

# Santa Claus coming on duty (3/50/20)

Christmas is a pleasant time of exchanging presents. This season too, companies would like to give presents to their staff and business partners. This article explores their tax treatment. In the emergency circumstances, we will not be discussing “staff sustainability” events such as Christmas parties for employees and their children. We will come back to this topic next year once the epidemiological situation has hopefully improved.

## Presents to employees

Christmas presents to members of staff can have personal income tax (“PIT”), national social insurance (“NSI”), corporate income tax (“CIT”) and VAT implications.

In general, any benefit arising from an employment relationship, including presents from the employer, is treated as the worker’s employment income subject to PIT and NSI. However, presents totalling up to EUR 15 for the calendar year will be exempt in the worker’s hands. If presents exceed this limit, the employer will charge the excess to PIT and NSI.

Neither the exempt presents totalling up to EUR 15 for the year nor any excess the employer has correctly charged to PIT and NSI will create a taxable base for CIT purposes. A CIT liability might arise if any non-personalised presents are not charged to PIT and NSI, yet it is important to note that any staff benefit must be primarily charged to PIT and NSI.

For VAT purposes, any input tax paid on staff presents totalling up to EUR 15 for the year will be deductible from output tax.

## Presents to business partners

If your company plans to give presents to your customers and suppliers then you need to assess whether they can be treated as representation expenses.

Representation expenses within the meaning of the CIT Act are low-value items displaying a taxpayer’s brand and being distributed to popularise the taxpayer, as well as expenses incurred in building the taxpayer’s prestige and keeping it up to public standards.

Please note that representation expenses exceeding 5% of the company’s total gross employment pay for NSI purposes in the previous financial year will create a taxable base for CIT purposes.

In our view, presents to customers up to the prescribed amount for a low-value item (EUR 20) will fit the definition and can be treated as representation expenses. However, if the company is to claim the exempt 5% allowance, it must keep a separate record of those expenses and its accounting policy must define its representation expenses (e.g. what kinds of presents to business partners the company considers suitable for keeping its prestige up to public standards). And the company needs supporting documents for those presents.

According to the State Revenue Service, where the value of a present exceeds EUR 20, it can still be treated as a representation item, but the PIT and CIT treatment will vary according to whether the present is given to an individual (we are not talking about employees here) or to an entity, and whether the recipient is identified.

So, if a present is worth less than EUR 20, the recipient does not need identifying, and the present will have no PIT or CIT implications for the company if total representation expenses do not exceed the exempt 5% limit. A present worth more than EUR 20 to an individual requires the recipient to be identified, and the present must be charged to PIT, while for CIT purposes it will be a business expense. If a present is given to an identified entity, there will be no PIT implications, and the cost will be part of the company's representation expenses. However, if the entity receiving the present is not identified, the expense must be added to the company's non-business expenses.

It is important to note that the VAT Act puts a different restriction on how much input tax a registered taxable person can deduct, i.e. 60% of input tax on goods acquired for representation purposes and for making representation items is not deductible from output tax.