Rödl & Partner

# NEWSLETTER CZECH REPUBLIC

Issue: September 2022

Information on Law, Taxes and Economics in the Czech Republic

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# Is a freight forwarder a postal service operator?

Ever since 1 January 2013, the effective date of an amending bill to the Postal Services Act, freight forwarders engaged in parcel delivery have been pondering as to whether they are liable to the applicable provisions of the Postal Service Act. So far, rulings of the Supreme Administrative Court did not shed much light on the issue. The most recent judgment of the SAC now finally resolves the matter and sets the record straight in respect to its previous inconclusive decisions.

Alice Kubová Bártková
Rödl & Partner Prague

On 14 September 2021, a grand panel of the Supreme Administrative Court awarded a judgment that clearly specified whether and under what conditions freight forwarders who provide parcel delivery services are liable to the Postal Services Act.

The court found that the Postal Services Act applies to all providers of postal services rather than just to postal license holders. Postal service is any activity that falls within the statutory scope of a postal contract, such as a delivery of a postal packet or cash amount from the post collection point in the agreed manner to the recipient at the indicated address. Postal packet is defined as a consignment marked with an address in the final form intended for delivery by postal operator; a postal packet also includes a postal parcel. Postal operator provides one or more of the following services: collection, sorting and transportation of postal packets. The mere transport of postal packets does not amount to a postal service unless it is performed by an entity who simultaneously collected, sorted or delivered the postal packet. It may therefore be inferred from the judgment that even freight forwarders who provide postal services as defined in the Postal Services Act (i.e. provide at least one of the foregoing services with respect to a consignment marked with an address in the final form) are liable to the Postal Services Act and act as postal operators. Interestingly enough, the judgment does not restrict the weight of such a postal packet. In reference to the Postal Services Act we would venture to suggest that the weight of such packet should be limited to 10 kg, but CAS does not address this matter directly. But the SAC remanded the case to the Metropolitan Court with instructions to also resolve the matter of the weight of the postal parcel within the context of the dispute at hand.

A freight forwarder may also act as postal operator. Transport alone is not a postal service.

This means that insofar as the freight forwarder provides postal services with respect to a consignment marked with an address in the final form, he is liable to the duties and obligations laid down in the Postal Services Act, including the obligation to register with the Czech Telecommunication Office under S. 18 of the Postal Services Act. Failing that, he may have to pay rather substantial fines. If a freight forwarder did not satisfy the duty in the period preceding the SAC judgment quoted above, he still may use the reasoning of the judgment to defend against the sanctions. But failing on the obligation after the date of the judgment continues to expose the freight forwarders to the risks mentioned above.

A freight forwarder providing postal services must also satisfy some other obligations arising under the Postal Services Act, such as the obligation to enter into a contract with anyone who is interested in making such contract under the terms and in the manner laid down in the Postal Services Act, or the obligation to publish the postal terms in each establishment and make them available by remote access. The freight forwarder must also fulfil the Czech Telecommunication Office's request for information under S. 32 of the Postal Services Act.

The Postal Service Act also stipulates special rules for opening postal packets, customer complaints, disposal rights, secrecy of correspondence and so forth. The freight forwarders are therefore expected to modify their internal rules and the postal terms accordingly.

On the other hand, such freight forwarders may benefit from some of the advantages related to the status of a postal operator. These include lower liability limits, a broader range of defences that relieve them of liability and so forth. The relevant services should also be properly set up and the associated postal terms adjusted.

Some freight forwarders may also wish to avail themselves of the opportunity, as postal operators, to enter into a so-called access agreement with Czech Post in order to obtain access to postal infrastructure.

Our advisors will gladly assist you to register with CTO, to draft the postal terms and to discharge your other obligations or exercise your rights under the Postal Services Act. We are also experienced in representing clients before CTO and courts when it comes to defending against fines for a breach of Postal Services Act or for a failure to register. We can also assist you in negotiating insurance cover for services liable to Postal Services Act; the normal insurance coverage used by freight forwarders usually do not extend to this type of liability.

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→ Taxes

# Tax deductibility of the costs of meals during a business trip

The tax deductibility of the costs of employee meals during business trips, in-house events and events for business partners was discussed with representatives of the tax administration in Coordination Committee No. 593/18.5.22.

Michael Pleva, Paulína Kesziová
Rödl & Partner Prague

Meals during business trips

The Income Tax Act does not explicitly address the tax deductibility of the costs of meals provided by the employer to employees during business trips and assignments outside the regular workplace, provided that such meals are provided free of charge and not in the usual form of travel reimbursement. Therefore, in their submission, the drafters sought to clarify the tax treatment of cases in which an employee is provided with meals in the form of lunch or dinner free of charge during a business trip, training or customer event.

The tax deductibility of similar expenses is explicitly addressed only in GFD Instruction D-22, according to which the cost of meals provided during training may be considered tax deductible. The Income Tax Act also does not restrict the deductibility of other costs related to business trips or trips away from the regular workplace, such as accommodation or transportation costs, where it is entirely at the discretion of the employer as to

the quality of the hotel in which the employee will be accommodated or the convenience of the mode of transportation used.

In the submission under discussion, the GFD agreed with the author's view that the cost of providing meals to employees on a business trip or on a trip outside the regular workplace provided in accordance with the Labour Code is a tax deductible expense.

This specifically concerns meals served for breakfast, lunch or dinner (e.g. served menus, to-go packages, free buffet, etc.). However, the taxpayer needs to prove that such costs are justified. In other words, the taxpayer needs to establish that the meals provided are not unreasonable given the circumstances of the business trip and that they do not constitute disguised remuneration of employees.

Furthermore, the GFD confirmed that employee income in the form of meals provided free of charge and paid for by the employer while the employee is on a business trip or a trip away from the regular workplace is not taxable.

In view of the conclusions of the Coordination Committee, we recommend a review of the internal rules on business trips and its tax treatment. We would like to point out that if employees are provided with meals while on a business trip, the employer must deduct the statutory meal allowance paid to employees.

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→ Taxes

# Special increase in domestic travel catering rates

In response to ongoing inflation pressures, the Ministry of Labor and Social Affairs has increased the domestic travel catering and average fuel price rates used to calculate reimbursable travel expenses effective from 20 August 2022.

After 20 August 2022, the official catering rates are:

- CZK 120 for business trips that last from 5 to 12 hours (the maximum amount exempt from tax is CZK 142)
- CZK 181 for business trips that last more than 12 hours but less than 18 hours (the maximum amount exempt from tax is CZK 219)
- CZK 284 for business trips that last more than 18 hours (the maximum amount exempt from tax is CZK 340)

For cars, the basic compensation for 1 litre of 98 octane gasoline has increased from CZK 40.50 to CZK 51.40.

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→ Taxes

# Rödl & Partner reclaims almost CZK 2 million for its client

One of our clients received a public aid to recover the extraordinary payroll costs sustained during to the COVID-19 pandemic. The aid was paid from the Government Antivirus Scheme.

Jakub Šotník
Rödl & Partner Prague

Regrettably, our client failed to satisfy all eligibility requirements, an unfortunate formal error that the tax authorities classified as a breach of budget discipline (a violation of conditions for the grant of aid). As a consequence, the tax authorities asked our client to refund the entire aid at the amount of almost 2 million Czech korunas.

The course of action adopted by tax authorities may appear justified and their insistence on a refund of the entire amount of aid reasonable. But when we took up the case on behalf of our client, we raised a vocal objection against the tax authorities' failure to account for the (im)materiality of the client's formal error, which made them decide unreasonably without view to the superficial nature of the violation. We also informed tax authorities about the settled case law of the Czech Supreme Administrative Court, neglected by the tax authority in making its decision, according to which public authorities must always account for the accomplishment of the purpose of the subsidy. As a result of our intervention, the appellate authority reduced the sanction to mere CZK 40 thousand; thus, we have managed to save our client almost CZK 2 million that it would otherwise had to pay as part of the sanctions imposed on him.

Although the conclusions presented in the tax authorities' decision may appear correct at first sight, it is not always so. Time and time again we find that the impeccable knowledge of the most recent case law and the ability to use it in practice in defence of our clients in their disputes with Czech tax authorities is the key to our success here at Rödl & Partner, as confirmed by the outcome of the cases such as the one described above.

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