

A person that belongs to the same group as the employer

A FRINGE BENEFIT GRANTED BY A PERSON THAT BELONGS TO THE SAME GROUP AS THE EMPLOYER

A benefit granted by a person belonging to the same group as the employer is considered a fringe benefit granted by the employer.

According to the Commercial Code, a parent company together with subsidiaries is considered to be a group. Thus, in the case of a group, it is necessary to distinguish between the employees of companies belonging to the group where the payer of taxes on fringe benefits is not the formal grantor but the company employing the person receiving the benefit.

We point out that branches are not groups. A branch is provided for in § 384 of the Commercial Code and the provisions of § 53 of the Income Tax Act apply to taxation.

An employee must notify the employer of the receipt of a fringe benefit from a person belonging to the same group as his or her employer. How the employee informs the employer of the benefit received from another company belonging to the group must be regulated by the employer itself, no such procedure has been established in the Income Tax Act. As a rule, companies belonging to a group communicate with each other and report within the group the benefits granted to employees of another company and the amount thereof.

In the case of a group, it is important to distinguish between three different cases when taxing fringe benefits.

a. The entire group is located in Estonia

For example, an Estonian parent company organises an information day within the group and bears the entire cost of the event. Catering is organised for the event.

The materials distributed on the information day (including pens) are not financially valuable benefits to the employee – they are necessary for work.

However, for the catering of employees (fringe benefit), taxes are paid by each employer itself, despite the fact that the parent company incurred the full cost. Thus, the parent company pays taxes on the fringe benefit granted to its employees and the subsidiary pays taxes on the fringe benefit granted to its employees and incurred by the parent company.

There are two main ways to find out the amount of the fringe benefit:

- ✓ the parent company submits an invoice to the subsidiary by reselling or making a claim for reimbursement of the costs of catering to its employee. In this case, the subsidiary has incurred both the costs and the taxes paid on it
- ✓ the parent does not invoice but notifies the subsidiary of the amount to be treated as a fringe benefit. How the information process takes place is decided by the group companies themselves. A subsidiary pays taxes on its employees' fringe benefits, even though it has not actually incurred the cost. The cost to the parent company will be treated as linked to its business and no double tax liability will arise.

b. An employee of a company belonging to a group located in Estonia receives a fringe benefit from a company belonging to the group and located in a foreign state

For example, an Estonian subsidiary sends its employee abroad to the parent company. The employee attends a reception, meeting, or other event where, among other things, there is catering, cultural service. Taxation in a foreign state is carried out pursuant to the laws of that state and if the expenses incurred by the parent company are subject to taxation in the foreign state (i.e., are included in taxable income, despite the fact that the specific expenses may be exempt to a certain extent), the Estonian subsidiary does not incur double tax obligations on such expenses. An Estonian subsidiary will incur tax on the special benefit granted to its employee only if the benefit is not included in the taxable income of the parent company in the foreign state (e.g., it would be taxable at the level of a natural person).

c. An employee of a foreign company belonging to a group who has come to Estonia receives a benefit from a company located in Estonia and belonging to the group

Section 48 of the Income Tax Act regulates the benefits granted by Estonian employers to their employees, which are treated as fringe benefits. Although it is a person belonging to the same group, the company belonging to the group is located in a foreign state and § 48 does not regulate the taxation of employees of companies belonging to a group and located in a foreign state in Estonia as a fringe benefit. According to Estonian law, this employee is treated as a guest and taxation is carried out in accordance with the provisions of § 49 of the Income Tax Act. Thus, there are no changes in taxation compared to the previous – these are costs of entertaining guests or gifts given to them.

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