

Daily allowance for an employee participating in temporary agency work

The possibility of sending an employee participating in temporary agency work on a business trip and paying them a tax-exempt daily allowance depends on the actual location of performing the work and the time of performing the work. In the employment contract concluded with the employee, the location of performing the work must be fixed based on the actual location of performing the work.

In the case of permanently working in a specific place outside the permanent place of residence, the expenses arising from being away from the residence are part of the salary. Work with a permanent location can be done by an employee living near the workplace, and an employee living further away can change their place of residence accordingly. However, there is no such possibility if the work is of a mobile nature. Therefore, if a person works outside their permanent residence at a fixed location, the employment contract concluded with them should fix the actual area of the corresponding location of work as the location of work, and such an employee could not be treated as being on a business trip at the corresponding workplace and they could not be paid a tax-exempt daily allowance.

Example 1. Long-term hire for one company

A company engaged in labour hire in Estonia hires its employee to a Finnish company on a long-term basis. In the employment contract concluded with the employee, the actual location of the performance of work must be indicated (the area where the Finnish company is located), and such an employee cannot be treated as having been sent from Estonia to Finland, nor can they be paid a tax-exempt daily allowance for their stay in Finland.

If an employee is hired to different companies for a longer period of time and the workplace is not permanent with one hiring company, the actual circumstances of the employee's work must be assessed when fixing the location of the employee's work.

If an employee is hired to different companies, but they are located in the same region, similarly to the previously described situation, the actual region of the corresponding work location must be fixed as the work location. Such an employee cannot be considered as being on a business trip in the respective region and a tax-exempt daily allowance cannot be paid to them. However, if the employee is hired in different regions, the region with which such work is most closely related must be fixed as the place of performing work in the contract concluded with the employee.

Example 2. Long-term hire for different companies located in the same area

A company engaged in labour hire in Estonia hires its employee to several Finnish companies located in Helsinki on a long-term basis. In the employment contract concluded with the employee, the specific area of the performance of work must be indicated (Helsinki), and such an employee cannot be treated as having been sent from Estonia to Helsinki, nor can they be paid a tax-exempt daily allowance for their stay in Helsinki.

Example 3. Short-term hire for companies located in different areas

A company engaged in labour hire in Estonia hires its employees for shorter periods to companies located in different regions, e.g., 2 months in Estonia, 1 month in Finland and 1 month in Sweden. Depending on the circumstances, the employee's stay in Finland and Sweden may be treated as a business trip, for which the person may be paid a tax-exempt daily allowance. In Estonia, tax-exempt daily allowance payment is possible if the hired employee's place of work under the hire agreement is further than 50 km from their usual place of work. If Estonia has been agreed as the usual place of employment of the agency worker, then it is not a business trip within Estonia and tax-exempt daily allowance cannot be paid.

To assess whether the formalisation of a business trip and payment of a tax-exempt daily allowance are justified in the case of workers participating in labour hire, the Tax and Customs Board is guided by the actual location of performing the work and § 84 of the Taxation Act. According to this, where it is evident from the content of a transaction or action that the transaction or action is performed for the purposes of tax evasion, conditions corresponding to the actual economic content of the transaction or action apply upon taxation. (Decision No. 3-06-2092 of the Tallinn Circuit Court.)

If the employee is on a business trip by a car or other means of transport that cannot be treated as public transport, the departure of the vehicle before 21:00. or arrival after 3:00 must also be certified to the Tax and Customs Board, if necessary.

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