

REIMBURSEMENT OF COSTS INCURRED BY SALES REPRESENTATIVES IS NOT EMPLOYMENT INCOME

In an individual interpretation of tax law dated 21 March 2011 (No. IPPB2/415-3/11-4/AS), the head of the Warsaw Tax Chamber upheld the tax remitter's position on the tax consequences of reimbursement of expenses incurred by employees in connection with performance of their jobs.

Under the facts presented, the employer hired sales representatives. The location where the sales reps were to perform their work was identified in their employment contracts as covering several provinces. In practice, the representatives worked throughout the provinces assigned to them in their employment contracts, where their work was inseparably connected with travel to meet current and potential customers. The employer did not treat this travel as business trips, since it was inherent in the nature of the work, and did not pay the employees any per diem travel allowance or other benefits for business trips provided for under the Labour Code. Instead, the sales reps covered expenses out of their own pocket for items like lodging, fuel and parking. They obtained invoices, bills and receipts issued in the name of the employer, which they then submitted to the employer for reimbursement.

The employer sought a ruling from the tax chamber that the reimbursement of these costs is not an additional benefit for the employee but only constitutes refinancing of the

employer's expenses, paid for the employer by the employee. Thus the reimbursement does not constitute employment income for the employee and is not subject to personal income tax. The tax chamber agreed.

According to the interpretation, the Personal Income Tax Act contains only an exemplary list of forms of employment income, including any payment of money resulting in an economic benefit to the employee, arising under the employment relationship or a related relationship between the employer and the employee.

In the situation described in the request for an interpretation, the expenses incurred by the employees are directly connected with performance of their duties under the employment contract. They are not connected with furthering the personal aims of the employees, but business purposes only. In the course of performance of their work, the sales reps incur expenses connected with performance of certain tasks for and on behalf of the employer. Moreover, under the principle of freedom of contract, the parties to an employment relationship may include in the contract a provision concerning reimbursement of expenses incurred in the course of performance of the employee's duties.

Thus, the employer should not treat reimbursement of expenses incurred by sale reps in connection with performance of the employees' duties under the employment contract as employment

income, and the employer is not required to withhold personal income tax on such amounts.

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INJUNCTION AGAINST INFRINGEMENT OF COMMUNITY TRADEMARK EFFECTIVE THROUGHOUT EU

In a judgment issued on 12 April 2011, the European Court of Justice resolved doubts concerning the geographical scope of injunctions against infringement of Community trademarks (*DHL Express France SAS v Chronopost SA*, Case C-235/09). The ECJ held that an injunction ordered by a court of one member state against acts constituting infringement of a Community trademark extends, as a rule, to the entire area of the European Union.

This holding applies to an injunction issued by a Community trademark court. These are designated courts in each of the member states with exclusive jurisdiction to hear cases involving infringement of Community trademarks. (In Poland, the Community Trademark Court is the 22nd Division of the Warsaw Regional Court.).

The ECJ reasoned that under the Community Trademark Regulation (40/94), a Community trademark exerts effects throughout the territory of the EU. It follows that judicial protection of the mark should also be effective throughout the EU. This means that a prohibition

against infringement issued by the Community trademark court in any of the member states results in a prohibition against such acts that is effective throughout the EU. Coercive measures ordered to ensure compliance with the prohibition are subject to recognition and enforcement in other member states. If the national law of a member state does not provide for a similar coercive measure, it should apply measures available under its own law ensuring equivalent compliance.

The court allowed for certain exceptions to the effectiveness of an injunction throughout the EU. First, the prohibition should apply to the territory in which an infringement or threat of infringement has occurred. Thus if the infringement does not concern the entire EU, the court should limit the injunction to the specific countries in question. Second, if the same act would constitute infringement of a Community trademark in certain member states but not in others, the territorial scope of the prohibition should be limited to the member states where the act would constitute infringement. This might be the case in particular where the similarity between a Community mark and a term used by a competitor arises out of the meaning of the term in the language of a particular member state.

The full English text of the judgment is published at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009J0235:EN:HTML>.

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