

<http://legislatiamuncii.manager.ro/a/10989/deducere-cheltuieli-cu-diurna-conform-legii-168-din-2013.html>

### **1. Daily pay expenses deduction according to law 168 of 2013**

Law no. 68/2013 published in the Romanian Official Gazette 310 of May 29th, 2013, revoked the provisions that limit the right to deduct daily pay within the limit of 2,5 times the legal limit fixed for public institutions, namely art. 21 paragraph (3) letter b of Fiscal Code. The elimination was necessary for allowing the full deduction of expenses with the daily pay offered to employees in case this limit is exceeded.

Through the enforcement of this provision, and available rules starting from February 1<sup>st</sup>, which laid down that daily pay, over the limit of 2,5 times the legal limit fixed for employees in public institutions, is subject to income tax and is included in the monthly calculation base for mandatory social contributions, the income taxpaying entities were disadvantaged, arriving at double taxation, for the amount of the daily pay that exceeded legal limit, the company supports a 16% tax, given the fact that this expense was considered non-deductible.

Thus, starting from July 1<sup>st</sup> 2013, the provision in art. 21, paragraph 3), letter (b) of Fiscal Code, will be revoked and the rules regarding daily pay are the following:

- The daily pay offered to employees within the limit of 2,5 times the legal limit fixed for public institutions is considered the deductible expense on income tax calculation before and after July 1<sup>st</sup> 2013;
- The daily pay offered to employees over the limit of 2,5 times the legal limit fixed for public institutions (the difference) is included in the wages and in the calculation base for social contributions in the month when it is offered and starting from July 1<sup>st</sup> 2013 it is considered deductible expense on tax income calculation. During the period February 1<sup>st</sup> 2013 – June 30<sup>th</sup> 2013, the difference of the daily pay offered over the limit of 2,5 times the legal limit fixed for public institutions was considered non-deductible expense on income tax calculation.

Regarding travel expense settlement, the normative act that regulates the grant conditions and minimum amount of the daily pay which is due to employees in public institutions is Government Decision 518/1995, on certain rights and duties of Romanian personnel sent abroad in the interest of carrying out missions with a temporary character.

According to art. 44 paragraph (2) of Labor Code, the commissioned employee has the right to payment for transportation and accommodation, as well as commission daily pay, under the conditions provided by law or applicable collective agreement.

For example, the daily pay for Germany according to Government Decision 518/1996 is 35 euros and the maximum deductible amount will be 87.5 euros/day ( $35 \times 2.5$ ).

<http://www.finaco.ro/articole/noutati-fiscale-cu-impact-in-activitatea-comaniilor-pentru-anul-2013/>

## **2. Fiscal innovations with impact on company activity for 2013**

Below, we set ourselves to present you main fiscal modifications that can have an impact on company activity for 2013.

The traveling expenses within the country and abroad (daily pay) offered to employees over the fiscal deductibility limit is assimilated to income and is included in the pay roll.

The deductible daily pay represents the sums offered to public institutions multiplied by 2.5. Depending on travel place, within the country or abroad, the maximum deductible daily pay can be:

For traveling within the country:  $13 \text{ lei} \times 2.5 \text{ times} = 32.50 \text{ lei/day}$

For traveling abroad, in the European Union:  $35 \text{ EUR} \times 2.5 = 87,50 \text{ EUROS}$

For traveling in other countries: the minimum limit provided in Government Decision 518/1995  $\times 2.5$

<http://legislatiamuncii.manager.ro/a/7324/calcul-diurna-deductibila-interna-externa-in-cazul-in-care-firma-este-pe-pierdere.html>

## **3. Deductible daily pay (internal, external) calculation in case the company is in the red**

According to the provisions of art. 44 paragraph 2 of Labor code, during the traveling/commissioning period, the employee has the right, besides the payment of transportation and accommodation expenses, to payment for commission allowance (daily pay), under the conditions provided by law or applicable collective agreement. If the company has no collective agreement concluded, then the determination of the daily pay and other conditions during traveling can be made by addendum to individual agreement.

According to the provisions of article 21 paragraph (1) of Law 571/2003 on fiscal code, in order to determine the taxable income, only expenses made with a view to making taxable revenues, including those regulated by normative acts in force, are considered deductible expenses. Thus, the daily pay expense is deductible within the limit of 2.5 times the legal limit fixed for public institutions according to art. 21 paragraph (3) letter b of Fiscal code.

According to art. 9 of Government Decision 1860/2006, the daily commission and detachment allowance in Romania is 13 lei, and the maximum deductible limit is 32.5 lei (13 x 2.5) according to art. 21 paragraph (3) letter b of Fiscal code.

Thus, the daily pay equal to 32.5 lei/day offered to an employee is fully deductible.

The normative act that regulates the grant conditions and minimum amount of the daily pay which is due to personnel in public institutions is the Government Decision 518/1995 on certain rights and duties of Romanian personnel sent abroad in the interest of carrying out missions with a temporary character, with its subsequent modifications and completions.

If until July 6<sup>th</sup> 2012, the maximum deductible pay was calculated according to the formula:

Maximum external deductible daily pay = external daily pay according to Government Decision 518/1995 x 0.75 x 1.15 x 2.5,

according to Emergency Government Ordinance of May 16<sup>th</sup> 2012, that modifies the provisions of Law 118 of June 30<sup>th</sup> 2010, that modified also the provisions of Decision 518/1995:

“Art. 1 (1) The gross amount of basic salaries / basic military pay office / base salary / employment benefits enjoyed by personnel paid from public funds be increased in two stages, as follows:

- a) 8%, starting from June 1<sup>st</sup> 2012, compared to May 2012
- b) 7.4% from 1 December 2012, compared to November 2012.”

Thus, the maximum available deductible external daily pay from June 1<sup>st</sup> 2012 to December 1<sup>st</sup> 2012 is calculated as follows:

external daily pay according to Government Decision 518/1995 x 0.75 x 1.15 x 1.08 x 2.5.

**Example:**

**- daily pay for Germany according to Government Decision 518/1995 – 35 euros**

**Thus, the calculation formula of the maximum external deductible daily pay on income tax calculation for traveling in Germany for example, will be:**

**35 euros x 2.5 x 0.75 x 1.15 x 1.08 = 81.50 euros.**

**In order to explain the need to travel or commission, the Travel order (commission) code 14-5-4, regulated by OMFP 3512/2008 on financial-accounting documents must be drawn up.**

The kind of expenses are considered to be made with a view to making taxable revenues, even the company does not make a profit.