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AUSTRIA New anti-trust provisions BELARUS New law on commercial secrets BULGARIA New Public-Private Partnership Act CZECH REPUBLIC Amendments to Czech Tax Law HUNGARY New developments in Labour Law ROMANIA Important tax code amendments SLOVAKIA Recent developments in Slovak Labour Law

AUSTRIA NEW ANTI-TRUST PROVISIONS

Which changes do companies have to adapt to?

The long-discussed amendment to anti-trust law entered into force in Austria on 1 March 2013.

The main changes to which companies must adapt are as follows:

1. Strengthening the Federal Competition Authority (FCA)

The institutional structure in Austria – that is to say, the separation of powers between the Cartel Court as the decision-making authority and both of the investigative authorities which co-exist side by side (the FCA and the Federal Cartel Attorney) – will basically remain unchanged.

Only one issue remained regarding the requested transformation of the FCA into a decision-making authority:

- In future, the FCA will be entitled to issue a decision ordering the provision of information and the submission of documents.
- The FCA will be able to directly enforce these decisions by issuing periodic penalty payments and it will have the power to impose administrative penalties of up to EUR 75,000 in the event of a failure to provide information and in the event that information is incorrect, misleading or incomplete.

Furthermore, the powers of the FCA during dawn raids will also be expanded:

- *Sealing of premises*: In future, the FCA can seal premises which are to be searched (if the dawn raid extends over a number of days).
- *Seizure of evidence*: The FCA will in future be able to seize evidence during dawn raids (should this prove necessary for the purposes of ensuring the success of the investigation).
- *Extended right to ask questions*: Whereas the right to ask questions was previously restricted to the storage location and the content of specific documents, the FCA will in future be able to demand all information necessary for conducting the investigation on site and ask any representative or member of staff for explanations on facts or documents relating to the subject matter and purpose of the inspection.

The question of the validity of the attorney-client privilege in the case of house searches remains unresolved. The FCA still does not recognise such a privilege for house searches conducted in Austria. Ultimately, the question will therefore have to be resolved before the courts.

2. "Stop the clock" in merger proceedings

To date, it has not been possible to stop the clock in Austrian merger control proceedings. A "stop the clock" procedure will now be introduced. Upon the application of the notifying party, Phase I

proceedings will be extended from four to six weeks and Phase II proceedings will be extended from five to six months.

3. *De minimis* cartels

The rules governing small and medium-sized enterprises (SMEs) will also be strengthened. Even "hardcore cartels" (e.g. price fixing or market partitioning by territory) have so far been admissible due to the *de minimis* exception provided that the companies concerned did not have a significant market share (when combined, not more than 5% in Austria and not more than 25% on a narrower sub-market). In future, hardcore cartels will not be covered by the *de minimis* exception. Furthermore, market share thresholds have been be amended to bring them into line with European antitrust law: (i) agreements between competitors: a combined market share on the relevant market of not more than 10%; (ii) agreements between non-competitors (e.g. suppliers and customers): a market share of not more than 15% each.

4. Claims for damages

The amendment aims to promote the private enforcement of anti-trust law. In particular, this concerns the following:

- For the first time, the Cartel Act explicitly provides a legal basis for asserting claims for damages on the basis of antitrust infringements.
- In future, final anti-trust decisions will be published so as to give potential damaged parties better access to information.
- Civil courts will in future be expressly bound by the decisions of the Cartel Court, the European Commission and other national EU competition authorities.
- The three-year limitation period for claims for damages will be suspended until six months after the final anti-trust decision. Interest will explicitly be granted from the time at which the damage occurs.
- Furthermore, proceedings to ascertain anti-trust infringements before the Cartel Court will also be deemed to be admissible for the purposes of preparing claims for damages.
- Any advantages gained by the damaged party as a result of the cartel will be taken into account when calculating the damages suffered.

5. Adapting Compliance Programmes

In view of the above and other changes, such as bringing the leniency programme into line with European standards and adopting the concept of collective dominance from German anti-trust law, companies should set about adapting their business activities and in particular their internal compliance programmes for the period after 1 March 2013 accordingly.

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BELARUS NEW LAW ON COMMERCIAL SECRETS

Introduction

The Belarusian parliament adopted Law No. 16–Z "On Commercial Secrets" (the "Confidentiality Act") on 5 January 2013 and it will enter into force on 10 July 2013. It will be the first time that a single legal act has consolidated all statutory provisions regulating the status of commercial secrets in Belarus. At present, the relevant legal norms are scattered throughout different laws and regulations. The aim of the Confidentiality Act is to streamline the regulation of commercial secrets in Belarus.

The most important new provisions

New Qualification of Commercial Secrets

The Confidentiality Act will introduce a new set of criteria for commercial secrets. Information may only qualify as a commercial secret if the owner of the information has put in place a security regime with respect to such information (the "Security Regime"). The procedure for establishing the Security Regime will consist of:

- determining the composition of information which is to be treated as a commercial secret. This can be done by means of adopting a relevant internal regulation;
- introducing specific measures targeted at protecting such information; for example, the company should (a) keep a record of the persons who have been granted access to commercial secrets, (b) enter into confidentiality agreements with employees, and (c) have confidentiality clauses inserted into contracts concluded with contractors, etc.

Owners of commercial secrets will be under an obligation to establish a Security Regime. If a company fails to establish such a Security Regime, information cannot qualify as a commercial secret which in turn will result in the lack of legal protection for such information.

The new qualification requirement for commercial secrets is aimed at clarifying which confidential information can be afforded legal protection. Previously the scope of confidential information was broader which resulted in numerous disputes. On the one hand, an additional obligation will be imposed on the owners of information to establish a Security Regime. In the long run, this should have a positive impact on the business climate in Belarus since it will clarify the rules for businesses.

New Basis for Termination of Employment

The Confidentiality Act will introduce a new basis for unilateral termination of an employment contract by an employer. An employer will be able to terminate an employee's contract if he/she (i) refuses to sign a confidentiality agreement or (ii) discloses a commercial secret.

This new provision is aimed at providing better protection for the interests of employers and the business community in general. It is expected that its introduction will improve the business climate in Belarus.

Summary

The Confidentiality Act will systemize the regulation of commercial secrets which at present is contained in different legal acts. Moreover, it will introduce clear-cut criteria with respect to the definition of commercial secrets and grant employers the right to dismiss employees who do not wish or who fail to comply with confidentiality obligations. In general, the Confidentiality Act has been positively perceived by the business community in Belarus.

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BULGARIA NEW PUBLIC-PRIVATE PARTNERSHIP ACT

Introduction

The Public-Private Partnership Act (PPPA) entered into force on 1 January 2013. This is the first consolidated piece of legislation which regulates in full public-private partnerships (PPPs). Before the adoption of the PPPA, public-private partnerships were only governed by a small number of municipal regulations and a few other laws (such as the Physical Education and Sports Act, SG 58/1996). The PPPA aims to stimulate private investment in the construction, maintenance and management of technical and social infrastructure and in other public activities. It also aims to improve the efficiency and quality of public services.

The most important new provisions

Scope of regulation

Under the PPPA, public-private partnerships may be established with a view to financing, developing, managing or maintaining public infrastructure (such as car parks, public transportation facilities, street lighting and furniture, public spaces, and parks) and social infrastructure (e.g. in relation to health, education, culture, sports, administrative activities, etc.). The PPPA provides that concessions, as well as the contracts under the Public Procurement Act (SG 28/2004), cannot constitute a PPP.

Establishment of public-private partnerships

The PPP is established under a PPP contract. The term of the PPP contract can be between five and 35 years. The private partner is selected by an open procedure in accordance with the Public Procurement Act. Under the PPPA, only the state, a municipality, or a state or municipal public entity can be public partners in a PPP. A private partner can only be an equity company (i.e. a limited liability company, a joint stock company, or a partnership limited by shares).

Allocation of risk

The PPPA provides that the contract must include the allocation of risks within a PPP, which will be individually specified for each PPP. However, the construction risk must always be borne by the private partner. Upon entering into a PPP, the parties define the economic balance of the PPP, which represents the balance between the benefits to the parties and the allocation of risks between them. When the contract is executed, the parties may specify that the economic balance would be disturbed if defined circumstances of a factual or legal nature occur. In such cases, the party concerned will be entitled to request an amendment of the PPP contract.

Summary

The new legislation consolidates and improves the PPP regulations and aims to make PPPs more transparent and to encourage developments in the public sector while giving investors greater comfort. The new business opportunities might attract new foreign investors.

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CZECH REPUBLIC AMENDMENTS TO CZECH TAX LAW

Introduction

Two acts entered into force on 1 January 2013: (i) Act No. 502/2012 Coll. amends the VAT Act and (ii) Act No. 500/2012 Coll. amends tax, insurance and other acts in connection with reducing the public budget deficit.

The first act mainly contains technical changes in the field of VAT application. This amendment has been prepared primarily due to the mandatory implementation of Directive 2010/45/EU of the European Council of 13 July 2010, as regards invoicing rules. The proposals for further measures to combat tax evasion of VAT was another major reason for its adoption.
The second act was unveiled by the Czech government at the end of 2012. It is a consolidation package, also known as deficit package, which seeks to increase income and optimize spending in the short term. Primarily, the package introduces higher value added tax and a solidarity tax to be imposed on wealthier taxpayers.

The most important new provisions

Higher rate of VAT

The basic VAT rate has increased from 20% to 21% and the reduced rate has increased from 14% to 15%. The list of goods subject to the reduced rate has also changed. Most changes introduced by the consolidation package, including the change in the amount of VAT, should only be effective for a transitional period: 2013-2015. After this period, the VAT rate should be 17.5 % across the board from January 2016 onwards.

Increases in VAT rates are negatively reflected in the rising cost of production which in turn reduces the competitiveness of companies in the domestic and international markets. This new provision also impacts on consumers who are sensitive to prices. There will be less demand for goods and this in turn is likely to have a negative impact on taxable corporate profits, consequently having an adverse effect on the public budget, even though the new provision was aimed at increasing the amount of revenue flowing into the public purse.

Unreliable payers' database

The amendment to the VAT Act introduced a totally new concept. From now on, the tax authorities will maintain an up-to-date list of tax payers who are or have been in breach of their duties towards the tax authorities. This database of unreliable VAT payers will be published online. A customer can guarantee the payment of VAT to the tax authorities if he/she receives domestic taxable goods or services from another VAT payer who did not pay output VAT on purpose.
It is hoped that this database will prove to be an effective measure to help combat the unfair practices of some unreliable tax payers who under the new system will be fined. In particular, this provision affects customers who now need to be very careful and cautious when choosing the business partners who provide them with goods or services. This system might be effective, but it will also bring with it other administrative duties for the companies operating on the Czech market.

Bank accounts for economic activities

The tax authorities will maintain a publicly-accessible register of bank account numbers of VAT payers. This new instrument brings certain duties for the VAT payers. Current VAT payers are obliged to inform the tax authorities which of their bank accounts is used for day-to-day financial transactions. If the VAT payer does not provide such information, all of his/her bank accounts that the tax administrator keeps on the basis of the payer's registration will be deemed valid for publication.

This new provision was aimed at combatting tax evasion. In the case of the new system dealing with unreliable payers, the state is also seeking to shift certain duties onto tax payers and therefore this new provision has also imposed an additional administrative burden on tax payers.

Summary

The amendments made to Czech tax law have introduced many changes for the companies operating in the Czech Republic as well as many innovations, such as the unreliable payer system, a publicly-accessible register of bank accounts for business activities, etc. Most of the changes are considered a step in the right direction for combatting tax evasion even though they burden tax payers with new duties. On the other hand, the change in the VAT rate has not been positively received by Czech companies because it means an additional administrative burden for tax payers and it is uncertain whether the tax authorities will collect more money in taxes to swell the public budget.

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HUNGARY NEW DEVELOPMENTS IN LABOUR LAW

Introduction

Hungary's first act of 2012, on the Labour Code, was promulgated in January 2012 with most of its provisions coming into effect on 1 July 2012. The second stage of the introduction of the Labour Code took place on 1 January 2013 when all remaining provisions entered into force.

The new Labour Code aims to formalise various concepts and interpretations that have evolved in judicial practice and to better align Hungarian labour law with the relevant regulations of the European Union.

The most important new provisions

Assignment, secondment and internal placement

Assignment, secondment and internal placement arrangements under the previous Labour Code were replaced on 1 January by provisions governing what is now known as "reassigned employment". Under the reassigned employment rules, an employee may be instructed to work in a different job, at a different workplace or for a different employer than the one stated in his/her employment contract. While the old rules allowed the total length of secondment, assignment or internal placement to be as many as 110 days per calendar year, the length of reassigned employment may now not exceed 44 working days or 352 hours per calendar year.

The official commentary to the Labour Code suggests that the aforementioned limits may not be exceeded even with the employee's consent. Consequently, any employer wishing to extend the length of an employee's reassigned employment could modify the employment contract (repeatedly, if necessary) with respect to the place of work for a fixed-term, preferably in advance. This would naturally require a modification mutually agreed by the parties.

Annual leave

Wholesale changes have been introduced with respect to annual leave, and employers may now – in theory – state in employment contracts that employees have until the end of the following year to take one-third of their accrued holiday entitlement. Another option is to include a provision which states that employees waive their right to take annual leave of 14 or more consecutive calendar days in a given calendar year. However, the lawfulness of including such general terms in employment contracts is open to debate because at present there is no judicial or regulatory practice to provide guidance regarding the new legislation. The general consensus on this issue will only be established as judicial practice evolves in the future.

Employee remuneration

The New Labour Code represented a major cutback in terms of employees' remuneration packages when it took effect on 1 July 2012. It prohibited the use of the term 'average salary' in employment contracts and stated that severance payments and the period when an employee is not required to work during termination periods must be calculated on the basis of a reduced amount known as the "absence fee" rather than the average salary. This trend continued on 1 January 2013 when new rules on the calculation of the absence fee, in many cases favouring employers, took effect.

Summary

The provisions of labour law were significantly modified to the disadvantage of employees. As a result, various employee representative organisations have been challenging the new provisions and it is possible that they will manage to achieve minor changes in the Labour Code. Consequently, monitoring the changes which may possibly be made to labour law remains an ongoing task.

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ROMANIA IMPORTANT TAX CODE AMENDMENTS

Introduction

The Romanian Tax Code was amended at the beginning of 2013, mainly by Government Ordinance no. 8/2013. The changes focused on introducing additional taxes and streamlining previous changes to the tax system.

The most important new provisions

Changes concerning corporation tax

From 1 February 2013, the depreciation of vehicles with up to nine passengers is tax deductible up to a maximum of RON 1,500 per month. This restriction also applies to vehicles purchased before 1

February 2013 for the the amount not yet depreciated that date. Research and development expenses represent an additional deduction of 50% on calculating the corporation tax.

Changes concerning income tax on wages

The main objective of this change was to introduce a new taxing method to prevent tax payers from deducting high daily allowances and to increase the amount of tax collected. This change will have little effect on businesses.

The daily allowance that exceeds 2.5 times the level established for employees in public institutions will be considered income regardless of the legal form of the entity granting the daily allowance. Social insurance is payable on such allowances exceeding that limit. The tax rate of 16% is introduced and applies to standard annual income.

Changes concerning the income of micro-enterprises

The changes are aimed at increasing the amount of tax collected, especially from small and inefficient companies.

From 1 February 2013, all companies paying corporation tax which achieved a turnover of up to EUR 65,000 as at 31 December 2012 will be considered micro-enterprises. Furthermore, a company no longer needs to have between one and nine employees in order to qualify as a micro-enterprise. Companies which meet the abovementioned conditions will pay tax on their revenue (turnover) at a rate of 3%, while those which do not meet the abovementioned conditions will continue to pay corporation tax at a rate of 16%.

Income tax payable by non-residents

This amendment has a positive effect on multinational companies and encourages such companies to expand their activities in Romania mainly by attracting workers from other EU member states who have specific know-how. From 1 February 2013, employees seconded in Romania will pay income tax on the revenue obtained from the company that seconded them based on their own income statement to be submitted to the Romanian tax authorities or they may rely on the provisions of a relevant Treaty for the avoidance of double taxation if such a treaty exists between Romania and the state of home jurisdiction of the non-resident. Consequently, Romanian companies where the respective employees are seconded will not apply withholding tax any longer.

Starting from 1 February 2013, the amendment introduces important changes regarding the tax payable by non-residents in Romania, namely the income of non-residents in Romania earned from management and consultancy services is no longer subject to the payment of withholding tax by the Romanian company paying such revenues. Accordingly, the non-residents will have to pay tax in Romania based on their own income statement to be submitted to the Romanian tax authorities or they may rely on the provisions of a relevant Treaty for the avoidance of double taxation if such a treaty exists between Romania and the state of home jurisdiction of the non-resident.

Changes in the value added tax

The amendments are meant to offer an increased efficiency to the business field and to provide temporary aid to small/medium-sized business owners by collecting VAT at the time at which invoices are issued. The VAT adjustment for goods other than financial assets has been amended, meaning that the VAT adjustment for stolen goods has also been amended.

In addition, from 1 January 2013, invoices can be issued and stored electronically without any other additional procedure (such as the one provided under law no. 135/2007 regarding electronic archiving). Nevertheless, companies will be under an obligation to guarantee the authenticity of invoices.

Regarding the VAT payment at the moment of collection, the provisions remain similar, with just a few changes regarding procedural aspects concerning the entering and exiting of the system. If the VAT taxpayer exceeds the threshold of RON 2,250,000, the taxpayer has to submit notification by the 25th of the month following the date on which the threshold was exceeded. In the event this notification is not submitted, the taxpayer will be registered *ex officio* in the system for VAT payment at the moment

of collection. The applicable law also provides a procedure for correcting errors in case of faulty automatic registrations in the system.

Summary

The main reason for introducing the changes was to expand the taxable base and increase the taxes collected. Although there are some improvements for small and medium-sized companies, these are overshadowed by the additional taxes introduced. At first glance, it seems the state is willing to make some improvements regarding businesses, but in the long term, the tax collected by the state will be higher than the tax loses generated by the improvements.

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SLOVAKIA RECENT DEVELOPMENTS IN SLOVAK LABOUR LAW

Introduction

On 1 January 2013, Act No. 361/2012 which amends Act No. 311/2001 Coll., the Labour Code ("the Labour Code"), and introduces comprehensive changes to Slovak labour law, entered into force.

The need to improve the legal status of employees was one of the main reasons for amending the Labour Code. This has been achieved in particular by striking a balance between the rights and obligations of both the employer and the employee and by creating respectable working conditions with a special emphasis on the negotiations of these conditions with social partners. Therefore, the amendment focuses mainly on provisions that have in practice been regarded as disadvantageous for either the employer or the employee. The amendment also seeks to improve dialogue between employers, employees and their representatives.

The most important new provisions

Mandatory concurrence of notice period and severance payment

The amendment introduces an obligation on the employer to provide a severance package to the employee whose employment has been terminated either by mutual agreement or with notice for organizational reasons or for health reasons, provided the individual in question was employed for at least two years, thereby bringing it into line with Article 12 Section 1 lit a) of the ILO Termination of Employment Convention (1982) (No. 158). Thus, under the new law, an employee whose employment lasted at least two years and was terminated with notice for the reasons mentioned above is entitled to both severance pay and a notice period. However, a notice period is not required in every case. If the employer and the employee terminate the employment relationship by mutual agreement, they may also agree that the employment relationship will cease to exist on a specific date. In such a case, no notice period applies.

Therefore, the new law may prove quite a burden on employers, particularly in relation to long-term employees. For instance, an individual employed for at least 10 years and whose employment was terminated with notice for organizational reasons will be entitled to (i) at least a 3 months' notice period and (ii) three times his/her average monthly earnings.

Wage compensation in the event of an invalid termination of an employment relationship

Under the Slovak Labour Code, the employer is obliged to pay wage compensation to an individual whose employment was improperly terminated. The amendment extends the period during which the employee is entitled to wage compensation from nine to twelve months (without the possibility of it being reduced or withheld). In future, the amendment of this provision may bring about even greater financial burdens for the employer regarding the termination of an employment relationship.

Overtime

Overtime may be agreed upon only for those cases specifically laid down in the Labour Code (temporary and urgent increase in work or if there is a public interest, such as upholding rights enshrined in law. Thus, this will have a rather limited application in the case of private companies). By excluding the possibility for the employer and employee to agree on overtime in cases other than those explicitly laid down in the Labour Code, this amendment attempts to strike a balance between the necessity on the part of the employer to meet demand in cases of a temporary and urgent increase in work and the employees' right to rest periods. An employee may work a maximum of 400 hours overtime per year.

However, the Labour Code provides that medical personnel may be ordered to work 100 hours more overtime per calendar year than "ordinary" employees. The amendment also repeals the provision which made it possible for certain employees in managerial positions to work overtime for the maximum number of 550 hours compared to "ordinary" employees, for whom the maximum number of 400 overtime hours applies.

Even though it attempts to take account of different professions, the amendment places yet more restrictions on the employer, thereby reducing its flexibility and options.

Chaining of fixed term contracts – reduction of duration and scope of chaining

This provision aims to improve the quality of work performed on the basis of fixed term contracts by applying the principle of non-discrimination and by preventing the illegal chaining of fixed-term contracts. According to the new amendment, a fixed-term employment relationship may be agreed for at most two years and one may be extended or renewed no more than two times within a two-year period.

Notice periods

In order to bring Slovakian law into line with EU legislation, the new law provides that the general notice period is at least one month. The notice period in the specific cases laid down in the Labour Code is at least two or three months. Thus, the new amendment introduces the possibility of agreeing upon notice periods in the employment contract or in a collective agreement which are longer than those laid down in the Labour Code.

Summary

As has already been mentioned above, the amendment's main objective has been to strengthen the legal status of employees.

Even though the changes presented above might in future have a positive impact on the status of employees, it should not be ignored that they place several new obligations on employers, e.g. in terms of their cooperation with social partners. Therefore, whether the amended law will actually achieve its objectives or not remains to be seen.

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