

The Weekend Tax and the Related Tax Treatment of Expenditure for Personal Use

Mariya Endreva, Attorney-at-law

The purpose and rationale of the tax treatment under the Value Added Tax Act (VAT Act) and Council Directive 2006/112/EC on the common system of value added tax, and of the use and separation of goods for personal use or for purposes different from the independent business activity can be explained in the light of the characteristic features of the value added tax. First and foremost, it is a tax charged on final consumption and the proper functioning of its mechanism is ensured through the right to deduct it in the purchase of a product or service which is intended for the independent business operations of the relevant person. This principle is violated when the tax is deducted but the asset is used for personal needs.

In this connection, as from 1 January 2016, companies are required to state before the National Revenue Agency (NRA) whether the owners, managers and/or employees use corporate assets for personal needs. The tax treatment of the use and separation of goods for personal needs is different, depending on whether the goods are included in the assets/property of the company, whether the tax has already been deducted (wholly or in part) and whether the good has been provided for personal use temporarily or it has been definitively separated and removed from the corporate assets.

Where the goods and/or services are used entirely for personal needs, there is no taxation problem because the right to deduction is irrelevant in this case or the value added tax is charged on all related costs. Where the goods and/or services are used only for the independent business operations of the taxable person, there is no problem either because the right to deduct the whole amount of the tax will apply. Businesses are confronted with challenges and practical difficulties in the cases in which a good and/or a service are used for both corporate and personal needs. The most difficult practical issue is to distinguish the corporate use from the personal use.

In accordance with *Clarification No 200015 of 22 January 2016 of the National Revenue Agency on the tax treatment under the Value Added Tax Act of the use and separation of goods for the personal needs of the owner and the employees*, where a taxable person intends to use a good which is included in his corporate assets also for personal needs, there are basically the following two legal alternatives:

- either to fully deduct the tax on the good and to charge the tax on the supply of the service relating to the use of the good for personal needs (i.e. to exercise the right to full deduction and to charge VAT on the personal use subsequently); or

- to exercise the right to deduction with regard to the good and the related costs on a *pro rata* basis, depending on the share of the use for business purposes and the share of the use for personal needs (i.e. to apply only partial deduction to the extent to which the good is used for business purposes).

Taxable persons are to devise their own cost allocation mechanism so that to establish the tax base, defining the relevant cost allocation base. Thus they should keep records and determine the portion of the use of personal needs. For example, in the case of vehicles, businesses should fill in journey forms and other documents and calculate the share of the use for business and personal purposes. Taxable persons should maintain the records to prove the application of their cost allocation mechanism.

In the light of the “weekend tax” on the use of corporate assets for personal needs, the Corporate Income Tax Act (CITA) and the Personal Income Tax Act (PITA) were amended accordingly with regard to direct taxation. The amendments concerning the taxation of costs for personal needs as income in kind for the natural persons (employees and managers) were promulgated in The State Gazette, No 75 of 27 September 2016.

It should be noted that no new tax has been introduced. Instead, there is a choice of options for the taxation of income in kind representing costs in kind within the meaning of § 1(83) of the Additional Provisions of the Corporate Income Tax Act. Employers are free to choose between the following two options:

- either to tax the costs in kind (income in kind for the natural persons) under the Personal Income Tax Act – income tax and the mandatory social security and health insurance contributions (the general procedure under the PITA), or
- to tax the costs in kind under the Corporate Income Tax Act with a final tax of 10 percent on the costs (the new procedure under the CITA).

Taxable persons are the employers, the contracting authorities under management and supervision contracts and the contracting authorities under private work agreements within the meaning of § 1(26)(i) of the Additional Provisions of the Personal Income Tax Act. They declare their choice for the current year in the annual tax return which is filed for the preceding year. The choice is not individual, as it is a block option for all persons using corporate assets. Where no choice is declared in the tax return, the general rules of the Personal Income Tax Act and the social security and health insurance legislation apply.

The tax base is the sum total of the costs in kind relating to corporate assets provided for personal use and/or to the use of staff during the calendar year. The Corporate Income Tax Act sets out the rules for calculating the tax base of the various assets as follows:

I. Vehicles:

In the calculation of the tax base of the costs in kind relating to vehicles, costs are allocated to the personal use by multiplying the total amount of all costs relating to the vehicle by:

1. the ratio between:
 - (a) the mileage for personal use and the total mileage of the vehicle, or
 - (b) the hours of personal use of the vehicle and the total hours of use of the vehicle, or
2. 50 percent. In this case, the documentation requirements are easier and the operational costs are subject to proof with an invoice (e.g. for fuel).

II. Immovable property:

Where the tax base is calculated for the costs in kind relating to immovable property and their allocation is not quantifiable, costs are allocated to personal use by multiplying the total amount of all costs related to the immovable property by the ratio between:

1. the area used for personal needs and the total area of the relevant property, or
2. the duration of the personal use of the relevant property in hours and the total duration of the use of the property in hours.

III. Other assets (laptops, telephones)

In the calculation of the tax base of the costs in kind relating to assets other than those set out in items I and II above, the tax base amounts to 20 percent of the total amounts of all costs relating to the relevant asset, unless the taxpayer provides documents to justify another tax base.

To sum up, in the case of *vehicles*, the ratio between the corporate and personal use of vehicles is based either on the mileage or the duration of use or a flat rate of 50 percent. In the case of *immovable property*, the ratio between the corporate and personal use is based either on the area or the duration of use. For all other assets, the tax base is equal to 20 percent of the total costs, unless another amount of the tax base can be justified.

These rules of taxation and calculation of the tax base with the relevant ratios and the choice of option by employers are yet to be implemented in practice. Employers should declare their choice for 2016 in the annual tax return for 2016, which means that the tax return will have to specify the choice for both 2016 and 2017.