

Your official tour daily allowance will be taxed if you don't have bills

Have you received a daily (per diem) allowance from your employer when on official tour? Be ready to pay tax on it if you don't have bills to claim it as a reimbursement. Here's why.

Employers as well as employees will have few more creases on their forehead after a recent judgement by the Andhra Pradesh High Court (HC). The judgement has put the onus on employers to deduct appropriate tax from the lump sum allowances paid to employees to meet their lodging and boarding expenses while on travel.

The HC has ruled and upheld the contention of lower tax authorities which required Sun Outsourcing Solutions Private Limited (employer) to deduct tax on lump sum allowance paid to its employees sent outside India on a short-term assignment since the employer could not justify that such allowances were utilised by the employees towards the performance and discharge of official duties while on assignment. This was due to the fact that the employees did not submit to the employer the proof of actual expenditure incurred by them, neither the employer maintained any log book or vouchers for the expenditure incurred by the employees to substantiate that allowances paid were utilised wholly and exclusively towards discharge of official duties.

As per Section 10(14)(i) of the Income-tax Act, 1961 (Act), any allowance or benefit granted to the employees to meet expenses wholly, necessarily and exclusively towards performance of official duties (normally referred to as per diems) are exempt from tax, provided such an expense is actually incurred by the employees. The employer, placing reliance on Section 10(14)(i) of the Act and few favourable judgements given by tax authorities in the past, omitted to deduct taxes on the allowance given to the employees and treated the same as exempt from tax as per Section 10(14)(i) of the Act.

As per the HC, the lump sum allowance paid by the employer did not partake the nature of reimbursement towards expenditure actually incurred by the employees in performance of their official duties but was in fact an additional advantage given to employees to meet higher cost of living in the overseas place of work. As there were no reasonable grounds shown by the employer to substantiate that the employees indeed used the allowance towards discharge of official duties, such lump sum payment is in the nature of additional benefit given to the employees and is taxable for the employees under Section 17(2) of the Act as salary income.

Whether an employer is required to obtain actual proof of expenditure incurred by the employee to verify incurrence of such expenditure as against a declaration by the employee supported by the fact that the per diem meets the test of "reasonableness" is a debatable issue and there have been contradictory rulings on this in the past. However, this latest HC ruling has put onus on the employers to withhold tax on such per diems provided to its employees where no proof of actual expenditure has been obtained to substantiate the incurrence of expenditure for performance of official duties. The aforesaid principles will be applicable not only for overseas assignments, but also for domestic travel undertaken by the employees for official purposes.

Thus, in order to claim the per diem allowance as exempt from tax, employees will have to maintain bills and vouchers of expenditure incurred by them while on official travel and submit

the details of the same with the employer. This increases the burden for the employees as it is not practically possible to maintain a record of each and every expenditure that may be incurred on official travel such as tips paid at a restaurant or to cab drivers, purchase of newspapers and other small items where the bill is not issued by the seller.

Where such bills and vouchers are not maintained and/or submitted by the employees, as per the employers internal policies, the employers will be liable to deduct taxes on the per-diem allowances paid to the employees, failing which the employer will be treated as an assessee-in-default for not deducting appropriate taxes.

Also, in the income-tax return form (ITR 1 - Sahaj) applicable for Financial Year 2017-18, specific reporting requirement has been provided for allowances/ benefits considered as exempt under Section 10(14) of the Act. In the earlier tax forms, there was no such requirement to report the income exempt under this particular Section. This shows the intent of the tax authorities to track such expenses being claimed exempt.

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