REPUBLIC OF ESTONIA
TAX AND CUSTOMS BOARD

Fringe benefits

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Questions and answers

QUESTIONS AND ANSWERS ABOUT FRINGE BENEFITS

1. Is discounted or free parking of the employee's car at the workplace a fringe benefit?

If an employee can park a passenger car free of charge or at a discount at the workplace in a parking lot or parking garage, it is important for taxation to determine whether the benefit (free or discounted parking) is provided by the employer or an independent third party. If the benefit is granted by the employer, it is a fringe benefit. If it is granted by a third party, then it is not a fringe benefit.

For example, if an employee can park a passenger car at a discount based on the price policy of the owner of an office building, car park or parking garage, then the benefit provider is not the employer, and the employer does not incur any tax liability on fringe benefit. This is also the case if the distribution of parking spaces and payment for the service takes place through the employer.

However, if the cost of parking an employee's passenger car free of charge or at a discount is borne by the employer, the employer is also the provider of the benefit and the employer incurs a tax liability on the fringe benefit.

2. Is the acquisition of flowers for the decoration of workspaces considered a fringe benefit?

If cut flowers / potted plants are used to decorate an office space, it cannot be a fringe benefit. As a rule, reasonable and normal expenses incurred on the working environment of office premises are not deemed to be non-business expenses either.

3. Are flowers given as a gift to an employee a fringe benefit?

Subsection 4 of § 48 of the Income Tax Act provides for the concept of a fringe benefit according to which fringe benefits are any goods, services, remuneration in kind or monetarily appraisable benefits which are given to a person in connection with an employment or service relationship, membership in the management or controlling body of a legal person, or a long-term contractual relationship, regardless of the time at which the fringe benefit is granted.

When gifting flowers, the employer must assess whether or not it is a financially appraisable benefit for the employee. If it is a financially appraisable benefit, it is a fringe benefit. However, if there is no financially appraisable benefit, it is not a fringe benefit. For example, getting cut flowers is generally not a financially appraisable benefit for an employee. However, giving a large potted plant can be financially appraisable for an employee if the employee uses the potted plant, for example, as an interior decoration element in their home.

4. The company pays support payments / benefits to a minor until he reaches the age of majority. The minor's mother was an employee of the company until her death. The employer pays support to widow,

children, or other family members of a deceased employee. Is it a fringe benefit or a donation?

Benefits paid to natural persons, regardless of the purpose for which they are paid, are treated as income of a person within the meaning of **§ 12 of the Income Tax Act** and generally income tax is withheld by payer of the benefits. Benefits paid to persons in question are not subject to social tax because the recipients do not have an employment relationship with the employer.

Cash payments made to natural persons are generally not treated as a fringe benefit within the meaning of **§ 48 of the Income Tax Act**.

Payments made in excess of the limits established by the regulations of the Minister of Finance, or the Government of the Republic are deemed to be fringe benefits. It is also a fringe benefit if the employer has waived the recovery of a financial claim from the employee, e.g., a loan granted, etc.

5. The company rents an apartment for one month to a member of its management board. Income tax is withheld on the rental income of the lessor and a fringe benefit is paid on the rent. However, the company must also pay the lessor a deposit, which is returned to the company by the lessor when the apartment is vacated. Is the deposit taxed and how?

The company does not have a tax liability when providing a deposit. The lessor takes the deposit to cover possible costs that the lessee may incur to the lessor, for example, not paying utility bills for the time lived in the apartment, damaging the apartment so that it needs repairs afterwards, etc. Whether or not the deposit is taxed will be determined after the rental agreement ends. If the lessor returns the deposit to the company, there will be no tax liability. If a board member leaves the apartment without paying utility bills and the deposit goes to cover these costs, the deposit becomes a fringe benefit in the month when the lessor should have had to return it.

Therefore, if the lessor does not refund the amount given as a deposit or partially refunds it, each specific case must be considered separately. The company must find out the reason why the deposit was not returned, and taxation will take place accordingly, i.e., based on the economic substance.

6. Does it make any difference in taxation if the expenses are made to the owner of the company (shareholder, etc.) or if the owner of the company is also a member of the management or controlling body or an employee of the company?

The income of the owner of a company are dividends and it does not make any difference in taxation whether they are or are not a member or employee of the management or controlling body of that company at the same time.
Regarding other expenses made to a natural person, the relationship between the legal person and the natural person is important and taxation is based on it.

If the owner of a company is also a person listed in **subsection 3 of § 48 of the Income Tax Act** (a person employed on the basis of a contract of employment, a member of the management or controlling body, a natural person who sells goods to an employer for a period of more than six months and a natural person who works or provides services based on a contract for services, authorisation agreement or any other contract under the law of obligations), then taxation is based primarily on this.

For example, if the owner of the company, who is also a member of the board, was given a gift on birthday, the gift is taxed based on § 48 of the Income Tax Act. If a gift was given to the owner of the company, who is not a person specified in subsection 3 of § 48, on birthday, the gift is taxed based on **§ 49 of the Income Tax Act**.

7. The manager of company A went to have lunch and discuss cooperation opportunities with the manager of company B. However, the manager of company B is the spouse of an employee of company A. Should the catering bill be treated as a fringe benefit or a cost of entertaining guests?

In accordance with **subsection 6 of § 48 of the Income Tax Act**, the benefits that the employer gives to the spouse, parent or child of an employee specified in subsection 3 of the same section are also considered fringe benefits. The catering expenses of the manager of company A are considered a fringe benefit. In the case of the manager of company B, it must be based on the content – whether it was a work-related consultation or whether the catering costs of company B are covered because the person is the spouse of the employee of company A.

8. Does the company have to report a fringe benefit if the owner gives the company a loan without any interest?

No, if a natural person gives a loan to a legal person, it is not a fringe benefit under any circumstances. In this case, the legal person has an obligation to the natural person, and the lender decides whether to grant the loan with interest or without interest.

9. Can expenses (e.g., transport, accommodation, material expenses) incurred for the provision of a service (e.g., training lecturer service) under an authorisation agreement be reimbursed exempt from tax to the natural person providing the service?

Documented expenses connected to performing the mandate can be reimbursed exempt from tax by the mandator on the basis of **subsection 3 of § 12 of the Income Tax Act**. In order to prevent later disputes, we recommend to agree in advance in the authorisation agreement the separately reimbursed costs added to the service fee, because according to **subsection 2 of § 628 of the Law of Obligations Act**, in addition to service fees, a mandator must 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.

In addition to the above, it is necessary to note that the application of subsection 3 of § 12 of the Income Tax Act to the reimbursement of accommodation and transportation costs is primarily intended for cases where the expenditure is of a one-time nature and where it is not reasonable to conclude an employment contract with the person or treating the person as a sole proprietor (FIE) is administratively burdensome. If an authorisation agreement is concluded with the lecturer for a longer period (like an employment contract), the tax-exempt reimbursement of accommodation and transportation costs may not be justified, but rather they can be treated as a fringe benefit within the meaning of § 48 of the

Income Tax Act as reimbursement for housing costs or expenses of commuting between workplace and home.

10. Is a service provided by an employer to its employee within the framework of its core business, for which different prices are set, depending on the group of employees to whom the service is provided, considered as a fringe benefit within the meaning of the Income Tax Act? How is the price of a fringe benefit calculated?

According to **subsection 7 of § 48 of the Income Tax Act**, the Regulation No. 2 “Procedure for determining the price of a fringe benefit” of the Minister of Finance of 13 January 2011 has been established, the **subsection 2 of § 2** of which provides that, in the case where a fringe benefit is the delivery free of charge of a thing, security, proprietary right or service the realisation (providing) of which is the principal activity of the employer or one of the principal activities, the price of the fringe benefit is deemed to be the selling price at which a similar thing, security, proprietary right or service is realised (provided) in the same quantity and at the same time to a third person not related to the employer.

Thus, it is a fringe benefit, and the price of the fringe benefit must be determined based on the same price and conditions with which the employer provides the same service to its clients.

11. Is reimbursing moving costs of an employee starting work in Estonia a fringe benefit?

If it is not possible to recruit a specialist in the relevant field from Estonia, the employer sets a requirement (it is not the employee's wish) to move to Estonia and does not allow remote work from a foreign country, then the employee's moving costs to Estonia (including administration costs) are considered business-related costs, which are not taxed as a fringe benefit, because compensating the corresponding costs is primarily in the interest of the employer and necessary for the employee to start working in Estonia.

Reimbursement of the moving costs of the employee's family members is not necessary for the employer. Therefore, if the moving expenses of family members (including administrative expenses) are clearly distinguishable, then it is a fringe benefit. The moving costs of family members are exempt from tax only if the moving costs of the employee do not become more expensive when taking the family's belongings with them (e.g., one container is rented, which contains both the employee's and family members' belongings, and the amount of the moving service/rented container does not change as a result).

Since the employee moves to Estonia and their place of residence is in Estonia, the employer cannot reimburse the employee for housing costs exempt from tax. Housing costs (e.g., rent and utilities) are taxed as a fringe benefit.

Last updated on 08.01.2025