

TAXATION OF HEALTHCARE PACKAGES

A seven-judge panel of the Polish Supreme Administrative Court adopted a resolution on whether employees may be taxed on the value of a healthcare services package purchased by their employer, as imputed income for a gratuitous benefit (resolution of 24 May 2010, Case No. II FPS 1/10).

In the case before the court, a company entered into an agreement with a healthcare centre to provide medical services for the company's employees, other than preventive care which the company was required to provide employees under the Labour Code and other provisions of Polish law. Under the agreement the company paid a lump-sum fee depending on the number of employees covered by the healthcare package, but the healthcare centre did not report to the company on which employees used healthcare services during each period.

The Supreme Administrative Court judges assigned to hear the case decided that because of conflicting precedent on taxation of medical benefits, they would certify the issue for resolution by an expanded panel of seven judges.

In the resolution, the court ruled that if an employee has the opportunity to use healthcare services free of charge thanks to the employer, the employee does receive a financial benefit. Therefore, healthcare packages purchased by the employer, whose value is not exempt from personal income

tax under Art. 21(1)(11) of the Personal Income Tax Act dated 26 July 1991, do constitute a gratuitous benefit for the employees under PIT Act Art. 12(1), and the value of the benefit is imputed income subject to personal income tax. The employer, as the tax remitter, should therefore withhold personal income tax on the value of healthcare packages purchased for employees.

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VAT DEDUCTIBLE UNDER INVOICES RECEIVED ELECTRONICALLY, STORED IN PAPER FORM

The Supreme Administrative Court has ruled that VAT payers have the right to reduce the amount of the output VAT by the amount of the input VAT indicated on VAT invoices issued to them by electronic means, without use of a secure electronic signature, provided that the recipient prints out the invoice and retains a hard copy (judgment of 20 May 2010, Case No. I FSK 1444/09).

Polish regulation

The Regulation of the Minister of Finance of 14 July 2004 on issuing and transmitting invoices by electronic means and on making such invoices available for inspection by fiscal audit authorities governs the situation where a VAT payer, when conducting transactions subject to VAT, issues the VAT in-

voice to the purchaser electronically, and the purchaser stores the invoice in electronic form (without printing a hard copy). That approach may be used only if the authenticity of origin and integrity of content of the invoice are guaranteed by a secure electronic signature or through electronic data interchange (EDI).

EU directive

The Polish rules are based on the EU VAT Directive (Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax). Pursuant to the directive, invoices may be issued in paper form, or, upon the recipient's consent, by electronic means, provided that the authenticity of origin and integrity of content are guaranteed by use of an advanced electronic signature or electronic data interchange. Member states may accept electronic issuance of invoices using other methods, but they may not impose any other obligations or formalities on taxpayers connected with issuing invoices electronically or making them available by electronic means.

Pro-European interpretation

The Supreme Administrative Court has indicated that in business transactions there may be situations where the VAT payer issues invoices electronically but the invoices are printed out and stored by both parties only on paper. According to the Supreme Administrative Court, the Polish regulation on electronic invoicing does not cover such invoices. However, the VAT Directive does allow member states to accept electronic invoicing without requiring the use of qualified authentication methods. The member states

also cannot limit electronic invoicing to situations where invoices will be stored only by electronic means.

Adopting a pro-European interpretation of Polish law, the Supreme Administrative Court held that although the Minister of Finance did require the use of a secure electronic signature for invoices that are issued and stored by electronic means, if the invoices are not stored in electronic form then such authentication of origin and content is not required because it was not provided for in the regulation.

Conclusions

Under this judgment, VAT payers may issue invoices by e-mail, for example in a .pdf file, without using secure electronic signature tools. However, a hard copy of such invoice must be printed out and stored by both parties. This may generate considerable savings to businesses who issue large numbers of invoices to customers every month.

If the invoices are to be stored only in electronic form, however, they must still be issued in a form that guarantees authenticity of origin and integrity of content, i.e. using a secure electronic signature or electronic data interchange.

The ruling was issued in a specific case and does not constitute a generally binding interpretation of tax law. Nonetheless, the position taken by the court is expected to shape the future line of rulings by administrative courts and tax authorities.

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