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Non-resident to be allowed personal expense deduction against German income?

An ECJ advocate general has asked the court to rule that a German deduction for personal expenses be extended to non-residents if they would not have had the income without the obligation.

https://blogs.pwc.de/de/german-tax-and-legal-news/article/229045/

A German resident mother left her property to her two sons in return for a monthly pension sufficient to support her in her old age. The amount of the pension was unrelated to the value of the property or to the income it generated but was settled within the family as a family matter. At the time, it was a deductible personal expense for residents. Non-residents are excluded from this type of personal expense deduction on the grounds that personal circumstances are best reflected in the country of residence where the authorities have access to the full facts. In the case at instance one of the two sons was living and working in Belgium. As a non-resident of Germany, he was denied a deduction for his share of the mother's pension from his rental income from the property. He was also precluding from claiming the outlay as a cost of earning that income because the business relationship between the pension paid and the rent received was too remote. He, however, felt himself to be in a comparable position to his brother and claimed that he had been discriminated against as a non-resident.

The advocate general on the case at the ECJ has now suggested that the court see the discrimination as a restriction on the free movement of capital. It is unjustified if the positions of residents and non-residents are similar. This would be the case if it was true that the Belgian resident would not have obtained title to the income-earning property without accepting the pension obligation. This seemed likely, but was for the referring court to verify. (AM)

The ECJ case reference is C-450/09 Schröder, opinion of December 9, 2010.

Schlagwörter

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