



Social security systems

Coordination in the EU

From 1 May 2010, a new Regulation No 883/2004 of the European Parliament and of the Council on the coordination of social security systems (hereinafter referred to as "the Regulation") and implementing Regulation No 987/2009 of the European Parliament and of the Council (hereinafter referred to as the "Implementing Regulation") came into force. Their main aim is a simplification of the coordination rules, which is an essential presumption to guarantee the free movement of persons within the EU.

The Implementing Regulation now applies also to persons without work or persons who have not worked yet or will not work anymore. Its material scope has been extended either, considering the regulations of paternity and pre-retirement benefits, which are provided to workers from a certain age, provided they shortened, finished or suspended their employment until the age, when they are entitled to old-age pension or pension in the case of early retirement.

Every person with no exception is now subject in the area of social security to regulation by only one member state. The main determinant, which will be further analyzed, is the place of main employment activity or residence.

Persons who are employed or self-employed in two or more member states at the same time abide the rules of the member state of residence, provided they pursue here the substantial part of employed or self-employed activity. This is defined as at least 25 % of the working time and/or 25% of total earnings.

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In the case of a self-employed activity, it also includes the turnover and/or number of services rendered.

As far as this condition is not fulfilled, persons are subject to regulations of that member state, where their employer has a registered seat, self-employed persons to member states, where their centre of interest is located. These regulations cannot be applied supposing the employee pursues an activity in more member states on behalf of an employer with their registered seat outside the EU. In this case, the person will always be subject to regulation of the member state of residence.

To determine the place of residence is decisive the length of stay, marital status and bindings to persons living here, housing situation of the given person, amount of occupational and non-remunerated activity and its nature, residence for tax purposes and in the case of students the source of their income (usually parents' residence).

A period, for which posted employees participate on a social security system of a country, which they are posted from, is extended from 12 to 24 months. This period cannot be extended, only pursuant to mutual agreement of two or more member states. This extension simplifies posting of employees into other member states of the EU for a longer time without a necessary administrative change of participation in the social security system. Participation will be newly confirmed by a special transferable form A.



The implementing regulation should significantly improve the electronic exchange of information between competent social security authorities in different Member States and thereby streamline the processing of applications for entitlements to social benefits. A special computer network EESSI will be also operated.

If according to the implementing regulation the jurisdiction will be accorded to another EU Member State than ever before, the former rules will be applicable until that time when circumstances determining for the definitive assessment will change, but not more than 10 years. However, the socially insured person affected by this change has in the respective period the right to request a change of jurisdiction under the new rules.

Refund of VAT from another EU Member

Extension of the deadline till 30 September 2010

As a result of the implementation of EU Council Directive No 2008/9/EC, this year brought a significant change in the procedure for the refund of VAT paid by Czech taxpayers during 2009 in another EU Member State. From 1 January 2010, it has been possible to apply for the VAT refund directly in the country of the applicant's establishment, i.e. in the case of the Czech VAT payer in the Czech Republic.

The entitlement to a refund of input VAT paid in another EU Member State is by the VAT Act granted only to that applicant which in the refund period:

- was considered as a tax payer in the Czech Republic;
- had its registered seat, place of business or establishment in the Czech Republic;
- did not have a registered seat, place of business or establishment in the EU Member State where the VAT refund is claimed;

- did not make only VAT exempt taxable supplies without the right to input VAT deduction.

In contrast with the previous legislation, an application for a refund of VAT can be submitted only electronically. It can be submitted also by an applicant's attorney, e.g. its tax advisor.

As regards the substantive requirements as well as necessary attachments of an application for VAT refund, it is always necessary to follow the legislation valid in the Member State of refund. Member States are entitled to request a copy of the invoice or import document if the tax base exceeds the amount of EUR 250 for fuel or EUR 1,000 for other goods and services.

The period of tax refund may be at least three months and maximally one calendar year. VAT refund for the period shorter than three months may be requested if it concerns rest of the calendar year. Minimum limits for refund of VAT amounts to EUR 400 for the period shorter than one calendar year, but not shorter than three months, and EUR 50 for the period of one calendar year as well as for the period shorter than three months if it concerns rest of the respective calendar year.

The above-mentioned amendment also brought an extension of the deadline for applying for a VAT refund. Regarding the refund of tax paid in another EU Member State during the year 2009, the applicant or his attorney must submit the application by 30 September 2010. Here it is important to mention that the sooner the application is submitted, the sooner VAT will be refunded. In these cases, the moment of sending of the notification to the electronic address provided by the applicant in the application (e-mail) is considered to be the moment of receipt of the application. The general deadline for handling the application is 4 months.

Finally, it should be emphasized that this change concerns only the possibility of refunds of VAT from



EU Member States. VAT refunds from other states have not been affected by this change and continue to be regulated by the local legislation of the respective state.

Protection of economic competition

Block exemption for vertical agreements

From 1 June 2010, a new regulation on the block exemption for certain categories of vertical agreements is valid in the entire territory of EU. Vertical agreements are agreements in the sector of sale of goods and services between producers, eventually service providers on the one side and distributors on the other side, which are potentially able to distort a competition. However, since the conditions specified by the regulation are fulfilled, it is assumed that the risk of distortion of competition will be compensated by the advantages which the agreement brings to final consumers. This regulation replaces the previous legislation which was effective till 31 May of this year. Regulation also reflects the substantial growth of the internet as an important tool of online distribution as well as cross-border trading bringing more variable offer to consumers and more efficient price competition.

- The block exemption may only be used when not only a supplier but newly also a buyer does not exceed market share threshold of 30% in the relevant market.

- Online sales may not be restricted in any way; whether from the perspective of territory as well as volume. Goods and services offered in this way must be provided for the same price as in the store.
- In certain cases it may be possible to accept the agreements regarding the determination of sale price, such as temporary introductory price for a new product on the market.

Producers will be still able to choose at their own discretion how to distribute their products to end users. However, if they want to benefit from the new block exemption, their market share cannot exceed the threshold of 30%, on the both sides of producer and distributor. At the same time, their agreements cannot contain any “hardcore restrictions” of competition such as determination of sale prices or the restriction of sales to end users by a distributor operating at the wholesale level of trade.

Already concluded agreements which meet the criteria stated by the corresponding exemption according to the previous legislation must be brought into line with the new rules by 31 May 2011. Therefore, we recommend to the affected businesses to check up all existing agreements related to the products’ distribution and assess their compliance with the new regulation. To fail the stated criteria may result in the initiation of proceedings by the Office for the Protection of Competition or similar EU institutions.



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