Business trips of members of management or controlling bodies

Clause 1 of subsection 3 of § 13 of the Income Tax Act and the Business Trip Regulation apply to the business trips of members of management or controlling bodies.

Members of the management and controlling bodies of legal persons, who can be sent on business trips to perform tasks, are 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 (subsection 2 of § 9 of the Income Tax Act).

The list of persons who can be members of management and control bodies is not final, and the head of a branch of a foreign company and the operations manager of a permanent establishment are also considered a management body. In the case of members of management and control bodies of legal persons, the workplace is considered to be the place where the person usually performs their duties. The person sending a member of the management or controlling body on a business trip is the legal person whose member of the management or control body the person sent on the business trip is.

Although the provisions of the Business Trip Regulation are applied to members of management or controlling bodies, there are still differences in sending them on business trips and reimbursement of costs associated with the trips, compared to sending employees on business trips. The main difference is that sending members of management or controlling bodies on business trips and reimbursement of expenses arising from the performance of duties are not regulated by the Employment Contracts Act. Thus, in case of business trips of members of management or controlling bodies, legal persons have no legal obligations to pay daily allowance to persons sent on business trips.

If a legal person still decides to pay daily allowance to a member of the management or controlling body, then according to clause 1 of subsection 3 of § 13 of the Income Tax Act and clause 3 of subsection 1 of § 7 of the Business Trip Regulation, daily allowance amounting to 75 euros for the first 15 days of a business trip, but no more than 15 days in a calendar month and 40 euros for each subsequent day, is not subject to taxation.

Subsection 2 of § 628 of the Law of Obligations Act provides for the possibility of reimbursement of expenses incurred for the performance of other tasks by members of management or controlling bodies on a business trip. According to this, even if there is no authorisation agreement signed with the member of the management or controlling body, the mandator shall reimburse the mandatary for any reasonable expenses which the mandatary has incurred in performing the mandate and which the mandatary could have deemed to be necessary in the circumstances, except in the case where the expenses are to be covered from the remuneration of the mandatary.

Thus, clause 1 of subsection 3 of § 13 of the Income Tax Act and the Business Trip Regulation provide

for a tax-exempt limit of daily allowance in the case of sending a member of a management or controlling body on a business trip (similarly to sending employees on business trips), but reimbursement of daily allowance and accommodation expenses and other expenses is a matter of agreement between the legal person and the person sent on a business trip.

If a legal person pays a daily allowance to a member of a management or controlling body, reimburses the cost of accommodation or expenses related to the performance of work tasks, regardless of whether the person sent on the business trip received remuneration of a member of the management and controlling body of a legal person, the limits set out in clause 1 of subsection 3 of § 13 of the Income Tax Act and the Business Trip Regulation will apply. All costs that the legal person decides to reimburse the person sent on a business trip are reimbursed based on documents certifying the costs.

For members of management or controlling bodies, the same principles apply to the use of a personal car on a business trip, combining holiday with a business trip, the procedure for going on another business trip upon arrival from a business trip, and the payment of a daily allowance, as well as sending on a business trip for the benefit of a third party, as in the case of a business trip of employees.

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