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Amendment to the Act on Employment Services adjusts the conditions of employment of third-country nationals

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An amendment to the Act on Employment Services will enter into force at the beginning of May, that among other things introduces changes to the conditions of employment of third-country nationals.

1. Simplifying the conditions of employment of third-country nationals. Under the current legislation, the Office of Labor, Social Affairs and Family of the Slovak Republic (the "Labor Office") grants a consent with filing a vacant job position by a third country national (non EU) if the vacant job position cannot be filled by the Slovak jobseeker who is listed in the Labor Office's records.

The Amendment introduces a simplification of this rule by providing that the Labor Office will not examine the situation in the labor market and will not seek suitable candidates from the Slovak labor market for a vacant position in the occupation of vacancies which will be, by the Headquarters of Labor, Social Affairs and Family of the Slovak Republic (the "Labor Headquarter"), classified as labor shortages in the Slovak districts where the average registered unemployment rate is less than 5% (the "List of job positions of selected districts"). The Labor Office will publish the List of job positions of selected districts for 2017 until 30 June 2018 on its web site.

For these job positions, publishing of an announcement of the vacant post will not be required. This exemption will apply only to those employers who employ less than 30% of third-country nationals from the total number of employees on the date of submission of an application for granting a temporary residence permit for the purpose of employment in Slovakia (submitted by a third-country national).

2. Limitation of the number of employees from third-country nationals. The employer may not employ more than 30% of third-country nationals employed under the exception set forth in point 1 above (i.e. without studying the labor market situation and without searching for suitable candidates from the Slovak labor market on the grounds that the job position was listed in the List of job positions of selected districts).

3. Shortening of the period for publishing the job vacancy notice. The period for publication of the announcement of the vacant post in order to find a suitable candidate for a vacant job position from the Slovak labor market is shortened from 30 working days to 20 working days. This shortened period will also apply to an application for granting a temporary residence permit for the purpose of employment in Slovakia and to the renewal (extension) of the temporary residence for employment in Slovakia.

4. Limitation of employability of third-country nationals. A positive statement with filing a vacant job position by a third country national as well as employment permit will be issued by the Labor Office only to employers who have not violated the prohibition of illegal employment for a period of two years before a third-country national applies for a temporary residence for employment in Slovakia.

5. Abolition of one of the possibilities for obtaining a work permit and temporary stay for employment

purposes. As of 1 May 2018, it will not be longer possible for an employee to obtain a work permit and temporary residence for the purpose of employment for a third country national (non EU) for the purpose of performance of work within the Slovak Republic on a contractual basis concluded between legal or natural entity. . The work permits and temporary residences for employment issued before 1 May 2018 remain valid for the entire period for which they were granted.

6. Introduction of additional obligations for an employer to whom employees are posted from another EU, EEA

Member State or Swiss Confederation. In the case of assignment of employee by the employer residing in another EU Member State, the EEA or Swiss Confederation, as of 1 May 2018, Slovak employers must attach to the information card the following documents:

- A document proving the provision of accommodation
- Form A1 certifying the social security of a third-country national in the Member State from which he/she is posted to work in the territory of the Slovak Republic,
- Copy of the residence permit for residence in the territory of the EU, EEA Member State or Swiss Confederation in which a third-country national normally performs the work if the residence permit is required under the legislation of the country from which he/she is posted to Slovakia.

The relevant Labor Office for fulfilment of this information obligation is the office in whose territory the work is being performed.

Amendment to the Labour Code introduces several changes

In May, the amendment to the Labour Code enters into force and brings about a number of changes among other things related to wage surcharges, base salary level, outside the employment work contracts, and standardisation of work.



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On 14 February 2018 the National Council of the Slovak Republic approved Act No. 63/2018 Coll., amending Act No. 311/2001 Coll. Labour Code as amended (hereinafter referred to as the "**Labour Code**") and amending certain laws (hereinafter referred to as the "**Amendment**"). The Amendment will enter into force on 1 May 2018.

The Amendment introduces, in particular, the following amendments:

A. Wage surcharges:

a) increase of the minimum wage surcharge granted to an employee for **night work** from the current 20% rate of the minimum wage in EUR per hour for each hour of night work to **50% of the minimum wage in EUR per hour**, whilst an employer who, due to the nature of work or operating conditions, requires that the majority of the work to be carried out as night work, there is a possibility for an agreement (unless such a worker performs hazardous work) upon lower amount of wage benefit, but not less than 35% of the minimum wage in EUR per hour;

b) increase of the minimum wage allowance **for work on holidays** from the current rate of 50% of the employee's average earnings to **100% of the employee's average earnings**;

c) Introduction of a new special wage surcharge **for work performed during the weekend**, for which the employee, in addition to the salary received, would be entitled to the following wage surcharge:

1. on Saturday: 50% of the minimum wage in EUR per hour;
2. on Sunday: 100% of the minimum wage in EUR per hour.

In the case of an employer who, due to the nature of work or operating conditions, requires to carry out the work – regularly – on Saturday or on Sunday, a lower wage allowance surcharge may be agreed upon, not less than:

1. on Saturday: 45% of the minimum wage in EUR per hour;
2. on Sunday: 90% of the minimum wage in EUR per hour.

The transitional provisions of the Amendment provide that from **1 May 2018 to 30 April 2019**, the amount of the wage benefit per hour is as follows:

a) Work on Saturday

1. not less than 25% of the minimum wage in EUR per hour;
2. not less than 20% of the minimum wage in EUR per hour, for an employer who, due to the nature of work or operating conditions, requires to carry out the work – regularly – on Saturday;

b) Work on Sunday

1. not less than 50% of the minimum wage in EUR per hour;
2. not less than 40% of the minimum wage in EUR per hour, for an employer who, due to the nature of work or operating conditions, requires to carry out the work – regularly – on Sunday;

c) Night work

1. not less than 30% of the minimum wage in EUR per hour and, in the case of an employee performing hazardous work, at least 35% of the minimum wage in EUR per hour;
2. in the case of an employer who, due to the nature of work or operating, requires that the majority of the work to be carried out as night work, it may be agreed, unless the worker performs hazardous work, lower wage benefit, but not less than 25% of the minimum wage in EUR per hour.

B. Base salary level. In connection with the amendment to Act No. 5/2004 Coll. on employment services effective from 1 May 2018, pursuant to which the employer is required to disclose the amount of the basic salary component in the publication of an employment offer, the Amendment also introduces an employer's obligation not to propose the basic salary component at a lower amount than stated in the advertisement.

C. Contracts for work performed outside the employment relationship. According to the Amendment, the provisions of the Labour Code regulating the claims of employees for work on Saturdays, Sundays, night work, and tough work, for which the minimum amount of performance is deducted from the amount of the hourly minimum wage, will be also applied to employees in labour relations who perform works based on contracts for work performed outside the employment relationship.

D. Standardisation of work. The Amendment further establishes the employer's obligation to introduce only such labour consumption standards which are processed on the basis of objective measurements and analyses of the required amount of work and the resulting working frequency of the concerned employee. The employers must not apply labour consumption standards that could result in the threat to safety or health of employees.

New anti-money laundering measures came into effect

On March 15, the amendment to the Act on Prevention of Legalization of Income from the Criminal Activity and Terrorist Financing (the “AML Act”) came into effect. It transposes the 4th AML directive.



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The amendment introduces mainly the following changes:

1. Obligated entity – amendment specifies in more details conditions under which a financial agent, financial advisor, insurance company, judicial executor, attorney-at-law or notary public is considered as an obliged entity for purposes of the AML Act.

In addition, new legislation reduces threshold of payments made or received in cash, execution of which classifies the relevant person as the obliged person, from EUR 15,000 to EUR 10,000.

2. Customer due diligence – scope of the (basic) customer due diligence is extended, for instance, by:

- mandatory identification of the ultimate beneficial owner (the “UBO”);
- adoption of measures for verification of such an identification and for understanding the ownership and control structure of the client;
- identification whether the client or its UBO are politically exposed persons or internationally sanctioned person.

Amendment reduces the threshold of the amount of occasional transactions, under execution of which the obliged entity must apply customer due diligence, from EUR 15,000 to EUR 10,000 (or EUR 2,000 for providers of gambling services).

3. UBO records-keeping – legal entities (excluding public sector entities) and purposeful property associations without legal personality are obliged to identify their UBO, to keep and regularly update data about the UBO – unless they are contained in the verification document filed with the register of public sector partners.

4. UBO registration – registration of data related to the UBO in the relevant register will represent one of conditions for establishment of selected legal entities (e.g. companies, non-investment funds, not-for-profit organizations or foundations). Such UBO data will not be publicly available.

In order to apply customer due diligence, the obliged entity is entitled to obtain UBO data from the Slovak Statistical Office.

Obligation to register UBO data when establishing and registering the above legal entities come into force on 1 November 2018. Legal entities already registered in the respective register (e.g. in the commercial register) by 31 October 2018, are obliged to file the application for UBO data registration by 31 December 2019.

However, registration of the UBO in a relevant register will not replace the obligation to identify and register the UBO under the act on the register of public sector partners.

5. Politically exposed person – means a natural person who is or has been entrusted with prominent public functions, irrespective of the place of his/her permanent residency. Under previous regulation, this category consisted only of such persons with permanent residency outside Slovakia.

6. Simplified due diligence – in areas of lower risk of legalization and terrorist financing, the obliged entities must apply at

least simplified customer due diligence. Before adoption of the amendment, no care was required in this case.

7. Enhanced due diligence - obliged entity is required to apply enhanced customer due diligence in a case of a higher risk reflected in the risk assessment, and always with respect to:

- cross-border correspondent relationships of a bank and financial institution with a third-country respondent institution,
- dealing with politically exposed person, or
- with a person established in the third countries identified by the Commission as high-risk third countries.

8. Own activity program and risk assessment - obliged entities must align their own activity programs with the amended legislation by 15 May 2018. In addition, the obliged person must conduct a risk assessment taking into account factors related to the type of the service and risk factors indicated in the AML Act.

9. Administrative offences - amendment regulates conditions for imposition of penalties for administrative offences, increases limits of these penalties (up to EUR 1 million for entrepreneurs and up to EUR 5 million for banks and financial institutions for a breach of selected obligations) and prolongs time limits within which the investigation unit is allowed to impose penalties from one year from detection of the breach to three years.

The Court of Justice of the EU Decided in Slovak VAT Case

Slovak legislation is not in compliance with EU law, when it precludes refund of VAT that was charged and paid several years after delivery of the goods, on the grounds that the limitation period for the exercise of that right began to pass on the date of supply and expired before the application for the VAT refund was submitted.



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On 21 March 2018 the Court of Justice of the EU decided in Slovak VAT case **C-533/16 Volkswagen AG v Finančné riaditeľstvo Slovenskej republiky**.

The Case

Suppliers of German company Volkswagen AG supplied between 2004 and 2010 to this company moulds for the production of parts. They did not include VAT in the invoices they issued, as they considered the transactions as not being supplies of goods; however, 'financial compensation'. They corrected this mistake in 2010 – they additionally charged VAT, filed supplementary VAT returns and paid the VAT to the State Budget. In 2011, Volkswagen AG submitted an application for a refund of this VAT.

The Tax Authorities however denied to refund VAT related to the supplies which took place in the period from 2004 to 2006, due to the expiry of the 5-years limitation period. According to the Tax Authorities, the right to VAT refund arose already on the date of supply of the goods, i. e. when the VAT become chargeable, with the result that the right to claim VAT refund for the period from 2004 to 2006 had expired by the time the application for VAT refund was submitted.

The Question

Provided the VAT was charged to the taxable person and paid by this person several years after supply, is it possible to deny the right to VAT refund on the grounds that the limitation period for the exercise of that right began to pass on the date of supply and expired before the application for VAT refund was submitted?

The Judgement

The Court of Justice of the EU in its judgement held:

- **the substantive requirements or conditions** needed in order to claim the right to VAT deduction are:
 - the person concerned must be a taxable person,
 - this person must use the goods and services in question for the purposes of his taxable transactions,
 - these goods and services must be supplied by another taxable person,
- **the formal condition** for exercising the right to deduction provides that the taxable person must possess an invoice issued in accordance with the VAT Directive,
- **the right to VAT deduction:**
 - although it arises at the same time as the VAT becomes chargeable, it can be exercised only once the taxable person holds an invoice,
 - must be in principle exercised during the same period it has arisen, namely once the VAT becomes due – a taxable person however can deduct VAT even if he did not exercise his right during the period in which the

- right arose, subject to compliance with the conditions and procedures determined by national legislation,
- the possibility of exercising this right without any temporal limit would be contrary to the principle of legal certainty, which requires the tax position of the taxable person, having regard to his rights and obligations vis-à-vis the tax authority, not to be open to challenge indefinitely,
- **a limitation period the expiry of which has the effect of penalising a taxable person who has not been sufficiently diligent and has failed to claim input VAT deduction, by making him forfeit his right to deduct, is compatible with the regime established by VAT Directive**, in so far as upon application of this limitation period the principle of equivalence and principle of effectiveness are observed,
- the Member States may impose also **other obligations** which they deem necessary for the correct collection of VAT and for the prevention of evasion – these; however, **must not go further** than necessary to attain such objectives; and therefore, **they cannot be used in such a way that they would have the effect of systematically undermining the right to deduct VAT and, consequently, the neutrality of VAT.**

To the present case the Court of Justice of the EU noted:

- even though the supply of goods at issue was carried out during 2004 to 2010, the suppliers adjusted the VAT until 2010 when they drew up invoices including the VAT, filed supplementary VAT returns and paid the VAT due – the risk of tax evasion or non-payment of VAT has thus been excluded,
- it was objectively impossible for Volkswagen AG to exercise its right to VAT refund prior to this adjustment, as it had neither been in possession of the invoices nor aware that the VAT was due – only following that adjustment, the substantive and formal conditions giving rise to a right to VAT deduction were met and Volkswagen AG could therefore apply for VAT refund,
- as Volkswagen AG did not demonstrate a lack of diligence, and in the absence of an abuse or fraudulent collusion with the suppliers, it is not possible to deny the right to VAT refund on the grounds of the limitation period.

The Court of Justice of the EU thus rules that **it is not possible to deny to the taxable person the right to refund VAT that was invoiced and that this person paid several years after delivery of the goods, on the grounds that the limitation period for the exercise of that right began to pass on the date of supply and expired before the application for VAT refund was submitted.**

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