

SOCIAL BENEFITS

FOOD VOUCHERS

The present material is aiming to draw your attention to some basic issues related to the tax treatment of expenses for food vouchers provided by employers to personnel, as well as to summarize the already established practice of the revenue authorities in applying and interpreting the respective legislation.

In view to satisfy the social, domestic and cultural needs of workers and employees **the employers could plan, finance and realize a social company program.**

A necessary condition for recognizing the social expenses for tax purposes in the year in which they are charged is their **documental justification.**

The social expenses provided in-kind should be documented in accordance with the requirements of the Corporate Income Taxation Act (§1, item 34 and Art. 204-205 CITA), i.e. the following should be available:

1. **Decision of the employer** for allocation of funds for provision of social benefits (funds for realization of a social program);
2. **Decision, respectively Protocol from the General Meeting of workers and employees** for distribution of the funds for realization of the social program;
3. **Guaranteed access of all employees** to the social benefits, including persons employed under management and control agreements;
4. **Absence of direct payment relations** of any kind between the employer and the persons using the social benefits.

With respect to their nature **social benefits provided not in-kind** (i.e. in cash) should meet the above listed requirements except for the requirement under p. 4. **The social benefits which are not provided in-kind** are in fact individual's income and are subject to taxation with income tax as per the Individuals' Income Taxes Act (IITA). Respectively, social security/ health insurance contributions are due on these benefits.

Social benefits provided in-kind are subject to taxation with tax on expenses. The social expenses provided to every employed person as food vouchers at the amount of a certain limit (for 2009 – BGN 60.00) are tax exempt in case all of the 5 cumulative requirements exhaustively listed in Art.209 CITA are simultaneously met.

The revenue authorities have expressed their opinion regarding the tax treatment of food vouchers expenses in their rulings and letters of clarification as response to concrete questions as follows:

- According to Art. 209, para 1 CITA, **the employer has the right to exemption from tax** on expenses for the food vouchers expenses only in case the agreed (**not the received**) basic monthly remuneration of each employee is not lower than the average agreed basic monthly remuneration for the previous three months. The basic employment remuneration could be changed only by change in the personal employment contract (Letter of Clarification of the National Revenue Agency (NRA) No 24-30-63 dated 25 April 2007).
- Within the hypothesis of reducing the working hours which also leads to reduction of the basic monthly employment remuneration (with an additional agreement to the basic employment contract), the first requirement of Art. 209, para 1, item 1 CITA would not be met. In this case if the persons were receiving food vouchers within the determined limit before the change and the respective expenses were exempt from tax on expenses, **then after the change** (reduced working hours and reduced basic employment remuneration) the employer would not be able to take advantage of the exemption from tax on expenses provided for by the law (Letter of Clarification of NRA No 96-00-70 dated 19 March 2009).
- The provision of food vouchers is made upon realization of the social program and **is not related to the provision of labour. The availability of periods in which the worker/employee is not available (including when using sick leave, paid annual leave, short-term unpaid annual leave) should not be a ground for termination or recalculation of the provided food vouchers.** In these cases the food vouchers expenses within the limit determined by law would not be subject to taxation with tax on expenses if the rest of the requirements in CITA are met as well (Letter of Clarification of NRA No 5-232915 dated 1 January 2008; Letter of Clarification of NRA No 24-30-63 dated 25 April 2007; Letter of Clarification of NRA No 3339 dated 31 August 2007).
- **The clear definition and formulation of the grounds for provision of food by the employers to employees is of a great importance.** The employer could provide food vouchers upon realization of a social program. He could also be obliged to provide to the personnel working under specific employment conditions and labour organization free food and/or supplements to it (Art. 285 of the Labour Code). According to Ordinance No 11 dated 21 December 2005¹ **the workers/employees are entitled to free food on one ground only.** This means that the employer should determine the type and cost of the free food and/or the supplements to it as well as the persons entitled to receive it with an explicit order in writing. These persons cannot also receive food vouchers as a social benefit **along with** receiving the free food (Letter of Clarification of NRA No 3-4047 dated 25 August 2008).

¹ Ordinance No 11 dated 21 December 2005 on the Determination of Rules and Conditions for Provision of Free Food and/or Supplements to It issued by the Ministry of Labour and Social Policy and the Ministry of Health.

- According to Ordinance 11 dated 21 December 2005 the free food could be provided as money, as food, as coupons, and as **food vouchers. The food vouchers should guarantee that a certain type of food corresponding to the one determined with the order issued by the employer would be received.** The expenses made in that connection are related to the business activity and not treated as social expenses; they are costs reported on the account of the company, which are tax deductible and not subject to tax on expenses as per Art. 11 CITA (Ruling No PK 25-3 dated 31 August 2006 of the Ministry of Labour and Social Policy and the Ministry of Healthcare; Letter of Clarification No 04-13-79 dated 22 March 2006 of the Ministry of Finance, Tax Policy Directorate).
- **The social expenses (including on food vouchers) made on the employer's account taxed as per the rules of CITA** (Art. 24, para 2, item 9; Art. 16, para 2 and Art. 50 IITA) (Letter of Clarification of NRA No 3339 dated 31 August 2007) **are not included in the taxable income** of the workers and employees and the persons employed under management and control agreements.

The information set out above has the purpose only to mark specific issues and is not exhaustive. In case you have questions regarding the application of the said provisions, please do not hesitate to contact us at tel: 02/943 37 00, fax: 02/943 37 07, e-mail: office@afa.bg or at 38, Oborishte Str., Sofia 1504.