Rödl & Partner

NEWSLETTER CZECH REPUBLIC

Issue: October 2023

Information on Law, Taxes and Economics in the Czech Republic

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Content:

→ Law

Electronic ID cards and lawyers verifying electronic signatures? The Czech Republic is one step closer to digitalisation.

Can you imagine being able to present your ID card or driving licence to the authorities or the police using just a mobile app? In mid-September, the government approved a bill on digital services that will make this revolutionary innovation possible in the Czech Republic starting from 1 January 2024.

Lenka Hanková
Rödl & Partner Prague

While the electronic ID card will not replace passports for travel abroad, the digital authentic copies will serve to prove identity and other facts about the user of the app. The new eDocuments application will be provided by the Digital Information Agency, which will be fully responsible for the digitisation of the state administration at the beginning of 2023. Logging into the app should be secured via a citizen's digital identity (e.g. eGovernment mobile key). A digital ID will not be mandatory, though, and traditional plastic cards will continue to be issued and used as before.

Digital cards are only useful if public authorities recognise and accept them. The new law proposes that central administrative authorities (ministries, the Czech Land Survey and Cadastre Office, the Office for the Protection of Personal Data, etc.) will be obliged to accept them from 1 January 2024, while other state authorities, such as the police, tax offices, regional authorities and local municipalities with extended competence, will be obliged to accept them from 1 July 2024. Other public authorities, municipalities and other persons who must verify a person's identity should be obliged to do so from 1 January 2025.

ID cards on your mobile phone – likely to become available next year

You may be wondering whether your birth (registration) number will continue to be listed on your identity card. The state is trying to gradually curb the use of this traditional identifier of Czech citizens and other designated persons. In fact, according to the current legislation, we were supposed to say adios to the birth number concept used in ID cards come the end of 2024, but apparently this will not be the case. On the contrary, the government has drafted an amendment to the ID Act. The birth number is to remain on them. It will continue to serve as an identifier for debtors listed in the bankruptcy register.

Lawyers are also moving towards digitalisation. The government is currently discussing an amendment to the Lawyers Act that will allow lawyers to verify the authenticity of an electronic signature. At present, only notaries can perform this type of verification, albeit in a complicated way.

We will keep you updated on the adoption of all legislative proposals. Setting 1 January 2024 as the date for the introduction of digital innovations is bold. We expect that the technical implementation in particular could slow down the whole process.

Finally, a quick question. Did you know that you can create a company or sign a notarial deed online? If you are a natural person registered in the general registers and you have a qualified electronic signature and a bank identity or some other type of recognised digital identity, you no longer have to hit the road to see your notary. You can also make an appointment with a notary online. Should you be interested in these innovations, please contact us – we will be happy to guide you through the process.

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→ Law

The amendment to the Labour Code is now in effect

A long-prepared and much-discussed amendment to the Labour Code has been published in the Collection of Laws under number 281/2023. It will enter into force on 1 October 2023.

The provisions governing leave for employees working under one of the agreements on work performed outside the employment relationship will enter into force on 1 January 2024.

The amendment mainly affects the following areas:

- The conclusion of employment contracts and agreements by electronic means;
- Employers' obligations to provide information to employees;
- Agreements to complete a task and agreements to perform work;
- Scheduling of working time, uninterrupted daily rest and uninterrupted weekly rest;
- Teleworking;
- Delivery of documents.

Employers are compelled to respond immediately to the changes introduced by the amendment and to incorporate them into their business practices. Failure to comply with the obligations will in most cases be punishable as an offence and may result in a substantial fine.

For more information, please contact.

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→ Taxes

Teleworking and related tax implications

An amendment to the Labour Code has been published in the Collection of Laws, which, among other things, regulates the reimbursement of expenses incurred by an employee when working remotely, i.e. from home. Reimbursement of expenses incurred by an employee working from a place other than the employer's workplace will be paid to the employee in the form of reimbursement of documented expenses or a lump sum for each hour worked. This change is effective from 1 October 2023.

Martina Šotníková, Daniel Ďuriš
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Tax implications for the employee

Flat rate

If the employer decides to pay a lump sum, this must set out in a written agreement or in a company policy. The flat-rate is set by the Ministry of Labour and Social Affairs. For 2023, the flat-rate should be CZK 4.60 per hour.

The flat-rate is mainly based on the cost of water, gas, electricity and waste disposal and is calculated using coefficients set by the Czech Statistical Office.

In the case of employees, any flat-rate amount is considered to be a mandatory payment by the employer. Therefore, the employee does not have to pay tax on the compensation up to the amount set by the MoLSA decree, and it is not included in the assessment base for social security and health insurance.

Company employees may be entitled to compensation in excess of the flat-rate sum. The difference between the flat-rate paid by the employer and the flat-rate determined by the decree is subject to both income tax and social security and health insurance contributions.

Actual expenditure

Alternatively, the employer may continue to reimburse the employee for documented expenses that are not included in the employee's tax base and subsequently in the assessment base for social security and health insurance.

Tax implications for the employer

Reimbursement of expenses demonstrably incurred by an employee in connection with the performance of telework is generally tax deductible, provided that the flat-rate amount is established by an internal policy or set forth in the employment contract.

Besides the reimbursement mentioned above, the employee may continue to be reimbursed for the wear and tear of his or her own articles and equipment necessary for the performance of his or her work. These reimbursements remain a tax expense. Their calculation must be sufficiently documented.

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→ Taxes

Carbon adjustment mechanism transitional phase from 1 October 2023

On 17 August 2023, the European Commission approved the Commission Implementing Regulation (EU) laying down rules for Regulation (EU) 2023/9 of the European Parliament and of the Council as regards reporting obligations for the purposes of the carbon border adjustment mechanism during the transitional period.

Jitka Mrázková
Rödl & Partner Prague

The Carbon Border Adjustment Mechanism (CBAM) aims to address the greenhouse gas emissions contained in certain goods imported into the EU from third countries (with the exception of certain countries and territories). A carbon tax as a levy on emissions generated in the production of goods outside the EU will thus complement the emissions trading scheme.

Products that fall into the following categories are defined as goods:
– cement
– electricity
– fertilisers
– iron and steel (and products made from them)
– aluminium
– hydrogen

where the relevant code is the customs nomenclature code of the product as listed in Annex 1 of the Regulation at the time of importation.

Consignments up to a value of EUR 150 and goods intended for military purposes are not subject to the notification requirement.

A transitional period starts on 1 October 2023 and ends on 31 December 2025. During this period, importers are obliged to report quarterly the emissions contained in the goods. First CBAM report for the period 1 October to 31 December 2023 will therefore be due on 31 January 2024.

The persons required to comply with the reporting obligation are:

- importers, where they lodge a customs declaration for release for free circulation in their own name and on their own account;
- the holder of an authorisation to lodge a customs declaration declaring the importation of goods;
- the indirect representative (if the importer is established outside the EU, otherwise upon his consent to lodge).

The content of the report will consist of the following information:
- the quantity of goods imported by type in tonnes or MWh and the type of goods identified by CN code;
- the quantity of direct and indirect emissions expressed in tonnes of CO_2 ;
- the carbon price payable in the country of origin of the goods.

The recommended (not mandatory) scope and content of the report is published on the European Commission website (in English only).

While data on the quantity of imported goods should be available to the importer, the relevant data on the quantity of emissions (in detail for each production site) must be provided to the importer by the supplier of the imported goods. This should be considered and included in the relevant contractual arrangements with third country manufacturers.

The notifying declarant is responsible for the timely submission of the report and the accuracy of the data contained therein. The penalty for failure to report or incorrect information in the report is set at EUR 10 to EUR 50 per tonne of emissions not reported. The amount is at the discretion of the administrative authority.

From 1 January 2026, annual reporting (by 31 May of the following year) and payment of fees for emissions contained in imported goods will be required. Only an approved declarant who has pre-registered with the CBAM authority will be entitled to submit the annual declaration. Without prior registration, imports of selected goods will not be allowed.

The central authority for the administration of CBAM is the European Commission. The administrative authority in the Czech Republic is the Ministry of Finance.

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→ Taxes

What is the deadline for filing a supplementary tax return for a lower tax?

There has long been controversy about whether a supplementary tax return for a lower tax can be filed after the so-called subjective deadline.

The subjective deadline is regulated by the Tax Code and means that the supplementary tax return for the lower tax can be filed no later than by the end of the month following the month in which the taxpayer discovered the reasons for filing it (e.g. reasons discovered in April, supplementary tax return filed by the end of May). After this subjective deadline, it is no longer possible to file a supplementary tax return for the lower tax.

This conclusion was also confirmed by the Supreme Administrative Court, but the Second Chamber disagreed and the matter was therefore referred to the Extended Chamber of the Supreme Administrative Court.
The Extended Chamber of the Supreme Administrative Court ruled that the taxpayer is entitled to file a supplementary tax return for the lower tax even after the subjective deadline has expired. The only time limit for the taxpayer is the statute of limitations, which is generally 3 years and begins to run from the end of the period for filing a regular tax return.

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→ Taxes

Limited depreciation for passenger cars over 2 million

One of the most important points of the consolidation package currently being discussed in the Chamber of Deputies is the tax restriction on passenger cars whose price exceeds CZK 2 million (M1 passenger cars).

Martina Šotníková
Rödl & Partner Prague

The proposed income tax limit on depreciation and financial lease repayments is that no more than CZK 2 million (VAT excl.) can be applied to the tax-deductible costs of an M1 passenger car.

The limitation applies to M1 passenger cars acquired or transferred (in the case of financial leasing) in tax periods beginning after the Act has come into force, which is expected to be on 1 January 2024. It does not apply to vehicles used for funeral services, ambulance services and vehicles used for the licensed trade of road haulage.

Depreciation

If the taxpayer is the depreciator of an M1 passenger car, he can choose the tax depreciation method. Specifically, straight-line depreciation, accelerated depreciation or, in the case of electric cars, special depreciation.

However, only the part of the calculated depreciation that corresponds to the ratio between the two million limit and the purchase price of the M1 car can be claimed as a tax deduction. The part of the depreciation that cannot be claimed as a tax expense is then forfeited forever and the taxpayer permanently loses the benefit of the tax deductibility of this forfeited part of the depreciation.

Tax residual value

In the case of the disposal of an M1 passenger car, the taxpayer calculates the standard half depreciation and claims as a tax expense only the part of the depreciation in the ratio of the limit of CZK 2 million to the purchase price of the M1 passenger car. The tax depreciation is calculated as if there had been no excess depreciation. Tax depreciation is not reduced. Its tax deductibility will be assessed as before, i.e. in relation to the reason for the disposal of the asset (e.g. sale, damage). The only limitation that the proposed provision of the Income Tax Act imposes on the tax deductibility of the tax residual value is that it must be calculated in view of the chosen depreciation method from the minimum allowable depreciation period, while any interruption of depreciation is not taken into account. In addition, the bill stipulates that if the taxpayer has not started to depreciate the M1 passenger car, it is considered to have been depreciated on a straight-line basis for the purposes of calculating the tax residual value.

Financial lease

The proposed amendment also limits the tax deductibility of lease payments. The procedure is similar to that for depreciation, and the individual accumulated instalments are reduced by the proportion of the two million limit and the total of the instalments for financial leasing. At the same time, if a lessee acquires an M1 car at the end of the lease, its subsequent depreciation is also limited. When calculating the tax-deductible depreciation of an M1 passenger car acquired after the end of a financial lease, the lease instalments already paid are taken into account so that the sum of the tax-deductible instalments and the tax-deductible depreciation does not exceed CZK 2 million.

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→ Taxes

Limited depreciation of luxury cars

Luxury cars are going to bring a frown to their owners, both in terms of income tax and VAT. The state is unearthing restrictions that existed in the Czech legal system until 2007, albeit in a more moderate form.

Miroslav Holoubek
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Compared to the Income Tax Act, the VAT Act is somewhat clearer when it comes to depreciation limits for M1 passenger cars. The amendment to the VAT Act stipulates that the limit for claiming VAT deductibility for M1 passenger cars is CZK 420,000. This corresponds to a tax base of CZK 2 million, which is the same value threshold as the limit in the Income Tax Act.

Furthermore, the definition of input price implies that the VAT not applied in this way increases the input price of the M1 passenger car and thus effectively becomes a non-tax expenditure as it cannot be deducted.

Limited depreciation will affect VAT payers both in terms of M1 passenger car direct purchases and acquisition effected under a finance lease. However, from a VAT point of view, it is unfortunate that any taxpayer who buys such a car in excess of the limit and includes it in his tangible fixed assets, i.e. not in his inventories, will be limited by the limit when he resells it.

In addition, the current wording of the amendment to the VAT Act does not allow only part of the sales price to be subject to VAT on subsequent sales. VAT must be paid on the entire

sales price. This results in multiple taxation, which can be seen as a violation of the basic principles of VAT.

Despair not, the above restrictions and limitations may be subject to change as the legislative process continues. So let's wait and see what the government does with the final wording of the amendment.

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→ Taxes

Taxing snacks

In a recent ruling, the Supreme Administrative Court dealt with the assessment of the remuneration of Polish miners who, in addition to their wages, received so-called świadczenia (a benefit similar to 'snack money') as compensation for the costs of their posting abroad. The workers' wages were paid by the Czech company, while their świadczenia benefits were paid by the Polish employment agency. The Supreme Administrative Court considered whether the benefit was part of the wages taxable at the place of employment, i.e. the Czech Republic.

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TIn 2013 and 2014, the Czech company POLCARBO employed Polish miners to work on its contracts for OKD. According to the contract, the workers were supplied by the Polish company POLCARBO Poland, which acted as a Polish employment agency. The miners worked exclusively on contracts for the Czech company POLCARBO, for which they were also paid by the Czech company. At the same time, however, POLCARBO Poland paid the miners so-called świadczenia benefits as compensation for the costs of sending them to work abroad (in the Czech Republic).

However, the tax authorities considered the benefit to be taxable income of the miners, on which the Czech company POLCARBO should have paid tax. This view was subsequently confirmed by the Regional Court in Ostrava and the Supreme Administrative Court, which ruled that the benefit did not constitute compensation for the costs associated with the posting abroad, as claimed by the Czech company POLCARBO, but rather a regular remuneration for work performed for that company.

It was established that POLCARBO Poland was not authorised to carry out agency activities in the Czech Republic and that the Czech company POLCARBO did not register any foreign workers in 2013 and 2014. According to the Supreme Administrative Court, the Czech company POLCARBO was therefore the actual employer of the workers.

This conclusion was reinforced by the fact that the amount of the benefits was directly linked to the number of shifts worked and the job classification of the Czech company POLCARBO. The date of payment of the benefits also corresponded to the date of payment of wages, with the wages paid to Polish miners by the Czech company POLCARBO being approximately half of the average wage for a similar job. This average was then approached only after the addition of the benefit paid by POLCARBO Poland.

It was also established that the Czech company POLCARBO had full control over the payment of the benefit, as it was linked to POLCARBO Poland in terms of personnel; although the benefit were paid to the miners from the Czech account of POLCARBO Poland, they were paid in Czech currency and from funds paid into this account exclusively by the Czech company POLCARBO at the instruction of authorised officers of the Czech company POLCARBO.

Thus, according to the tax authorities, the benefit was in fact intended to serve as remuneration for work performed, since the payment

of the benefit was attributable to the Czech company and not to the Polish company. The Supreme Administrative Court upheld this conclusion and agreed that the benefit were remuneration for work performed in the Czech Republic and therefore also gave rise to a right to taxation in the Czech Republic.

Nor was Supreme Court swayed by POLCARBO's argument that the benefit was subject to Polish law, i.e. that bonuses covering travel expenses were tax-free in Poland and that other bonuses were taxable to the recipient, and therefore the benefit was not part of the remuneration for work that was subject to taxation in the Czech Republic. On the contrary, the Supreme Administrative Court upheld the assessment of personal income tax on the employment income of the Czech company POLCARBO for the years 2013 and 2014, as it found the benefits to constitute taxable income of the miners on which tax should have been paid in the Czech Republic under the applicable international treaty.

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