

# Rödl & Partner

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→ Law

## Electronic bills of lading

The debate on the use of electronic bills of lading or consignment notes is gaining momentum worldwide. But can they be used in the Czech Republic?

Alice Kubová Bártková  
Rödl & Partner Prague

### Bills of lading or consignment notes

At present, a uniform definition of a bill of lading, specifically its requirements and functions, is not possible, as it varies from state to state. Therefore, should we wish to characterise the bill of lading, it is necessary to deal primarily with the legal order by which it is governed. The aim of this article is to discuss the relevant documents for multimodal transport, i.e. for transport where goods are transported by several modes of transport, and therefore instead of the term bill of lading, which is common for maritime transport, we will use the term consignment note.

Where the relationship between the carrier and the person authorized by the consignment note is concerned, the consignment note often constitutes evidence of the conclusion of a contract. The consignment note also usually confirms that the carrier has made receipt of the shipment for transport

Czech law does not allow for electronic consignment notes

in the condition stated in the consignment note. However, these two characteristics do not necessarily have to apply in full according to Czech law. According to the Czech Civil Code, a consignment note includes the right to issue a shipment, but not ownership of the shipment. Therefore, a consignment note is usually a document of title that entitles the person authorised by it to issue a shipment. If the authorised person does not present the consignment note, they cannot receive the shipment.

### Electronic consignment note?

Czech law allows the issuance of a consignment note as a document of title issued in the name of the consignee, to order or to bearer. The Civil Code only acknowledges documents of title in paper form and there is no mention of electronic

form whatsoever. Literature based on many other reasons infers that according to current Czech legislation, a consignment note cannot be validly issued in electronic form. Nonetheless, other legal systems may allow such a form if it is issued in accordance with them and in compliance with them.

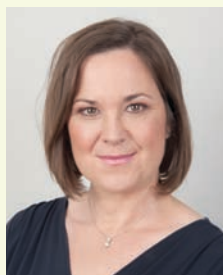
### Applicable law

Whether the transport document is a document of title (bill of lading or consignment note), its nature, particulars, form and consequences of use depends on the relevant national law applicable to the document. Establishing such a legal system is not easy and depends on the court of the State in which the related litigation may be pending.

If the document in question were governed by a legal system other than Czech law, it would be necessary to answer these questions in accordance with the particular law applicable to the relevant document. The mere fact that a document is designated, for example, as a “bill of lading” does not necessarily mean that it is indeed a document of title without which the shipment cannot be issued (delivered). It is not clear in professional literature whether electronic consignment notes issued under the law of a State that allows their electronic form would even be admissible before Czech courts.

If you encounter electronic bills of lading or consignment notes in practice, our advisors are available to help you solve the considerable difficulties associated with their use.

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→ Law

## Labour law in international context

If you are in charge of human resources in several countries, it may be of interest to you to know that an International Labour Law Practice Group has been established within the Rödl & Partner network to deal with labour law issues in an international context. In the Czech Republic, the group is led by attorneys Mgr. Václav Vlk, JUDr. Thomas Britz and Dr. iur. Alena Klikar.

The task group holds regular online meetings to discuss current labour law topics and, by means of clear summaries comparing legislation in individual countries, it tries to answer complex legal questions and thus make labour law legislation easier for its users to understand.

We encourage you to follow our website: [International Employment Law | Rödl & Partner \(roedl.com\)](https://www.roedl.com/en/international-employment-law)

This website also contains links to the above-mentioned summaries of labour law topics, for example [Restructuring in selected countries | Rödl & Partner \(roedl.com\)](https://www.roedl.com/en/restructuring-in-selected-countries)



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→ Taxes

## Czech Government introduces Recovery Package

In view of the increasing disproportion between government revenue and government spending, the Czech Government decided to recently present its Recovery Package. It primarily aims at securing additional revenue for the state budget and reducing the state budget deficit. This topic has been widely discussed in the media over the past few weeks, and we have seen several variants of the announced changes. The Government presented the final version of the Recovery Package on 11 May, and it is this version that we would like to introduce to you in more detail. The Chamber of Deputies will debate the proposal during the summer and the Government expects it to come into effect in 2024.

Martina Šotníková, Michael Pleva  
Rödl & Partner Prague

The income tax perspective

The Recovery Package will affect the taxation of both individuals and corporations, not only in terms of the level of taxation, but also by removing a number of tax exemptions.

Taxation of individuals

The tax rate for individuals remains unchanged, but the [limit for taxation at the higher rate of 23% is reduced](#). This limit is to be reduced from 48 times the average wage to 36 times. According to the figures for 2023, this would be a reduction of the limit from CZK 1.9 million to CZK 1.45 million.

Another major change affecting employees in particular is the **abolition of the exemption for employee benefits**. The employer, however, will now treat these taxable benefits as a tax deductible expense.

Also very much debated is the new regulation of **meal vouchers**; the tax treatment of meal vouchers and the meal voucher lump sum should be unified. Thus, the exemption of meal vouchers will be limited in the same way as in the case of the meal voucher lump sum, at 70 per cent of the upper limit of the meal allowance (for 2023, this limit is CZK 107.10).

**Nursery school fees, student discount and deduction of union membership fees are also abolished.**

The current exemptions from taxation should be consolidated into a **general limit of CZK 50,000**.

## Taxation of legal entities

For corporations, the main change is the proposal to **increase the tax rate** from 19 to 21 per cent. This brings corporate taxation back to the 2008 tax rate.

The Recovery Package also reverts to the **limitation of the tax input cost of a passenger car**, where a maximum of CZK 2 million can be claimed as a tax expense. It may be assumed that the limit will also apply to the acquisition of a vehicle by way of a finance lease.

Excise duty on **still wine** is also under discussion. It is likely that still wine will continue to be free of excise duty. However, with the amendment to the Income Tax Act, it will no longer be possible to treat still wine as a tax-deductible advertising item.

As noted above, **employee benefits** will now be a tax deductible expense.

## Changes in VAT

The Government's main points in the draft amendment to the VAT Act are the reduction of the number of VAT rates and the transfer of

selected items to the standard rate. Only two VAT rates would now apply, a standard rate of 21 per cent and a reduced rate of 12 per cent, despite the fact that the original proposal envisaged a 14 per cent rate.

According to preliminary information, selected items of no demonstrable social or health significance will be moved from the reduced to the standard VAT rate. These items include, for example, draught beer, services provided by hairdressers and barbers, services provided by authors and artists, the collection, transport and dumping of municipal waste, cleaning work, firewood, newspapers and selected services of craftsmen.

On the other hand, the tax burden on a number of currently sensitive goods and services, such as food (except beverages), selected medicines and pharmaceuticals and child car seats, should be reduced. A completely new idea is the non-taxation of books, which will be subject to a zero tax rate.

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→ Taxes

## Can shareholders claim general meeting expenses only to the extent of their shares?

In a recent decision, the Supreme Administrative Court addressed the issue whether expenses related to holding a general meeting for the purpose of a capital interest transfer are tax deductible. Specifically, the SAC considered whether such expenses are tax deductible in full, even if they are paid by only one of the shareholders, who also owns only 95 per cent of the shares.

Jakub Šotník  
Rödl & Partner Prague

The Supreme Administrative Court assessed the tax deductibility of expenses for notarial deeds and amendments to entries in the Commercial Register. The issue brought before was whether the majority shareholder can claim the expenses in full, even though the expense also concerned the minority shareholder, who has a 5 per cent share.

In its decision, the Supreme Administrative Court reiterated that, according to case law, expenses can be considered tax-deductible if they meet the following conditions: 1) the expenses have been incurred by the taxpayer, 2) the expenses have been incurred by the taxpayer in connection with the acquisition of taxable income, 3) they have been incurred within the reporting period, and 4) they satisfy the definition of “expenses” under applicable law.

In this case, the tax authority argued that the second condition was not met because the majority shareholder did not own 100 per cent of the shares. Therefore, according to the tax authority, the majority shareholder did not convince the tax authority that the expenditure of 5 per cent met the conditions for tax deductibility on his part.

SAC did not agree with the expenses being allocated proportionally as per shareholding. It concluded that under the Income Tax Act, the tax deductibility of expenses requires only that such expenses serve to achieve, secure or maintain taxable income. Nowhere does the law stipu-

late that there must be any ‘direct proportionality’ between income and expenditure. SAC further emphasised that if the majority shareholder had not made the above-mentioned expenditures to the extent of one hundred per cent, the transfer of the companies would not have taken place. In assessing whether certain expenses can be considered tax deductible, it is also always necessary to take into account the actual economic substance of the legal relationships to which the expenses relate.

The Supreme Administrative Court concluded that the expenses claimed by the majority shareholder (i.e. in the amount of one hundred per cent) served to achieve, secure or maintain taxable income. The eligibility of such expenses for deduction could be contested only if the tax authority had reasonable doubts about the majority shareholder’s initial claim that it had actually incurred the expenses in the manner declared.

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→ Taxes

## Black market electricity as a supply of goods subject to VAT?

The Court of Justice of the European Union has delivered its judgment in Case C-677/21 *Fluvius Antwerpen*. The case has uncovered a relatively new perspective on the illegal consumption of electricity. In layman's terms, the illegal consumption of electricity is theft and we know from past case law that theft is not considered a supply and that it is not subject to VAT because it does not fulfil certain attributes important for a supply, in particular the intention of both parties to carry out the supply. It may therefore come as a surprise that this judgment has somewhat departed from the practice established in the past.

Michael Pleva, Johana Cvrčková  
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Fluvius is an inter-municipal cooperation structure established in the form of an association, of which several Flemish municipalities are members. Fluvius was entrusted with the operation of the electricity distribution system in the municipalities of the region. The association acted as a public body.

It discovered that some of the residents of the region were engaged in the unauthorised consumption of electricity as distributed by the association's distribution network. The as-

sociation therefore determined the extent of such consumption based on the meter readings and issued an invoice for electricity including VAT, plus interest for late payment. The question therefore arose whether the amount claimed was subject to VAT on the supply of electricity.

The Court held that there was a direct link between the illegal consumption of electricity and the amount claimed by the association as compensation. It also noted that, even though the supply of electricity was made without a contract, the relationship between the association and the customer is defined in the relevant energy regulations and decrees, which anticipate just such a situation and lay down clear conditions for the recovery of compensation for the benefit unlawfully obtained by the resident of the municipality from that electricity supply. The CJEU therefore concluded that in the present case the supply of goods for consideration was subject to VAT.

The CJEU then went on to consider whether such a supply of electricity constituted an economic activity carried out by a taxable person or whether it was merely a supply carried out by a public body to an insignificant extent which did not distort competition. The CJEU found that this activity could not be regarded as having been carried out only to a negligible extent, since the association had defined clear administrative and financial conditions for the illegal consumption of electricity, indicating that it was significant and not negligible. According to the CJEU, Fluvius therefore acted as a taxable person in these cases.

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Illegal consumption of  
electricity is subject to VAT



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