



Circular Letter 9 / 2018

Personal income tax exemption
in maternity benefits
received from the INSS.

Barcelona, 9 October 2018

Dear client,

In a judgement handed down on 3 October 2018, the Supreme Court set new legal doctrine by ruling that public maternity benefits received from the Social Security National Institute are exempt from personal income tax.

As a result of this judgement, the taxpayers concerned may apply for a refund of the tax paid incorrectly to the Spanish tax administration due to the taxation of these benefits as earned income. The acknowledged right to apply for such a refund may be exercised in relation to years that are not statute-barred, which, at the date of this letter, means the personal income tax returns relating to financial years 2014, 2015, 2016 and 2017, with the exception of specific cases involving circumstances that interrupted the limitation period with respect to these years.

The treatment of these benefits has been a controversial matter, since the wording of Article 7.h of Law 35/2006 on Personal Income Tax which regulated this area allowed for conflicting interpretations. This resulted in different high courts issuing contradictory rulings on these benefits, a situation which has been resolved by the Supreme Court, which has fixed, as legal doctrine, the interpretation of said article by recognising the right to an exemption. It should be noted that the Supreme Court has not made any reference to the obligation to pay Social Security contributions during maternity situations, which remains unaltered.

We are at your complete disposal to analyse the extent to which this Supreme Court judgement may be applied in your case, as well as for any clarification or further information you may require.

Yours sincerely,

AUDICONSULTORES

The sole aim of this Circular Letter is to provide its recipients with a selection of general information items about novelties or issues of a labour, tax or legal nature, without this constituting professional **advice** of any kind or being sufficient for the making of personal or business decisions.

© 2018 "Audiconsultores Advocats i Economistes, S.L.P.". All rights reserved