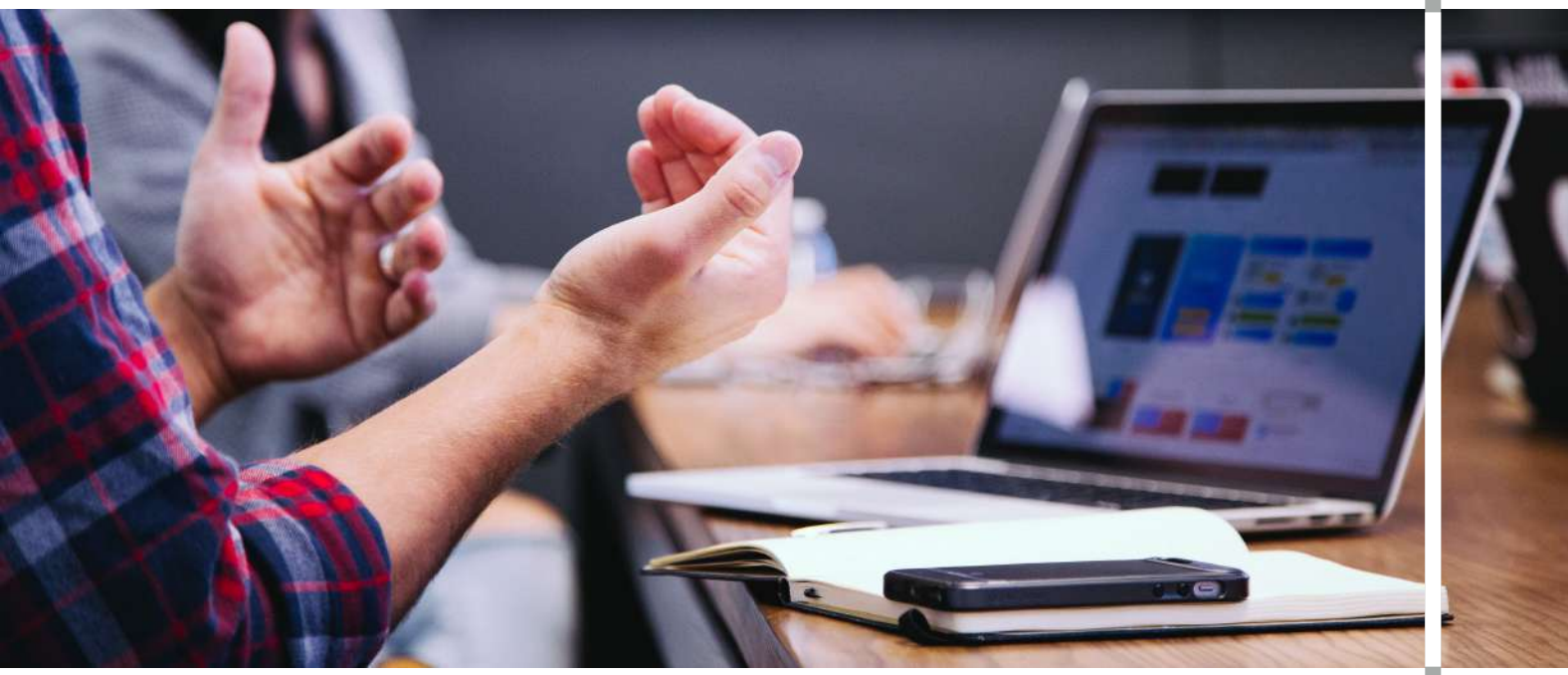
FICIL Position Paper No. 3

Foreign Investors' Council in Latvia on Labour Force Issues

10 September 2020

Executive Summary



In this Position Paper on labour force issues, the Foreign Investors' Council in Latvia (hereinafter - FICIL) highlights a number of issues which remain pressing regardless of the lifted state of emergency in the country and the potential economic consequences. Thus, in this year's Position Paper FICIL sets out recommendations related to expanding the opportunities for vocational training or upgrading the qualifications of the existing labour force, as well as promoting regional employment and mobility of the labour force which could become even more pressing in the context of the anticipated economic downturn. Although the state of emergency of the country and the potential economic consequences may have eased the labour force shortage in the short-term, FICIL believes that the issue of labour force availability needs to be looked at in the long-term so that when the economic situation in the country improves, it is not undermined by a lack of access to a labour force. FICIL appreciates that amendments were made to several Cabinet Regulations to reduce the bureaucratic obstacles to recruiting foreign labour force, and that a new Immigration Law has been drafted which, it is hoped, should relieve many of the formal procedures and quicken the process of recruiting employees. Another significant matter which FICIL has raised for several years, and which has not been suitably resolved, is the control of the procedures for issuing sick leave certificates (hereinafter - SLCs), as well as improving the system for mandatory health examinations (hereinafter - MHEs). Although it is undeniable that the overall state of health of employees is deteriorating each year, it is not acceptable that SLCs can be issued without grounds or that the MHE is formally carried out without assessing the true state of health of employees. The above-mentioned shortcomings in the quality of legislation and its enforcement lead to considerable losses for employers, as well as increasing the risks associated with job security.

Content

Recommendations

Measures for improving business activities and the more effective use of the labour force

Changes to human resource management framework - The State Employment Agency serves as the single platform for the human resource management of Latvia

A single platform is needed for the available labour force and employers - a human resource management model, so that the State can help unemployed people return to the labour market more quickly, reducing the burden of benefits on the State budget. The existing SEA labour market platform is not effective as it does not fully comply with the requirements of modern day communication platforms; it lacks communication options and recognition in the labour market. A strong strategy must be formulated, creating a single platform and involving the public and private sectors. This should controlled providing comprehensive information about the existing work opportunities and unemployed persons.

Expansion of opportunities for vocational training or upgrading of qualifications for the existing labour force

In the age of rapid digitalisation and robotisation, lifelong learning and continued improvement of skills are an integral component of economic activity, benefiting both employees and employers in promoting the competitiveness of both groups. This issue may become more pressing after the end of the state of emergency and the renewed amount of economic activities, when employers will need a labour force and persons who have become unemployed due to the state of emergency, look for new employment opportunities. Therefore, employers should be given more opportunities to engage in the training and upgrading the qualifications of employees, while protecting the interests of employers.

In FICIL's opinion, the current Labour Law framework does not effectively protect the investments by businesses into upgrading the qualification of employees, if employees leave their jobs shortly after completing training. In accordance with this framework, the employer may request the reimbursement of training costs only if they are related to the work of the employee, but such improvement in the competitiveness of the employee does not play a key role in the performance of the work being contracted.

Recommendations

Measures for improving business activities and the more effective use of the labour force

In order to encourage the investment by employers into the further education of employees and to reconcile the rights of employers and employees, FICIL proposes amendments to Section 96, Paragraph two of the Labour Law. These amendments would provide that if employees leave work on their own initiative within three years following the end of training, employers can recover their training costs in all cases where they are related to the current or post-training work of employees. At the same time, the Labour Law would retain a provision whereby the amount to be repaid be reduced proportionally to the time the employee worked for the employer after the end of the training.

The current provision of the Law On Personal Income Tax (hereinafter - PIT Law) also prevents employers from becoming engaged in the education of employees, by covering the costs of acquiring a higher education. That is, Section 8, Paragraph two of the PIT Law provides that " *salary, bonuses, one-off and systematic remuneration and other income received by the employee on the basis of current or previous employment relations in commercial companies (…) shall be added to the income for which the salary tax has to be paid in accordance with Cabinet Regulations*". In turn, Paragraph 18.^{2}, Sub-clause 3.1 of Cabinet Regulation No.899 of 21.09.2010 "Procedures for the Application of the Provisions of the Law On Personal Income Tax" determine that: "*for the purposes of applying Section 8, Paragraph two of the Law, income for which no salary tax has to be paid is the expenditure covered by the employer for the training of an employee in order to acquire, improve or extend the skills and knowledge necessary for work, occupation, position or trade (except for the acquisition of a general education and the acquisition of a higher education)*".

To summarise, if an employer wishes to cover an employee's expenses for obtaining a higher education, these payments will be treated as an employee's income and subject to personal income tax and the corresponding mandatory social security deduction. Considering that the position of the Government of the Republic of Latvia is also to facilitate the acquisition of a higher education where possible and the provision of high value added services, the current regulation of the PIT Law and Cabinet Regulation No. 899 "Procedures for the Application of the Provisions of the Law On Personal Income Tax" does not actually contribute to the achievement of the aforementioned objectives, but in fact does the exact opposite - prevents employers from investing financial resources in the acquisition of a higher education by employees. Thus, FICIL recommends that Paragraph 18.^{2}, Sub-clause 3.1 of Cabinet Regulation No.899 of 21.09.2010 "Procedures for the Application of the Provisions of the Law On Personal Income Tax" be deleted.

Recommendations

Measures for improving business activities and the more effective use of the labour

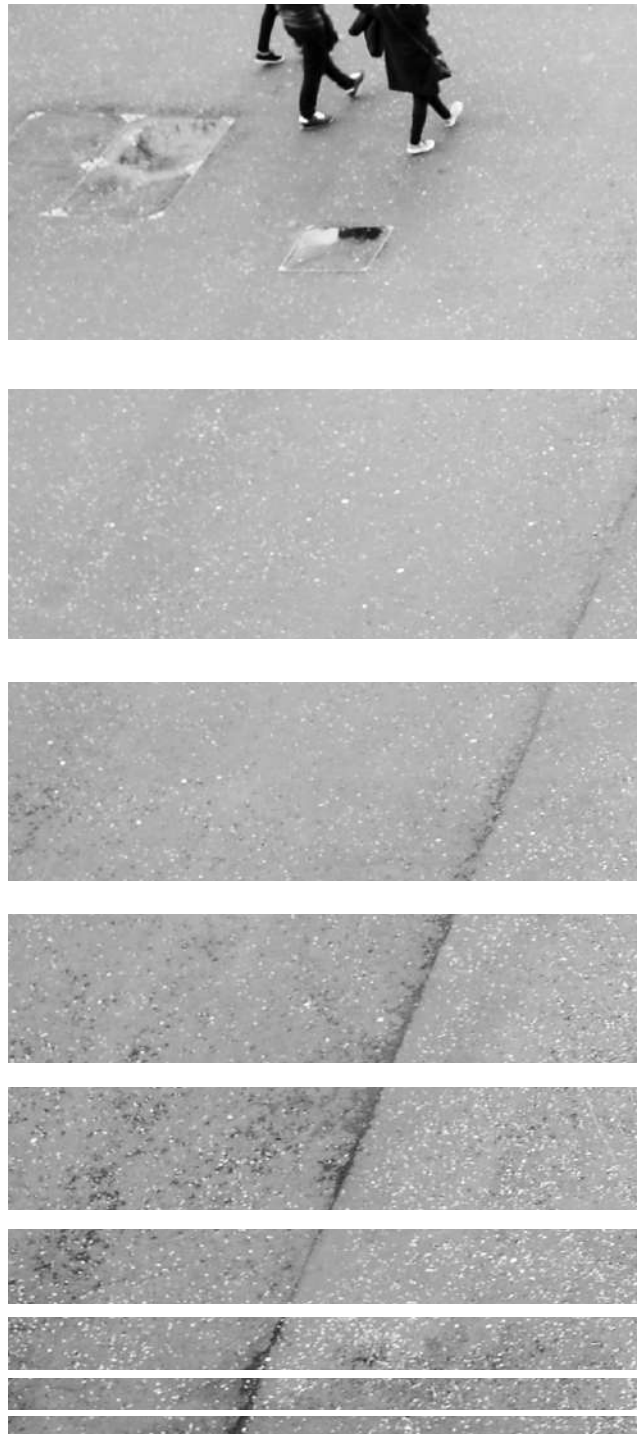
Promoting regional employment and mobility of the labour force

In FICIL's opinion, the matters of regional mobility and employment have been pressing for some years now, however, considering also the current situation, one of the central means of reducing the impact of the state of emergency could actually be the promotion of regional employment and mobility. Regional mobility of a labour force is hindered significantly by the high tax burden placed on an employer in relation to recruiting a labour force from the regions, as well as the limited offer of good quality rented apartments and service hostels. These limitations have a particularly negative impact on classes of lower-paid employees who cannot afford to rent a separate apartment in the city themselves.

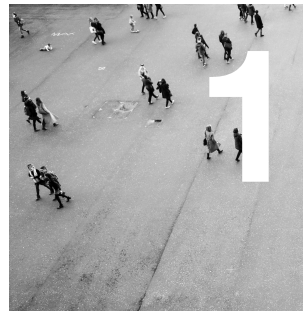
FICIL recommends promoting the development of the infrastructure concerned and promoting regional mobility in the following ways:

1. To support the demand by entrepreneurs for service hotels, providing that the following shall not be taxable income:
   a) employer's payments covering employee rental costs if the employee's habitual residence is in another city or region;
   b) promoting supply to labour force infrastructure developers through co-financing, tax incentives or public private partnerships.

These solutions have been suggested by FICIL for several years and have been discussed with several public authorities, however, no considerable improvements have been established. Therefore, in the context of the current situation, it would be particularly important to provide additional opportunities for employers to attract labour from regions with lower employment levels to promote economic development.



Recommendations



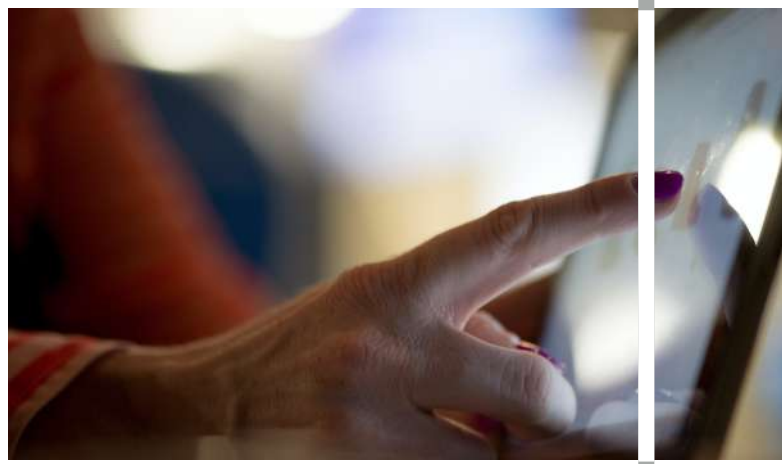
Measures for improving business activities and the more effective use of the labour force

Regulation for labour availability

At a time when the problem of access to a labour force has dropped for a while due to the state of emergency, FICIL still recommends that the issue of introducing more appropriate regulations for the attraction of a foreign labour be resolved. The introduction of timely mechanisms for recruiting a foreign workforce would be a forward-looking solution to allow employers to recruit them quickly and easily, including from third countries, when economic development has reached a phase where additional working hands are needed. This would not unnecessarily slow down the country's economic development, as occurred at the end of 2019/early 2020, when, according to economists, economic development began to slow down, the shortage of a labour force being mentioned as one of the reasons.

FICIL does not deny that primary attention should be paid to recruitment for vacant posts, so the position paper also suggests solutions for employers' involvement in the training and upskilling of employees, and solutions are also needed for remigration and improving the birth rate. However, the trend observed in recent years shows that labour shortages have become a serious obstacle to Latvia's economic development. Therefore, it is still necessary to think about forward-looking solutions for recruiting a third-country labour force to avoid unnecessary economic slowdown, which will be particularly important in the period after the end of the state of emergency.

Therefore, FICIL recommends that the means required by foreigners be reduced, setting it at a level no lower than the average gross remuneration for foreigners in the following employment sectors:
- Hospitality sector (hotels, restaurants etc.);
-Road transport
- Logistics
- Production of food products;
- Retail trade (insofar as a knowledge of the State language is not required to perform work duties).



Recommendations

Addressing the state of health and incapacity of employees

FICIL members have been pointing out the flaws in the procedures and supervision of issuing SLCs for several years. Real-life examples show that employees may often receive an SLC even though they do not have justified grounds for this. A similar situation has been identified with the MHE procedure, which formally controls the state of health of employees, relying solely on the information provided verbally by the employees. FICIL initiated meetings with representatives of both the Ministry of Health and the Ministry of Welfare and representatives of the Health Inspectorate and Association of Family Doctors to jointly find solutions to the current situation. During the meetings, it was recognised that there were a number of issues which would need to be addressed.

In view of the fact that SLCs issued without grounds and inadequate MHEs pose not only a loss to employers but also a risk to job security for other employees, FICIL calls for immediate attention to be paid to these issues and for improvements in regulations.

Improving the EDS system so that the employer can verify the issued SLCs

In the Electronic Declaration System (hereinafter - EDS), employers cannot see immediately if an employee has been issued an SLC. This often makes it difficult for an employer to ascertain whether an employee has come to work unjustifiably or is on a temporary period of incapacity.

Automatic registration of the opening of an SLC in the EDS would significantly improve the ability of employers to react promptly to an employee's absence and to ensure the uninterrupted work of the business. Thus, although FICIL acknowledges the existing problems with the e-health system, in FICIL's opinion, the inclusion of information about an opened SLC in the EDS is just as important. In addition to the aforementioned, FICIL recommends that information about the date as well as the precise time that an SLC is issued, be included in the EDS, as well as the course of treatment prescribed to an employee.

Recommendations

Addressing the state of health and incapacity of employees

Development of a clear and effective control mechanism to reduce the number of unjustifiably issued SLCs

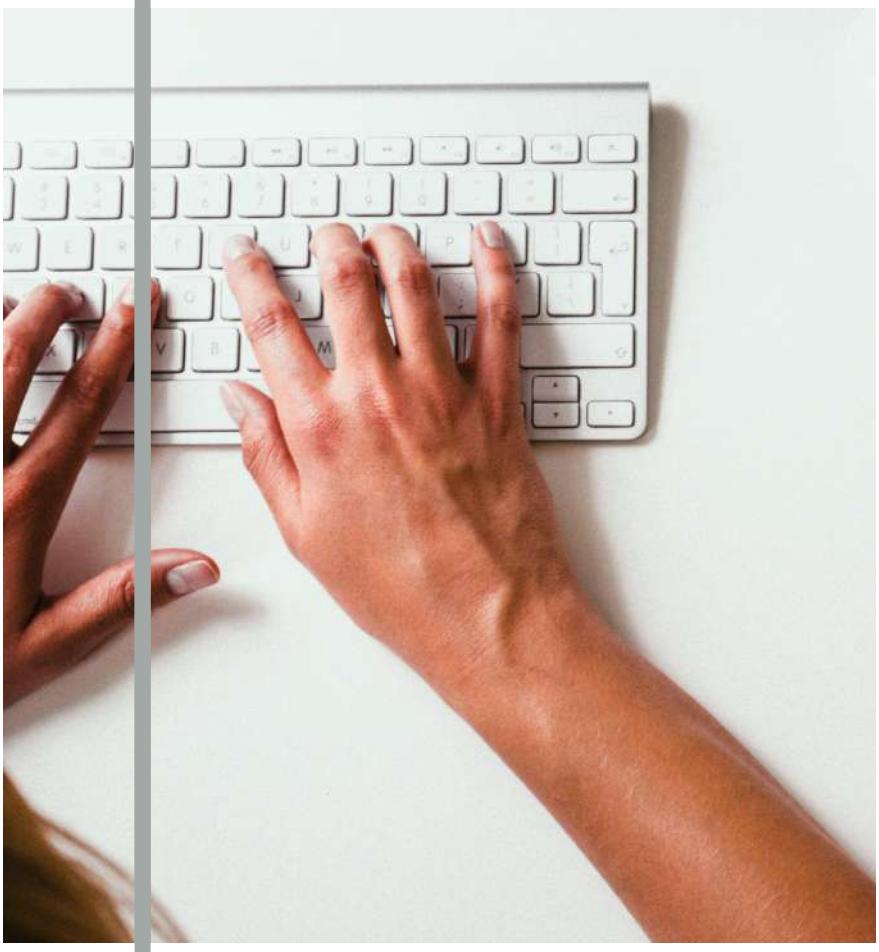
Unjustifiably issued SLCs cause losses in both the private and public sectors. Therefore, in FICIL's opinion, effective control mechanisms should be introduced in order to avoid such situations. Otherwise, an inefficient system for controlling the issuance of SLCs causes direct losses to employers who pay for the 2nd to 9th sick days, and also hinders the daily work of the companies. It would therefore be necessary to reinforce checks on doctors' practices and anticipate administrative penalties for unjustifiably issued SLCs.

Organising the mandatory health examination process to provide objective data on the state of health of employees

FICIL members recommend providing a legal framework for the uniform performance of MHEs, to prevent situations where different occupational doctors have different conclusions on the suitability of an employee for the performance of the specific job, in particular where the work has specific requirements. The "special remarks and recommendations to the employer" by occupational disease doctors should determine which specific recommendations may be included so that employers can comply with them and there are no different interpretations possible. Finally, it would be necessary to ensure that such procedures for MHEs are in place so that employees cannot conceal their health problems. One such solution would be the involvement of family physicians in this process, at least providing an opinion about the overall state of health of a patient or a previously carried out examination as part of the MHE process.

Recommendations

Amendments to the Labour Law



Introduction of part-time aggregated working time

The current position made public by the State Labour Inspectorate (hereinafter - SLI) is that part-time aggregated working time is prohibited. In the opinion of FICIL members this position significantly limits the ability of employers and employees to agree on a mutually acceptable working time planning model. In view of the conflicting case-law on this matter and the differing opinions of lawyers, the Labour Law should be clarified by providing that the organisation of aggregated working time is also allowed for part-time employees.

Rationale for Recommendations

Measures for improving business activities and the more effective use of the labour force

Taking into account the state of emergency in the Republic of Latvia and globally, FICIL draws attention to the long-term objectives in order to not only eliminate the consequences of the state of emergency in the economic context, but also to ensure the presence of a suitably trained and qualified labour force in the Republic of Latvia, as well as the recruitment thereof if necessary. Today's circumstances require, and will continue to require, continued training and upgraded qualifications of the workforce in order to adapt to the changes in everyday life. In a situation where a large number of persons have become unemployed due to the state of emergency, the regulation of training and upgrading qualifications has become even more important. Thus, FICIL sets out the regulation of employee training and upgrading qualifications as one of the priority recommendations in this position paper.

Expansion of opportunities for vocational training or upgrading of qualifications for the existing labour force

Section 96, Paragraph two of the Labour Law currently prescribes that an agreement regarding the reimbursement of costs for the upgrading of qualifications of an employee may only be entered into where the measures for upgrading qualifications are related to the work performed by the employee, but are not crucial for the performance of contracted work. Thus, under the current framework, a situation arises in which the employer is not entitled to recover the costs of upgrading the qualifications of the employee, the need for which is determined by the nature of the specific job.

In FICIL's opinion the limit prescribed by Section 96, Paragraph two of the Labour Law has no legal grounds. On the contrary, this unnecessarily prevents employees from obtaining the necessary job qualifications. In fact, in this situation, it is the employees that suffer as employers do not wish to risk and pay for this type of training with no guarantee that it will be possible to recover the costs if the employee resigns. If employers cannot retrain existing employees in Latvia, they are forced to search for a workforce abroad, or at least partially transfer their economic activities abroad.

Rationale for Recommendations

Measures for improving business activities and the more effective use of the labour force

Section 96, Paragraph two of the Labour Law sets out additional criteria to be met to allow an agreement between the employer and employee regarding training. One such criteria fundamentally protects the interests of employees by providing that the training expenditure to be reimbursed is reduced proportionally according to the time the employee worked for the employer following the end of the training. FICIL considers that such mechanism protecting employees' rights in the Labour Law should be maintained.

In FICIL's opinion the solution whereby an employer may request the reimbursement of those costs incurred for upgrading the qualification necessary for the performance of the relevant work would reconcile the rights of employers and employees. In addition, the maximum period for such an agreement within which the employer is entitled to recover at least part of his investment would be extended to 3 years.

Therefore, in order to ensure the opportunity of implementing the reimbursement of training costs, as well as to encourage employers to invest in further training and to reconcile the rights of employers and employees: FICIL proposes that the following amendments be made to Section 96, Paragraphs two and four of the Labour Law.

Rationale for Recommendations

Measures for improving business activities and the more effective use of the labour force

Section 96 Vocational Training or Upgrading Qualifications

[..]
(2) If vocational training or measures for upgrading qualifications are regarded as such which, according to the circumstances, are related to the work to be performed by the employee, or work to be performed, the employer and the employee may enter into a separate agreement on the employee's vocational training or upgrading of qualifications and covering the related expenses (hereinafter – the agreement on training).
(4) The agreement on training of an employer and employee shall be permissible only where the agreement in question conforms with the following:
[..]
2) the term of agreement does not exceed three years starting from the issuance date of an education document certifying the occupational training or upgrading of qualifications;
[..]

The current provision of the PIT Law deters employers from become engaged in the education of employees, by covering the costs of acquiring a higher education. That is, Section 8, Paragraph two of the PIT Law provides that "*salary, bonuses, one-off and systematic remuneration and other income received by the employee on the basis of current or previous employment relations in commercial companies (…) shall be added to the income for which the salary tax has to be paid in accordance with Cabinet Regulations*". In turn, Paragraph 18.[2], Sub-clause 3.1 of Cabinet Regulation No.899 of 21.09.2010 "Procedures for the Application of the Provisions of the Law On Personal Income Tax" determines that: "*for the purposes of applying Section 8, Paragraph two of the Law, income for which no salary tax has to be paid is the expenditure covered by the employer for the training of an employee in order to acquire, improve or extend the skills and knowledge necessary for work, occupation, position or trade (except for the acquisition of a general education and the acquisition of a higher education)*".

Thus, if an employer wishes to cover the employee's expenses for acquiring a higher education, these payments will be treated as an employee's income and subject to personal income tax and the corresponding mandatory social security deductions.

Considering that the position of the Government of the Republic of Latvia is also to facilitate the acquisition of a higher education where possible and the provision of high value added services, the current regulation of the PIT Law and Cabinet Regulation No 899 "Procedures for the Application of the Provisions of the Law On Personal Income Tax" does not actually contribute to the achievement of the aforementioned objectives, but in fact does the exact opposite - deters employers from investing financial resources in the acquisition of a higher education by employees. Thus, FICIL recommends that Paragraph 18.[2], Sub-clause 3.1 of Cabinet Regulation No.899 of 21.09.2010 "Procedures for the Application of the Provisions of the Law On Personal Income Tax" be deleted.

Rationale for Recommendations

Measures for improving business activities and the more effective use of the labour force

Promoting regional employment and mobility of the labour force

Recruiting a labour force from the less economically active regions of Latvia has been a constantly pressing issue for several years already. The deterioration of the economic situation does not undermine its importance, as a potential wave of emigration must also be taken into account, as a result of which the issue of access to labour will continue to be pressing. Therefore, as in previous years, FICIL calls for the promotion of regional employment and labour mobility in order to prevent obstacles to economic development in the country.

Taxes on housing and transport costs of the regional labour force

A number of FICIL members are already undertaking measures to promote regional labour mobility by linking labour resources to regional centres. However, in practice businesses are experiencing hurdles which greatly hinder the mobility of the labour force. The main hurdles include excessive costs associated with the recruitment of a regional labour force, as well as the lack of adequate residential space in regional centres and suburban areas.

If the employer pays the transport and housing costs to the employee, these payments are considered to be the employee's taxable income, from which the employer must deduct both the personal income tax (PIT) and the mandatory state social security contributions. Such a tax burden applicable to regional labour recruitment measures makes mobility measures economically unsound, hampering labour recruitment and reducing the competitiveness of businesses.

In light of the above, FICIL proposes that the government makes changes to the tax regulatory framework, determining that payments for employee housing in the city (hostel, service hotel, rented apartment, etc.) and transport costs for getting to work and home in the region shall not be regarded as the taxable income of employees.

Supporting the building of housing stock

The second significant factor hampering the recruitment of labour force is the insufficient housing stock in regional centres. The market is not currently solving this problem because investments in the construction of residential buildings have a long repayment term, as the solvency of the population is relatively low. In light of this, the involvement of state and local governments in dealing with the situation is also needed.

FICIL welcomes the programme developed by the government, which allows for the capital companies of local governments to borrow funds in the Treasury and to support the construction, renovation, conversion or purchase of newly built, renovated or converted residential rental buildings. FICIL believes that the government can effectively support the construction and reconstruction of the residential stock by other means. The demand for rented accommodation would drive the aforementioned changes in the tax regulation in respect of employers' payments for employee transport and housing costs. At the same time, the development of residential premises needed for the recruitment of labour force may be encouraged by stimulating the supply of such residential premises. This can be achieved through the introduction and implementation of programmes providing for co-financing, tax incentives or public private partnerships.

Rationale for Recommendations

Measures for improving business activities and the more effective use of the labour force

Regulatory framework for labour availability

The matter of labour availability has been highlighted by FICIL for several years. Although the state of emergency of the country and the potential economic consequences may bring short-term gains, FICIL believes that the issue needs to be looked at in the long-term and that it will still be as pressing. Although FICIL welcomes the amendments made to a series of Cabinet Regulations that facilitate the recruitment of a labour force from third countries. as well as the forthcoming draft Immigration Law, which could simplify various immigration-related issues, the recruitment of a labour force from third countries is still considered to be a rapid and simple way to attract labour when it is needed for employers.

Although the position of the Latvian government to promote the recruitment of a highly qualified labour force is understandable, employers also need less qualified employees and, in view of the potential wave of emigration after the end of the state of emergency, this issue should be assessed in the long-term perspective.

If highly qualified labour force only is recruited from third countries, this will leave only the lower qualified vacancies for the local residents of Latvia. In FICIL's opinion, such an approach is not appropriate or forward-looking if we want to aim to increase the level of education of Latvian citizens and performance of jobs with a high added value. In order to fulfil that indicated in the current government declaration regarding the involvement of Latvia's residents in jobs with higher productivity and higher remuneration, solutions must be found to fill those vacancies that do not demand a special qualification or that ask for lower qualifications.

Therefore, FICIL recommends that the means required by foreigners in certain sectors be reduced, setting it at a level no lower than the average gross remuneration for foreigners in the anticipated employment sectors, similar to that already established in the agricultural, forestry and fish farming sectors during the season.
FICIL recommends reducing the means required by foreigners in the following sectors:

- Hospitality sector (hotels, restaurants etc.);
- Transportation by road;
- Logistics;
- Production of food products;
- Retail trade (insofar as a knowledge of the State language is not required to perform work duties).

In this way, a temporary solution could be found to also reduce labour shortages in the lower-skilled segment and to ensure that economic development is not slowed until the remigration measures and measures to improve the birth rate have started to produce some results. This framework could also be introduced with certain additional conditions to protect the labour market from uncontrolled labour flows. Such additional conditions may include, for example, the re-issue of a residence permit on the same basis only after a certain period of time following expiry of the previous permit or the introduction of a regulatory framework only for a period of time, while the sectors concerned are experiencing acute labour shortages.

Rationale for Recommendations

Addressing the state of health and incapacity of employees

Addressing the state of health and incapacity of employees

FICIL members have been pointing out the shortcomings in the procedures and supervision of issuing SLCs for several years. Real-life examples show that employees may often receive an SLC even though they do not have justified grounds for this. Supervision by the responsible authorities, including the Ministry of Welfare and the Health Inspectorate, is clearly insufficient and untimely. Physicians who unjustifiably issue an SLC are not actually penalised in any way; the mechanism for controlling the issue of unjustified SLCs does not therefore work. SLCs issued without grounds pose financial losses to employers as they have to pay for the 2nd to 9th days of incapacity to work.

FICIL's meetings with representatives of the Ministry of Health, the Ministry of Welfare, the Health Inspectorate and the Association of Family Doctors were useful and merely confirmed that the issue of SLCs should be given increased attention. FICIL stresses that the SLC issue has been acute for several years and, despite the problems with the existing e-health system, should be addressed in the near future. Agreement was reached during the talks with the Ministry of Health, that information regarding opened SLCs would be visible to employers, from 1 January 2021. If, due to the problems identified, it is not possible for the e-health system to meet this promise, FICIL calls for at least a temporary solution so that employers can learn independently about issued SLCs as soon as possible without having to depend on the employees offering this information.

A similar situation has been identified with the MHE procedure, where experience by FICIL members shows that mandatory health examinations of employees are carried out formally, relying solely on the information provided verbally by the employees. Members of FICIL have come across situations in which employees hide serious health problems in order to obtain a positive MHE result. This situation is also unacceptable and poses a significant work safety risk not only for the fraudulent employees, but also for the employer and other employees, or even the clients.

Rationale for Recommendations

Addressing the state of health and incapacity of employees

Improving the EDS system so that the employer can verify the SLCs issued

The most common problems encountered by employers related to the issue of SLCs are as follows:

-Currently, in the EDS system, the issue of an SLC can only be seen when the doctor has "signed off" the SLC.

An employer only knows about the "opening" of an SLC when the employee informs the employer himself or herself. In practice this poses a number of difficulties for an employer. For example, if an employee does not arrive at work and does not notify the employer of the reason for absence, the employer is unable to plan the company's activities, as it is unclear whether the employee is sick or simply not coming to work for no good reason. In the latter case, the employer has the right to dismiss such employee from work and seek a replacement. Without knowing the reason for the employee's absence, the company is unable to quickly adapt the company's operations to avoid any difficulties arising from the employee's absence. It is therefore essential to amend the existing framework and the functionality of the EDS system so that employers can independently verify the SLCs issued.

-Members of FICIL have been subject to malpractice by employees who, on the day of receiving a disciplinary sanction or notice from their employer, have arranged for the opening of an SLC on the same day.

In order to avoid this type of situation where following the issuance of a disciplinary sanction or dismissal, the employee goes to a doctor and receives an SLC, the EDS system should contain information not only about the fact that an SLC has been opened and closed, but also about the time it was issued. The experience of FICIL members with submissions to the Health Inspectorate shows that there have been cases where, following the verification, it transpires that the SLC has been issued after, for example, the dismissal. This situation whereby employees are taking advantage of system flaws cannot be allowed. An effective way of avoiding such situations would be to determine that the EDS also shows the time that the SLC was issued. This could also prevent the need for involving the Health Inspectorate in clarifying such matters, which in turn removes the unnecessary burden on the public authority.

-The indication of the period of treatment for an employee in the EDS.

In recent years, increasingly more employees have been diagnosed with diseases that do not require hospital or home treatment. Employers often find that an employee participates in social activities, sports or similar activities during their period of incapacity for work. It is understandable that the employer in question raises questions about the appropriateness of the issuance of the SLC.

Rationale for Recommendations

Addressing the state of health and incapacity of employees

Paragraph 16 of Cabinet Regulation No. 152 of 03.04.2001 "Procedures for the Issuance and Revocation of Sick Leave Certificates" specifies that a doctor or an assistant to a doctor may make a note regarding a violation of the treatment regime specified. However, the experience of FICIL members shows that it is the employers who often face situations where an employee has been issued an SLC, but in the meantime is actively travelling and participating in events or sports. If it was therefore possible for the employer themselves to independently verify the treatment regime for the employee without asking the employee to submit a form No 27/u "Statement from a hospital patient/outpatient medical card" or having to apply to the Health Inspectorate for the verification of the appropriateness of the issuance of the SLC, this would help avoid unnecessary misunderstandings between employers and employees and the functioning of the Health Inspectorate would not be unduly burdened In addition, the employer could inform the doctor who issued the SLC of any violations of the treatment regime, if any were determined. In FICIL's opinion, the suggested proposal does not violate the employee's right to privacy, since the validity of the issuance of the SLC and compliance with the prescribed treatment regime is also significant for employers.

- When issuing an SLC category B to a person who is nursing a sick child up to the age of 14 years, following the closing of the SLC, in the EDS system the employer sees the reason for the employee's absence as being for "other reasons".

Given that employers assess the reasons for the incapacity for work by employees and develop measures in order to improve work conditions and prevent potential risks to the health of employees, it is important for an employer to know whether or not the incapacity for work of a specific employee is related to the sickness of the employee himself or herself (accordingly, due to conditions at work). With no information that the absence of an employee is not related to his or her own illness, the employer cannot fully analyse the data on risk factors in the company and react accordingly.

Rationale for Recommendations

Addressing the state of health and incapacity of employees

Establishment of a clear and effective control mechanism, including prevention, to reduce SLCs issued without grounds

In order to reduce the number of unjustifiably issued SLCs causing losses in both the private and public sectors, in the opinion of FICIL members the introduction of a control mechanism is necessary. Although, according to the information provided by the Ministry of Health and the Health Inspectorate, data on the SLCs issued are collected and doctors who have issued the most SLCs have been inspected, in FICIL's opinion, such checks should be regular in order not only to collect information on the statistics of issued SLCs, but also to encourage doctors to behave more responsibly about the grounds for issuing SLCs.

-Regular inspections at doctors' practices. Each year, a certain number of random tests are carried out, as well as targeted tests in those doctors' practices where a significantly higher number of SLCs have been issued than elsewhere, according to the data available on the e-health system. A certain number of random tests should be carried out in doctors' practices where it has been determined that a significantly higher number of SLCs have been issued and/or violations in the issuance of SLCs have been determined.

-Imposing an administrative fine for a medical practitioner who has issued an SLC without grounds. At present, Section 45.[1] of the Administrative Violations Code determines an administrative fine for a medical treatment institution or medical practitioner for a health care violation - a warning or fine up to EUR 350. In FICIL's opinion such an administrative fine does not serve as a deterrent to prevent medical practitioners from the unjustified issuance of an SLC. The penalty provided in the Administrative Violations Code should be increased by at least three times, that is, to at least EUR 1050. The penalty would be differentiated, with a higher penalty for the repeat issuance of unjustified SLCs. FICIL also calls for an administrative fine to be imposed on persons who have provided a medical practitioner with false information about his or her state of health, which has resulted in the unjustified issuance of an SLC.

-Informative posters aimed at patients in doctors' practices with clear information about the patient's obligation to provide true information on his or her state of health.

Rationale for Recommendations

Addressing the state of health and incapacity of employees

Organising the mandatory health examination process to provide objective data on the state of health of employees

Members of FICIL have repeatedly pointed out that the MHE does not provide an objective view of the state of health of employees. Therefore, FICIL proposes that the issue of changes to the MHE process or the involvement of a family doctor in this process be assessed, as employees often do not inform the doctor of occupational diseases or deliberately conceal them.

The procedures by which mandatory health examinations are performed for those employees whose state of health is affected by or may be affected by factors of the working environment harmful to health, and those employees who have special conditions at work are regulated by Cabinet Regulation No.219 of 10 March 2009 "Procedures for Performance of Mandatory Health Examinations". Although the Regulation lays down the procedures for the performance of MHEs, in practice several issues have arisen regarding the procedures for the performance of MHEs and their practicality, therefore FICIL recommends the following to improve the MHE process:

1. A single register would be required containing information on the state of health of the employee and comments, as in practice, cases have been identified where an employee is assessed on a visit to one occupational disease doctor with an assessment of “not compliant” for some of the points but "compliant” in the opinion of another occupational disease doctor.
2. The “Special remarks and recommendations to the employer” (point 12 on the MHE card) are often very vague and ambiguous, which makes it difficult for employers to comply with the recommendations of an occupational disease doctor to adapt the work environment to the employee in question.
3. Regions and non-major cities have limited access to the MHE service and terms which delay employees from commencing employment. In places, the process can take several weeks while all the necessary investigations are carried out, and the time and money of the employee are wasted (for their first MHE). In essence, in such situation an employer cannot employ someone while the suitability of his or her state of health with the work to be performed is unknown. For example, by involving family doctors in the MHE process, the result could be achieved much more quickly and possibly more objectively, as a family doctor has more personal information available.
4. In order to ensure that the employee does not hide true information on his or her state of health, family doctors should be involved in the MHE process, as they could provide additional information on the state of health, tests carried out and chronic diseases of the employee. Another alternative would be to improve the MHE process to prevent a situation arising where an employee can conceal his or her health problems which are also not detected in the MHE process itself. For example, by specifying additional testing or requesting the results of previously performed health checks, if such have been carried out in the previous six months to a year.

Rationale for Recommendations

Amendments to the Labour Law

Introduction of part-time aggregated working hours

At present, the situation is uncertain about the possibility of applying the aggregated working time regime to part-time employees. This is particularly important for businesses working in the customer services sector (hotels, cafes, restaurants, shops, customer service centres, other small retail outlets). Such jobs often employ students who combine working with studying, as well as other categories of people who do not wish to work full-time. Jobs are usually carried out by setting non-standard daily working hours in line with the expectations of the employee concerned during the specific time period, as well as the specific nature of the work to be carried out (for example, the working time of the restaurant). Employers therefore need an effective, flexible working time planning mechanism to allow the planning of working hours, taking into account the expectations and opportunities of employees, which are aligned with the needs of the employer. A part-time aggregated working time regime provides for flexible and effective planning of working hours. Moreover, if the number of minimum guaranteed part-time working hours is specified in the employment contract then this prevents an employer from breaching this agreement.

The current position made public by the State Labour Inspectorate (hereinafter - SLI) is that part-time aggregated working hours are prohibited. The SLI justifies this position by that cited in Senate Judgments No. SKC-2735/2015 and No. SKC-1818/2014. There are disputes between lawyers about the interpretation of these judgments concerning the admissibility of part-time working hours. As a result, the legal situation is currently unclear.

Several companies continue to apply the aggregated working time system to part-time employees, although the State authority objects to such practices.

In order to put an end to legal uncertainty and to allow companies to employ employees effectively and flexibly, the Labour Law should be amended by unequivocally specifying that the system of the organisation of the aggregated working time can also be applied to part-time employees. Such amendments could be made by extending Section 140 of the Labour Law with an eighth paragraph: "(8) Aggregated working time may be applied to full-time or part-time employees. If aggregated working time is applied to part-time employees, then the minimum guaranteed number of working hours per week which are calculated as an average of the reporting period, shall be indicated in the employment contract".

FICIL Position Paper No. 3

Foreign Investors' Council in Latvia on Labour Force Issues

FICIL is a non-governmental organisation that unites 37 largest foreign capital companies from various industries, 10 foreign chambers of commerce in Latvia, French Foreign Trade Advisers and Stockholm School of Economics in Riga. The goal of FICIL is to improve Latvia's business environment and overall competitiveness in attracting foreign investment, using the experience and knowledge of its members to provide recommendations to Government and state institutions.