

### Remark

## Should the provision of company mobiles and laptops to employees be considered payment in kind?

17<sup>th</sup> September 2020

In recent years it has become common practice for companies to provide different working tools to their employees. However, the crisis resulting from COVID-19 has caused these practices to increase exponentially due to teleworking.

At this regard, it should be noted that, in general, companies have not considered as payment in kind the provision of such tools to their employees, as they understand that they are necessary for the performance of the work.

However, it should be noted that, in recent months, several companies have received requests from the Spanish Tax Authorities and the Labor Inspectorate, asking them to regularize their situation and declare all deliveries of laptops, mobiles, tablets, etc. that they have provided to their employees in the last 4 years as payment in kind.

Consequently, this change in the Administration's criteria would mean that companies would be forced to assume an additional cost due to the increase in social security contributions for remuneration in kind. In turn, employees will see their taxation and, therefore, their deductions (income on account) in personal income tax increase.

However, possibly one of the most controversial aspects will be to determine the percentage of time that the worker uses the property privately. Thus, the Tax Inspection would apply the same criterion as for company vehicles, which is the availability for private use (approximately 78%).

However, Article 22.4 of Royal Decree 439/2007 of 30th March should be considered. Which specifies the Personal Income Tax Regulations, describing the personal use of the fixed assets on non-working days or hours as "accessory and distinctly irrelevant". We therefore consider that this assessment could be transferred to income in kind, as there is currently no rule governing how to calculate the percentage of private use made of an asset.

Finally, it should be noted that, although there seems to be a change of criteria on the part of the Administration, there is still no regulatory regulation on this matter, nor is there any judicial resolution or binding consultation of the General Tax Directorate that has pronounced on this issue. It is possible that the law on teleworking is being used to regularize this situation. As soon as we have any official pronouncement, we will issue a note to inform you of the latest developments.



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