

Employee

Employee as a beneficiary of a fringe benefit is a broader term than only within the meaning of the Employment Contracts Act. From the perspective of the fringe benefit, it is not important which law regulates employment relationships. According to subsection 3 of § 48 of the Income Tax Act, an employee is:

- ✓ a person employed under an employment contract
- ✓ an official (subsection 1 of § 13)
- ✓ a member of the management or controlling body (§ 9)
- ✓ a natural person who sells goods to an employer during a period longer than six months
- ✓ a natural person who works or provides services on the basis of a contract for services, authorisation agreement or any other contract under the law of obligations

Pursuant to subsection 6 of § 48 of the Income Tax Act, benefits which an employer grants to the spouse, cohabitee or direct blood or collateral relative of the mentioned person or which are granted by a person that belongs to the same group as the employer are also taxed as fringe benefit.

A PERSON EMPLOYED UNDER AN EMPLOYMENT CONTRACT

All persons who have entered into an employment contract with an employer will be deemed to be persons employed on the basis of an employment contract.

The workload the person employed, whether the employment contract has been suspended at the moment of granting the fringe benefit, whether the benefits are prescribed in the employment contract or collective agreement, etc., do not matter at the taxation of fringe benefits granted to a person employed on the basis of an employment contract.

AN OFFICIAL

According to the Civil Service Act, an official is a person who is in the public-law service and trust relationship with the state or local government.

The persons specified in subsection 3 of § 2 of the Civil Service Act (members of the Riigikogu, members the European Parliament, the President of the Republic, members of the Government of the Republic, judges, the Chancellor of Justice, the Auditor General, the Public Conciliator, members of local

government councils, members of rural municipalities or city governments, elders of rural municipalities or city districts) are treated as officials for the purposes of the Income Tax Act (subsection 1 of § 13).

A MEMBER OF THE MANAGEMENT OR CONTROLLING BODY

Pursuant to § 9 of the Income Tax Act, a management or controlling body of a legal person is any authorised body or person who, pursuant to an Act governing the legal person, a partnership agreement, the articles of association or any other legislation regulating the activities of the legal person, has the right to participate in managing the activities of the legal person or in controlling the activities of the management body of the legal person.

Management or controlling bodies include management boards, supervisory boards, partners authorised to represent general or limited partnerships, procurators, founders until registration of the legal person, liquidators, trustees in bankruptcy, auditors, controllers and revision committees, etc. Directors of branches of foreign companies and managers of other permanent establishments of non-residents are also deemed to be management bodies (§ 9 of the Income Tax Act).

A NATURAL PERSON WHO SELLS GOODS TO AN EMPLOYER DURING A PERIOD LONGER THAN SIX MONTHS

Upon the sale of goods to an employer, a natural person is deemed to be an employee for the purposes of § 48 of the Income Tax Act if the goods are sold for a longer period than 6 months. The time criterion will be assessed on the basis of the length of the period during which the goods are sold. If the sale of goods is agreed for a period of more than 6 months, the natural person will be deemed to be an employee as of the beginning of such an agreement (regardless of the frequency of the sale of individual goods). The fringe benefit must therefore be granted to a person with whom the grantor of the fringe benefit has or has had an business relationship.

A NATURAL PERSON WHO WORKS OR PROVIDES SERVICES ON THE BASIS OF A CONTRACT FOR SERVICES, AUTHORISATION AGREEMENT OR ANY OTHER CONTRACT UNDER THE LAW OF OBLIGATIONS

A person providing services to an employer on the basis of a contract under the law of obligations is deemed to be an employee for the purposes of § 48 of the Income Tax Act regardless of the duration of the provision of such services.

In granting benefits to the mentioned natural persons, after the end of the supply of the services or goods provided by them, it is necessary to assess, in the case of those persons, whether or not the benefit was granted as a result of the contractual relationship.

The benefits granted or given by the employer to the spouse, registered cohabitee, cohabitee or direct blood or collateral relative of the employee are also taxed as a fringe benefit.

A cohabitee is an unspecified legal term and, as beneficiaries of fringe benefits, a cohabitee is granted the same meaning as a spouse and registered cohabitee, assuming a common economic interest regardless of the formal connection. Direct blood and collateral relatives are terms arising from the Family Law Act.

Direct blood relatives are parents and children (also grandparents, grandchildren) and collateral blood relatives are sisters, brothers, aunts, uncles.

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