

## Tax & Legal Weekly Alert

3 – 7 October 2016

### In this issue:

#### **Accepting an employee to work while the individual employment agreement is suspended represents a civil offense, the High Court of Cassation and Justice ruled**

By Decision no. 20/2016, the High Court of Cassation and Justice (the Panel for ruling on law matters) ruled that the provisions of Article 260 (1) e) of the Labour Code, according to which „receiving up to 5 people to work without concluding an individual employment agreement, as per article 16 (1)“ is a civil offense, are also applicable when employees are accepted to work based on a suspended individual employment agreement.



## Accepting an employee to work while the individual employment agreement is suspended represents a civil offense, the High Court of Cassation and Justice ruled

In the future, if following inspections the Territorial Labour Inspectorates state that up to 5 employees are performing work although their individual employment agreements are suspended, they could sanction the employer with a fine ranging from RON 10,000 to RON 20,000 for each such employee.

### **The arguments on which the Decision no. 20/2016 of the High Court of Cassation and Justice is based**

- The necessity to combat undeclared work;
- Performing work during the period when the individual employment agreement is suspended leads to the circumvention of the legal provisions requiring the written form of the individual employment agreement;
- Prevention of abusive behavior by parties to the individual employment agreement;
- The necessity to construe the law not only *ad litteram*, but also within its spirit.

### **Steps to be followed by employers to prevent being sanctioned with a civil fine for receiving an employee for work whose individual employment agreement is suspended**

- Recording the occurrence of the individual employment agreement's suspension through a document, in writing, to indicate both the legal grounds and the suspension effects;
- Registering the suspension of the individual employment agreement in the General Registry of Employees (except for cases when suspension is based on medical certificates);
- Recording the termination of the individual employment agreement's suspension through a document, in writing, to indicate the grounds for the suspension' termination and the date on which the suspension ceases;
- Registering the termination of the individual employment agreement's suspension in the General Registry of Employees (except for cases when suspension is based on medical certificates);
- Receiving an employee for work only after having recorded in writing the termination of the individual employment agreement's suspension and after having performed the necessary registrations in the General Registry of Employees.

### **Possible consequences of Decision no. 20/2016 of the High Court of Cassation and Justice**

In the future, the Decision of the High Court of Cassation and Justice could create some interpretation problems for the following provisions:

- Article 260 (1) f) of the Labour Code, according to which "performing work by a person without having concluded an individual contract of employment" represents a civil offense;
- Article 264 (4) of the Labour Code, according to which "receiving for work more than 5 people, regardless of their citizenship, without concluding an individual employment agreement represents a criminal offense and is sanctioned with imprisonment from 3 months to 2 years or with a fine".

Thus, starting from Decision no. 20/2016 of the High Court of Cassation and Justice, in the future, it should be established if the civil offense and the criminal offense (which have not been brought before the High Court of Cassation and Justice) are to be interpreted so as to also include the situation of performing work, respectively receiving to work, based on a suspended individual employment agreement.

For further questions regarding the aspects mentioned in this alert, please contact us.

**Florentina Munteanu**

Partner

+40 730 077 934

[fmunteanu@reff-associates.ro](mailto:fmunteanu@reff-associates.ro)

**Gabriela Ilie**

Senior Associate

+40 744 474 622

[ailie@reff-associates.ro](mailto:ailie@reff-associates.ro)



This publication contains general information only, and none of Deloitte Touche Tohmatsu Limited, any of its member firms or any of the foregoing's affiliates (collectively the "Deloitte Network") are, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your finances or your business. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see [www.deloitte.com/ro/about](http://www.deloitte.com/ro/about) for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Reff & Associates SCA is a law firm member of Bucharest Bar, independent in accordance with the Bar rules and represents Deloitte Legal in Romania. Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms or their affiliates that provide legal services. Visit the global Deloitte Legal website <http://www.deloitte.com/deloittelegal> to see which services Deloitte Legal offers in a particular country.

Deloitte provides audit, tax, consulting, and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries and territories, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges. Deloitte's approximately 225,000 professionals are committed to making an impact that matters.