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SETTING FOUNDATIONS

Issue:
16 November
2022

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→ Law

Amendment to the Labour Code

On 1 November 2022, an amendment to the Labour Code came into force introducing fundamental changes in the area of labour law. These changes result in particular from the transposition of (i) Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union and (ii) Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU. The new amendment to the Labour Code aims to provide employees with predictable and transparent information on working conditions, as well as to ensure work-life balance for parents and carers. For this reason, in particular, the provisions of the Labour Code concerning the content of the employment contract and other information on working conditions have been amended and a new institution of paternity leave has been introduces as well. There have also been a number of other changes affecting other areas closely related to labour law.

Below we provide you with a comprehensive overview of the most important changes in the Labour Code.

Performance of other work

Under the amendment to the Labour Code, an employer will not be able to prohibit an employee from performing other gainful activity outside the working hours specified by the employer. However, this does not apply to the performance of a competing gainful activity. In the case of a competitive parallel employment relationship, the regulation requiring the employer's consent has been maintained.

Protection of employees from adverse treatment

In order to protect employees from adverse treatment in relation to the lodging of a complaint against an employee or an employer, the amendment to the Labour Code explicitly introduces a written form of the employer's response to a complaint lodged by an employee.
The employee filing a complaint is also to be more consistently protected against the potential threat of harassment or other sanctions in connection with the filing of a complaint.

For example, if an employee was terminated at the time he or she filed a complaint, the employer would have to prove that the termination was for a reason other than the employee's filing of the complaint.

Time limit for receipt of documents served

In the amended legislation, the employer may not set a collection period of less than ten days for mail relating to the commencement, modification and termination of the employment relationship (or also in connection with agreements on work performed outside the employment relationship) or the commencement, modification and termination of the employee's obligations under the employment contract.

Calculation of the duration of the employment

According to the amended legislation, the duration of the employment relationship also includes the duration of the previous employment relationship, which is immediately followed by the duration of the employee's employment relationship with the same employer. This may be relevant, for example, in determining the amount of severance payment or the length of the notice period.

Essential prerequisites of the employment contracts and information on working conditions

Until now, the Labour Code has provided for the so-called general mandatory prerequisites of an employment contract and the so-called special prerequisites of an employment contract. The amendment unified these prerequisites and now the employment contract must contain the following essential prerequisites:
- type of work,
- place of work,
- day of work commencement,
- wage conditions (may also be agreed in the collective agreement).

Other terms and conditions of employment may be agreed directly in the employment contract. These are:
- pay date,
- working hours,
- length of leave,
- length of notice period.

In the case of other terms and conditions of employment, the employer has the choice of whether to communicate them to the employee

in the form of written information or to agree them in the employment contract as additional conditions of employment.

If the employment contract does not contain such additional conditions of employment, the employer is obliged to provide the employee with written information on the conditions of his employment:

- within seven days of the commencement of the employment relationship, at least to the extent of the following information:
  - the method of determining the place of work or the main place of work if several places of work are agreed in the employment contract,
  - the weekly working time stipulated or, where appropriate, the rules for the distribution of working time,
  - the maturity of wages and the payment of wages, including pay dates;
- within four weeks of the commencement of the employment:
  - the amount of leave and the method of determining it,
  - the rules for termination of employment, the length of the notice period or the method of determining it if it is not known at the time the information is provided, the time limit for bringing an action for a declaration that the termination of employment is invalid,
  - the right to training provided by the employer, if any, and its scope.

This written information must be provided by the employer to all employees who start work on or after 1 November 2022. For other employees, the employer has this obligation only if requested by the employee.

Prerequisites of employment contracts in case of place of work abroad

According to the amendment to the Labour Code, if the place of performance of work is outside the territory of the Slovak Republic, the employer is obliged to agree with the employee in the employment contract on other prerequisites and to provide additional information before the employee leaves to perform work in a country outside the territory of the Slovak Republic.

The employer is not obliged to provide additional information if the period of work in the country or countries outside the Slovak Republic does not exceed four weeks.

Probationary period

According to the amendment, the probationary period of an employee with a fixed-term employment relationship must not be longer than half of the agreed duration of the employment relationship.

Changing the form of employment

An employee:
- with a fixed-term employment relationship or
- a short-term employment relationship,

whose employment relationship lasts longer than six months and whose probationary period has expired, may apply for a transfer to an indefinite employment relationship or fixed weekly working hours. The employer shall be obliged to provide a written, reasoned reply within one month of the date of the request. This shall also apply to any subsequent request made by the employee not earlier than twelve months after the previous request.

An employer who is a natural person and an employer who employs fewer than 50 employees must respond to such a request within three months of the date of the request.

Posting an employee to work in another EU country

The Labour Code is also amended with respect to agreements in the case of posting to perform work in another Member State of the European Union. Similarly to the employment contract, the law requires, in addition to the prescribed content of the agreement, the submission of written information beyond the scope of the agreement. The employer shall provide the information before the employee leaves to carry out work in another Member State. The employer is not obliged to provide this information if the period of work in another Member State does not exceed four consecutive weeks.

Change of working conditions

In case of a change in the employment conditions referred to in points “Essential prerequisites of the employment contracts and information on working

conditions", "Prerequisites of employment contracts in case of place of work abroad" and "Posting and employee to work in another EU country", the employer is obliged to provide the employee with written information about the change in the employment conditions and the change in the data without delay, but on the day on which the change takes effect at the latest.

Severance and redundancy payment in the event of the death of an employee

The amendment to the Labour Code has also addressed the controversial issues of application practice in relation to the right of survivors to benefits arising from the termination of employment if the employment relationship of the employee was terminated by death before the date of the proper termination of the employment relationship.

According to the amendment, if an employee dies while his or her notice period is running or if he or she has concluded an agreement to terminate the employment relationship, the employment relationship shall terminate on the date of death if he or she dies before the expiry of the notice period or before the agreed date of termination of the employment relationship and, at the same time, his or her entitlement to severance or redundancy payment shall not be terminated. For the purposes of severance payment, the date of termination of the employment relationship by notice or agreement shall be deemed to be the date of the employee's death. Likewise, for the purposes of redundancy payment, in the event of the death of an employee, the date of termination shall be deemed to be the date of the employee's death. Entitlement to severance and redundancy payment shall thus pass, together with wage entitlements, to the employee's survivors.

New regulation of paternity leave

The amendment introduces two weeks of paternity leave for fathers. The former parental leave that could be taken by the father is replaced by the concept of paternity leave. The leave will be granted to the father to the same extent; if the father takes two weeks' leave in the 6 weeks following the birth of the child, he will be entitled to a social security benefit in addition to that granted to the mother.

Until now, the mother and the father have never received benefits for the same child at the same time.

In this connection, the new Act also amends Act No 461/2003 Coll. on Social Insurance (hereinafter referred to as the 'Social Insurance Act'), which regulates maternity benefits.

New protection for men caring for children:

- According to the previous regulation, an employer may terminate the employment relationship with a pregnant woman, a mother up to the end of the ninth month after childbirth and a nursing woman during the probationary period only in writing, in exceptional cases unrelated to her pregnancy or maternity, and the termination must be duly justified in writing, otherwise the termination of the employment relationship during the probationary period is null and void.
- The new amendment to the Labour Code extends the protection against termination of employment during the probationary period to a man caring for a child, as it also grants such protection to a man on paternity leave.

Predictability of employment in activities outside employment

When concluding agreements on work performed outside the employment relationship (i.e. agreement on work activity, agreement on performance of work or agreement on temporary work for students), the employer is also obliged to provide the employee with written information with the statutory prerequisites.

The content of the information also determines the employee's right to refuse to perform the work if the employer requires performance of the work in breach of the written information. The employee may also claim remuneration, i.e. at least the part of the remuneration provided for by law, which he/she would have received if the employer had cancelled the performance of the work in breach of the law.

Information under the new provision of Section 223a will not be required if

- the beginning and end of working time and the work shift schedules are determined by the employer in agreement with the employees' representatives and are announced in writing in a place which is accessible to the employee, and

the employee is given at least one week's notice of the schedule with validity of at least one week,
- the employer agrees with the employee that the employee shall arrange his or her own working time or, if
- the average weekly working time does not exceed three hours in any period of four consecutive weeks.

However, this obligation applies only to those agreements where the commencement of work is agreed on 1 November 2022 and later. For other employees employed on the basis of agreements on work performed outside the employment relationship, the employer has this obligation only if the employer is requested by such employee to provide the information.

We hope that the above has brought you closer to the changes brought about by the amendment to the Labour Code. For further analysis of any part of the amended Labour Code, please do not hesitate to contact us.

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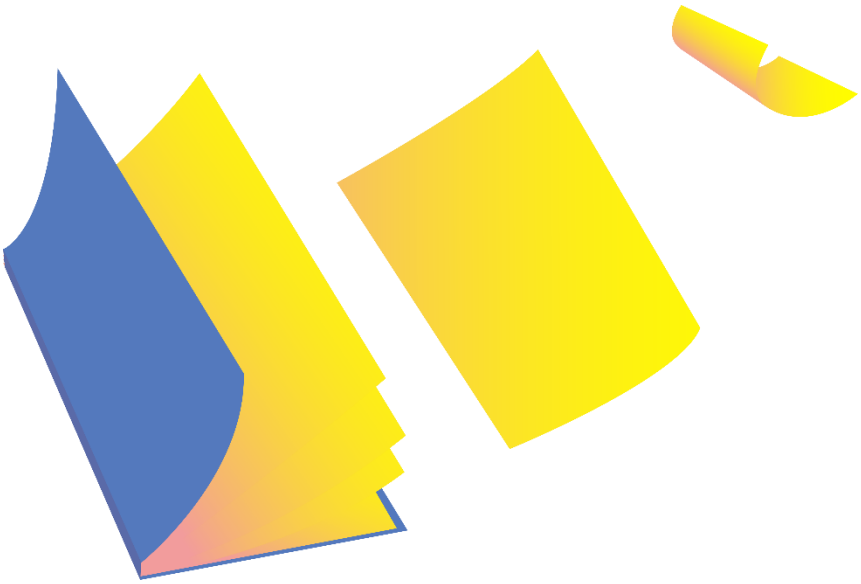

→ Tax

Duty to correct deducted VAT upon failure to pay for goods/services delivered

The Ministry of Finance of the Slovak Republic has submitted to the Parliament a draft amendment to Act No. 222/2004 Coll. on value added tax, as amended, the most significant change of which is the introduction of the obligation of customers, payers of value added tax, to correct the deducted VAT if the customer does not pay for the supply of goods or services to their supplier.

The obligation to adjust the VAT deducted applies to supplies where the person liable for VAT is the supplier and the customer claims a VAT deduction. The customer, who is liable for VAT, shall adjust the VAT deducted in the tax period in which 100 days have elapsed since the due date for payment of his liability, to the extent of the unpaid supply.

If the customer claims the VAT deduction after the end of the period in which 100 days have elapsed from the due date of his liability, he must correct the VAT deducted in the same tax period, i.e. in the period in which he also claims the right to deduct the VAT. At the same time, he shall take into account the extent to which he has not paid for the supply from the supplier. In the same way, unpaid supplies more than 100 days overdue will also have to be taken into account when claiming the VAT deduction when registering as a VAT payer.

The customer will continue to be obliged to correct the VAT deducted in cases where he receives a correction document from his supplier, where the customer is in bankruptcy or insolvency proceedings, and also where he fails to satisfy the supplier's claim after the end of the restructuring.

If the customer even partially satisfies the supplier's claim, he will again have the right to deduct VAT in proportion to the amount of the payment made, provided that he has not received a document from the supplier correcting the tax base due to the creation of an irrecoverable claim. Adjustments to the tax deducted will also need to take into account the proportional deduction and any adjustments made to the tax deducted. It will thus become administratively burdensome for customers to recalculate the deducted tax by the VAT coefficient, to keep track of credit and debit notes, instalment plans, etc. All adjustments to the tax deducted will also have to be recorded and reported in the control statement.

According to the proposed wording of the amendment, the adjustment should also apply to deliveries made before 1 January 2023, if the threshold of 100 days is exceeded on 1 January 2023 at the earliest.

On the supplier's side, it is proposed to extend the current conditions for the possibility to correct the taxable amount and the VAT paid on irrecoverable receivables, thus easing the current extremely strict conditions.

The supplier will also be able to treat as uncollectible a claim that is 150 days past due. If the amount of the claim is no more than 1,000 euros including VAT, it will be sufficient for the supplier to prove that he has taken any action to obtain payment in order to consider the claim as unenforceable. In the case of claims of more than 1,000 euros including VAT, it will be necessary to prove that the supplier seeks payment by an action in court, except in arbitration, or that the supplier enforces payment in enforcement proceedings.

The adjustment on the supplier's side will apply to receivables for which the moment of expiration of 150 days after the due date occurs after 31 December 2022.

The provisions on the correction of VAT in case of non-payment for the supply on the part of the supplier and the customer are set disproportionately, since the customer is obliged to reimburse VAT to the state budget before the supplier has the right to reduce the VAT paid, and moreover, the supplier can only apply a reduction of the VAT paid if certain conditions are met. The Government's main aim with this proposal is to improve

payment discipline in commercial relations and potentially to reduce the VAT collection gap.

Other major changes expected to take effect from 1 January 2023 and 1 January 2024 introduced by the amendment include:

- abolition of the VAT registration requirement for taxable persons providing exclusively financial or insurance services or exempt rental of immovable property,
- providing for the correction of the VAT deducted on the theft of fixed assets valued at less than 1,700 euros by means of the fiction of a flat depreciation of the assets over a period of four years,
- waiving the obligation for foreign persons to file a "blank" tax return if they only carry out triangular trade under an identification number assigned in the Slovak Republic in the position of the first customer,
- the introduction of a record-keeping obligation for payment service providers in relation to payments made and the obligation to send data to the European central system on payments.

The draft of the Government amendment to the VAT Act will still be discussed in the National Council of the Slovak Republic. The final text will be known after the legislative process is completed.

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Tax deductibility of interest expenses

The Government's proposed amendment to the Income Tax Act has been tabled in Parliament, which would introduce an additional rule on capping net interest expense **from 1 January 2024**. The new proposed rule transposes the amended provisions of Council Directive (EU) 2016/1164 of 12 July 2016 (the "ATAD Directive"), and should take precedence over the application of the current rule on the limitation of interest expenses from dependants set out in section 21a of the Income Tax Act.

According to the wording of the draft amendment, the rule is to be applied both to taxpayers with unlimited tax liability and to taxpayers with limited tax liability who have a permanent establishment in the territory of the Slovak Republic for income tax purposes. Exceptions to the application are to be banks, insurance companies, foreign insurance companies, reinsurance companies, their branches, pension management companies and taxpayers whose dependants are only natural persons.

The limitation is intended to apply to net interest expense, i.e., the amount by which tax-recognized interest expense (expense), including other character-similar costs (expense) related to loans and borrowings, exceeds taxable interest earnings (income), including related other character-similar taxable revenues (income), if the **net interest cost** (expense) exceeds the safe harbour amount. The draft amendment foresees a threshold of 3 million euros, but this threshold may be modified or deleted in the course of the legislative process. In contrast to the existing limit, the indicator should also include interest in relation to persons who are not dependants, i.e. also interest on bank loans.

A taxpayer that does not qualify for the de minimis exception would be required to increase its tax base by net interest expense in excess of 30 per cent of the so-called tax EBITDA. Unlike the existing interest limitation rule, which is based on book-keeping entries, the newly introduced rule is to be tied to tax interest and tax indicator EBITDA. Capitalized interest, which is part of the valuation of fixed assets, is also to be included in net interest expense.

The primary objective of these measures is to prevent the artificial shifting of profits by multinational groups in order to reduce tax bases through excessive debt financing. The proposed wording also allows for the recognition of unrecognised net interest expense over the five

immediately succeeding tax years. The unused interest capacity will only be available if the total amount of net interest expense in the affected subsequent period does not exceed the limit of 30 per cent of taxable EBITDA.

If the taxpayer is not obliged to adjust its tax base according to the newly introduced rule, it will be obliged to apply the existing rule limiting interest expense from dependants to a maximum of 25 per cent of EBITDA.

Another change is being consulted at EU level in the area of interest. This could be brought about in due course by a proposal for a Council Directive on the establishment of rules concerning relief to reduce the preference for debt over equity and the limitation of deductibility of interest for corporate tax purposes.

The DEBRA (Debt-Equity Bias Reduction Allowance) initiative aims to put debt and equity financing on an equal footing from a tax perspective, as most EU tax systems allow for the deduction of interest costs when calculating the corporate tax base, while costs related to equity financing, such as dividends, are generally not tax deductible. This asymmetry leads to a preference for debt financing over equity financing.

The draft Directive contains rules under which, under certain conditions, it will be possible to deduct hypothetical interest from an increase in equity for tax purposes. The tax deductibility of net interest expense on borrowings should also be further limited, provisionally to 85 per cent.

The Directive could also potentially reduce the risk of insolvency, and strengthen growth, innovation, economic competitiveness and financial stability of EU businesses. The draft text of the amendment to the Directive states the obligation to transpose the Directive into national law by 31 December 2023 with effect from 1 January 2024, but the Directive itself has not yet been published in the Official Journal of the EU.

Other income tax news

Among other innovations that the Government's draft Income Tax Act should bring with effect from 1 January 2023 are changes in the area of transfer pricing. The definition of a foreign dependent person and a controlled transaction is specified. The addition of the definition of a so-called significant controlled transaction will allow taxpayers not to be required to maintain transfer pricing documentation for transactions with a value below the value defined by law.

The rules for determining the tax base of permanent establishments of taxpayers with limited tax liability (non-residents) and the corresponding adjustments have also undergone modifications. According to the proposal, taxpayers with limited tax liability will also be able to base the calculation of the tax base on the economic result reported under the legislation in the State of their establishment, and it will also be possible to include in income (revenue) and expenses (costs) items of income (revenue) and expenses (costs) attributable to the permanent establishment arising before its establishment or after its dissolution (by means of a supplementary tax return).

The addition of a reference to the OECD Transfer Pricing Directive directly into the Income Tax Act should also bring greater legal certainty to taxpayers, but the OECD Directive will still not be a directly binding source of law. In order to increase legal certainty, the law also adds a procedure for the tax administrator in situations where the prices used by the tax entity in transactions with dependants do not correspond to the arm's length principle. In such a case, the tax administrator will apply the mean value (median) to quantify the differences during the tax audit, unless the taxpayer proves that another value within the range is more appropriate. However, the application of the median value by the tax administration is questionable. The amendment, as currently drafted, places the burden of proof on the taxpayer to prove compliance with market prices when using values other than the median.

The amendment to the Income Tax Act could, among other things, from 1 January 2023, bring, for example, an addition to the procedure in the case of preventive restructurings and adjustments related to the adoption of the new International Financial Reporting Standard IFRS 17 – Insurance Contracts relating to Technical Provisions.

The Government's proposal also includes an amendment to the Tax Administration Act, under which, for example, a so-called "second

chance" for administrative offences should be introduced from 1 January 2023. This means that the tax administrator would warn the taxpayer of non-compliance with selected obligations at the first violation. However, it will sanction any further breaches, as it has done so far.

The amendment to the law will still be subject to negotiations in the National Council of the Slovak Republic, so the current wording is still open.

At the level of the European Union, further negotiations on the proposal for a Council Directive on ensuring a global minimum level of taxation of multinational groups in the Union are in prospect. The Directive is based on the OECD project on base erosion and profit shifting (known as "BEPS") and its extension (BEPS 2.0, namely the so-called Pillar II). The Directive is intended to ensure effective taxation at EU level and to limit the advantages that many multinational corporations derive from different national tax regimes.

Provisions to ensure effective taxation of large multinational and national groups operating in the EU market should apply to groups with consolidated revenues of at least 750 million euros in at least two of the four preceding financial years. If the income of the group entities (referred to as the 'basic entities') in a jurisdiction was taxed at an effective tax rate of less than 15 per cent, an 'additional tax' would be levied. In theory, the introduction of the Directive could affect companies that, for example, benefit from tax reductions.

The collection of the additional tax should be ensured by two rules:

- Income Inclusion Rule (IIR), which allows for the taxation at the parent country level of income of subsidiaries that have been taxed at less than the minimum tax rate, and thus levies additional tax on undertaxed profits of subsidiaries in low-tax countries,
- Under Taxed Payments Rule (UTPR), which allows Member States to apply additional tax to low-taxed entities in their own country instead of levying the entire additional tax at the level of the ultimate parent entity.

The final text of the draft directive has not been agreed at EU level, and approval is under discussion.

According to the proposal, Member States would have to transpose the Directive into local legislation by 31 December 2023 so that the IIR rule would start to apply to financial years starting no earlier than 31 December 2023 and the UTPR rule to financial years starting no earlier than 31 December 2024.

Pillar I of the BEPS 2.0 project is also under discussion at EU level, which addresses issues of the distribution of taxing rights between tax jurisdictions and discusses various proposals for rules on the allocation of the profits of the largest and most profitable multinational businesses to individual countries.

Under Pillar I of the OECD project, 25 per cent of the profits of the largest and most profitable multinationals above a set profit margin (residual profits) should be re-allocated to the jurisdictions in which the users and customers of the MNEs are located (Sub-A), i.e. to the countries where the sales are made. The first pillar also provides for a simplified and streamlined approach to the arm's length principle for core in-country marketing and distribution activities (sub-pillar B).

The allocation of residual profits should be based on the principle of a mathematical formula, which would represent a significant change compared to the currently applied transfer pricing principles. As the Pillar I rules are still under negotiation at OECD level, plans to introduce rules in this area have been temporarily suspended at European Union level. However, unless the negotiations at OECD level move significantly forward, the introduction of further harmonised rules on taxation will resume at EU level.

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