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General rulings of the Minister of Finance on 50-percent tax-deductible costs and car fringe benefits

Two general rulings in the field of personal income tax, i.e. general ruling no. DD3.8201.1.2020 of 11 September 2020 on the flat-rate revenue from using company cars for private purposes and general ruling no. DD3.8201.1.2018 of 15 September 2020 on the application of 50-percent tax-deductible costs to royalties, have been recently published in the Official Journal of the Minister of Finance.

Using a company car for private purposes

According to the Minister of Finance, the costs related to maintenance and general use of a vehicle, borne by the employer who makes the vehicle available to the employee for their private use, shall be classified as flat-rate income referred to in Article 12(2a) of the PIT Act.

The Minister of Finance pointed out that the goal of regulating the issue of car fringe benefits through the PIT Act was to facilitate the method of calculating the amount of the related revenue. Any interpretation which would make it necessary to separately calculate some of the financial costs incurred by the employer for the purpose of taxation would go against the legislator's intention to make such settlements as simple as possible and would challenge the applicability of the flat-rate revenue legal regulations.

The Minister of Finance supported the uniform approach expressed by administrative courts in their judgments, according to which the flat-rate value of the car fringe benefit **covers the costs related**

to the maintenance and general use of the vehicle, such as: fuel, insurance, tire replacement, current repairs or periodic inspections, which the employer, as the vehicle's owner, must incur to keep the car operational and authorised to participate in road traffic.

However, some additional charges, such as parking fees or highway tolls shall not be treated as benefit-derived amounts covered by the flat-rate revenue. In fact, the Minister of Finance stressed that the Act refers solely to benefits relating to the use of a company vehicle, which in principle do not cover any derivative costs of travel by a car made available for private use.

Applying 50-percent tax-deductible costs to revenues from royalties

The second ruling provides conditions which shall be met in order to apply 50-percent tax-deductible costs to revenue earned on account of exercising and disposing of copyright or related rights under an employment contract or other civil law contract.

According to the Minister of Finance, in order to treat part of the remuneration as a royalty and apply to it a 50-percent deduction, the following must take place:

1. creation of a work being the subject of copyright, conditioning the use of copyright by the author and enabling the disposal of proprietary copyright to the work;

2. providing objective evidence that a work protected by copyright was created;
3. making clear distinction between the royalty and other components of the remuneration, except for a situation where 50-percent tax-deductible costs can be applied to the entire remuneration of the author.

It should be noted, however, that the ruling analyzed herein does not specify the method of determining the amount of the royalty due. In turn, it leaves the contractual freedom to the parties, citing only negative, case-law derived premises for excluding the possibility of applying 50-percent tax-deductible costs by authors.

Furthermore, the ruling points to the requirement of proper documentation of the revenue earned from copyright and related rights and/or disposing of the said rights, along with its amount. In principle, the method of establishing the documentation is arbitrary. For instance, it may take form of records or a joint statement of parties to the contract.

Additionally, according to the Minister of Finance, the royalty for a given work may also be paid out, in whole or in part, before the work is created (e.g. on the date of signing the contract).

If you would like to learn more about the issue discussed, please do not hesitate to contact us at: mampytanie@kpmg.pl

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