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Daňovky

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Taxes

Upcoming changes in the amounts of meal and travel allowances

Two decrees of the Ministry of Labour, Social Affairs and Family of the Slovak Republic ("MPSVR SR") were published in the Collection of Laws, which increase the amounts of meal allowances and the amounts of basic compensation for the use of motor vehicles on business trips. Ministry has amended the previous regulation as a response to the increasing prices of food and beverages in restaurants as well as costs related to the operation of vehicles. In this article, we provide an overview of the changes effective as of 1 May 2022.

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MPSVR SR issued on 7 April 2022 in accordance with the Travel Allowances Act, a new Decree No. 116/2022 Coll. on the amounts of the meal allowance. It determines the new amount of meal allowance for business trips, which we have already covered in our previous Article.

As of 1 May 2022, this change will also affect the employer's contributions to all forms of meals. In this context, the minimum employer's contribution increases from EUR 2.11 to **EUR 2.48** and the maximum employer's contribution increases from EUR 2.81 to **EUR 3.30**. Higher amounts of meal allowance apply to each of the legal meal forms. The new Decree also affects the minimum value of the meal voucher to **EUR 4.50**. It is still possible to contribute the employees from the Social fund, with no limitation.

Please note that the financial contribution or meal vouchers must be provided to employees in advance, i.e. for May they should be provided already in April. Many companies are unable to respond timely to these changes. It may also be more complicated to reduce the entitlement for holidays or other days where the entitlement is related to the months in which the old amount was still valid (especially at the turn of month April and May).

The main changes we summarize as follows:

SUBSISTENCE ALLOWANCE FOR BUSINESS TRIPS		
Duration of the business trip	**Amount of meal allowance**	
	valid until 30 April 2022	**valid from 1 May 2022**
time zone 5-12 hours	EUR 5.10	**EUR 6**
time zone 12-18 hours	EUR 7.60	**EUR 9**
time zone over 18 hours	EUR 11.60	**EUR 13.70**
MEAL ALLOWANCE FOR EMPLOYEES		
Parameters	**Amount**	
	valid until 30 April 2022	**valid from 1 May 2022**
Maximum employer contribution (55% of the meal allowance amount)	EUR 2.81	**EUR 3.30**
Minimum value of the meal voucher	EUR 3.83	**EUR 4.50**
Minimum employer contribution for meal voucher	EUR 2.11	**EUR 2.48**
Minimum financial contribution for meals by the employer	EUR 2.11	**EUR 2.48**
Maximum financial contribution for meals by the employer	EUR 2.81	**EUR 3.30**
MEAL ALLOWANCE FOR SELF-EMPLOYED INDIVIDUALS		
Maximum amount of meal allowance for each working day in tax deductible expenses	EUR 2.81	**EUR 3.30**

MPSVR SR also made changes to other Decree No. 117/2022 Coll. changing the rate of basic compensation for the use of road motor vehicles on business trips. Employees are entitled to increased reimbursement for each kilometer traveled on a business trip by their private vehicle:

• from EUR 0.053 to **EUR 0.059** for two-wheeled vehicles and tricycles,

• from EUR 0.193 to **EUR 0.213** for road motor vehicles.

Both measures become effective as of 1 May 2022.

Taxes

Short overview of the amendments of the Social Insurance Act

Among others changes, the law amendment abolishes the annual reconciliation of prepayments for social insurance.

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On 13 April 2022, Act No. 125/2002 Coll. on amendment of the Slovak Social Insurance Act was published in the Collection of Law of the Slovak Republic (further only "amendment"). One of the changes the amendment brings is **cancellation of the annual reconciliation of prepayments for social insurance**. We have informed you on the planned introduction of the annual reconciliation of social insurance prepayments in Daňovky at the end of 2018.

In 2022, the social insurance should have been settled via prepayments and the first annual reconciliation should have been performed in 2023 for the year 2022. The provisions of the Slovak Social Insurance Act, which were linked to the implementation of the annual reconciliation of social insurance prepayments, **have never came into force**. In relation to the cancellation of the annual reconciliation, the amendment brings return of several original provisions of the Slovak Social Insurance Act so that these reflect the situation where no annual reconciliation is performed, e.g.:

- Provisions on daily assessment base for determination of amounts of accident allowances for students and pensioners
- Provisions on maximum monthly assessment base (maximum annual assessment base is not more mentioned in the Act)
- Provisions on order of paying social insurance for individuals performing parallel working activities, and others.

Among other changes of the amendments belong:

- recording of the sickness by the doctor in the system of electronic public health
- broadening of the 8months' protective period for sickness allowances claims for individuals, who become pregnant within 180 days after cancellation of sickness insurance (until the amendment, this period was only 7 days).

Case law

Can a fixed establishment of a company be created through the use of its subsiduary's resources?

In the judgment C-333/20 Berlin Chemie A. Menarini SRL, the Court of Justice of the EU dealt with a question on whether a company which has its registered office in one Member State has a fixed establishment in another Member State because that company owns a subsidiary there that provides it with human and technical resources under contracts on provision of i.a. marketing, regulatory, advertising and representation services.

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Background situation

Berlin Chemie AG is a company that has its registered office in Germany which has marketed pharmaceutical products in Romania. It also has a tax representative in Romania and is registered for VAT there.

Berlin Chemie also has a subsidiary in Romania with whom the German company entered into a marketing, regulatory, advertising and representation services contract. Under this contract, the Romanian company undertook to promote actively the products of the German company in Romania through, inter alia, marketing activities.

The Romanian company has focused on legally qualified advisory services to deal with advertising, informational and promotional issues, in the name of and on behalf of the German company. The Romanian company also undertook to take all the regulatory actions necessary in order to ensure that the German company is authorised to distribute its products and promote them in Romania. These activities have been carried out in accordance with the strategies and budgets established by the German company.

Furthermore, the Romanian company has taken orders for pharmaceutical products from wholesale distributors in Romania and issued invoices to customers in the name and on behalf of the German company. However, it was not directly involved in the sale and supply of pharmaceutical products by the German company and did not enter into commitments with third parties in the name of that company.

Issue concerned

The Romanian company invoiced the services in question exclusive of VAT to the German company, taking the view that the place of supply of those services was in Germany.

However, following a tax audit, VAT was imposed on the respective services. The tax authority took the view that the services supplied by the Romanian company to the German company were rendered to a fixed establishment of the latter in Romania and therefore, the place of their supply was in Romania.

The reasoning was based on the circumstance that the German company had continuous access to technical resources owned by the Romanian company, such as computers, operating systems and motor vehicles, as well as to its human resources. These were, according to the tax authority, sufficient to carry out regular supplies of taxable goods or services and therefore constituted a fixed establishment for VAT purposes to the German company in Romania.

Conclusions of the Court of Justice of the EU

- CJEU judgments (e.g. C-605/12 „Welmory“) generally do not exclude constituting a fixed establishment of taxable person through the use of resources belonging to an idependent economic operator.
- For a fixed establishment to be constituted, it is however necessary that the taxable person has the right to dispose of those human and technical resources in the same way as if they were its own.
- CJEU remarked that given that a legal person (the Romanian company), even if it has only one customer, is assumed to use the technical and human resources at its disposal for its own needs. The German company could have a suitable structure with a sufficient degree of permanence in Romania, in terms of human and technical resources, only if it were established that, by reason of the applicable contractual provisions, the German company had the technical and human resources of the Romanian company at its disposal as if they were its own.
- The human and technical resources which were made available to the German company by the Romanian company and which, according to the Romanian tax authorities, make it possible to establish the existence of a fixed establishment of the German company in Romania, are also those through which the Romanian company supplies the services to the German company. Yet, the same resources cannot be used both to provide and receive the same services.
- The respective services provided by the Romanian company seem to be received by the German company, which uses its human and technical resources situated in Germany to conclude and perform the contracts of sale with distributors of its pharmaceutical products in Romania.
- If the mentioned facts are established, the German company does not have a fixed establishment in Romania, since it does not have a structure in that Member State allowing it to receive services there provided by the Romanian company and to use those services for the purposes of its economic activity of selling and supplying pharmaceutical products.
- CJEU concluded that a company with its registered office in one Member State does not have a fixed establishment in another Member State on the ground that that company owns a subsidiary there that makes available to it human and technical resources under contracts by means of which that subsidiary provides, exclusively to it, marketing, regulatory, advertising and representation services that are capable of having a direct influence on the volume of its sales.

The judgment brought further clarifications of the fixed establishment concept for VAT purposes. It may be helpful e.g. when setting up contractual relationships with independent economic operators whose activities, carried out through their own technical and human resources, have a direct influence on sales activities of a company seated abroad.

If you have any questions regarding assessment of existence of a fixed establishment, e.g. when entering new sales markets, we would be pleased to assist. You can find the judgment here.

Legal

Amendment to the Commercial Code will bring changes regarding the transfer of majority shareholding

The law amendment especially regulates the moment when the transfer of a majority shareholding in a limited liability company takes effect.

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On 16 March 2022, the National Council of the Slovak Republic approved Act No. 111/2022 Coll. on Resolving Imminent Bankruptcy and on Amendments to Certain Acts (“Amendment” “Act”), which among other things, is to amend the provisions of Section 115 para. 5 of Act No. 513/1991 Coll., the Commercial Code (the "Commercial Code") concerning the effects of the transfer of a majority shareholding in a limited liability company. The Act was published in the Collection of Laws of the Slovak Republic on April 6, 2022, and thus entered into force on that day.

The aforementioned Amendment to the Commercial Code regulates the moment when the transfer of a majority shareholding in a limited liability company takes effect. After the new one, the effects of the transfer of a majority shareholding towards the company are to **take effect from the date of delivery of the share purchase agreement to the company**, not as previously as of the moment of registration in the commercial register.

Registration of the transfer of any business share, i.e. minority or majority in the relevant commercial register will thus only have a declaratory / certifying effect (the commercial register will only confirm the legal state that has already arisen earlier).

Still in force, however, is the provision of the Commercial Code which states that if the Commercial Code or the articles of association of the company require the consent of the general meeting for the transfer of the business share, the effectiveness of such transfer of the business share does not come into effect until the general meeting of the company has given its consent to such a transfer.

The modification of the moment of entry into force of the effects of the transfer of the majority share will harmonize with the modification of the entry into force of the effects of the transfer of the minority share, i.e. the effects of the transfer of both the minority and the majority share will come into force, as mentioned above, at the moment of delivery of the share purchase agreement to the company.

The Amendment to the Commercial Code also **omits the obligation to submit to the registry court the consent of the tax administrator**, or the obligation to submit a declaration of the transferor and the transferee that the transferor or the transferee does not have such an obligation under the Commercial Code. The above-mentioned changes will administratively simplify the registration of a change in the person of a shareholder.

The above-mentioned amendments to the Commercial Code will enter into force on July 17, 2022.

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