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Private car for business purposes – reimbursement of expenses as income for an employee

Tax Alert

Dear Readers,

When employers reimburse expenses incurred by employees for the use of their private cars for business purposes, such reimbursement shall constitute employees' income arising from an employment relationship. Such a position is presented in the currently issued individual interpretations (for example, the interpretation of the Director of the Tax Chamber in Łódź of 24 June 2016, reference number 1061-IPTPB1.4511.294.2016.2.MH or the interpretation of the Director of the Tax Chamber in Poznań of 17 June 2016, reference number ILPB1/4511-1-505/16-2/KF).

The interpretations relate to employees with whom employers have entered into civil agreements to use their private cars for business purposes. Under the agreements, employees are paid a flat rate reimbursement of expenses incurred for using their cars. According to tax authorities, the reimbursement means receiving income from an employment relationship as referred to in Art. 12 Section 1 of the Act of 26 July 1991 on Personal Income Tax (Journal of Laws of 2012, item 361; as amended; hereinafter: the PIT Act). Such income should be taxed just as other income from employment. The employers, in turn, as withholding agents shall have obligations referred to in Art. 31 of the PIT Act, related to calculating and withholding advance personal income tax payments.

The issued interpretations emphasise that the Constitutional Court's decision of 8 July 2013, ref. No. K 7/13, shall not apply to the cases. This is because the decision concerns gratuitous benefits received by employees, while in the situation described above employees receive cash. Moreover, it is emphasised that the above-mentioned decision relates to situations where employees receive benefits in connection with being employed, which are closely associated with the business activities performed by the employer and the value of which cannot be calculated according to the methodology indicated in the PIT Act. As a result, applying the arguments of the decision to cash benefits is not justified.

In addition, the tax authorities present the opinion that it will not be possible to apply the exemption referred to in Art. 21 Section 1 item 23b of the PIT Act. The provision stipulates that the reimbursement of expenses incurred by employees for using their own vehicles for the needs of the employer, for local travel, is tax-free if the obligation to bear such costs by the employer or the possibility of granting the right to reimbursement of the costs stems directly from the provisions of other acts.

According to the authorities issuing interpretations on the matters described above, the reimbursement is not made under the provisions of other acts, but on the basis of civil law agreements. Consequently, since there are no provisions ensuring the reimbursement of expenses incurred for using private cars for business purposes, the money paid by the employer is not subject to an exemption under Art. 21 Section 1 item 23b of the PIT Act.

Let us recall, however, that a different approach was presented by tax authorities at the beginning of the year. One of the examples is the interpretation of the Director of the Tax Chamber in Warsaw of 11 February 2016, reference number IPPB4/4511-1369/15-2/MS. The authority decided then that "since the proper and effective performance of an employee's duties requires the employee to use their private car, the reimbursement of the above cost by the employer is not a benefit for the employee, but it is just fulfilling the statutory obligation to properly organise work by the employer (...)".

Changing the interpretation is undoubtedly unfavourable both for employees and employers, who will have additional responsibilities related to calculating and withholding advance personal income tax payments. However, one cannot deny that the authorities are right claiming that the reimbursement of the expenses incurred for using private cars for business purposes is not a gratuitous benefit.

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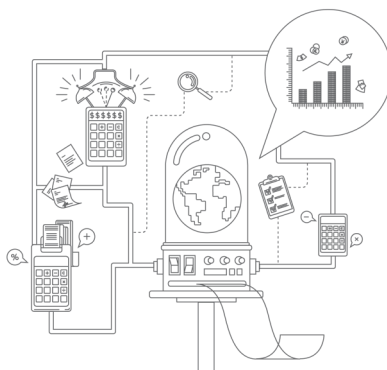
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