

MEALS EXEMPT FROM PERSONAL INCOME TAX ONLY IF NOT EXCEEDING DAILY SUBSISTENCE ALLOWANCE

We wish to alert you to a case decided by the Supreme Administrative Court ("SAC") on 5 October 2016 (case no. FSK 2521/14) in relation to personal income taxation of employees' meals during business travel.

The case originated from a company whose employees travel in business domestically and abroad. The company wanted to pay for the meals they have during such travel. The company wanted to purchase those meals directly on its own account, without paying the employees any money in lieu or any expense reimbursements.

The company requested a tax ruling to confirm its conclusion that the sums it would pay for the meals will not represent taxable income for the employees even if the sums exceed the daily subsistence allowance (per diem) set out in the regulation of 29 January 2013 on business travel ("Business Travel Regulation"). The tax authority ruled that this conclusion is wrong, and the company requested a judicial review of the unfavourable ruling.

The case first reached the Provincial Administrative Court ("PAC") in Warsaw, which held on 16 April 2014 (case no. III SA/Wa 31/14) that a purchase of meals for an employee in such situations does not represent any accretive benefit for the person and is merely a way in which the employer discharges its statutory duties, similarly to when the employer provides its employees with protective clothes and footwear or with cold beverages. Thus, PAC affirmed the company's position. The tax authority appealed to SAC.

SAC decided the matter by holding that the caps from the Business Travel Regulation apply to all forms of providing meals to employees. Consequently, costs of meals will represent taxable income for an employee for PIT purposes to the extent they exceed the relevant rate of daily subsistence allowance.

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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