

## COURTS DIFFER ON RIGHT TREATMENT OF MEALS EXPENSES

When an employee incurs expenses on meals during a business trip, these expenses may be reimbursed to him even if they are higher than his statutory per diem allowance. Courts do not have a single approach to the personal income taxation of such reimbursements.

The Finance Minister consistently rules that any amount of such reimbursement that exceeds the employee's statutory per diem allowance should be treated as his employment income and taxed as such.

Recent case law shows two different approaches taken by the courts:

- (1) Full reimbursement for meals is not a duty of the employer but is made in the interests of the employee. Therefore, to the extent the reimbursement exceeds per diem allowance, it becomes employment income of the employee and as such is subject to personal income tax (see Supreme Administrative Court cases nos. II FSK 416/14 (judgement of 5 April 2016) and II FSK 1516/13 (judgement of 11 September 2015)).
- (2) An employee on a business trip does business in the interests of his employer, so a full reimbursement for meals purchased during the trip does not generate any income for the employee (see Warsaw Provincial Administrative Court cases nos. III SA/Wa 3985/14 (judgement of 5 November 2015) and III SA/Wa 1111/14 (judgement of 23 January 2015)).

Employers who reimburse their employees for meals expenses above the applicable per diem allowances should take special care about how to treat these reimbursements for personal income tax purposes.

We will keep you up to date on further case law on this topic.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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