

GMS Flash Alert

2023-003 | January 9, 2023



Czech Republic – Monetary Contribution to Employee Vacation Is Taxable Income

In its recent decision,¹ the Supreme Administrative Court (“SAC”) of the Czech Republic ruled on what is to be considered a non-monetary benefit to an employee from an employer. The SAC decision confirms the state authorities’ interpretation of what is to be considered a non-monetary benefit to an employee from an employer under the *Income Tax Act*² for the purposes of exempting certain benefits from income and social security taxes.

WHY THIS MATTERS

The ruling has implications for the exemption of an employer-provided benefit from income tax and social security contributions. In determining the form of benefits to provide employees, companies should be aware of that to be exempt for income tax and social security withholding purposes, the benefit must not be a direct monetary contribution to the employee.

Details

In the case in question, an employer provided an employee with a monetary contribution to cover expenses demonstrably incurred on his vacation. The employer treated the monetary contribution as tax exempt for the employee (no wage tax pre-payment was withheld, and no social security contributions were paid). The District Social Security Administration considered the contribution paid by the employer to be taxable income that had to be included in the assessment base for the employee’s social security contributions, as one of the conditions for tax exemption on the part of the employee is that the payment must be non-monetary.

The Regional Court sided with the employer, concluding that a non-monetary benefit to an employee that is exempt from income tax can take two forms. The employer can provide services or goods acquired as defined by the law, or make a contribution for such purposes, i.e., the employee purchases the benefit himself and the employer provides the

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employee with financial resources for this specific purpose, either in advance or against expenses already demonstrably incurred.

The District Social Security Administration appealed the Regional Court's decision to the Supreme Administrative Court. The SAC did not fully agree with the Regional Court's conclusions. According to the SAC, the essence of a non-monetary benefit, apart from its limited purpose, is also the form in which it is provided. A non-monetary benefit is by nature a benefit that is not provided in the form of money or is not exchangeable for money or other similar means or benefits. The SAC concluded that non-monetary benefits in this sense can only be when the employer pays sums of money to a person other than the employee and his family member (unless the employer itself is the provider of the recreational facility) and that person then provides a benefit or service to the employee. This is the only way to make sure that the benefit is treated as exempt from income tax and therefore not included in the assessment base for social security contributions.

The SAC also did not consider it appropriate to apply the provision of the *Income Tax Act*⁸ regulating sums received by an employee from an employer as advances to be paid by the employee on behalf of the employer. Its application is prevented by the provisions being mutually exclusive: one stipulates the exemption of the employee benefit from income tax, while the other excludes the supply from being subject to income tax.

FOOTNOTES:

1 The decision of the SAC (in Czech) at: <https://vyhledavac.nssoud.cz/DokumentOriginal/Text/705612> .

2 Sec 6 (9) letter d) of the *Act No. 586/1992 Coll. – Income Tax Act* (in Czech) / *Zákon č. 586/1992 Sb: Zákon České národní rady o daních z příjmů* at: <https://www.zakonyprolidi.cz/cs/1992-586#> . Please note that by clicking on this link you are leaving the KPMG website for an external site (non-governmental, non-KPMG), that KPMG is not affiliated with, nor is KPMG endorsing its content. The use of the external site and its content may be subject to the terms of use and/or privacy policies of its owner or operator.

3 Sec 6 (7) letter c) of the *Act No. 586/1992 Coll. – Income Tax Act*.

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Contact us

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