

PERSONAL INCOME TAX: TAXPAYER WILL HAVE TO MAKE UP FOR WHAT HIS REMITTING AGENT DID NOT WITHHOLD

Where it is objectively impossible for a remitting agent to withhold an advance personal income tax (PIT) payment due on a benefit provided to its employee (taxpayer) in kind, the agent does not have to remit that payment to the tax authorities, says Director of Katowice Tax Chamber in his private tax ruling of 15 September 2016 (ref. IBPB-2-1/4511-324/16-1/BJ).

The case involved a company which understated the income of its employee because it failed to account for a certain benefit provided to him in kind. The company detected this mistake when the employee no longer worked for it, so it could not withhold PIT on that benefit from the employee's salary.

The case reached Director of Katowice Tax Chamber, who held that in such cases:

- the company's only duty is to adjust the employee's income figure on form PIT-11,
- the company is not required to pay PIT on the benefit, whether using its own funds or funds provided earlier by the ex-employee,
- it is the ex-employee himself that is required to tax the benefit in his annual tax return.

This approach is better for PIT remitters than the approach taken before by the Finance Minister and courts. The earlier approach was that it is the remitting agent that should pay the delinquent tax with interest and will merely have a recourse claim against the employee.

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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