CHANGES IN CATERING AND MEAL VOUCHERS

KEY INFORMATION

Since 1 January 2022 two new amendments to the Income Tax Act have had an impact on the remuneration of employees and their net income. These amendments concern employees' nutrition and non-monetary benefits. Let's focus on the first topic today.

Based on the amended provisions, meal vouchers, financial meal contributions, and hot meals provided by an employer to employees are exempt from tax (and consequently from social security and health insurance) only up to the limit defined by the Labour Code, which since 1 May 2022 is EUR 3.30 daily, or in the amount funded from the Social Fund ("the SF") of the employer.

The relevant authorities simultaneously confirmed that the exemption applies only if the meal voucher or financial contribution is provided in advance, before the lunch break of the particular work-day for which the exemption is claimed.

NEGATIVE CHANGE?

From the employee's perspective this change is obviously negative, as until the end of 2021 the employer's contributions for meal vouchers were tax exempt without limit and irrespective of the source of their funding (this was not true in the case of financial contributions).

Thus, in January 2022 many employees discovered that the over-limit contributions of their employer for their nutrition had had a negative impact on their net salary. Employers must also pay additional social security and health insurance for over-limit contributions.

IS THERE ANY WAY TO ELIMINATE SUCH NEGATIVE IMPACTS?

The answer might be the effective use of the Social Fund. The rules for the creation and use of an SF are defined by the Act on SF, which stipulates that an SF may be created from:

a) Mandatory contribution of 0.6 -1 % of the sum of gross salaries of employees,

b) Other contribution agreed upon in the Collective Agreement or internal directive, up to 0.5% of the sum of gross salaries, or

c) Other sources based on Articles 4(2) or 4(3).

Based on Article 4(3) these other sources are:

- gifts, donations, and contributions provided by the employer to the fund, and
- contributions of the employer from its usable net profit

The creation of the "mandatory" social fund is treated as a tax-deductible expense of the employer. Thus, every employer should first review the actual source and use of its social fund. It can see that this is one of only 3 benefits which, if paid from the Social fund sources, have a tax regime under which:

- the expenses of the employer are tax deductible;
- the net income of the employee remains the same (he/she does not pay any taxes or contributions for the benefit received); and
- the employer does not incur any additional social security or health insurance expenses.

GUESS WHAT THE OTHER TWO BENEFITS ARE?

Now, maybe you are guessing which other two benefits may be funded through the SF with the same positive tax treatment. These are employer contributions for (1) optional preventive health checks, and (2) providing assistance in the case of a death of a person close to an employee, mitigating or eliminating the impact of natural events, or providing long-term temporary disability payments of up to EUR 2,000 per year.

Any other benefit from SF sources decreases the net income of the employee by cca 30% (13.4% - contributions and 19% - tax calculated from the tax base = value of benefit decreased by related contribution) and increases the cost to the employer through increased social security and health insurance contributions (35.2% of the value of benefit). For completeness, a partial exception applies in the case of a contribution to a supplementary pension plan which is not subject of social security.

But what if funding of the "mandatory" SF is not sufficient, and the employer would like to contribute more than the current sources of its SF allow?

A first option is to add to the SF from the net profit of the employer. With a little simplification, the employer would not generate a tax-deductible cost (i.e., the corporate income tax burden would be increased by 21% of the value of the benefit). However, there would arise no additional cost to the employer (35,2%), and the employee's net salary would not be decreased (cca 30%).

The simplified result is 21% vs 58% in favor of the SF in comparison to benefits funded from costs.

The situation with gifts and donations is more complex. In our opinion, the employer cannot create a social fund from its own "tax non-deductible" costs in order to donate to its own SF. However, this should be possible within a Group.

Thus, we recommend that you take out your calculators and calculate how to most effectively use the current sources of your SF and/or how to increase the fund. The over-limit contribution to an employee of, e.g., EUR 1 daily may not seem like much. However, if you multiply that by X employees, 250 workdays, and 65%, the resulting number might be interesting for your CFO.

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