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Tax and Legal news

Taxes
Legal
In brief
World news
Case law

Tax and Legal News | April 2021

Taxes

5 frequently asked questions about employees' meal allowance

The amendment to the Labor Code effective as of 1 March 2021 introduced the long-awaited possibility of providing employees with a financial contribution for meals instead of meal vouchers or meal cards.

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However, this new legislation has brought several issues and application ambiguities. Therefore, most companies have applied the transitional period until the end of 2021 and have postponed introduction of the financial contributions. The financial contrition appears as a less favourable option in many areas.

The Financial Administration issued an extensive methodological guideline on this topic last week. The methodological guideline goes beyond the scope of the legislation in several areas and attempts to cover the unclear issues. These include e.g. financial contribution for an employee during a sick leave, vacation, or contributions for persons having other types of work relationship than an employment contract (e.g. mandate agreements or other agreements). It is very likely, that the Labour Code will be subject to an additional amendment with respect to the financial contributions until the end of this year.

We answer you the five most frequently asked questions, which we usually face in terms of employees' meal allowances. The answers were prepared based on the currently available information, which, however, may change until end of this year.

1. Are all employers obliged to allow their employees to choose the form of meals?

In general, this obligation applies to all employers who do not provide meals in their own canteen or in another employer's canteen. Thus, the provision of hot meals continues to take the precedence. The financial contribution should be an alternative to meal vouchers or electronic meal vouchers (meal cards).

2. Can an employer contribute to meal from the Social fund without any limitation? Is there a difference in case of financial contribution and meal vouchers?

According to current interpretations, it is possible to make the contributions from the Social fund in case of both options (financial contributions as well as meal vouchers) in an unlimited amount. The entire contribution from the Social fund is exempted from taxation in hands of the employees.

3. The employer provides meal vouchers, i.e. financial contribution to its employees in the amount of 5 EUR (2.81 EUR contribution according to § 152 of the Labor Code, 1 EUR contribution from the Social fund, 1.19 EUR voluntary contribution of the employer). Is it possible to consider both forms as exempt income of the employee in full amount?

The meal voucher would be exempted in full amount for the employee. The financial contribution would be exempted only up to the amount of EUR 3.81 (i.e. EUR 2.81+ EUR 1) and the remaining EUR 1.19 would be subject to tax and contributions on side of the employee. The employer would also have to pay contributions from this amount.

4. To what extent would the amounts from the previous example be considered as tax deductible expense for the employer?

If the employer provides a meal voucher, EUR 1.19 from the above example would be a tax non-deductible expense. The financial contribution would be considered a tax-deductible expense in full, as EUR 1.19 was already taxed on the side of the employee and five legal conditions must be met (agree its amount in written, non-discrimination of the financial contribution or meal voucher in terms of the amounts, etc.).

5. Is an employee performing work from home and teleworking entitled to meal allowance?

Yes, if he works more than 4 hours per day. Such an employee should be able to choose between a meal voucher and financial contribution in the same way as employees working from the employer's premises.

Both employees and employers are concerned about many questions in this area. The main issues need to be covered in the employer's internal regulation, which should list all the options and methods of employees' choice, as well as solve possible problematic situations.

We will be happy to advise you in this area and draft your internal regulation regarding financial contribution if you wish so.

Legal

Kurzarbeit has passed the first reading

On 24 February 2021, the Government of the Slovak Republic approved a bill that addresses the introduction of a permanent regime of abbreviated work, the so-called kurzarbeit.

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The bill was discussed at the 25th meeting of the National Council of the Slovak Republic, on 18 March 2021, at which more than 120 deputies voted for discussion in the second reading and the assignment of the bill to the committee.

Purpose and wording of the law

The main purpose of the proposed bill is, in addition to ensuring coverage of part of compensation of the employee 's salary or compensation of the employee's income at a time when the employer can not assign work to employees to the originally agreed extent due to external factors well as maintaining jobs and competitiveness of employers and self-employed persons in times of economic crisis, recession and other crisis situations.

According to the prepared law, external factors are considered to be circumstances of a temporary nature which the employer could not influence or prevent and which have a negative impact on the assignment of work to the employer's employees, in particular an extraordinary event, state of emergency, extraordinary circumstance or circumstances of force majeure.

The bill strictly defines that the external factor does not consider the time of the war and the state of war, the seasonality of the activities performed, restructuring, planned shutdown or reconstruction.

Entitlement to support

According to the prepared law, an employer who applies for support for his employee must meet several of the following conditions, namely:

- be at the time of abbreviated work,
- have, on the date of application, paid social security contributions, compulsory old-age pension contributions for the relevant period,
- must not have infringed the prohibition on illegal employment for a period of two years prior to the submission of the application for support, if he did so, he would not meet the exhaustive calculation defined by the prepared law.

Financial support should be provided to the employer per employee - a natural person who is either in an employment relationship or in a civil service relationship, or in a legal relationship on the basis of a contract for the professional practice of sport. It therefore follows from the prepared law that a self-employed person respectively another self-employed person is not entitled to such a contribution to cover repayment for his own business activity.

Amount of support and conditions per employee's post

According to the prepared law, support is to be provided for each hour of obstacles to work on the part of the employer due to a restriction of the employer's activity, amounting to 60% of the employee's average hourly earnings in the calendar month for which the support is provided, however, up to a maximum amount of 60% of 1/174 double average wage of an employee in the economy of the Slovak Republic published by the Statistical Office of the Slovak Republic for the calendar year which two years preceding the calendar year in which the support is provided.

The employer will be able to apply for support in this amount only if he cannot assign work to the employee to the extent of at least 10% of the established weekly working time.

Support will be possible to get per the employee:

- if his employment relationship with the employer lasted at least one month at the same time as at the date of application, and at the same time
- he is not on notice period.

The condition for drawing the support is the obligation to keep the job position supported in this way by the employer for at least two months after the end of receiving the support.

Period of drawing on the support

The Government of the Slovak Republic has proposed to provide such support in total for a maximum of 6 months for 24 consecutive months, with the possibility of extending such a period, if it is necessary.

According to the submitted wording of the prepared law, the government bill is expected to take effect from 31 December 2021, except for selected provisions with later effect.

In brief

Slovak Financial Administration has introduced a new electronic tool

On 15 April 2021 the Slovak Financial Administration made available on its website an online free tool for improving the tax discipline. The service so-called „saldokonto“ enables taxpayers to enter into the system and obtain the current status of fulfillment of their tax obligations.

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The new measure is expected to contribute to the use of financial administration’s electronic services. All taxpayers will be able to well-versed and check on such things as the status of the account or their liabilities (e.g. arrears, overpayments or prepayments, etc.). At the same time, the published data will draw attention to the tax due date within the statutory deadline, including payment instructions, which will help to collect taxes more efficiently.

„Saldokonto“ presents in a well arranged way the personal account of the taxpayer with a thorough quantification of items for all types of taxes. The aim is to provide taxpayers with comprehensive access to useful information in the following structure:

- **personal account statement** - will keep you informed about the status of unpaid and paid taxes due, arrears, overpayments or prepayments. The detailed data are also presented for the relevant type of tax (total amount, tax levied, settled amount and the outstanding amounts before and after the due date).
- **tax payments** – will provide more detailed information on the payment of the respective taxes, the method of payment and fees, the account numbers in the State Treasury, variable and specific symbols.

The data would be reflected in the new system gradually according to the processed tax returns with the announced deadline by the end of May. Moreover, the financial administration will show:

- payment history for one-year period,
- the history of payments made after the due date for a period of one year after the date of the last payment,
- an overview of the history of prepayments for the last two years.

Taxpayers that communicate with the Tax Authorities electronically have access to the saldokonto’s data. Individual information is also available to the statutory representative or authorized representative based on the granted general Power of Attorney.

As part of the digitization of the financial administration, next steps and improvements are planned, which should be implemented by the end of 2021.

EU Discussions on European Financial Transaction Tax

Taxation of the financial sector has long been one of the most controversial topics in European tax policy. Portugal, as the current presidency, is trying to reopen in the Council the debate on the proposal for a Financial Transaction Tax at the EU level.

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The proposal to introduce a new European Financial Transaction Tax (FTT) has not had the unanimous support of EU Member States since 2011. Nevertheless, eleven Member States decided to move ahead with the initiative under the so-called *enhanced cooperation procedure*, including Slovakia.

The aim of the FTT is to ensure that the financial sector contributes fairly to public revenues and helps to prevent speculative transactions on the market. Even after the revised draft of Directive from 2019, based on the French model, a negative opinion persists. The amended proposal includes narrower scope of the tax base as well as an increase in the rate, new system for splitting the FTT revenues for participating Member States and an optional exemption for pension schemes. The concept of introducing FTT was not supported until 1 January 2021.

The Portuguese Presidency of the Council of the EU has asked the Member States to express on the key points of setting the tax. It is determined to make progress and discuss all possible ways of reaching a consensus. At the same time, it bases on the experience of France and Italy, which already apply a financial transaction tax at local level. In addition, in Portugal's view, a step-by-step approach will allow:

- Member States and the European Commission to evaluate the economic impact of the FTT;
- tax administrations to progressively develop efficient and effective collection procedures;
- financial institutions to gradually build up the knowledge and infrastructure required to facilitate tax compliance.

The various views of Member States on the introduction of a financial transaction tax do not indicate a significant shift in this area in the foreseeable future. The measure only makes sense in case of global implementation.

Currently, ten countries are supporters of enhanced cooperation: Belgium, France, Greece, Germany, Portugal, Austria, Slovakia, Slovenia, Spain and Italy.

It will be interesting to monitor the further development of European legislation, which for decades has pointed to fundamental differences of opinion on the issue of taxation of the financial sector.

Case law

CJEU assessed whether a penalty imposed by the tax authority was proportionate

On 15 April 2021, the Court of Justice of the European Union ("CJEU") released its judgment in the case C-935/19 „Grupa Warzywna Sp. z o.o.", dealing with a question whether a penalty imposed by the tax authority at a rate of 20% of the amount by which an unduly claimed excess VAT deduction was overstated was proportionate.

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Background

A Polish company Grupa Warzywna Sp. z o.o. acquired an immovable property which was occupied for more than two years. The sales price of the building was agreed as a gross amount including VAT. The seller issued an invoice showing the amount of VAT applied on the transaction and the mentioned company deducted this VAT in its VAT return.

The tax authority found that the supply of the property was in principle VAT exempt and that the contractual parties had not submitted a waiver of exemption. The company proceeded with correction of the VAT return based on the findings of the tax authority. Compared to the VAT return originally filed, the declared excess VAT deduction was significantly lower.

The tax authority imposed a penalty in the amount of 20% of the amount by which the excess VAT deduction was decreased.

Question whether the imposed penalty was proportionate

CJEU dealt with a question of whether the penalty was proportionate, considering that it was imposed:

- on a taxable person who has incorrectly classified a VAT exempt transaction as a supply on which VAT was applicable and who claimed deduction of VAT wrongly invoiced by the seller,

- irrespective of the nature and seriousness of the infringement, with no indication that the error constitutes tax evasion and where no tax revenue was lost.

CJEU's arguments

EU member states may adopt measures to ensure the correct collection of VAT and to prevent evasion. In particular, in the absence of provisions of EU law on that matter, the EU member states have the power to choose the sanctions which seem to them to be appropriate in the event that conditions laid down by EU legislation for the exercise of the right to deduct VAT are not observed.

However, the sanction must not go beyond what is necessary to attain the objectives of ensuring correct collection of VAT and to prevent evasion. In order to assess whether a penalty is consistent with the principle of proportionality, account must be taken of, inter alia, the nature and the degree of seriousness of the infringement which that penalty seeks to sanction, and of the means of establishing the amount of that penalty.

In this case, the penalty was intended to have a preventive effect. It is intended to encourage taxable persons to complete their tax returns correctly and with due care, and, in the event of incompliance, to correct them in order to achieve the objective of ensuring the correct collection of VAT.

As regards the method of determining the amount of the penalty in the present case, it should be noted that, where it is set

at 20% of the amount by which an unduly claimed excess VAT deduction was overstated, that amount of penalty cannot be, with certain exceptions, reduced depending on the specific circumstances of the case.

It is apparent in the case at hand that the amount of penalty does not reflect the fact that the incompliance stems from an incorrect VAT assessment of the transaction by the contractual parties who incorrectly assumed that VAT was applicable on the supply of the building. It is also apparent that the penalty applies without distinction in a situation in which the incompliance results from an error, where there is no evidence of tax evasion and which did not lead to any loss of tax revenue, and in a situation where such specific circumstances worth of consideration do not exist. This method of determination did not therefore enable the tax authorities to adjust the amount of the penalty according to the specific circumstances of the present case.

It follows that the method of determining the penalty, applied automatically, does not enable the tax authorities to individualize the penalty imposed in order to ensure that that penalty does not go beyond what is necessary to attain the objectives of ensuring correct tax collection and prevention of tax evasion.

CJEU holds incompatible with EU law a penalty imposed to a taxable person who has incorrectly classified a VAT exempt transaction as a supply on which VAT was applicable, equal to 20% of the amount by which an unduly claimed excess VAT deduction was overstated, in so far as the penalty is applied without distinction:

(i) in a situation where the incompliance stems from an incorrect VAT assessment of the transaction by the contractual parties as regards its taxable nature, provided that there is no evidence of tax evasion and no loss of tax revenue, as well as

(ii) in a situation where such specific circumstances do not exist.

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