

Tax treatment of digital activities and winnings

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This article explores the tax treatment of winnings in prize draws run by social networks and of payments to digital content creators.

Gifts to users of social networks

Competitions that companies post on their social network profiles have recently become very popular. Individuals who carry out certain activities, such as pressing the “Like” button, sharing the post, or tagging friends in comments, are allowed to enter a prize draw for a product or service offered by the company. The tax treatment varies according to whether the prize draw is organised as a lottery/competition according to statutory requirements or whether an entrant is randomly selected to receive a gift.

If the prize draw is run as a lottery, the organiser is required to register under the Goods and Services Lotteries Act, take out a lottery licence from the Lotteries and Gambling Regulator, provide them with all necessary information, and pay a duty. If the prize draw fits the definition of a lottery, then winnings are not taxable as goods and services lottery winnings under section 9(1)(26) of the Personal Income Tax (PIT) Act.

However, according to the Lotteries and Gambling Regulator, such prize draws being posted on social networks do not require registration under the Goods and Services Lotteries Act because no goods are bought nor service contracts signed. So, if the prize draw is not registered, the prize may be treated as a competition prize or a gift.

According to the SRS, for the prize draw to qualify as a competition, it needs a set of rules stating the purpose of the competition and naming its organiser and the commission that will adjudicate its results, as well as adjudication criteria. Most of the prize draws posted on social networks are unlikely to fit this format. However, if the winnings meet the definition of a competition prize, any value up to EUR 143 (in aggregate for the tax year) is exempt from PIT, while any excess attracts PIT. Under the Corporate Income Tax (CIT) Act, only a low-value (up to EUR 20) item will be considered a business expense and stay out of the CIT base if the results of the competition the company has run for advertising purposes are published in the mass media.

Accordingly, an evaluation of the provisions of the CIT Act and the PIT Act leads to the conclusion that for a competition prize won by the individual, the company should charge CIT on a taxable base of EUR 123 (EUR 143 – EUR 20) and PIT on any excess over EUR 143. The SRS has never publicly interpreted the tax treatment of prizes exceeding EUR 20, so we would recommend applying to the SRS for a written opinion.

On the other hand, a product or service won in a prize draw that meets neither the lottery nor competition requirements should be treated as the company’s gift to the individual. In that case the entire gift value is subject to PIT, with the payer of income responsible for withholding and paying the tax to the government. The company will have no CIT liability if PIT has been paid on a personalised benefit.

Payment to digital content creators (influencers)

Another popular way of attracting customers involves goods and services being advertised through digital content creators (aka influencers). Such collaborations commonly include an element of remuneration that creates a tax liability.

The company and the digital content creator must enter into a contract for services to form a basis for the company paying fees for advertising services.

The company should establish whether the person is registered as a trader in order to correctly determine the taxes due at source. This status can be verified on the SRS register.

If the person is registered as a trader, they are responsible for paying taxes on their income. If the person working under a contract for services has not registered a trade, the person is considered an employee and the remuneration is subject to PIT and mandatory national social insurance (NSI) contributions.

Also, if the influencer is gifted a product to be advertised, this has to be measured at market value and charged to both PIT and NSI. And bear in mind that any goods made available for use for the advertising period may create an obligation to determine the taxable amount (i.e. identify the individual's benefit).