LEGAL NEWS
JUNE 2021

Jeseniova 1151/55 130 00 Praha 3 +420 212 246 725 info@ak-haven.cz www.ak-haven.cz

Dear clients, let us to introduce several news from Czech legislation and judicial decisions appeared during June 2021 and previous months. We will inform you about next changes soon.

Labor Law

+ Kurzarbeit

The President of the Czech Republic has signed an amendment of Law on Employment bringing so-called kurzarbeit. This means in practice that for cases, in which employers could not from objective reasons assign work to their employees, a mechanism is in place to offset their labor costs. Kurzarbeit could help to bridge the transitional period when employers could not assign work to their employees. At the time when the government announces the so-called period of partial work, employers will pay their employees a wage of at least 80% of the average earnings of the employee. The employer will then receive from the state a contribution in the amount of 80 % of the cost of an employee who worked for the employer for at least 3 months before announcing kurzarbeit, however, no more than 1,5 times the national average wage. The condition for granting the contribution is that the employer has to allocate work to employees only in the range of 20 - 80% of working hours (1 – 4 working days), applied to the whole business establishment. Receiving the contribution will be possible for a maximum of 1 year and it will be necessary to inform the Employment Office about obstruction at work. Employees on whom the employer will be receiving the contribution will be for some time protected against redundancy. Thus, kurzarbeit prevents from mass redundancies. In the previous month before announcing kurzarbeit, during the month and subsequently one year after its end the employer will not be able to pay dividends, extraordinary profit shares, or repay the loan early under the penalty of repayment of received contributions.

+ New approach of MoLSA (MPSV) to the access of foreigners to the labor market in the Czech Republic

The Ministry of Labor and Social Affairs (MoLSA) recently made conditional access of foreigners to the Czech labor market with a status of a family member of the EU citizen and residence permit in the Czech Republic. Whether the Ministry of the Interior terminated the foreigner's temporary residence, such a foreigner could not work legally in the Czech Republic until the foreigner obtained a long-term residence permit. This conclusion offered an ambiguous interpretation of Czech legislation and relied on the official opinion of the MoLSA which has changed. Newly, MoLSA takes the view that if a foreigner applies for a long-term residence permit in time, can work in the Czech Republic until a decision is made on it.

HAVEN
ADVOKÁTNÍ KANCELÁŘ

+ Amendment of AML decree

In connection with the recent amendment so-called AML Act, also the so-called AML decree (decree no. 67/2018 Coll.), changes with effect from 1. 7. 2021. The decree especially reacts to changes in the identification of another person acting on behalf of the client, in the scope of identification data of the legal entity, and in the identification of the client using means for electronic communication. In this context, the decree allows the Czech National Bank (CNB) to set our requirements by a decree for the system of internal principles and risk assessment by certain obligated persons against which the CNB supervises. The decree also requires an update of a system of internal policies and risk assessment always before a new product is launched on the market.

Taxes

+ Tax context of the meal voucher

The General Financial Directorate (GFD) issued information according to tax-deductibility of the meal voucher flat rate on the side of the employer and tax exemption on the part of the employee. The GFD stand for sure that meal voucher flat rate, unlike classic meal vouchers, is not in the case of employee liberated from income tax indefinitely, but only up to 70 % of the upper limit of the meal allowance, which can be provided to employees remunerated with a salary for a business trip lasting 5 to 12 hours, regardless of the length of their shift. The GFD further confirmed that meal voucher flat rate can be also paid to executives and so-called contractors if they have in contract working hours scheduled for shifts and working at least 3 hours within the specified shift. If the conditions of the Pension Insurance Act are met, then such a cost is for the employer tax-deductible and an exemption can be applied on the part of the employee. The GFD finally confirmed that meal voucher flat rate can be liberated from income tax of employee and include it in the employer's expenditure even when the employee works from home. However, the employees must have their place of residence as the place of work in the contract.

+ VAT refunds after Brexit

As a result of Brexit, tax refunds to foreign taxable persons are now based on the principle of reciprocity. The GFD issued information to VAT refund to taxable persons established in the United Kingdom after the end of the transitional period, which confirmed that in the case of the UK and the Czech Republic is the principle of reciprocity fulfilled and the right to a tax refund can therefore be claimed by these persons. The refund is claimed through an application for a tax refund submitted to the Tax Office for the Capital City of Prague in the Czech language and on the prescribed form of the application.

From case-law

+ To the concept of "production, business and services not stated in attachments 1 to 3 of the Trade Licensing Act"

We would like to warn you of the very significant decision of the Supreme Court (NS), which is going to have great consequences for many companies. In the judgment from 12. 5. 2021, reference No. 27 Cdo 3549/2020, the NS dealt with the concept of "production, business, and services not stated in attachments 1 to 3 of the Trade Licensing Act". Many companies have stated in their founding documents this wording as the subject of their business. Indication of the subject of business is a necessary part of every founding legal action. However, according to the NS, the aforementioned specification of the subject of business does not meet the requirement of certainty because it is not clear from it what exactly is the subject of the company's business. Moreover, the NS also noticed that the practice of courts of registration, which aforementioned subject of the business entered in the Commercial Register, was in violation of the Register Act which requires to enter the subject of business or activity in the Commercial Register and not the designation of trade. For future established companies, the practice is given. For companies already registered in the Commercial Register, the NS decision means that **these companies have to convene general meetings and vote on changes to the founding documents** so that the subject of their business will be specified in the documents. **The decision of the general meeting will be necessary to certify by notarial deed and then make a change in the Commercial Register.** If the company does not make the change voluntarily, the company will be most likely soon summoned by the registry court. If the company still does not react, the court may decide to cancel it with liquidation and impose a disciplinary fine of up to 100 000 CZK.

+ Unconstitutionality of sec. 82b par. 3 sentence three of the VAT Act

The Constitutional Court (ÚS) issued in its decision from 18. 5. 2021, ref. no. Pl. ÚS 23/20 the unconstitutionality of a part of the VAT Act which connected the effects of the service of an e-mail document sent by e-mail to a taxable person registered for tax purposes in another EU Member State with the time of their dispatch (not delivery). According to the ÚS, this legislation is contrary to the right to other legal protection, where the time limit for an appeal depends on the time of delivery, whereas, if the moment of delivery is already associated with the sending of an e-mail by the tax administrator, such an e-mail may not reach the addressee's sphere at all, or it will not be delivered to the addressee at such a time interval that the taxable person without fault of its own, misses the deadline for an appeal.

Do not hesitate to contact us with any particular question.

We will inform you about next legal news.

NEJSTE NA TO SAMI
YOU'RE NOT ALONE
SIE SIND NICHT ALLEIN