

TAX HOT TOPICS

24 August 2020

Law no. 172/2020 for the amendment and completion of Law no. 16/2017 regarding the secondment of employees in context of the provision of transnational services

- ❖ Law no. 172/2020 for the amendment and completion of Law no. 16/2017 regarding the secondment of employees in context of the provision of transnational services was published in the Official Gazette no. 736 of 13 August 2020.
- ❖ The normative act follows the transposition of the EU legislation (i.e. Directive 2018/957/EU amending Directive 96/71/ EC regarding the secondment of employees in context of service supplies) and hereby introduces additional working related terms and employment conditions which should be guaranteed by companies that post employees transnationally, and clarifies the cooperation between national authorities responsible for secondment:

In respect to the secondment of employees to the Romanian territory from other Member States or from Switzerland

- ❖ The definition of **remuneration applicable in Romania** is introduced, which may include, besides the minimum wage, other mandatory bonuses and allowances available under the national legislation, as well as those provided per the collective labor agreements with general applicability;
- ❖ Seconded employees sent in Romania benefit from similar working conditions to those applicable to Romanian workers sent to other cities for professional purposes, in accordance with the provisions of the Romanian labor legislation and the following:
 - **the conditions related to the accommodation of employees**, in cases where such are offered by the employer to the employees sent to temporarily perform job related tasks corresponding to the job attributions outside their usual place of work;
 - **allowances or reimbursement of transport, accommodation and meal expenses** for employees obliged to travel for business purposes to and from their usual place of work in Romania or if they are temporarily sent by their employer from their usual place of work available in Romania to another job, in accordance with the national legislation or the applicable collective labor agreements.
- ❖ The provisions applicable with respect to allowances or reimbursement of transport, accommodation and meal expenses, apply exclusively to transport, accommodation and meal expenses incurred by employees sent in secondment in Romania when such are

obliged to travel to and from their usual place of work or in cases where they are temporarily sent by their employer from their usual place of work to another job in Romania, in accordance with the national legislation and/ or the applicable collective labour agreement;

- ❖ In case the actual duration of the secondment exceeds a 12 month period, the employers must guarantee to the employees sent in secondment in Romania that all working conditions and terms laid down in accordance with the national legislation and the applicable collective labour agreements are respected. In this case, employers cannot intervene in the following:
 - the conditions for concluding and terminating the individual employment contract, including the non-competition clauses;
 - the contributions provided under Law no. 1/2020 in connection with the supplementary occupational retirement schemes.
- ❖ The secondment period may be extended up to 18 months, provided that a notification is submitted the day before the completion of 12 month period at the latest, with the Territorial Labour Inspectorate located in the area where the seconded employee performs his activity;
- ❖ The 12 month period applicable to the transnational secondment shall be computed based on a reference period of one year starting with the commencement date. When determining such period, the periods when the position has been previously occupied by another employee seconded in this respect or in case a seconded employee is replaced by another who performs the same task and the same job are taken into account;
- ❖ For cases where the employees are hired by a temporary work agent from abroad, in case of changes at the level of the employment contract, when the Romanian company requires the employee to carry out his activity on the territory of another member state, it is considered that the employee was sent in secondment on the territory of that Member State by the temporary work agent with whom he concluded an employment agreement.

In respect to the secondment of employees from Romania to another Member States or Switzerland

- ❖ Clarifications regarding the concept of **employee seconded from the Romanian territory** are provided in context of the provisions of Regulation (EC) no. 883/2004 of 29 April 2004 on the coordination of social security systems, with respect to the notion of limited working period. Thus, the employee seconded from Romania is the employee of an employer established in Romania, who, **for a limited period of time, but not more than 24 months**, carries out his work in another Member State than the one where the employer is located, or in the territory of the Swiss Confederation, during the execution

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of the contract concluded with the employer from the other Member State in context of the provision of transnational services;

- ❖ The part of the transnational seconding allowance that exceeds the non-taxable threshold provided under the Fiscal Code is subject to taxation (respectively 2.5 times the legal level established for the daily allowance set by Government decision for Romanian personnel sent abroad to fulfil temporary missions);
- ❖ The definition of **remuneration applicable on the territory of a member state of the European Union other than Romania or on the territory of the Swiss Confederation** is introduced, which includes the amount of money determined under the national law and/or national practices of the related Member State where the employee was seconded, representing all constituent elements of remuneration mandatory under the internal law, or the administrative acts or the collective agreements or the arbitral awards, which are universally applicable or otherwise applied accordingly with art. 3 (8) of Directive 96/71/ EC in the respective Member State;
- ❖ In case the secondment period exceeds a 12 month period, the host Member States must ensure that the companies who second employees to their territory, guarantee to such workers that all applicable working and employment conditions available in the Member State where the work is carried out is respected as per the law in force and the administrative acts and/ or under the collective agreements or arbitral awards universally applicable for workers in the Member State carrying out their activity in that territory, except for the following:
 - procedures, formalities and conditions for concluding and terminating the individual employment contract, including non-competition clauses;
 - supplementary occupational retirement schemes.
- ❖ The 12 month period may be extended up to 18 months in situations where the service provider submits a notification to the competent authorities of that host Member State. In cases where a secondment period exceeds the 12 month period or, as the case may be a 18 month period, the additional terms and conditions related to the employment contract must be guaranteed by the company who posts workers in the territory of another Member State, shall also be applicable in the case of seconded workers who replace other seconded workers who perform the same task in the same workplace, in order to ensure that such replacements are not used in order to evade the normally applicable rules;
- ❖ For cases where the employees are hired by a temporary work agent from Romania, if the company established or carrying out its activity in the territory of another Member State or in the territory of the Swiss Confederation requests the secondment of an employee in another Member State, in context of the provision of transnational services, by the respective company, it is considered that the employee was sent in secondment on the

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territory of that Member State by the temporary work agent with whom he concluded an employment agreement.

In respect of other changes of impact related to transnational secondment

- ❖ The secondment specific allowance is considered part of the remuneration, except for the expenses generated by such secondment. The employer reimburses the employees the expenses generated by the secondment in accordance with the national legislation available in respect to the employment relationship;
- ❖ As a newly introduced provision, the law provides for the application of the more favourable provisions applicable in respect to the working conditions. Thus, in cases where the legislation and/ or the collective agreements available in respect to the secondment of the employees in another Member State or in the Swiss Confederation, where the enterprise is established, provide more favourable working conditions, the respective regulations apply accordingly. Otherwise, if the legislation and collective labour agreements applicable in Romania provide for more favourable working conditions than the conditions provided in the legislation or practice of that Member State or the Swiss Confederation, where the Romanian workers are sent in secondment, Romanian legislation has priority;
- ❖ New administrative obligations relevant to employers are introduced, which impose, among others, the obligation to make available to the control bodies supporting documents approving the total amount of remuneration and the expenses generated by the transnational secondment.

Regarding on the road transport sector

- ❖ This law applies, with certain exceptions, to the road transport sector as well, for secondment of drivers;
- ❖ Drivers seconded to Romania in the context of the provisions of transnational services must benefit, regardless of the law applicable to the employment relationship, from the minimum wage, including payment of overtime benefits;
- ❖ Drivers sent in secondment from Romania in context of the provision of transnational services, benefit, regardless of the law applicable to the employment relationship, from the minimum wage applicable on the territory of a Member State or on the territory of the Swiss Confederation, including the payment of overtime benefits.

For additional details regarding the above, you can contact any member of the Taxhouse team or you can send us an e-mail at office@taxhouse.ro.