

Rödl & Partner

NEWSLETTER CZECH REPUBLIC

Issue:
March
2023

Information on Law, Taxes and Economics
in the Czech Republic

www.roedl.cz



Czech Law Firm
of the Year 2012-2022



Content:

→ Law

- Occupational health examinations: What's going to change and what stays the same?
 - Thinking about (not only) a new trademark? EU subsidies are the way to go.
-

→ Taxes

- DAC7: New reporting obligations for platform operators
- New instruction of the General Financial Directorate (GFD) on waiving tax penalties etc.
- Amendment to the GFD Instruction on waiving fines for a failure to submit a VAT Control Statement
- Mandatory invoice details in triangular transactions

→ Law

Occupational health examinations: What's going to change and what stays the same?

There has recently been a lot of talk about changes to occupational health examinations. As this is an important topic for both employees and employers, let's take a closer look at what has changed and what has not changed (yet).

Václav Vlk
Rödl & Partner Prague

The Act on Specific Health Services and its implementing decree distinguish five types of occupational medical examinations, namely:

- Initial medical examinations;
- Periodic medical examinations;
- Emergency medical examinations;
- Exit medical examinations;
- Follow-up medical examinations.

Initial medical examinations remain unchanged

The Government did not live up to its autumn plans and so initial medical examinations remain unchanged. Initial medical examinations will continue to be compulsory for all employees recruited. Employees who are to be employed under an agreement to perform a work task or an agreement to perform work will continue to be sub-

Initial medical examinations – no change. Periodic check-ups – minor changes.

ject to an initial medical examination only if they are not engaged in risk-free category I or II activities. It is, however, very likely that in the future the range of cases in which an employee must undergo an initial medical examination will be narrowed. This presupposes an amendment to the Specific Health Services Act, which has not yet been tabled.

Restrictions on periodic medical examinations

Perhaps the most significant change is the limitation of periodic occupational health examinations. As of 1 January 2023, they are no longer mandatory for employees in Category I and Category II jobs without occupational risk. Where legislation no

longer prescribes a periodic medical examination, this examination will be carried out if the employer or the employee so requests.

Company car drivers

Driving a motor vehicle while working but not as a professional driver is no longer considered to be an occupational risk (risk to health). This has two major implications for employees with Category I or Category II type jobs who drive a motor vehicle but who are not professional drivers (the change does not apply to professional drivers), for whom no other occupational risk will be present:

- They can now also undergo an initial medical examination with their registering general practitioner. Until now, only the employer's occupational health service provider could carry out their initial medical examination, as occupational risk jobs cannot be carried out by registering GPs.
- They are no longer subject to compulsory periodic medical examinations.

There have been other changes in occupational health services effective 1 January 2023. If you'd like more information, please let us know and we will be happy to provide you with more information.

Contact details for further information



Mgr. Václav Vlk
advokát
(Attorney-at-Law CZ)
Associate Partner
P +420 236 163 720
vaclav.vlk@roedl.com

→ Law

Thinking about (not only) a new trademark? EU subsidies are the way to go.

If you are an SME (i.e. if you have no more than 250 employees and your annual turnover is less than €50 million), don't miss out on an EU grant programme that has been designed to help businesses protect their intellectual property rights.

You can apply for reimbursement of up to 75 per cent of fees for national or European trade mark or design registrations, and up to 50 per cent for non-EU registrations. The maximum you can apply for is €1,000.

You can also receive a subsidy of up to 90 per cent of the cost of an IP scan. An IP expert will help you examine your business model and processes and recommend an appropriate

strategy for protecting and developing your IP. In the Czech Republic, an IP scan costs €900, so with the grant you'll save €810.

Applications can be submitted from 23 January 2023 to 8 December 2023. Please take our advice – don't delay filing your application, as the funds will soon run out due to high demand.

Contact details for further information

Mgr. Lenka Hanková
lenka.hankova@roedl.com

→ Taxes

DAC7: New reporting obligations for platform operators

Do you operate a sharing economy platform or are you a vendor on such a platform? If so, the new DAC7 reporting obligations may be lingering at your doorstep, as you may now be either a notifier or a person whose information is reported.

Martina Šotníková
Rödl & Partner Prague

The Czech Republic implemented the DAC7 Directive under an amendment to the Act on International Cooperation in Tax Administration. The DAC7 Directive deals with the exchange of information from operators of sharing economy platforms such as Airbnb, Uber or Bolt. DAC7 aims to obtain information enabling the control of the taxation of income generated on these platforms. The amendment is effective from 2023.

A platform is defined as software that allows a seller to connect with a user to carry out a reportable activity. A platform, on the other hand, is not software that merely allows the processing of a payment, the promotion of a selected activity

or platform, or the redirection or transfer of a user to a platform.

Selected activities covered by the reporting obligation include:

- The provision of immovable property or part thereof, including, for example, a parking space;
- The provision of a means of transport (without a driver);
- Personal services (work by an individual time or task based); or
- Sale of goods (animals included).

The information to be reported includes, in particular, the seller's identification details, the payments made to the seller and identification of the account number to which the payments are made.

The reporting obligation does not apply to excluded sellers, particularly:

- Public vendors;
- Quotation sellers;
- Large-scale sellers providing immovable property and exceeding the 2,000-transaction limit; and;
- Small-scale sellers with a limit of less than 30 transactions and a total value of up to EUR 2,000.

Sellers whose transactions are to be reported are obliged to provide cooperation to the platform operator. If the seller fails to provide sufficient cooperation, the platform operator will close the trader's account and he will prevent the seller from re-registering; or the platform operator may fail to pay the seller the consideration.

The platform operator must first register for reporting. The platform operator's reports (notifications) will be submitted electronically within 15 days of the date on which the platform operator became a Czech notifying platform operator. Ac-

cording to transitional provisions, the notification period is extended to 75 days from the entry into force of this Act, but no later than 3 months, i.e. until 3 April 2023.

The competent tax authority for filing under DAC7 is the Specialised Tax Office.

The first notification report will be the report for the year 2023. The deadline for filing this notification is 31 January 2024.

Contact details for further information



Ing. Martina Šotníková
daňová poradkyně
(Tax Advisor CZ)
Associate Partner
P +420 236 163 237
martina.sotnikova@roedl.com

→ Taxes

New instruction of the General Financial Directorate (GFD) on waiving tax penalties etc.

The Code of Tax Procedure allows for the waiver of penalties, various interest and fines for late filing of tax returns. In such cases, in addition to assessing the fulfilment of the basic statutory conditions for the waiver of the penalty imposed, the specific grounds for the waiver are also assessed. This is where the new Instruction No. GFR-D-58 on waivers of tax appurtenances (i.e. penalties, late payment interest etc.) comes into play. In contrast with its predecessor, the new Instruction tightens the rules for waiving tax penalties.

Jakub Šotník, Michal Gola
Rödl & Partner Prague

Instruction No. GFR-D-58 on waivers of tax appurtenances (i.e. penalties, late payment interest etc.), which came into force on 1 February 2023 and which repeals the existing Instruction No. GFR-D-47, was issued in response to the conclusions of the Supreme Administrative Court on the issue of waivers of tax penalties. In this context, the Supreme Administrative Court stated that while usually when making an assessment of whether the conditions for waiving a penalty are met the tax authority does not generally take into considera-

tion the breach of tax regulations that led to the imposition of the penalty (the so-called source conduct), the tax authority is nevertheless allowed take this into consideration and may decide not to waive the imposed penalty in view of the nature, intensity or other circumstances of the breach. Typically, this will be the case where a waiver is being sought of tax appurtenances that were imposed due to an assessment of additional VAT on account of the taxpayer's participation in a tax fraud.

The tax authority will now take into account, in addition to the extent to which the taxable entity cooperated with the tax authority and the frequency of the breaches of legal obligations,

the nature of the conduct that led to the imposition of the penalty in question. In addition, according to the new Instruction No. GFŘ-D-58, this procedure will be applied not only when assessing applications for a waiver of penalties, but also when assessing requests for waiver of interest on late payment or penalties for late filing of tax returns or other tax-related submissions. As regards the assessment of requests for a waiver of fines for failure to file a VAT Control Statement, Guideline No GFŘ-D-29, which also takes into account the above-mentioned conclusions of the Supreme Administrative Court, is already applicable here.

The new Instruction No. GFŘ-D-58 will probably have the greatest impact on assessments of requests for waiver of penalties. The previous practice was that the tax authority considered only the extent to which the taxable entity cooperated during the tax audit, and if the tax entity cooperated properly with the tax authority, the request was usually granted and the penalty was usually waived. Now, however, the tax authority will also have to look at the reasons that led to the assessment of supplementary tax (i.e. the source conduct). If the assessment of supplementary tax was caused, for example, by the taxpayer's knowing participation in tax fraud, it is very likely that the tax authority will not waive the imposed penalty.

However, this new procedure on the part of the tax administration does not only apply to the waivers of penalties, but also to waivers of other sanctions imposed under the Code of Tax Procedure.

Finally, Instruction No. GFŘ-D-58 adds new reasons to the list of reasons on the basis of which it is possible to waive tax appurtenances. It is now possible to waive the entire late interest and penalty for late filing of a tax returns or other tax-related submissions on the grounds that the MOJE DANĚ portal was not working on the last day of the deadline for filing tax returns or other tax-related submissions, unless it was a planned shutdown of the portal.

Contact details for further information



Mgr. Jakub Šotník
advokát
(Attorney-at-Law CZ)
Associate Partner
P +420 236 163 210
jakub.sotnik@roedl.com

→ Law

Amendment to the GFD Instruction on waiving fines for a failure to submit a VAT Control Statement

The General Financial Directorate (GFD) has updated Instruction No. GFŘ-D-29 on waiving fines for a failure to file a VAT Control Statement. This is the ninth amendment of this Instruction.

The most significant new feature with regard to making an assessment of the extent of the waiver of the fine for a failure to file a VAT Control Statement is that the tax administrator

will now have the authority to take into account the nature, intensity or other circumstances of the so-called source conduct, i.e. the conduct that caused the fine and for which the waiver is being requested. The source conduct consists typically of abuse of law, knowing participation in tax fraud or disguised tax conduct.

In practice, this means that if the tax administrator considers that the nature, intensity

or other circumstances of the source conduct preclude a waiver of the fine, then the tax administrator will reject the request for waiver of the fine for a failure to file a VAT Control Statement by issuing a decision to that effect.

If you have been fined by the tax office for failing to file a VAT Control Statement, please do not hesitate to contact us to en-

quire about the possibility of a waiver. We will be pleased to review your case.

Contact details for further information

JUDr. Michal Gola
michal.gola@roedl.com

→ Taxes

Mandatory invoice details in triangular transactions

At the end of last year, the Court of Justice of the European Union handed down its judgment in Case C-247/21 *Luxury Trust Automobil GmbH* concerning the particulars of tax documents issued by an intermediary in the context of a triangular transaction. Although it may, at first glance, appear that the particulars of a tax document are not all that important that we could expect serious consequences if they were not included, the judgment says otherwise.

Michael Pleva, Johana Cvrčková
Rödl & Partner Prague

This is what happened. An Austrian company acted as an intermediary in a triangular transaction involving goods supplied to an end customer in the Czech Republic. The Austrian company issued an invoice for this delivery, stating that it was a triangular transaction, but neglected to state that the reverse charge regime applied and that the tax would be paid by the customer in the Czech Republic. The Austrian tax authority held that the triangular trade concept could not be applied to the transaction because of the omission. It went on to assess the Austrian company for tax on the acquisition of the goods in Austria. And because the goods were physically trans-

ported to the Czech Republic and not to Austria, the Austrian tax authority denied the company the right to deduct tax on the acquisition.

Regrettably, the Court of Justice of the European Union (CJEU) agreed with the Austrian tax authorities and ruled that there is no substitute for the absence of information that the tax is to be paid by the customer and that the European VAT Directive strictly requires the inclusion of this note. The CJEU's decision in this case essentially states that the inclusion of the note The customer pays the tax is, in addition to the inclusion of the transaction in the recapitulative statements, another substantive legal condition for the application of the triangular trade regime. And if that condition is breached, the simplification cannot be applied. This bears major implications for the intermediary, because he will, as per VAT

Triangulation is subject to reference to the reverse charge scheme.

The intermediary must include all mandatory details on the triangulation invoice.

legislation, make intra-community acquisitions of goods in the country whose VAT number he used for the transaction, but will not be able to claim the related deduction.

The CJEU further held that the omission on the invoice could not be subsequently corrected so as to have a retrospective effect so that the simplification for triangular trade could apply.

If you are involved in triangular trades as an intermediary, we recommend you make sure that you are issuing proper tax documents with all the statutory requirements to avoid the negative effects that incorrect invoicing can have, as described above. We will be happy to assist you in this regard in any way we can.

Contact details for further information



Ing. Michael Pleva
daňový poradce
(Tax Advisor CZ)
Associate Partner
P +420 236 163 232
michael.pleva@roedl.com



Ing. Johana Cvrčková
daňová poradkyně
(Tax Advisor CZ)
Senior Associate
P +420 236 163 249
johana.cvrckova@roedl.com



THERE IS NO NEED
TO CATCH ANYTHING
UP WITH US

Impressum

NEWSLETTER CZECH REPUBLIC
MARCH 2023, MK ČR E 16542

Published by:
Rödl & Partner Consulting & Valuation, s.r.o.
Platněřská 191/2, 110 00 Prague 1
P +420 236 163 111
www.roedl.cz

Editorial board:
Ing. Jana Švédová, Mgr. Václav Vlk,
Ing. Martina Šotníková, Ing. Jaroslav Dubský,
Ing. Ivan Brož

Layout/Typeset by:
Rödl & Partner

This newsletter is an information booklet intended for general informative purposes. The information in this newsletter is not advice, should not be treated as such, and you should not rely on it as an alternative to legal, taxation, financial, accountancy or corporate advice. Although we prepare the newsletter with the utmost of care, we do not represent, warrant, undertake or guarantee that the information in the newsletter is correct, accurate, complete, non-misleading or up-to-date. Since the information presented here does not discuss the specific cases of particular individuals or corporations, you should always verify the information applicable to your circumstances by consulting an appropriately qualified professional. We disclaim liability for any decisions made by readers based on the information in our newsletters. Our advisors will gladly assist you with any questions you may have on the topics presented here or with any other matters.

The entire contents of our newsletters as published on the internet, including the information presented here, represent the intellectual property of Rödl & Partner and are protected by copyright laws. Users may download, print or copy the contents of our newsletters for their own needs only. Any modification, reproduction, distribution or publication of the contents of a newsletter, in whole or in part, whether online or offline, is subject to the prior written consent of Rödl & Partner.