Rödl & Partner

NEWSLETTER CZECH REPUBLIC

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→ Law

Probationary period under the flexibility amendment

The so-called flexibility amendment to the Labor Code has already been passed by a large majority in the Chamber of Deputies. If it is also approved by the Senate and signed by the President, and is expected to take effect on 1 June or 1 July later this year. The flexibility amendment brings numerous changes to the Labor Code and other regulations. In the following text, we will introduce upcoming changes to the probationary period.

Václav Vlk
Rödl & Partner Prague

A probationary period is a well-established concept of labor law. The probationary period give the employer and employee the opportunity to terminate employment for any reason or without stating a reason effective from the delivery of the termination notice to the other party, unless specified otherwise. Since an employer can normally terminate employment by notice only for one of the causes listed in law, it is understandable that agreeing on a probationary period is primarily in the employer's interest.

New maximum duration of the probationary period

The flexibility amendment extends the maximum permissible length of the probationary period from the current three to four months, and for managerial employees from the current six to eight months. The rule that the probationary period must not be longer than half of the agreed duration of a fixed-term employment relationship remains unchanged. Therefore, if, for example, a managerial employee is hired on a fixed-term contract for one year, it will not be possible to agree on an eight-month probationary period.

Probationary period now up to four or eight months, respectively

The calculation that the agreed probationary period does not exceed half of the fixed-term period must be done by days, not just by months. Given the unequal length of calendar months, agreeing to a six-month probationary period for a one-year fixed-term employment may not be compliant.

Probationary period can be extended by mutual agreement

The probationary period can and will continue to be agreed upon in writing no later than at the commencement of employment. While until now it was not permitted to extend an already agreed probationary period, this will now be possible, up to the maximum permissible length of the probationary period. Therefore, if, for example, a two-month probationary period is agreed upon, the parties can, before the lapse of the period, extend the probationary period by additional two months through an amendment to the employment contract.

Statutory extension of the probationary period

The flexibility amendment clarifies the rules regarding the extension of probationary periods. The probationary period is extended by the number of employee's working days in which, during the probationary period, the employee did not work the entire shift due to an obstacle to work, taking vacation, or unexcused absence from work. The probationary period cannot be extended if the employee worked a part of the shift. The probationary

period is subsequently extended not by calendar days but by the employee's working days. It would not make much sense to extend the probationary period by days anyway when no shift is scheduled for the employee.

Transitional provision

A probationary period agreed upon before the effective date of the flexibility amendment will be governed by the current wording of the Labor Code. It will therefore only be possible to agree on a probationary period of four or eight months in employment contracts that are concluded no earlier than on the effective date of the flexibility amendment.

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→ Taxes

Taxation of employee shares and options – developments in 2025

The taxation of employee shares and options in the Czech Republic has undergone another significant change in 2025. The most recent amending bill to the Income Taxes Act introduces flexibility, allowing employers to choose between immediate and deferred taxation, and establishes new administrative requirements. What are the key changes and what should you watch out for?

Miroslav Holoubek
Rödl & Partner Prague

After several months, we have witnessed further significant changes in the taxation of employee shares and options. The Czech Parliament has passed an amendment that modifies the rules for taxing these forms of remuneration and provides greater flexibility for employers.

Brief history

Until 2024, there was no specific provision in the Income Tax Act that would expressly address the matter of employee shares and options. Taxation was governed by general principles and was relatively straightforward – income was taxed at the inception.

However, in 2023, there was strong demand, especially from startups, for the possibility to defer taxation into the future. The response was an amendment that came into effect in 2024 and allowed the deferral of taxation on shares and options for up to 10 years. However, this change brought administrative complications and ambiguities that caused practical problems for both employers and the tax authorities. Moreover, despite the income tax deferral, it was still necessary to pay health and social insurance contributions.

These issues were partially resolved in mid-2024 through amendments that allowed the deferral of not only taxes but also mandatory contributions. Nevertheless, many practical questions remained unresolved, necessitating further legislative adjustments.

New rules from 2025 onwards

The current amendment gives employers a choice between two taxation regimes:

- Immediate taxation in the year the income arises – a return to the original system valid until 2023, which is prefered by traditional employers
- Deferred taxation – preserving the deferral option, but with an obligation to notify the tax authorities of the intention to use this regime. The notification must be submitted by the 20th day of the month following the income generation. The tax authorities are expected to specify the form of the submission for this purpose.

Although the current amendment was only adopted in 2025, it has a significant impact on 2024 as well.

Impact of the amendment on 2024 income taxation

The amendment establishes rules for employers who used tax deferral in 2024:

- If they want to continue with the 2024 deferral, they must notify the tax authorities of their intention within two months of the amendment taking effect (i.e., by the end of May 2025
- If they fail to send the notification on time, the previously deferred taxation will be canceled, and the income will be taxed in May 2025.

Foreign companies that allocate shares or options to employees in the Czech Republic are to follow the same rules as domestic employers. Foreign employers must also notify the tax authorities that they will apply tax deferral; if they fail to do so, employees will have to pay tax on the income received in 2025. The tax authorities should clarify how foreign employers should notify their decision to apply deferred taxation in practical terms.

Recommendations for employers and employees

- Carefully monitor the tax authorities' guidelines, which will specify the details of implementing the new rules
- Submit notification in time, if they want to exercise the deferred taxation option
- Secure professional support, especially for cross-border cases or when they need to consult on the optimal taxation regime.

If needed, tax advisors at Rödl & Partner will gladly answer all your questions.

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→ Taxes

New General Financial Directorate's Guidance D-67 on tax accessory forgi-veness is here

Effective from 1 March 2025, the new guidance replaces the older D-58 guidance and introduces clearer, shorter, and more practical guidelines for the forgiveness of penalties, interest, and fines. The Tax Administration has simplified the reference tables, updated interpretations based on case law, and emphasized that responsible tax behavior pays off.

The guidance now places greater weight on the "underlying conduct" – that is, whether delays occurred for excusable reasons or deliberately (e.g., tax fraud). The guidance also confirms that in certain cases, decisions may be made "beyond the scope of the directive" if circumstances warrant it.

If you're filing for forgiveness of tax accessories, we recommend familiarizing yourself with the new guidance.

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→ Taxes

Incorrectly collected customs duties: Can you claim interest?

The Constitutional Court has opened the possibility of compensation for incorrectly assessed customs duties in the form of interest on improper actions by the tax administrator according to the Tax Code. The Constitutional Court has thus opened the floodgates for compensation for improper procedures by the Customs Administration.

Jakub Šotník
Rödl & Partner Prague

Imagine importing goods – video cameras, for example – and classifying them under a lower customs tariff according to the Combined Nomenclature. Later, however, the customs office informs you that you've misclassified the goods and retroactively assesses additional customs duties plus penalties. You challenge this assessment, and several years later it turns out it was indeed unjustified. The customs office then refunds the paid duties. The question remains whether you're also entitled to interest for the period when you couldn't use your money – similar to tax proceedings.

The Constitutional Court addressed this issue in a case involving a businessman who wasn't satisfied with merely getting his customs duties back and demanded interest under Section 254 of the Tax Code. He argued that his funds had been wrongfully taken from him throughout the entire period, preventing him from using them. However, the Customs Administration refused to pay interest, claiming that customs regulations don't allow for such claims.

The Supreme Administrative Court upheld this stance, stating that payment of interest is excluded under both EU and Czech customs regulations. However, it acknowledged that the damage caused by improperly assessed customs duties could be compensated in other ways, specifically under Act No. 82/1998 Sb. This law establishes that everyone is entitled to compensation for damages caused by unlawful decisions or improper official procedures.

The Constitutional Court, however, didn't fully agree with this interpretation. It pointed out that the courts should have clearly justified why the businessman should rely solely on compensation under Act No. 82/1998 Sb. and whether this approach might cause unnecessary delays. At the same time, it suggested that it would be appropriate to consider whether Section 254 of the Tax Code could be applied as a supplementary measure. Simply returning the improperly collected customs duties might not fully cover the loss caused by the fact that the affected entity couldn't use their finances for a certain period.

This decision has an important practical implication: even though customs and tax regulations don't explicitly provide for interest when refunding improperly collected customs duties, there is still a path to compensation. If the state wrongfully issues you an additional customs assessment, you can seek damages that also take the passage of time into account. So if you're unwilling to settle for just getting your customs duties back, you can now try to obtain fair compensation in the form of interest.

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→ Taxes

Supreme Administrative Court confirms tax authority bears the burden of proof

The Supreme Administrative Court (SAC) issued a judgment on 28 February 2025 addressing the application of Section 23(7) of the Income Tax Act and confirming that the tax authority bears the initial burden of proof.

Martin Koldinský
Rödl & Partner Prague

The taxpayer was engaged in assembling and configuring hard disk drives (HDDs) for a related entity. The taxpayer did not originally acquire ownership rights to these disks and received compensation calculated by the costs plus methodp. However, during the period under review, ownership rights for part of the HDD production transferred to the taxpayer, while the same markup on costs continued to be applied regardless of this change in ownership status.

The taxpayer continued to handle all HDDs in the same manner, regardless of whether they owned them or not. According to the tax authority, however, HDD ownership ties up significantly more financial resources for the taxpayer, with funds locked in without the possibility of alternative use. The tax authority argued that the applied markup failed to reflect this reality.

The tax authority concluded that the taxpayer had money "frozen" in these inventories and assessed additional tax on missing revenue by applying the USD LIBOR reference rate to these "frozen" funds in inventory. For clarity, USD LIBOR is a rate that determines the reference interest rate for short-term international interbank loans.

The tax authority argued that if the taxpayer had freely utilized these funds in the market environment, these resources would have appreciated by earning interest. The tax authority defended using this reference rate simply on the grounds that it was denominated in US dollars, the currency in which the taxpayer purchased and sold HDDs.

The Regional Court, which reviewed the tax authority's procedure, argued that neither the taxpayer nor the related entity were banking institutions, making the use of this rate problematic in this case. This conclusion was also confirmed by the SAC.

The SAC approved the tax authority's conclusion that the portion of the HDD purchase transaction into ownership should have been subject to Section 23(7) of the Income Tax Act. The SAC also agreed with the concept of applying a standard interest rate to money "frozen" in inventory, but noted that the tax authority had failed to prove and substantiate reasons for using the USD LIBOR interest rate. The SAC also criticized the absence of comparison with other independent transactions. Nevertheless, it concluded that the tax authority had failed to bear the burden of proof when, according to the court, it gave up on providing adequate justification for its decision, as the decision shows no apparent effort to properly determine a reference price.

According to the SAC, when establishing a reference price, the tax authority must base its determination on objective, fair, and reviewable criteria supported by economically rational reasoning.

Thus, in the area of transfer pricing, the tax authority bears the burden of proof. However, in cases where the tax authority meets this burden, the ball is once again in the taxpayer's court, who must then prove compliance with the arm's length principle or justify any deviation. Therefore, we recommend not delaying verification of price compliance with the arm's length principle and properly setting up or reviewing intra-group transactions before the tax authority conducts its own testing.

If you're unsure about handling intra-group transactions, don't hesitate to contact our team of transfer pricing specialists.

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→ Taxes

Supreme Administrative Court rules against disguised employment: How to avoid penalties?

The Supreme Administrative Court has upheld a 445,000 CZK fine imposed by the Regional Labor Inspectorate for disguised employment of two workers. Prevention is always cheaper than paying fines and potential litigation costs.

Jakub Šotník
Rödl & Partner Prague

Illegal employment through so-called "disguised employment" (švarcsystém in Czech) is increasingly resulting in hefty fines and court disputes. Recently, the Supreme Administrative Court (SAC) examined a case where the Regional Labor Inspectorate fined a company 445,000 CZK for the illegal performance of dependent work by two individuals outside of an employment relationship. This SAC decision demonstrates that formal contractual arrangements aren't decisive – if work performance shows characteristics of dependent employment, it cannot be disguised as a business-to-business relationship with self-employed contractors.

When is a contractor actually an employee?

A businesswoman operating in industrial technologies hired two individuals who performed organizational and dispatching activities in transportation. One was Mr. P.Ž., who served as the head of the transportation and administration department, and the other was Ms. D.K., who worked as a transportation dispatcher. Their main duties involved ensuring smooth operation of company transportation, coordinating deliveries, and organizing transportation processes. While formally these were business relationships, in reality they worked just like employees – they had regularly assigned tasks, followed company instructions, and were organizationally integrated into the company.

In its decision, the SAC emphasized several key elements proving the existence of dependent work. The first and most critical characteristic was personal dependence on the company – Mr. Ž. had only one source of income from this activity during the relevant period, while for Ms. K., work for the company represented more than half of her income, indicating her economic dependence. Another important factor was the workplace, as both individuals worked directly at the company premises, used its offices, technical equipment, and internal company systems. The SAC also considered witness testimonies confirming that Mr. Ž. was perceived as a superior who gave work instructions to other employees. Ms. K. even had company business cards and a company email address, clearly suggesting her organizational integration.

Can some factors be misleading?

Conversely, there were certain characteristics that might suggest independent work. For example, Mr. Ž. and Ms. K. didn't record their working hours and could come and go as they pleased. They also weren't formally registered as employees and had service contracts instead of employment agreements. However, the SAC pointed out that these factors alone aren't decisive. The fact that workers didn't track attendance wasn't enough to disprove the conclusion of dependent work. What was crucial was that their activities were long-term, economically dependent on the company, and performed on its premises.

Implications of the SAC decision

n this context, the SAC emphasized that an employer can either perform transportation-related activities through its employees or outsource them to external suppliers. The key question in this case was whether the specific activities of the two individuals exhibited the elements of dependent work. Since Mr. Ž. and Ms. K. were long-term integrated into the company structure, performed their activities according to company instructions, and were economically dependent on it, the SAC concluded that their work wasn't outsourcing but a disguised employment relationship.

It's also significant that the SAC acknowledged that the essential elements of dependent activity interpreted in tax case law are identical to those assessed during labor inspectorate controls. Both tax authorities and labor inspectorates therefore use the same criteria when examining relationships between companies and workers, such as economic dependence, degree of superiority and subordination, or personal integration into the employer's structure. The SAC admitted that judicial conclusions under the Income Tax Act are relevant for interpreting the concept of dependent work, but the decisive factor is fulfilling the characteristics of dependent work as defined by the Labor Code.

How to avoid problems?

The importance of prevention has increased with the most recent amending bill to the Labor Code effective from 1 January 2025, which granted labor inspectorates broader powers and especially strengthened their cooperation with tax authorities. This may lead to an increase in inspections by both labor inspectorates and tax authorities, raising the risk of penalties for employers.

Not sure if your work relationships are compliant? Now might be the perfect time to check! If you have doubts about the proper setup of employment relationships in your company, we recommend consulting with an expert in labor and tax law. The SAC decision shows that prevention is always cheaper than a fine and litigation.

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