number of points is set for each injury caused by a work accident or occupational disease, which reflects the severity of the injury. One point is equal to a fixed amount of CZK 250. This is binding legislation and the amount of compensation calculated in accordance with the regulation is the minimum amount to be awarded to the injured party.

In its judgment of 2021, file No. II ÚS 2925/20, the Constitutional Court dealt with a complaint lodged by an employee who sought compensation for social impairment before the ordinary courts. Although the injury had occurred in the performance of his work tasks, the employee claimed the right to compensation under Section 2958 of the Civil Code. The amount of the compensation was quantified by a medical report drawn up on the basis of the Methodology of the Supreme Court as exceeding CZK 700,000. The ordinary courts, however, concluded that the case was an accident at work and that the amount of compensation could therefore not be calculated in the manner laid down in the Supreme Court's Methodology, but that it was necessary to apply the government decree and its point-based method of calculation. In doing so, the ordinary courts awarded the employee compensation for social impairment in the amount of only CZK 175,000.

The Constitutional Court considers the significant disproportion between the amount of the compensation for injury resulting from the application of different methods of calculation to be unconstitutional. In the present case, the principle of equality under Article 1(1) of the Charter of Fundamental Rights and Freedoms has been violated. There is no legitimate reason to justify treating an employee differently from persons who have suffered a comparable injury but which is not classified as a work accident or an occupational disease.

In view of the above-mentioned finding of the Constitutional Court, the ordinary courts are required in future to award the injured employee compensation for personal injury at least at the level which he would have received under civil law given the circumstances. This conclusion places a significantly higher financial burden on the employer. This could lead to employers making greater efforts towards occupational safety and health to prevent work accidents and occupational diseases.

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→ Taxes

The decision to waive VAT on energy will be reviewed

The Minister of Finance has ordered a review of the decision to waive VAT on electricity and gas supplies in November and December 2021. The decision was originally issued by former Finance Minister Alena Schillerová. The review will focus on examining whether the significant increase in energy prices at the end of last year can objectively be considered an extraordinary event that would justify the issuance of a general pardon. The Tax Administration has stated on its website that the launch of the review procedure has no impact on the rights and obligations of the VAT payers affected by the general pardon, i.e. that the review does not in itself imply any obligation to make any retroactive payments at this point in time. Nevertheless, we recommend monitoring the effects of the review decision. If the effects of the review decision are retroactive, disputes may arise as to whether the VAT remitted should be paid.

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→ Taxes

Proposed tax changes in income tax and value added tax

The Government's bill introduces generally positive changes for taxpayers, particularly by extending the application of extraordinary tax depreciation of tangible property, increasing the limit for compulsory registration of value added tax payers and increasing the income limit for the flat-rate tax scheme.

Michal Klečka, Jan Holeček
Rödl & Partner Prague

In line with the Government's Programme Statement, the Ministry of Finance has prepared a bill proposing amendments to the Income Tax Act, the Value Added Tax Act and related regulations. The bill is currently in the legislative process, so it cannot be ruled out that its wording will be amended.

The main changes contained in the individual amendments, which are expected to come into force on 1 January 2023, are presented in more detail below.

Extraordinary tax depreciation also applies to 2022 and 2023

Under current legislation, taxpayers could apply extraordinary tax depreciation for tangible assets classified in the first or second depreciation group in the period from 1 January 2020 to 31 December 2021. If the bill is adopted, the same would apply in the period from 1 January 2022 to 31 December 2023.

In this context, it should be reiterated that the taxpayer applying the extraordinary depreciation must be the first depreciator of the assets. The extraordinary depreciation is determined to the nearest whole month and therefore cannot be interrupted. At the same time, technical improvements made to tangible assets under the extraordinary depreciation scheme do not increase the entry price of the asset, but are depreciated as separate tangible assets.

Changes to value added tax

The proposed amendment should increase the turnover limit for compulsory registration of value added tax payers from CZK 1 million to CZK 2 million. The methodology for determining the taxpayer's turnover remains unchanged.

In addition thereto, the Government proposes to halve the fine for failure to file a recapitulative statement for taxpayers who are natural persons and limited liability companies with a natural person as the sole owner. The deadline for taxpayers to respond to the tax authority's request to amend, supplement or confirm the information provided in the recapitulative statement should also be extended from 5 to 17 days. However, this extension of the deadline only applies to notices delivered to taxpayers' data boxes. In all other cases of service, the original 5-day deadline for the submission of the subsequent recapitulative statement remains.

Increase of income limit for the flat-rate tax scheme from 1 January 2023

With reference to the adjustment of the limit for compulsory registration of value added tax payers, the Government proposes to increase the threshold of income from self-employment for entry into the flat-rate tax scheme. Three new categories should be introduced, depending on the amount of income and the type of income, or the possibility of applying a flat-rate expenditure. The table below shows the limits for the individual flat-rate tax zones.

	Income * regardless	Income* if at least 75% of income is income where a flat rate of 60% or 80% can be applied	Income* if at least 75% of income is income where a flat rate of 80% can be applied	Monthly advance payment for flat-rate tax 2023
Zone 1	CZK 1 million	CZK 1.5 million	CZK 2 million	CZK 6,500 **
Zone 2	CZK 1.5 million	CZK 2 million	–	CZK 16,000
Zone 3	CZK 2 million	–	–	CZK 26,000

* Income from self-employment

** This is an approximate amount, as the minimum contribution to health and pension insurance changes according to the average gross wage in the Czech Republic

The conditions for taxpayers to participate in the flat-rate tax scheme remain unchanged. Thus, the taxpayer must not have income from employment, except for income subject to withholding tax, he must not be a payer of value added tax, he must not be a partner in a limited or general partnership, and all other income, income from rentals and income from capital assets must not exceed CZK 25,000.

Based on the transitional provisions, taxpayers may enter the flat-rate tax scheme for 2023 even if the application they submitted for cancellation of their VAT registration is not been decided by 31 December 2022. Up until now, if a taxpayer did not receive a decision on the cancellation of his VAT registration by 31 December, he could not apply the flat-rate scheme in the following year. Now for 2023, if a decision to cancel the taxpayer's VAT registration is notified by 16 January 2023, the flat-rate tax scheme can be used in 2023.

The taxpayer must file notification of his entering the flat-rate scheme using the form issued by the 10th day of the relevant tax year or by the date that he starts to work independently. To change the chosen zone (category) and the amount of the flat-rate tax, he must submit the relevant notification to the tax authority by the 10th day of the taxable period/the following taxable period.

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→ Taxes

VAT subsidiary of a parent company?

Pursuant to judgment C-333/20 Berlin Chemie of 7 April 2022, a parent company which has a subsidiary in another Member State does not have a VAT establishment in the State of residence of the subsidiary solely because that subsidiary allows it to use human and technical resources used exclusively for concluding sales contracts for the supply of products to the parent company in the State of residence of the subsidiary.

Klára Sauerová, Monika Páblová
Rödl & Partner Prague

German-based Berlin Chemie AG sold pharmaceutical products to wholesalers in Romania. For that purpose, it entered into a contract with its Romanian subsidiary, under which that subsidiary promoted its products in Romania, secured the necessary authorisations for the sale of the products, assisted in clinical trials and other research, and also took orders from Romanian wholesalers, which it forwarded to the German company and then sent invoices issued by the German company to those wholesalers. The subsidiary did not provide any services to third parties.

The Romanian subsidiary invoiced the services net of VAT because it was of the opinion that the place of supply was Germany, where Berlin Chemie AG had its place of business. However, the Romanian tax authority considered that the German company had a permanent establishment in its Romanian subsidiary because it had immediate and permanent access to its technical and human resources, and therefore the place of supply should be in Romania.

The court did not rule out that a subsidiary may, under certain conditions, be a permanent establishment of the parent company.

Although it may be that the subsidiary is a permanent establishment of its parent company, that fact alone is not sufficient to conclude that the German company has a permanent establishment in Romania. According to Article 11 of the VAT Directive, a permanent establishment must, in particular, be characterised by a sufficient level of permanence and an appropriate structure of technical and human resources to enable it to receive and use the services supplied to it for its own purposes. The existence of an appropriate structure must be ensured in the light of economic and commercial reality and it is therefore not required that, in this case, the German company owns the technical and human resources in question, but what is necessary is that it can dispose of them as if it owned them (for example, on the basis of a lease or service contract which cannot be terminated at short notice).

Since the resources which, according to the Romanian tax authority, give rise to VAT on the establishment are also resources which the Romanian subsidiary uses to provide services to the German parent company, the court concluded that the German company does not have an establishment in Romania, since the same resources cannot be used to provide and receive the same services at the same time. Thus, the German company does not have the infrastructure in Romania that would enable it to receive the services provided by the Romanian company there and to use them for its economic purposes.

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→ Taxes

CNB has a new governor – how will this affect intra-group transactions?

The election of a new Governor of the Czech National Bank will most likely stabilise interest rates. This will of course have various economic impacts and will also affect related party relationships - intra-group financing in particular.

Martin Koldinský
Rödl & Partner Prague

Aleš Michl was elected the new head of the Czech National Bank on 11 May 2022. He was a member of the Bank Board and strongly opposed interest rate increases. What impact will the change in the CNB's leadership have on related party relationships and intra-group transactions?

It is clear that, given Aleš Michl's previous view on raising interest rates, we can expect them to stabilise at the level to which the old Bank Board will move them in June, when it is very likely that they will rise further, especially in view of the exceptionally high inflation. We are then unlikely to see further interest rate rises in the near future. A possible halt in the rise in interest rates will of course also impact relations between related parties, which should react accordingly. This will particularly affect those companies which, as lenders or borrowers, are involved in intra-group financial transactions and have so far not reacted to interest rate increases (although they should have) and have been waiting for further developments or a stabilisation of the situation. Such stabilisation seems to be around the corner and the waiting strategy will no longer be cool or even economically defensible. Companies involved in intra-group financial transactions should therefore assess the situation and adjust (in most cases increase) interest rates to reflect the current level of base interest rates announced by the Czech National Bank. It should be noted that the base rates announced should be further adjusted to reflect the specific risks associated with a particular situation. The resulting applied interest rate will thus be even higher in most cases. We should add that the high rates announced by the CNB are significantly higher than the base EUR rates announced by the ECB. When it comes to euro-based intra-group financing in euro, detailed attention should be paid to which interest rates are to be applied.

Another area that will generally be affected because of the new head of the CNB from a transfer pricing perspective is the exchange rate of the koruna, although we expect rather short-term fluctuations and a subsequent stabilisation of the exchange rate. Moreover, even short-term fluctuations in exchange rates may affect companies carrying out transactions with related parties in foreign currencies that are not hedged against this risk (whether naturally or managed) and for which a tax authority could examine whether the Czech companies had the opportunity to hedge against exchange rate effects or whether this area was coordinated with the group.

These and other transfer pricing issues are constantly monitored by Rödl & Partner and, should the need arise, we are available to assess the specific risks you may face.

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