

Tax ruling on free employee meals (3/19/18)

The State Revenue Service (SRS) has published an advance ruling¹ explaining the tax treatment of meals an employer provides to his employees. This article explores the ruling and the application of relevant provisions of the Corporate Income Tax (CIT) Act effective from 1 January 2018.

Background

The company seeking the tax ruling retails a variety of products at non-specialist shops and pays for meals provided to shop workers. The cost of those meals cannot be traced to individual employees.

In financial periods before 2017 the company recognised the employee meals as non-business expenses for CIT purposes and added them back to taxable income after applying a coefficient of 1.5.

The company says the costs of employee meals are paid under a collective agreement, they exceed neither €480 a year nor 5% of the company's gross wages, and all of the other conditions listed by section 8(15) of the Personal Income Tax (PIT) Act are satisfied. Accordingly, the company believes the employee meals are business expenses for CIT purposes.

The company enquired about recognising the employee meals as business expenses in prior tax periods and adjusting its calculation of taxable income for CIT purposes in prior periods.

The legal framework

In the ruling the SRS refers to provisions of the CIT Act governing taxable income of resident entities and permanent establishments (section 4(1) of the CIT Act) and their non-business expenses (section 5(1) of the CIT Act).

Section 8(15) of the PIT Act, which came into force on 1 January 2017, provides that an employee's income attracting wage tax excludes any meals the company pays for under a collective agreement up to €480 a year (on average €40 a month) as long as the company meets all the other conditions of section 8(15). Accordingly, the meals are an employee's fringe benefit that is exempt from wage tax, provided the company meets all of the PIT criteria.

Since the meals are a fringe benefit exempt under the PIT Act, they are business expenses for CIT purposes.

Answers given in the ruling

In reply to questions asked by the company, the SRS makes the following points:

1. According to their economic substance, the company's employee meals can be treated as business expenses, provided they meet the conditions of section 8(15) of the PIT Act;
2. For CIT purposes the costs of employee meals up to €480 a year (on average €40 a month) which the company pays under a collective agreement, and for which the conditions of section 8(15) of the PIT Act are satisfied, are business expenses under the CIT Act and can be deducted on the CIT return;

3. Because section 8(15) of the PIT Act was not in force before 2017, the company is not allowed to adjust its calculation of taxable income for CIT purposes in prior periods or recognise the employee meals as business expenses.

PwC comment

In the light of the ruling and the provisions of the CIT Act, employee meals can be recognised as business expenses under the new CIT Act effective from 1 January 2018, provided the company meets all the conditions of section 8(15) of the PIT Act.

¹ Advance Ruling No. 30.1-8.7/251758 of 25 September 2017 on the tax treatment of employee catering services. The ruling refers to provisions of the CIT Act that were in force up to 31 December 2017.