

## **HR Retention and talent acquisition – Tax incentives**

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Against the current backdrop of staff shortages, many HR departments are designing retention mechanisms to incentivise current employees and attract new talent. However, when designing such measures, it is also important to consider the fiscal aspects, which can have an impact on the budgeting process.

The most important benefits in kind to employees and their tax treatment from 01.01.2023 are shown below.

### **New tax incentives**

In addition to the currently most common benefits, e.g. private health services, private pensions, stock option plans, meal tickets, sports subscriptions, etc., the following benefits will be considered non-taxable in the future:

- Meals prepared in-house or purchased from catering companies, up to the maximum value of one meal ticket per worker per day. Workers who telework or are on leave or business trips, as well as those who receive meal tickets, are excluded.
- Accommodation or rent provided by the employer up to the value of 20% of the minimum salary, i.e. up to a non-taxable limit of RON 510 (20% x RON 2,550), if:
  - the worker or his/her spouse does not own or already rents a dwelling in the locality where the gainful activity is regularly carried out
  - the accommodation is in owned or rented units
  - in the case of rent, there is a rental agreement between the employer and the landlord.

Only one of the spouses receives these benefits.

Such benefits in kind are regulated either in the employment contract or in the company's internal regulations.

However, under the new rules, for the purpose of determining monthly non-taxable income, the above-mentioned benefits are cumulated with certain other non-taxable benefits provided for by law (mobility allowance, tourist benefits, private health services, voluntary private pension and telework assistance) and are jointly subject to a new limit of 33% of the employee's basic salary. Amounts in excess of this are subject to wage tax.

In future, employers must take this allowance of 33% of the basic salary fund into account when drawing up their budget. In doing so, they must determine the order in which the benefits are included in its calculation.

### **Existing tax incentives with potential problems in practice**

In recent years, there has been an increased appetite for stock option plans or similar forms of compensation.

Such programmes can be initiated both by group companies and by the Romanian employer itself. In principle, they can also be considered for Romanian limited liability companies, but the implementation is likely to be more complex than for joint stock companies.

Such plans enjoy preferential tax treatment if certain conditions are met. Among the most important is the period of at least one year between the date of grant and the date of exercise.

The benefits are not taxable at the time the option is granted or when it is exercised by the employee. The tax is determined at the time of the disposal of the asset.

In practice, however, special care must be taken in the way such programs are structured, in order to avoid tax risks. For example, in the case of option plans with different vesting periods, some of which run for less than a year, there is a risk of tax benefits being denied on the grounds that the program as a whole does not qualify. In addition, for schemes launched before 2016 – when the law was significantly amended – tax auditors sometimes do not recognise the tax benefits even if the conditions are fully met at the time of exercise.

## **Conclusion**

Benefit packages are undoubtedly useful tools for retaining employees and attracting talent. In the current context, broadening the range of non-taxable benefits is both sensible and tempting for HR departments.

In practice, however, tax and legal expertise is required when preparing benefit packages in order not to provide the Romanian tax authorities with arguments for a disadvantageous approach. Often, during tax audits we accompany, it is found, for example, that certain non-taxable benefits in kind are not taken into account for tax purposes due to insufficient labour law documentation. During the 5-year limitation period, a significant tax risk can arise given the high Romanian non-wage labour costs.

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