

SCHAFFER NEWS

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Dear Readers of Schaffer News,

Here is some brief information about the latest changes to legislation.

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Travel expenses

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As of 1st January 2012 due to an amendment to the Labour Code certain changes have been made to travel expenses.

Among the main changes to travel expenses as of 1st January 2012 are:

A mandatory reduction in the meal allowance when one or more free meals are provided to employees in the state sector,

Consequently a reduction in the meal allowance for other employees for the same reason. In the opposite case it will be the employee's taxable income and this additional income will be subject to social security and health insurance.

In addition, we would point out that these changes also apply to foreign business trips. A change has also been made to the way spending money is calculated on foreign business trips.

Example

An employee went on a foreign business trip to Germany. He crossed the German border at 15:00 hours and was given a free dinner (dinner with a business partner). He returned on the same day and crossed the border into the Czech Republic at 24:00 hours. It was shortened to the maximum possible degree.

Calculation according to 2011 rules

The time spent abroad is 9 hours. The employee is entitled to a meal allowance equal to half the basic rate, i.e. 22.50 euros. For one meal provided free of charge the meal allowance is reduced by 35 %, i.e. the meal allowance is 14.62 euros. The amount of spending money is set according to the amount of time spent abroad regardless of the free meal => 40 % of 22.50 euros = 9.00 euros.

The employee therefore receives a total of 23.62 euros.

Calculation according to 2012 rules

The foreign meal allowance for 9 hours spent in Germany is one third of the basic rate, i.e. 15.00 euros. For one meal provided free of charge the meal allowance is reduced by 70 %, i.e. the meal allowance is 4.50 euros. The spending money is calculated from the foreign meal allowance after it has been reduced and is 40 % of 4.50 euros = 1.80 euros. **The employee therefore receives a total of 6.30 euros.**

The method of calculating spending money is being discussed by representatives of the Czech Chamber of Tax Consultants and the Czech Ministry of Finance. We will let you know the results of the discussions in a future issue.

As a consequence the employer's costs will increase in any case. Either in the form of increased administrative costs (it will take longer to calculate travel expenses) or in the form of increased social security and health insurance payments.

Recording shifts

In the amendment to the Labour Code a small change has been made to § 96, paragraph 1. The employer is now obliged to record for individual employees, amongst others, the start and end of a shift that the employee has worked. So the shift will now be monitored instead of the working hours. This is a minor difference which could lead to complications during Labour Office checks.

2012 news regarding entrepreneurs' seats

Mgr. Šárka Gregorová, Mgr. Magdalena Maturová

With effect as of January 1, 2012, several changes have been made to the regulations of the Commercial Code that refer to (i) registration of a seat or place of business and (ii) the option to transfer a foreign company's seat to the Czech Republic.

Registration of a seat or place of business

The changes prescribe more duties for entrepreneurs, connected with the registration of their seat in the Commercial Register. As before, each entrepreneur is obliged to document the legal title to the premises of his seat or place of business when making an application to be registered in the Commercial Register. As of January 1, 2012, the conditions of documentation have become more comprehensive (one of the new conditions is the mandatory obligation to have an officially verified signature on the consent to the seat placement). However, on the other hand, such duty is no longer applicable in cases where this legal title can be recognized directly from the information system of public administration. This situation arises usually when the entrepreneur is the owner of the premises or is entitled on the basis of an easement, both registered in the Cadastral Register. Nevertheless, lease relationships are not evident from such register.

Another change is the explicitly stated obligation of an entrepreneur to have a legal title to the premises valid for the whole period of their registration as his seat or place of business in the Commercial Register. If the entrepreneur – legal entity – does not comply with this rule, it runs the risk of the company being dissolved and entered into liquidation. Should the registration court find out (for example according to a motion submitted by a former landlord) that an entrepreneur does not have the legal title for usage or its legal title has ceased to exist, the court should, according to the new legislation, require the entrepreneur to prove this legal title or to change its seat to different premises under the indicated conditions. Depending on the conditions, a seat transfer often also requires an amendment to the Articles of Association in the form of a notarial deed. If the entrepreneur does not take these measures, the court can order the company to be dissolved and subsequently liquidated. By such means the Commercial Code gives the owner of a real property the right to defend himself against unwilling registration of the company's seat at his address.

The above-mentioned duty to have a legal title for usage of the premises applies also to an entrepreneur - natural person who is also obliged to have his real place of business registered in the Commercial Register or elsewhere, typically the trade register. This obligation towards the Trade Authority, however, applies only when the place of business is different from his permanent residence. If an entrepreneur - natural person - does not comply with these duties, he runs the risk of a sanction. The exact sanction depends on the intensity of the breach but can possibly lead to a suspension of the business licence.

Seat transfer

The above-mentioned amendments do not cover all the changes concerning the legal regulation of the seat. Furthermore, the changes affect the transfer of a corporate entity's seat, established under a foreign law for the purpose of conducting business activities.

Contrary to the former legal regulation which only referred to international treaties which have not been concluded so far, the new provisions allow for a seat transfer and include quite detailed instructions on further steps directly in accordance with Czech law.

The regulation regarding the transfer of such corporate entity's seat contains the amended law on mergers. In its provision there is explicit mention of all the conditions and the procedure of the transfer itself. After all the statutory conditions have been fulfilled, the seat of a foreign corporate entity can be relocated without dissolution and establishing a new company in the Czech Republic. The seat transfer may, in some cases, replace the option to establish a daughter company or subsidiary of a foreign corporate entity in the Czech Republic. However, the law presumes a change to the legal form of a foreign corporate entity into a Czech company or association and its subordination to Czech law.

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