

A TURNAROUND: IF EMPLOYER PAYS FOR EMPLOYEE'S ACCOMMODATION, NO INCOME TAX IS TO BE CHARGED

We wish to draw your attention to a groundbreaking private tax ruling issued by Director of Warsaw Tax Chamber on 18 June 2015 (ref. IPPB2/4511-353/15-2/MK1), which says that the fact that an employer paid the accommodation expenses of his mobile employee does not generate income for the employee under PIT Act.

The case involved a company whose staff's employment contracts indicated several provinces as their place of work. In such a situation, their travel does not qualify as business trips for the purposes of the Labour Code.

The tax authority accepted the company's argument that:

- it is in the interests of the employer to pay for such employee's accommodation, and the employer does so only to ensure compliance with the statutory duty to properly organise his employees' work, while the employee himself does not earn any personal advantage here;
- thus, an employee who uses such company-provided accommodation in order to discharge his duties of employment does not earn taxable income subject to personal income tax.

This ruling, which breaks a taxpayer-unfriendly line of authority from the Finance Minister, follows the guidelines laid down in Constitutional Court's judgement of 8 July 2014 (case no. K 7/13) in the matter of free-of-charge benefits for employees. Previously, the only realistic success option for businesses in these cases was for the case to reach the stage of judicial review (see our newsletters nos. 44/2014 and 18/2015).

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

Doradztwo Podatkowe WTS&SAJA Sp. z o.o.

Delta Building, 4th floor
ul. Towarowa 35
61-896 Poznań
tel. (+48) 61 643 45 50
fax. (+48) 61 643 45 51

Warsaw Office

CENTRAL Tower, 22nd floor
Al. Jerozolimskie 81
02-001 Warszawa

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