

# Rödl & Partner

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## Whistleblowing! It's time to get ready.

Since the end of April this year, a legislative process has been underway in connection with the draft Whistleblower Protection Act, which is to implement the requirements of the 2019 European Whistleblowing Directive in the Czech Republic. After consideration by the government, the draft of this ground-breaking law is expected to be submitted for parliamentary debate and approval in the near future, with the new law coming into force on 1 July 2023.

Pavel Koukal  
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### Whistleblower Protection Bill

The Czech Republic is significantly behind schedule in adopting comprehensive legislation on internal whistleblowing and whistleblower protection, which was supposed to be done by 17 December 2021 at the latest. According to the bill, it will be possible to report violations through several channels, with the internal whistleblowing system playing the primary role. Under the bill, selected entities are obliged to implement an internal whistleblowing system. What's crucial is that every employer who employs an average of at least 50 employees will be subject to the obligation.

Under the internal whistleblowing system, the obliged entity must ensure compliance with a number of legal obligations. These include, in particular, the obligation to designate a so-called competent person to exercise the rights and duties in relation to the receipt of the notification and the assessment of its validity, the obligation to ensure that organisational arrangements are in place for the submission of the notification, and the obligation to inform the notifier of the progress and results of the assessment of the validity of the notification by the competent person.

Violations of the obligations under the Whistleblower Protection Act are also linked to liability for offences under the Act, as offences committed by the obliged entity may be subject to a fine of up to CZK 1 million or 5 per cent of net turnover in the most serious cases.

Get ready in time for the introduction of the internal whistleblowing system

Although it now appears that the effective date of the Whistleblower Protection Act is still relatively far away, this is not the case and it is high time you prepare for the upcoming obligations related to the introduction of the internal whistleblowing system and whistleblower protection.

This is because the introduction of an internal whistleblowing system involves a number of legal, organisational and technical issues and tasks that need to be planned and secured in good time. In this respect, in particular, the question of how the internal whistleblowing system will be conceived, i.e. how the means and methods of notification will be set up (technological platform, secure e-mail, etc.), how the activities of the competent person will be organised and technically ensured, and how issues related to the processing of personal data will be addressed.

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→ Law

## Registration of beneficial owners to change. Again.

On 1 October 2022, a mere 16 months after the new law on the registration of beneficial owners came into force, its first amendment came to see the light of day. The amendment changes, among other things, the very definition of a beneficial owner and expands the group of persons obliged to register a beneficial owner. Most of the changes are in response to criticism from the European Commission that the Czech Republic has incorrectly implemented the so-called 5th AML Directive.

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The amendment no longer divides beneficial owners into persons with ultimate influence and ultimate beneficiaries. It does, however, refer to the beneficial owner as a general concept, redefining it in a broader sense than that embodied by current regulation. A new separate criterion for corporations (including all limited liability companies and stock companies) is also the size of the share in the registered capital, irrespective of the size of the share in voting rights or the size of the share in profits. This change is aimed in particular at companies that have a share in voting rights or a share in profits set at variance with the shareholder's contribution. The beneficial owner of a corporation is now also a natural person who exercises a decisive influence in a legal person that holds more than a 25 percent share in the recording person. This applies even if the legal person is only a minority shareholder of the recording person. These and other changes in the definition of beneficial owner lead to the concept becoming extensively formal, as a person who does not even have any effective influence on the recording person will in many cases be registered as a (material) beneficial owner.

Entities that according to the law have not had a beneficial owner until now, such as homeowners' associations, churches, trade unions and hunting associations, must now also register the beneficial owner.

A positive change brought on by the amendment is that it has expanded the scope of so-called automatic transcripts, and not only for persons who are newly obliged to register the beneficial owner.

We all remember how difficult it was to work with the beneficial owner registration system when the

new law was introduced in June last year. Things will be easier this time round as the legislator decided to take the registration system off line in October to bring it up to scratch with the amendment. The system will be on line again from 1 November 2022. Some changes will be made automatically by the system as they are more of a technical nature. These include adjustments to terminology and the implementation of automatic transcripts. Other changes that go hand in hand with the extension of the legal definition of beneficial owner are up to the recording persons to make. They need to file the relevant petition with the court or a notary.

Corporations that had a duly registered beneficial owner as of 1 October 2022, according to the regulation in force until 30 September 2022, have a transitional period until 1 April 2023 to review and possibly modify their registration. The same deadline is also available to corporations that have not yet had to register their beneficial owner.

Given the significant penalties associated with incorrect registration, we recommend you review your registration entries in light of the amendment and ensure that any necessary adjustments are made in a timely manner.

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→ Taxes

## Changes to compensation for home office

The Covid-19 pandemic has changed the home office concept. The result? Many many issues, including compensation for home office and the tax implications involved. Tax authorities say, yeah, heck, compensate, but in order to benefit from the tax-advantaged scheme, a proper calculation of compensation must be provided, which poses a practical problem.

It now appears that the amendment to the Czech Labour Code, which is under comment, should bring about a significant shift in home office compensation.

The Labour Code assumes that dependent work is performed at the employer's expense and so employees are entitled to compensation for working from home (i.e. home office). The proposed amendment is then intended to administratively simplify the cost reimbursement practice. Based on the data for 2021, compensation is set at CZK

2.80 per each home office hour. This applies to employers from the non-business sector. Employers from the entrepreneurial sphere can pay more.

The amendment to the Czech Labour Code also includes an amendment to the Income Tax Act, according to which compensation in the amount of CZK 2.80 per each home office hour is not subject to employment tax. Any compensation higher than that will be subject to employment tax and will touch on social security and health insurance contributions on the employee's and will constitute a tax expense on the employer's side.

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→ Taxes

## Tax updates

The Tax Administration has recently published information on its website regarding new tax developments. The most important ones are listed below.

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### Meal allowances

Effective 20 August 2022, the meal allowance for business trips lasting 5 to 12 hours has been increased and can now be up to CZK 142. The increase in meal allowances affects both travel allowances and meal voucher packages.

The Tax Administration has confirmed that employees can now receive a tax exempt meal allowance of up to CZK 99.40 per shift. The increase in the meal allowance may pose an optimal solution for employers when it comes to their wage policy, as contributions up to the above amount are

not subject to taxation on the part of the employee and are (if all statutory conditions are met) a tax deductible expense for the company.

### Low-emission vehicles

As we informed you in our summer newsletter, the Income Tax Act brings additional support for low-emission vehicles. If an employee can use a low-emission vehicle also for private purposes, their non-monetary income is now set at only 0.5% of the entry price of the car.

In this context, the Tax Administration has clarified what a low-emission vehicle actually is. According to the Tax Administration, a low-emission vehicle is as a Category M1, M2 or N1 road

vehicle which does not exceed the CO<sub>2</sub> emission limit of 50 g/km and 80 % of the emission limits for air pollutants in real traffic. Specifically, this should include battery electric vehicles (BEVs), fuel cell vehicles (hydrogen vehicles) and plug-in hybrids or extended range electric vehicles (E-REVs) meeting the above parameters.

Whether or not a vehicle meets the specifics can be ascertained from the vehicle's COC (Certification of Conformity) and vehicle registration certificate (long form), which contains emission-related information.

## CZK 5,000 one-off payment for children

The Czech Government has started paying out a one-off benefit in the amount of CZK 5,000 per child to families whose gross income last year was below CZK 1 million. The benefit is income that is exempt from tax and so will not be included in

employees' annual tax returns. People filing a tax return will also not have to report it.

The benefit will also not be included in the spouse's own income limit of CZK 68,000, which is the decisive amount for claiming a spouse's tax credit.

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→ Taxes

## Windfall tax

Not only in the Czech Republic has the current economic situation been affected by high inflation and the energy crisis. The situation is so very grave that the State has been forced to compensate vulnerable citizens and entrepreneurs.

The State is working towards finding adequate revenue sources for these compensations. And that's where windfall tax comes into the picture. Windfall tax has become a topic central not only to the Czech Republic and it is quite possible that a common EU regulation may be adopted.

Basically, windfall tax should not be a new kind of tax, it should be an addition to existing income tax.

Windfall tax is intended to be a temporary measure and should only apply to selected entities operating in an area which, given the current economic situation, make more (unexpected) profit. Companies engaged in energy and banking sectors are making bigger profits. Whether the Czech Republic will eventually see the introduction of windfall tax is still a question. We are of course monitoring the situation and will keep you informed.

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→ Taxes

## Rising demands for proof of advertising costs

The Supreme Administrative Court has yet again ruled on the tax deductibility of advertising costs and on the proof of advertising costs. The case described below spun around proof of advertising on LCD screens in shopping centres. The Court confirmed once again that tax entities must, at the tax authority's discretion, be able to prove that not only was an advertisement really placed, they must also be able to prove the declared extent of the advertising project.

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The prerequisite for bearing the burden of proof is the provision of formally impeccable documents or documentation that do not cause the tax authority to doubt their veracity. If the tax authority does have any doubts, the Supreme Administrative Court suggests that the key means taxpayers can use to prove (to the tax authority) the extent of the advertising services provided is, for example, through internal records kept by employees (or their testimonies or photographs with a time stamp) on the systematic and continuous review of the provision of advertising services at randomly determined intervals at various places where the advertisements are placed.

In the given case, the Supreme Administrative Court acknowledged the tax authority's assessment of a tax liability pertaining to a taxpayer who submitted distorted and incomplete evidence in order for his advertising costs to be recognised as tax-effective. Specifically, the taxpayer purchased advertising services from a supplier consisting of advertising spots being broadcast at specific time slots on LCD screens in shopping centres. The problem was that the supplier did not own the LCD screens and that it sub-contracted the job.

The discrepancy between the media plan and the actual extent of the allegedly supplied advertisements was what led the tax authority to question the formal evidence (media plan and subcontractor's statement) submitted by the taxpayer. You see the documentation submitted by the taxpayer showed that the supplier purchased fewer advertising spots from its subcontractors than it had invoiced the taxpayer.

Besides that, the tax authority was unable to contact most of the entities involved in the

advertising project and many of them were unable to provide further information on the extent of the project. Further evidence produced by the taxpayer included, in particular, images of LCD screens in shopping centres, expert reports and witness statements. Nonetheless, according to the tax authority, the evidence did not constitute relevant systematic documentation for the purpose of proving the extent of the advertising provided.

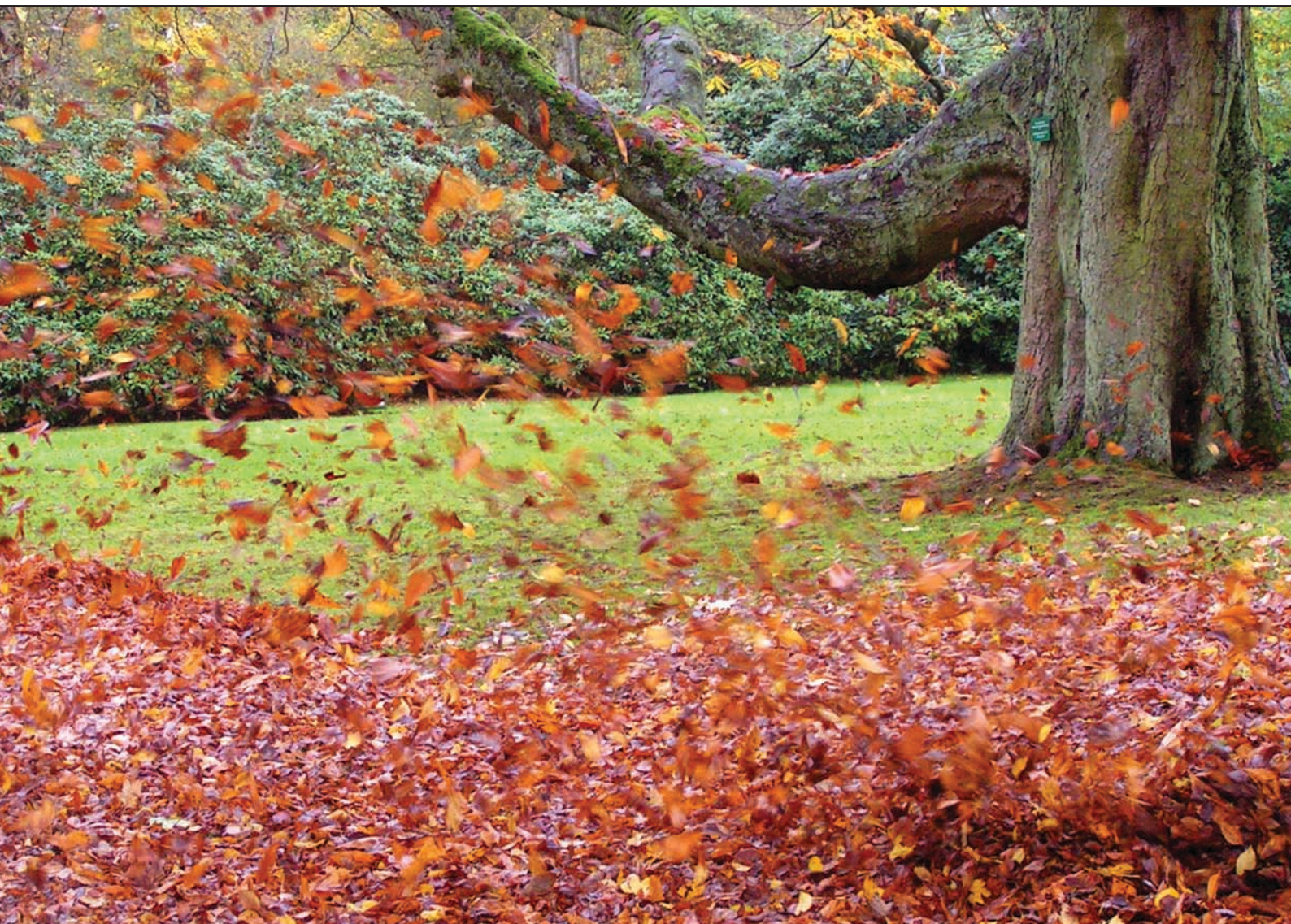
The tax authority also emphasised that the taxpayer failed to document pricing and the staff interconnectivity between the supplier and the taxpayer at the time when the contract was signed. The tax authority also noted that there was no link between the advertising project and the taxpayer making, securing and maintaining his income. The fact that an advance invoice for CZK 31.8 million was issued before a purchase order had been placed or any work done also didn't go down well with the tax authority.

Based on the many judgments related to advertising services that have already gone against taxpayers, we recommend that clients keep continuous and factually correct documentation proving the performance and extent of the advertising services provided.

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