Rödl & Partner

NEWSLETTER SLOVAKIA

SETTING FOUNDATIONS

Issue: December 2021

Latest News on law, tax and business in Slovakia

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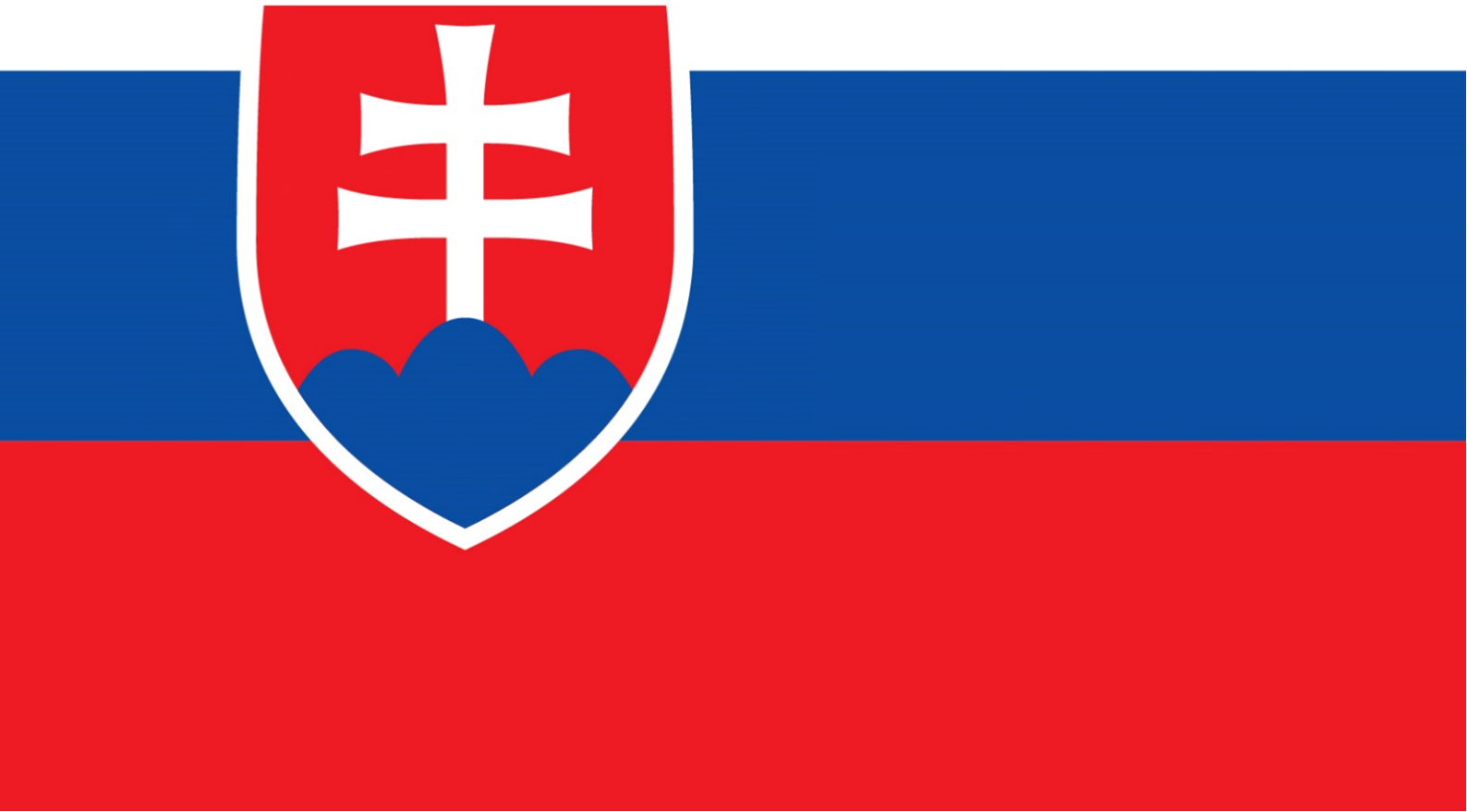

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→ Law

Prepared changes in the Labour Code as of 1 August 2022

The government of the Slovak Republic conducts negotiations on the amendment of the Labour Code submitted by the Ministry of Labour, Social Affairs and Family of the Slovak Republic with a proposed effect as of 1 August 2022, the purpose of which shall be the securing of transparent and predictable working conditions for employees.

The draft amendment of the Labour Code shall implement the 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 the Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers into the Slovak legal order.

The proposed changes of the Labour Code include mainly the following:

Addition of provisions regarding the employment contract

New and relevant requirements of the employment contract shall include also the specification of the employer in the scope of name and registered offices (in case of a legal entity) or name and place of business (in case of a natural person) and the specification of the employee in the scope of Christian name and family name, date of birth and permanent address. Other relevant requirements of the employment contract in terms of Sec 43 par. 1 of the Labour Code remain unchanged (type of work and its brief characteristics, place of work – municipality or part thereof or a place stipulated otherwise, day of work commencement and wage conditions), whereby the place of work is complemented by the statement that there can be more places of work or the rule can be agreed on that the place of work shall be determined by the employee.

New is also the provision of Sec 44a regulating the requirements of the employment contract and the information in writing of the employer in case of work performance outside of the territory of the Slovak Republic. The place and duration of work performance in a state or states outside of the territory of the Slovak Republic represent important requirements of the employment contract in such case. In case the place of work performance of the employee is outside of the territory of the Slovak Republic, the employer is obliged to grant to the employee an information in writing in scope of the following data at least, unless included in the employment contract:

- currency, in which the wage or part thereof shall be paid out;
- data on other benefits related to the work performance in a state or states outside of the territory of the Slovak Republic in cash or in kind;
- data on the securing of the repatriation of the employee and its conditions.

The employer shall inform the employee prior to his/her departure for work performance outside of the territory of the Slovak Republic. The employer is not obliged to grant the information in case the work performance in a state or states outside of the territory of the Slovak Republic will not exceed four consecutive weeks.

The following provisions of the employment contract or another agreement concluded by and between the employer and the employee shall be null and void:

- provisions, by which the employee undertakes to keep secret his/her working conditions including wage conditions and the terms of employment;
- provisions, by which the employee is prohibited from performing another gainful activity outside of the working hours stipulated by the employer; the restriction of another gainful activity in terms of Sec 83 of the Labour Code (ban on competitive activities) or in terms of special regulations remains unaffected hereby. This provision corresponds also with the proposed wording of Sec 13 par. 6 of the Labour Code that imposes a ban on the employer to prohibit the employee from performing another gainful activity outside of the working hour stipulated by the employer. However, this restriction does not have any effect on eventual restrictions imposed by law, as e.g. the ban on competitive activities.

Informing on working conditions and terms of employment

The Labour Code amendment introduces a new information duty of the employer towards employees in scope of the following data at least:

- method of determining the place of work performance or determining a main place of work performance in case multiple places of work performance are agreed in the employment contract;
- determined weekly working hours, data on the method and rules of working hours allocation including the assumed working days and the compensatory period in terms of Sec 86, Sec 87 and 87a, scope and time of granting of rest breaks at work, uninterrupted daily rest and uninterrupted weekly rest, rules of overtime work including wage benefits for overtime work;
- number of vacation days or method of its determination;
- wage due date and wage pay-out including payment dates;
- rules of employment termination, duration of the period of notice or method of its determination, if unknown at the time of informing, period for filing a lawsuit for the determination of invalidity of the employment termination;
- right to professional preparation granted by the employer, if granted, and its scope.

The employer shall grant this information in writing in a separate document or agree it in the employment contract as further working conditions (their change shall be subject to an amendment to the employment contract, i.e. the consent of the employee in such case).

In terms of temporary provisions, the employer will be subject to this information duty with respect to employees whose employment commenced prior to 1 August 2022, only in case an employee applies for such information or in case of a change of the conditions subject to the information duty.

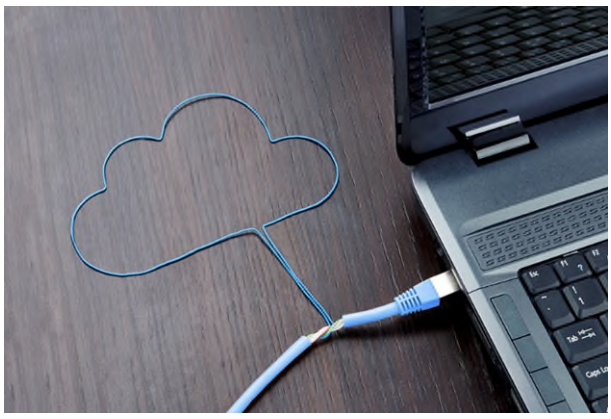
Information delivery and granting form

In order to increase the legal certainty regarding the delivery of documents by the postal service, the Ministry proposes to stipulate 10 days as the exact duration of the mail retention time.

The draft amendment of the Labour Code allows with respect to the granting of information by the employer to the employee apart from the paper form also the electronic form, however, only if the employee has access to the electronic form of the information, is able to save and print it out and the employer keeps a confirmation of its delivery or receipt. The new method of information granting does not apply to the delivery of documents regarding the commencement, change and termination of employment.

Transition to another form of employment

The Labour Code amendment proposes the addition of the new provision of Sec 49b, by which the employer is obliged to grant to the employee with a temporary employment contract or with an employment contact with shorter working hours, whose employment has been in existence for longer than six months and whose probation period, if agreed, has passed, a reasonable response in writing to his/her application for the transition to a permanent employment contract or to an employment contract with determined weekly working hours within one month as of the filing date of the application; this applies also to all subsequent applications of the employee filed after the lapse of 12 months as of the filing date of the previous application at the earliest. The employer being a natural person and the employer employing less than 50 employees is obliged to respond to an application in terms of the first sentence within three months as of the day of its delivery at the latest and may grant the response by word of mouth in case of a repeated application, if the reasoning remained unchained.



The duration of the previous employment is also included into the duration of a temporary employment contract in case of a temporary employment contract agreed on repeatedly.

Introduction of the term “paternity leave”

This is not the introduction of a new institution, it is more a terminological change and amendment of some related provisions. Practically, it will mean

the separation of the parental leave of the man and its renaming to paternity leave in terms of Sec 166 par. 1 of the Labour Code. It also proposes to grant to a man (employee) taking paternity leave protection from employment termination during the probation period being motivated by using the right to paternity leave in the same manner as such protection is currently granted to a mother till the end of the ninth month after giving birth. That means that the employer will be able to terminate employment during the probation period not only with a mother till the end of the ninth month after giving birth, but also with a man taking paternity leave, however, only in writing and in special cases not related to taking care of a newborn and the employer will be obliged to justify it adequately in writing, otherwise the employment termination shall be invalid.

Further proposed changes of the Labour Code include e.g. also the following:

- completion of the current regulation of the probation period in a way that the agreed probation period must not be longer than one half of the agreed employment duration in case of an employee with a temporary employment contract;
- new information duty with respect to employees employed on basis of an agreement in terms of minimum work predictability (the employer shall be obliged to inform the employee in writing at the conclusion of an agreement of the days and the time periods, during which the employer may require the employee to perform work and on the period, during which the employee shall be informed of the work performance prior to its beginning, which, however must not be shorter than 24 hours);
- possibility of the employer to perform a one-side wage deduction also in case of the unbilled advance payment for securing of boarding or the granted financial contribution for boarding;
- possibility to ask for flexible forms of work performance in case of persons caring for children.

Eventual changes can be expected due to the state of the legislative process the Labour Code amendment is currently in.

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→ Tax

The most interesting tax changes

Public index of tax reliability

The amendment of the tax code introduces the public index of tax reliability that shall reflect the observance of tax and accounting duties of a tax subject – taxpayer registered to income tax and its economic indices. Highly reliable tax subjects shall be entitled to a number of benefits within the tax process, on the contrary, sanctions shall be imposed on unreliable subjects.

The assessed period shall be the calendar half-year. The criteria included into the assessment shall be stipulated by a directive/ generally binding legal regulation of the Ministry of Finance of the Slovak Republic. The notifications of the tax reliability index shall be send till the end of February 2022, the first list of reliable tax subjects shall be published till 30 June 2022.

Deduction of investment expense

The amendment of the Act on Income Tax introduces a new form of investment support – deduction of investment expense (cost).

Taxpayers with average investments exceeding 700 per cent compared to three previous tax assessment periods and with planned average investments in an amount of more than 1 million euros shall be entitled to the stated support. This support is bound to investments into investment spheres defined by law with the aim to optimize production processes using state-of-the-art technological knowledge to increase production.

The stated support shall lie in the possibility to additionally deduct investment expenses in the amount of 15 - 55 per cent (based on the planned average amount of investments in million euros and based on the average investment amount in percent) from the tax deduction claimed from assets invested.

Both-way electronic communication

31 December 2021, means the end of the transition period, during which the Act on e-Government enabled the Financial Administration of the Slovak Republic to postpone the duty to communicate with tax subjects in both ways using the electronic form – the communication duty functions currently only in the direction tax subject → Financial Administration.

The sending of official documents in paper form shall be, therefore, replaced by the delivery of documents to electronic mailboxes as of 1 January 2022. However, the communication of the Financial Administration shall not be performed via portal of the Financial Administration, but the Central Portal of Public Administration (slovensko.sk) in accordance with the Act on e-Government.

Electronic mailboxes are activated automatically at their establishment in case of legal entities and the Financial Administration can, therefore, apply the fiction of delivery in case of a non-acceptance of mail as well. Tax subjects have the possibility to set the sending of notifications of new messages in the mailbox to an e-mail address or by means of text messages. Subjects without an active electronic mailbox (e.g. foreigners or natural persons) shall receive documents via "Central Official Delivery" that offers also the possibility to send electronic documents in paper form by post.

Tax liability and so-called "split payment"

As we have already stated in our previous Newsletter, in case a customer settles after 1 January 2022, a payment for goods/services to the bank account of a supplier that is not published in the list on the web page of the Financial Administration (as of the day of entering e bank order), the customer shall be liable for the payment of tax, unless settled by its supplier.

In case the bank account number of the supplier is not stated in the list published by the Financial Administration, the customer can avoid the tax liability by settling the amount of VAT to the Personal account of the taxpayer (supplier). A new variable symbol shall be introduced in order to differentiate such payment of the customer.

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→ Business

Contribution for boarding from the point of view of taxes and deductions as of the year 2022

As of 1 January 2022, the amendment of the Act on Income Tax eliminates the discrepancy in the taxation of two possibilities of the employer to meet its legal obligation to provide for boarding of employees at work.

With effect as of 1 January 2022, the explicit reference to the provision of Sec 152 of the Labour Code introduces the limit for income tax exemption of income granted as the value of boarding provided for by the employer for employees for consumption at work.

In terms of the currently valid regulations, the employer makes a contribution of at least 55 per cent of the lowest possible value of a meal voucher (3.83 euros) → 2.11 euros and at most 55 per cent of the boarding allowance granted during business trips lasting 5 to 12 hours in terms of the Act on Travel Expense Reimbursement (5.10 euros) → 2.81 euros. The employer can grant a contribution from the social fund beyond the stated. The value of boarding provided in this way is exempt from income tax for the employee in full amount, this applies to the meal voucher as well as to the financial contribution.

As of the year 2022, the exemption from income tax shall be applied uniformly to all forms of boarding provision in terms of Sec 152 of the Labour Code (by means of meal vouchers as well as the financial contribution) up to the amount of 2.81 euros per shift at most.

In case the employer decides to contribute a higher amount to employees,

- the amount exceeding 2.81 euros shall represent taxable income from dependent activities for the employee – irrespective of whether the boarding will be provided for by a meal voucher or in form of a financial contribution;
- the respective cost shall represent tax deductible expense in full amount for the employer, irrespective of its amount.

The contribution from the social fund granted by the employer shall remain tax-exempt.

Example

The employer grants meal vouchers in the value of 5 euros to its employees. The employer contributes with the maximum amount of 2.81 euros (55 per cent from the maximum amount of 5.10 euros) from expense, but grants additionally another 1.00 euros. The contribution from the social fund granted by the employer amounts to 0.69 euros for each day worked. The employee settles 0.50 euros. Alternatively a part of employees receives instead of meal vouchers a financial contribution for boarding in the total amount of 4.50 euros (2.81 euros legal maximum + 1.00 euro exceeding the legal maximum + 0.69 euros from the social fund). The taxable income of the employee amounts in both cases to 1.00 euro for each day of being entitled to boarding allowance.

The proposed change of the Labour Code introducing the possibility to grant boarding for a monthly period backwards has not been adopted.

Mode in case of employees employed on basis of an agreement

The employee employed on basis of an agreement can be entitled to boarding in case such boarding has been agreed on in the agreement or in case the employer extends after negotiations with representatives of employees the circle of natural persons, for whom the employer provides boarding and for whom the employer contributes to boarding, by this circle of persons as well.

The employee employed on basis of an agreement can choose between a meal voucher and the financial contribution for boarding only in case the provision of boarding has been agreed on in the agreement of such employee employed on basis of an agreement. The financial contribution

for boarding is tax-exempt up to the legal amount in case of an employee employed on basis of an agreement.

In case the employer extends the circle of natural persons by employees employed on basis of an agreement as well, as stated above, whereby the provision of boarding is not agreed directly in the agreements of employees employed on basis of an agreement, the employee employed on basis of agreement does not have the right to choose between a meal voucher and the financial contribution for boarding. The financial contribution for boarding would not be granted in accordance with the provision of Sec 152 of the Labour Code and, therefore, no tax exemption can be applied to it.

Mode in case of managing directors and shareholders

With respect to one person companies it is necessary to assess, whether the company is deemed an employer in terms of the Labour Code. In case the company does not employ any person on basis of a labour relation, such company is not deemed an employer. In case such company contributes to the boarding of the managing director, e.g. in the amount of 2.81 euros, the value of boarding is tax-exempt for the managing director. As of the year 2022, this will be deemed taxable income of the managing director.

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