

21 August 2020

# Fiscal Bulletin



## Summary:

1. Law No. 172/2020 for amending and completing Law No. 16/2017 regarding the international posting of workers

## Main amendments regarding the international posting of workers

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Law No. 172/2020 for amending and completing Law No. 16/2017 regarding the international posting of workers was published in the Official Gazette No. 736/13 August 2020 (the "Law"). The main amendments regarding the assignment of employees are presented herein below:

- It is specifically stated that secondments from Romania to another EU Member State or to the territory of the Swiss Confederation are limited to 24 months;
- The Law redefines the term *secondment allowance* by expressly mentioning that this type of allowance falls under the provisions of Fiscal Code (art. 76, para. (2), let. k). Thus, it is specifically provided that this type of allowance is assimilated to salary revenues, following the same taxation rules;
- It is defined, as a new concept, *the remuneration applicable in Romania* (concept that replaces the "minimum wage" term) being the amount of money that includes the minimum wage, the benefit for additional work, the benefit for work on weekly rest days, the benefit for work on public holidays, the benefit for night work, other bonuses and allowances which are compulsory under national law, as well as those provided for in collective agreements having general applicability;
- Also, it is defined as a new term *the remuneration applicable on the territory of a Member State of the European Union, other than Romania or on the territory of the Swiss Confederation*, being the amount of money established by the national law and/or national practices of the Member State where the worker is seconded, representing *all the constitutive elements of the remuneration that are mandatory* according to the internal law, the laws and regulations or the collective agreements or the arbitral sentences, which have been declared with general applicability;

- Both for the employees posted on the Romanian territory, and for those posted outside the Romanian territory, it is provided that they benefit of the same working conditions provided by the local legislation of the country where their activity is carried out, regarding the following:
  - Accommodation of employees, when they are offered by the employer to employees sent to temporarily perform work or tasks corresponding to their duties at place other than their usual place of work,
  - Allowances or reimbursement of transport, accommodation and meals for employees obliged, for professional reasons, to travel to and from their usual place of work in Romania or if they are temporarily sent by their employer to work to another place than their usual place of work, in accordance with applicable national law or collective work contract.
- For assignments having an effective period of more than 12 months, the Law provides the liability of the beneficiary company to guarantee all applicable working and employment conditions in accordance with the applicable national law and collective labour agreements and impose to the beneficiary companies to not interfere with the conditions of termination / cancellation of the contracts, including non-compete clauses;
- If, following their overall assessment, the inspectors assess that the conditions for international posting are not met, they shall notify the Labor Authority of the competent authorities of the service provider's country of origin and/or, as the case may be, apply the provisions of the Labor Code on undeclared work without contract and without transmitting the contractual elements in "Revisal" program;
- Non-resident employers who second employees in Romania are liable to make available to the relevant authorities, at their request, supporting documents regarding the total amount of remuneration applicable in Romania from which the employee will benefit during the secondment, with distinct breakdown of the secondment allowance and of the expenses generated by the secondment and the method of granting or reimbursing them, respectively the method of providing transport, accommodation or meals, if the case;
- Also as a novelty, the obligation to inform the employees seconded abroad, prior to the secondment, regarding certain aspects is introduced.

The Law entered into force on August 16, 2020 and within 60 days from this date, the Ministry of Labor and Social Protection will submit for approval to the Government the amendment and completion of the Methodological Norms on international posting of workers, approved by Government Decision No. 337/2017.

## Editors

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