

## TAX TREATMENT OF MOBILITY ALLOWANCES

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**Abstract:** *The purpose of this paper is to clarify is to clarify the transposition into practice of the aspects related to the application of the legal provisions regulating the tax treatment of the additional benefits granted according to the mobility clause. There are two categories of employees who benefit from additional benefits according to the mobility clause: the first category refers to drivers who carry out road transport activities according to Government Decision no. 38/2008 and the second category includes other mobile employees. In this paper, we will present the fiscal treatment of the additional benefits granted according to the mobility clause, in compliance with the provisions related to income tax of the nature of salaries and mandatory social contributions.*

**Key words:** delegation, secondment, mobile employees, non-taxable, tax, social contributions

**JEL Classification Codes:** M41, K34.

### 1. INTRODUCTION

Corporate The starting point of this paper is represented by the questions arising, at the beginning of 2023, in relation to the allowances granted to employees who travel for work. While no problems with a high degree of difficulty were raised for delegation and secondment, the case of the benefits granted according to the mobility clause was the focus of the attention of specialists in the fiscal and legal fields.

In practice, there are two categories of mobile employees. The first category includes drivers who carry out road transport activities and fall under the provisions of Government Decision no. 38/2008, and the second category includes other mobile employees.

According to art. 25 of the Labour Code, “through the mobility clause, the parties in the individual labour agreement establish that, in taking into account the specificity of work, the fulfillment of the tasks by the employee is not carried out in a stable workplace. In this case, the employee benefits from additional benefits in money or in kind.”

The mobility clause is a specific clause. Mobility involves frequent trips to the headquarters of the employer's contractual partners. This is the case, for example, of an employee who, according to his duties, performs construction-assembly work on the client's premises.

The Labour Code provides for the employer's obligation to grant the mobile employee an additional benefit according to the mobility clause, but does not provide for the minimum amount of the allowance. The Fiscal Code establishes rules concerning the non-taxable ceiling, taking as a reference the delegation, secondment allowance, established by Government Decision for the employees of public institutions. The non-taxable ceiling is of maximum 2.5 multiplied by the budget allowance.



In practice, the idea has been propagated according to which, in the private sector, the employer has the obligation to grant the allowance for delegation, secondment and additional mobility benefits at the level of the non-taxable ceiling. According to my personal opinion, the employer has the obligation to ensure the minimum level approved by Government Decision for the employees of public institutions, and the provisions establishing the non-taxable ceiling are mandatory only from a fiscal point of view.

## 2. CURRENT TAX TREATMENT OF MOBILITY ALLOWANCES

The additional amounts granted by the employer to employees who travel for work are found in the individual labor agreement under the name of delegation, secondment allowances, and additional benefits granted according to the mobility clause. These new names are equivalent to what was previously referred to as daily allowance or per diem.

Since the beneficiaries of allowances and additional benefits are natural persons who have the status of employees, it is important to distinguish whether they generate tax obligations specific to salaries.

The essential differentiation criterion is the non-taxable ceiling established by the Fiscal Code. In order to facilitate the understanding of the application of the fiscal rules, we will group allowances and benefits into two categories:

- a) the delegation, secondment allowances, and additional benefits granted according to the mobility clause to drivers falling under Government Decision no. 38/2008;
- b) additional benefits granted according to the mobility clause to other mobile employees.

**a) For the first category, the rules for taxation of own income from salaries** are applied according to the provisions of Art. 76 (2) k), only the part that exceeds the non-taxable ceiling is taxed: delegation allowance, secondment allowance, including the allowance specific to transnational secondment, additional benefits received by mobile workers provided for in Government Decision no. 38/2008 as well as any other amounts of the same nature, other than those granted to cover transport and accommodation expenses, received by employees according to the relevant legislation in the field, during the period of the activity in another city, in the country or abroad, for business purposes, for the part that exceeds the non-taxable ceiling established as follows.

- in the country, 2.5 times the legal level established for allowance, by Government Decision, for the employees of public authorities and institutions, within the limit of 3 basic salaries corresponding to the position they hold;

- abroad, 2.5 times the legal level established for the daily allowance, by Government decision, for Romanian personnel sent abroad to fulfill temporary assignments, within the limit of 3 basic salaries corresponding to the position they hold.

The ceiling related to the value of 3 basic salaries corresponding to the position held is calculated by relating the 3 salaries to the number of working days in the respective month, and the result is multiplied by the number of days during the period of delegation/secondment/performance of the activity in another city, in the country or abroad.

Example concerning the calculation of the non-taxable ceiling of delegation allowances, secondment allowances including the allowance specific to transnational secondment, the additional benefits received by mobile workers provided for in Government Decision no. 38/2008 concerning the organization of the working time of people who carry out mobile road transport activities.

The employer is a company with private majority capital and grants amounts as additional benefits to an employee who performs mobile road transport activities, which falls

under the provisions of Government Decision no. 38/2008. The activity period is between 05.04 2023- 11.04 2023, 7 calendar days, the month of April has 18 working days, the basic salary is 3000 RON/month.

Version 1 travel in the country

From 1st April, 2023, the amount of the delegation allowance provided for in art. 1 paragraph (1) and para. (2) letter a) from the annex to Decision no. 714/2018 on the rights and obligations of the employees of public authorities and institutions during the period of delegation and secondment to another city, as well as in the case of travel for business purposes, it is increased to 23 lei. Source: Order 1235/2023 updating the amount of the delegation/secondment allowance and the amount of the accommodation allowance provided in the annex to Government Decision no. 714/2018.

The non-taxable ceiling will be at the level of the minimum amount resulting from the following two calculations:

$2.5 * 23 \text{ RON/day} * 7 \text{ days} = 403 \text{ RON}$

3,000 RON: 18 working days of the month \* 3 salaries = 500 RON representing 3 base salaries per day;  $500 \text{ RON} * 7 \text{ days} = 3,500 \text{ RON}$ .

The non-taxable amount is 403 RON.

Version 2 travel abroad

The daily allowance for travel in an EU country is 35 Euro/day. The non-taxable ceiling will be at the level of the minimum amount resulting from the following two calculations:

$35 \text{ Euros} * 2.5 * 7 \text{ days} = 612.5 \text{ Euros}$

The equivalent in lei of the daily allowance granted, which is recorded in account 625. <<Travel, secondment and transfer expenses>> is determined by using the exchange rate of the National Bank of Romania in force on the date of making the bank transfer to each travelling employee.

$612.5 \text{ Euros} * 4.9380 \text{ RON/Euros} = 3025 \text{ RON}$

3,000 RON/18\*3=500 RON representing 3 base salaries per day;  $500 \text{ RON} * 7 \text{ days} = 3,500 \text{ RON}$ .

The non-taxable ceiling is 3,025 RON because  $3,025 < 3,500$ .

It is important to note that the documents for the payment of secondment allowances and additional benefits granted according to the mobility clause should clearly mention the economic content of these operations. Otherwise, the NAFA inspectors may reconsider these amounts as salary income.

The supporting documents are the Payment Order to the Treasurer, if the payment is made in cash, or the Payment Order, in case of transfer; by bank transfer to the employee's card account.

We thus highlight the existence of two criteria for inclusion in the non-taxable ceiling with reference to 3 basic salaries. The purpose of this double limitation is to prevent cases of tax evasion, taking into account that in practice there were cases when in the road transport activity the drivers received a daily allowance 4-5 times higher than the basic salary.

**b) The second category** comprises the additional benefits granted according to the mobility clause to other mobile employees, falls under the provisions of Art. 76 (2) k1), and are viewed as taxable income of the nature of salaries:

the additional benefits received by employees based on the mobility clause in compliance with the law, other than those provided for in paragraph (41) letter a)

<<(41) The following monthly cumulated income does not represent taxable income in the meaning of income tax, within the limit of the monthly ceiling of no more than 33% of the

base salary corresponding to the position held or of the monthly pay/monthly salary granted in compliance with the law. >>>

The correct classification of the travel allowances must be viewed under a double aspect, one that refers to the compliance of the employer's legal obligations towards the employees who travel for business purposes and a; the second aspect related to the tax treatment of these allowances, considering that starting from April 2023, the daily allowance for the employees of public institutions has been increased, an increase that influences the increase of the non-taxable ceiling.

We list below a set of eight elements, each with an individual limit and which after being added must not exceed 33% of the basic salary. The component of this set of elements is shown in Table no. 1

**Table no. 1- Non-taxable incomes within the limit of 33%\* of the base salary**

It. no.	Content	Limit
1	<u>the additional benefits received by employees based on the mobility clause in compliance with the law, other than those provided for drivers falling under the incident of Government Decision no. 38/2008 Art. 76 (4<sup>1</sup>) Letter a)</u>	a) 2.5 times the legal level established for the delegation/secondment allowance, by Government Decision, for the employees of public authorities and institutions
2	the equivalent value of food provided by the employer for its own employees, when this obligation is not stipulated by law, but is assumed by the labour contract or the internal regulation, Art. 76 (4 <sup>1</sup> ) letter b)	within the limit of the maximum value, in compliance with law, of a luncheon voucher/person/day
3	accommodation and the equivalent value of the rent for the accommodation/living spaces made available by the employers to their own employees, in compliance with the conditions stipulated by the law, Art. 76 (4 <sup>1</sup> ) letter c)	within the limit of a non-taxable ceiling of 20% of the gross minimum base salary per country guaranteed in payment/month/person,
4	the equivalent value of travel and/or treatment services, including transport, during the annual leave period, for own employees and their family members, Art. 76 (4 <sup>1</sup> ) letter d)	within the limit of an annual ceiling, for each employee, representing the level of an average gross salary valid in the year in which they were granted;
5	contributions to optional pensions in compliance with the legislation in force, Art. 76 (4 <sup>1</sup> ) letter e)	within the limit of 400 euros per year for each person;
6	voluntary health and medical services insurance premiums provided in the form of subscriptions Art. 76 (4 <sup>1</sup> ) letter f)	at the level of the year, the equivalent in RON of the amount of 400 euros for each person should not be exceeded;
7	the amounts granted to employees who	within the limit of a monthly ceiling of 400

## Tax treatment of mobility allowances

	carry out telework activities, <i>Art. 76 (4<sup>1</sup>) letter g)</i>	RON corresponding to the number of days in the month in which the natural person carries out telework activity
8	the equivalent value of subscription for the use of sports facilities <i>Art. 76 (4<sup>1</sup>) letter h)</i>	within the limit of the equivalent in RON of 400 Euros per year for each person.

Source: made by the author

Example concerning the calculation of the non-taxable ceiling in the case of benefits granted according to the mobility clause to other mobile employees

The employer is a company with majority private capital. The employee is a natural person who carries out construction-assembly activities on the client's premises, the base salary is 3000 RON/month. In April 2023, the number of working days is 18 and they are carried out on the client's premises.

In April 2023, the employee benefits from a base salary of 3,000 RON plus additional benefits according to the mobility clause for the days worked on the client's premises.

The additional benefit granted according to the mobility clause  $23 \times 2.5 \times 18 \text{ days} = 1,035 \text{ RON}$ .

The non-taxable ceiling is  $3,000 \text{ RON} \times 33\% = 990 \text{ RON}$ ; Taxable income  $1,035 - 990 = 45 \text{ RON}$ .

Total salary income related to the month of April  $3,000 + 45 = 3,045 \text{ RON}$ .

We reconsider the case of the mobile employee who provides construction and assembly services on the client's premises. We will complete by adding an additional benefit that consists in the employer paying the accommodation expenses in the amount of 600 RON. We specify that these expenses are part of the category of accommodation expenses provided by art. 76 para. (41) . letter c) from the Fiscal Code. Although the accommodation expenses fall under the minimum ceiling of 20% of the minimum salary in the economy, the salary income is supplemented by the amount of 600 RON because the additional benefits granted according to the mobility clause plus the accommodation expenses borne by the employer exceed 33% of the base salary of the.

We can observe that any other advantage, which is part of the category of the 8 elements, provided by art. 76 (41) of the Fiscal Code, is in accordance with the tax treatment of salaries, if mobile employees receive daily additional benefits according to the mobility clause.

We remind you that the limitation of the non-taxable ceiling to 33% of the base salary does not apply to mobile employees who carry out driving activities in the field of road transport that falls under the provisions of Government Decision no. 38/2008.

### Contribution to state social insurance

From the content of art. 142 letter g) of the Fiscal Code, it can be inferred that no social insurance contribution is due for the delegation allowance, the secondment allowance, including the allowance specific to transnational secondment, the additional benefits received by mobile workers provided for in Government Decision no. 38/2008, during the performance of the activity in another city, in the country or abroad, for business purposes, within the limit of the ceiling established in art. 76 para. (2) letter k).

Taking into account the provisions of art. 142 letter aa1) of the Fiscal Code, the additional benefits granted according to the mobility clause, which do not exceed the non-taxable ceiling provided by art. 76 (41) in conjunction with art. 142 lit. aa1) is not included in the base for the calculation of the contribution to the social insurance.

### Contribution to social health insurance

According to the provisions of art. 157 letter m) of the Fiscal Code, in the case of the allowance for delegation, for secondment, including in the case of the specific allowance for transnational secondment and the additional benefits received by mobile workers provided for in Government Decision no. 38/2008, the contribution to social health insurance is due only for the part that exceeds the non-taxable ceiling established in art. 76 para. (2) letter k).

From the content of art. 157 letter u) from the Fiscal Code, it can be inferred that the additional benefits granted according to the mobility clause, which do not exceed the non-taxable ceiling provided by art. 76 (41) in conjunction with art. 142 letter aa1) is not included in the basis for calculating the social insurance contribution.

## CONCLUSIONS

According to art. 20 of the Labor Code, apart from the essential clauses, the individual labor agreement may also include specific clauses such as the mobility clause. The mobility clause is included in the individual labor agreement of mobile employees who, due to the specificity of the activity they carry out, do not have a stable workplace.

Additional benefits granted under the mobility clause should not be mistaken for delegation and secondment allowances. The specificity of the activity has a permanent character and influences the inclusion in the category of mobile employees.

Delegation and secondment are occasional in nature and involve the unilateral amendment of the individual labor agreement at the employer's initiative.

On another note, the delegation can only be ordered for a period of at most 60 calendar days in 12 months and the secondment only for a period of at most 1 year.

Consequently, the allowances for delegation, secondment and mobility are regulated by different articles of the Labor Code. There have been warnings in the online environment concerning the correct classification of these allowances within companies that have travelling employees, either occasionally or frequently. The correct classification of the travel allowances must be viewed under a double aspect, one that refers to the compliance of the employer's legal obligations towards the employees who travel for business purposes and a; the second aspect related to the tax treatment of these allowances, considering that starting from April 2023, the daily allowance for the employees of public institutions has been increased, an increase that influences the increase of the non-taxable ceiling.

## REFERENCES

1. Predut M.C., *Commented Labour Code*, 3<sup>rd</sup> edition, Universul juridic Publishing House, Bucharest, 2022, p 150-
2. [Talpos I.](#) - *Theoretical and Applied Taxation*, Universitatea de Vest Publishing House. Timisoara, 2022, p 145 -180;
3. Țiclea A. – *Labour Code, Related Legislation. Comments. Jurisprudence*. Publishing House: [Universul Juridic](#), Bucharest, 2020, P 44
4. Ungureanu M.A., Nedelescu D, Ungureanu D- *Compared Taxation and Taxation Optimization Techniques*, Universitaria Publishing House, Bucharest 2017, p 25-124;
5. [www.anaf.ro](#) Law no. 227/2015 on the Fiscal Code as updated: Law no. 216/2023;
6. [www.anaf.ro](#) Government Decision no.714/2018 714/2018 on the rights and obligations of public authorities and institutions' staff during delegation and secondment to another city, as well as in the case of business travel;
7. <https://www.linkedin.com/pulse/cuquantumul-diurnei-s-a-majorat-de-la-1-aprilie-2023-elena-savciuc/?originalSubdomain=ro>, Saioc E., The daily allowance amount was increased from 1<sup>st</sup> April, 2023.