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### Read in this issue:

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#### Law

- Occasional Work Performance at Home
  - Working Time
  - Remuneration
  - Catering
  - Occupational Health Protection and Working Tools
  - Data Protection (GDPR)
  - Costs connected with Home Office
  - Liability for Damage
  - Work Performance from Abroad
  - Conclusion

#### → Business

- Approval of the Financial Statements
- Extension of the period for fulfilling duties resulting from the Act on Accounting
- Duty to have the Financial Statements audited by an auditor
  - How shall accounting entity assess its audit duty in the year 2020 and in the following years?
  - What will be the consequences of the passed increase of criteria for a compulsory audit?

## → Law

### Occasional Work Performance at Home

The situation caused by the COVID-19 pandemic has emphasised the necessity to adopt measures on part of the employer in form of e.g. work from home. In this respect many employers require that home office be introduced where possible in terms of job content.

The Slovak legal order does not have a legal definition of the term home office yet, however, for better understanding home office may be perceived as: „occasional, not regular work from home which is carried out with the consent or upon agreement with the employer.“ Occasional work performance from home cannot be used interchangeably with home working, which is regulated by the Labour Code and has a permanent character.

If you are planning to introduce home office in your company or work already in this manner, in our view, it is necessary to evaluate this modus operandi not only in technical but also in legal terms. In legal terms means all aspects connected with the performance of work from home. This includes in particular a possible amendment of the employment contract and further consequences, which are caused by the introduction of home office. We recommend to stipulate them in an internal regulation with the following content.



#### 1. Working Time

Also during home office the employee is obliged to observe the working time arranged and stipulated by the employer. In contrast to home working, where the employee distributes his working time himself, during home office the working time is distributed by the employer. In case of overtime work, the employee is entitled to wage and wage surcharge for overtime work, which is not the case of home working. Therefore, it is recommended to stipulate the duty to keep daily time sheets or record the daily activities of the

employee, based on which the compliance with the distributed working time may be monitored (control mechanism of the work performance).

#### 2. Remuneration

The aforementioned timesheets and working time of the employees are directly linked to the remuneration. Similarly as in case of work performed in the workplace, the employee is entitled to wage for overtime work, or if applicable, to wage compensation for holidays, in case of obstacles to work and in other cases stipulated in the Labour Code.

#### 3. Catering

Regardless of the fact, whether the employee carries out his work tasks in the workplace or at home, the employer is obliged to comply with the statutory duties to provide for the catering of its employees.

#### 4. Occupational Health Protection and Working Tools

In case of work from home, just as at the workplace, the employer is obliged to provide the employee with working tools suitable for the performance of work, which will be assigned to him. Upon the provision of devices for fulfilment of work tasks the employer has to consider the legal criteria, which have to be met by computer technology.

#### 5. Data Protection (GDPR)

Safety and occupational health protection and providing for computer technology are directly linked to the protection of data and information accessed by the employees during the fulfilment of work tasks. As the employer bears the responsibility for the protection of such data, it is in his interest to ensure, that the employees protect the entrusted data and information as far as possible.

#### 6. Costs connected with Home Office

The entitlement to contribution to costs has to be assessed always in consideration of the circumstances of the home office. We believe that in case of occasional home office the employees are not legally entitled to a contribution to the costs (electricity, internet or toners, etc.). However, if the employer choses to reimburse the expenses related to increased costs during work

performance in form of home office, we recommend to assess the tax duties and possibilities on part of the employee as well as on part of the employer (consideration of the taxation duty on part of the employee and recognition of tax expenses on part of the employer).

## 7. Liability for Damage

Last but not least, the internal regulation should contain a regulation of the liability of the employees for damage to entrusted items and damage caused by violation of work obligations. A more detailed specification of duties, the breach of which will result in the accountability of the employee, may prevent future disputes with the employees of the company.

## 8. Work Performance from Abroad

Special aspects have to be considered in case of work performance in form of home office from abroad. The performance of activities in a country, which is not at the same time the country of the registered office of the employer, can have consequences in terms of tax law and social law. The country, where the work is being temporarily performed in form of home office, may assert the right to tax the employee. In such a case further duties related to the official registration will arise, in particular the tax registration of the employer for dependent activity and the registration for contributions to the social system of the particular country.

## 9. Conclusion

Special aspects have to be considered in case of work performance in form of home office from abroad. The performance of activities in a country, which is not at the same time the country of the registered office of the employer, can have consequences in terms of tax law and social law. The country, where the work is being temporarily performed in form of home office, may assert the right to tax the employee. In such a case further duties related to the official registration will arise, in particular the tax registration of the employer for

dependent activity and the registration for contributions to the social system of the particular country.

As already mentioned above, it is necessary to differentiate between the occasional home office and the permanent home office with the features of home working pursuant to the Labour Code, which is subject to a stricter legal regulation. Such differences are obvious in particular in case of the legal regulation or the regulation of the Labour Code. The consequences in terms of taxes and social law do not differ between „home office“ and home working.

If you consider introducing home working or home office in the long term, please take note of the planned amendment of the Labour Code, which has been already approved by the Government and submitted to the Parliament for legislative procedure. The amendment of the Labour Code should take effect on 1 March 2021 and introduce changes not only with respect to home working, but also to the catering of employees. With respect to home working, the amendment introduces a new right of the employee to disconnect, specifies the duties of the employer in the context of work performance of the employee in a different place than the employer's place of business or specifies the aspects of distribution of working time.

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## → Business

### Approval of the Financial Statements

Have you submitted not approved Financial Statements in the year 2020? In that case you are obliged to approve those Financial Statements and deposit a notification of the approval of the Financial Statements into the Register of Financial Statements **within one year as of the end of the accounting period for which these Financial Statements were prepared at the latest.**

The accounting entity that is obliged to have the Financial Statements audited by an auditor must not publish information not previously audited by an auditor in a way that could mislead the users of the Financial Statements into thinking that these data have been audited by an auditor. In case the Financial Statements of an audited company were not audited till the deadline for its deposit, the company must inform of this fact when depositing the Financial Statements. The company will then deposit the audit report subsequently within one year as of the end of the accounting period at the latest. In case the Financial Statements were audited till the deadline for its deposit, the accounting entity shall deposit the audit report together with the Financial Statements.

In case the accounting entity opens the account books again after depositing the (not approved) Financial Statements into the Register of Financial Statements (in accordance with Sec 16 par. 10 of the Act on Accounting) and prepares new Financial Statements, it must deposit the new and approved Financial Statements into the Register of Financial Statements within five working days as of their approval at the latest.

In case the accounting entity is obliged to prepare an Annual Report, it must deposit the regular individual Annual Report (or the extraordinary individual Annual Report) into the Register within one year as of the end of the accounting period for which this individual Annual Report has been prepared at the latest. This applies accordingly to a consolidated Annual Report in case the accounting entity is obliged to prepare a consolidated Annual Report.

The deposited Annual Reports don't have to include the Financial Statements and the audit report in case these documents have been deposited into the Register separately.

The documents are deposited into the Register of Financial Statements either in electronic or physical form.



In case the documents are in physical form, they are delivered to the locally competent Tax Office which will ensure their conversion into electronic form and deliver them to the register administrator.

The Tax Office checks in case of submitted Financial Statements and the notification of the date of approval of the Financial Statements the following:

- completion of all their general requirements (completion of data in the first sheet), whereby the general requirements in terms of Sec 17 par. 2 item a) and b) of the Act on Accounting must be completed correctly,
- whether the Financial Statements include all components in terms of Sec 17 par. 3 of the Act on Accounting (Balance, Income Statement, Notes) or in terms of Sec 17 par. 4 of the Act on Accounting (statement on income and expense, statement on assets and liabilities).

In case the Tax Office discovers that the accounting entity did not complete the general requirements correctly or that the delivered submission was incomplete and the accounting entity fails to remedy the defects within periods in terms of Sec 23a par. 3 and 4 of the Act on Accounting (e.g. within the period for the submission of the tax return), the Tax Office shall request the accounting entity to remedy the defects within a period set by the Tax Office and instruct the accounting entity on the consequences if it fails to do so.

The documents to be submitted by the other accounting entities in electronic form will be delivered by means of the electronic filing room of the Financial Directorate of the Slovak Republic and this will ensure their delivery to the Register.

The Financial Directorate of the Slovak Republic checks in case of Financial Statements

and the notification of the date of approval of the Financial Statements submitted in electronic form the general requirements, such as in case of the physical form. The only difference is that of all the general requirements, the Financial Directorate of the Slovak Republic does not check the signature entry of the statutory body of the accounting entity or a member of the statutory body of the accounting entity or the signature entry of a natural person in case of the electronic delivery of Financial Statements and the notification on the date of approval of Financial Statements. In this case, the signature entry is replaced by the qualified electronic signature or a signature based on a written agreement with the tax administrator on electronic delivery.

In case the accounting entity did not complete the general requirements or in case the accounting entity did not complete them correctly, the Tax Office shall request the accounting entity to remedy the defects within a period set by it and instruct the accounting entity on the consequences if it fails to do so.

By delivering the documents to the respective Tax Office in physical form or by delivering them by means of the electronic filing room of the Financial Directorate of the Slovak Republic, the conditions of the publication and deposit of documents in terms of the Act on Accounting are deemed to be met. The deposit of

documents in electronic form into the Collection of Deeds of the Commercial Register shall be provided for by the register administrator.

In case the documents deposited in the Register contain defects or in case they are incomplete and the accounting entity fails to comply with the request and does not remedy the defects within the set period, the Financial Statements are deemed not delivered.

All periods for the processing of documents begin to pass only after a complete and correct submission.

The Tax Office is entitled to request the accounting entity to remedy defects in the submitted documents after their deposit into the Register on basis of a notification of doubts by the register operator.

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## Extension of the period for fulfilling duties resulting the Act on Accounting

In case the accounting entity could not objectively fulfil its duties in terms of the Act on Accounting during the pandemics period due to staff or technical reasons, such non-fulfilment is not considered a breach of these duties, if the accounting entity fulfils these duties **till the end of the third calendar month following after the end of the pandemics period, i.e. till December 31, 2020**. This concerns e.g. the current bookkeeping during an accounting period in the course of the pandemics period (Sec 11 par. 2 of the Act on Accounting), the duty to notify of changes of the accounting period (Sec 3 par. 6 of the Act on Accounting), the duty to perform stock-taking, in case the accounting entity applies the business

year as its accounting period (Sec 6 par. 3 of the Act on Accounting), the notification of the date of approval of the Financial Statements (Sec 23a par. 4 and 7 of the Act on Accounting) etc.

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## Duty to have the Financial Statements audited by an auditor

At the end of the year 2019, the National Council of the Slovak Republic has passed the Act No. 363/2019 Coll. altering and amending the Act No. 431/2002 Coll. on Accounting as amended.

One of the most important changes was the increase of the criteria and a change in the type of company by legal form of business activities for the duty to have the Financial Statements audited by an auditor. As of January 1, 2020, the duty to have the Financial Statements audited by an auditor applies not only to the cooperative, the joint-stock company and the limited liability company, but also to the public limited company and the limited partnership. A company will be

obliged to have the regular and extraordinary individual Financial Statements audited by an auditor, if it meets at least two of the following conditions as of the Balance Sheet date and for the immediately preceding accounting period:

1. the total sum of assets (gross) has exceeded 2 000 000 EUR,
2. the net turnover has exceeded 4 000 000 EUR,
3. the average recalculated number of employees in one accounting period has exceeded 30.

The changes according to the legal form are summarized in the following table:

	Original wording of the act	Amendment
<b>Legal form of business activities</b>	<ul style="list-style-type: none"> <li>• Cooperative</li> <li>• Joint-stock company</li> <li>• Limited liability company</li> <li>• Simple joint-stock company</li> </ul>	<ul style="list-style-type: none"> <li>• Cooperative</li> <li>• Joint-stock company</li> <li>• Limited liability company</li> <li>• Simple joint-stock company</li> <li>• Limited partnership</li> <li>• Public limited company</li> </ul>

Within the measurements related to improving the business environment and aimed at preventing the spread of the dangerous contagious human disease COVID-19, the National Council of the Slovak Republic has on July 21, 2020, passed the Act No. 198/2020 Coll. again altering and amending the Act No. 431/2002 Coll. on Accounting as amended.

The amendment again significantly concerns the criteria for the duty to have the Financial Statements audited by an auditor. The

criteria for a compulsory audit have been increased in two steps – as of January 1, 2021, and as of January 1, 2022. The key information is that the amendments passed within less than one year increase the criteria for a compulsory audit 4-times (with respect to the number of employees almost 2-times).

The changes of size criteria are summarized in the following table:

	Year 2019	Year 2020	Year 2021	Year 2022
The total sum of assets (gross) exceeds	1 000 000 EUR	2 000 000 EUR	3 000 000 EUR	4 000 000 EUR
The net turnover exceeds	2 000 000 EUR	4 000 000 EUR	6 000 000 EUR	8 000 000 EUR
The number of employees exceeds *	30	30	40	50

\*number of employees = average recalculated number of employees as of the Balance Sheet date (assessed in one accounting period)

→ How shall the accounting entity assess its audit duty in the year 2020 and in the following years?

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- a. Accounting entities with the calendar year as their accounting period:

Duty to audit the Financial Statements for the year 2020 – for the current accounting period, the accounting entity must meet the criteria for the year 2020 and for the immediately preceding accounting period, the accounting entity must meet the criteria for the year 2019 (stated in the table above). The accounting entity applies the same procedure also to the assessment of meeting criteria in the following years.

- b. Accounting entities with the business year as their accounting period:

Duty to audit the Financial Statements for a business year ending in the year 2020 – for the current accounting period, the accounting entity must meet the criteria for the year 2020 and for the immediately preceding accounting period, the accounting entity must meet the criteria for the year 2019 (regulated by the Act No. 363/2019 Coll.).

Duty to audit the Financial Statements for a business year ending in the year 2021 – for the current accounting period and also for the immediately preceding accounting period, the accounting entity must meet the criteria for the year 2020 (regulated by the Act No. 198/2020 Coll.).

Duty to audit the Financial Statements for a business year ending in the year 2022 – for the current accounting period, the accounting entity must meet the criteria for the year 2021 and for the immediately preceding accounting period, the accounting entity must meet the criteria for the year 2020. The accounting entity applies the same procedure also to the business year ending in the year 2023. First for the business year ending in the year 2024, the current accounting period and also the immediately preceding accounting period shall be assessed in full extent on basis of the criteria for the year 2022 (i.e. assets = 4 million EUR, turnover = 8 million EUR and 50 employees).

→ What will be the consequences of the passed increase of criteria for a compulsory audit?

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According to the presented explanatory report, the intent of the lawmaker was to decrease the financial burden of accounting entities and to simplify the business environment. The bill was

prepared in accordance with long-term requirements of business subjects that often deem a statutory audit only an administrative burden. It is however questionable, whether the intent of the lawmaker will be fulfilled. It must be considered that more than 5 000 commercial companies (with a revenue of 4 - 8 million EUR) will not have their accounting audited by an independent auditor as of the year 2022. These will thereby joint ca. 2 000 companies (with a revenue of 2 - 4 million EUR) that loose the duty to perform an accounting audit in the year 2020. Together this represents a loss of control in ca. 7 000 companies with a turnover of 25 - 50 billion EUR. Only less than 1 percent of all accounting entities remains audited. This increases the risk that the Financial Statements of a great number of not audited companies will contain significant misstatements. That can manifest itself later in form of an additional administrative burden, e.g. in case of a tax audit, customs inspection or a control of the drawing of funds from the state budget or the European Union. It leads also to a decrease of the reliability of data included in not audited Financial Statements for external users, such as banks.

The aim of audit companies is to offer its clients a broad spectrum of consulting services aimed at an increase of the level of credibility of the output of the company in form of financial statements. Therefore, a large section of Slovak companies chooses to perform a so-called "voluntary audit" on basis of a recommendation from their parent company (often with registered offices abroad). We hope that you perceive the audit not only as a legal condition that needs to be met, but also as some kind of independent support helping you to improve the functioning of the company and making it more effective.

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