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By PwC Deutschland | 16. Februar 2011

No unspecific tax-free wage supplements

The Supreme Tax Court has held that wage supplements for work at night and on weekends are only tax-free if paid for actual work done.

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An airline captain received a flight supplement to his salary. This was split in the agreement into specific portions to cover night and weekend work, as well as the general inconvenience of flying on long distance routes. The supplement was paid regularly as a fixed monthly amount and was treated as part of the captain's salary when calculating the pension provision and other salary-related benefits. He applied to the tax office for exemption on the night and weekend-related portions under the rules exempting such supplements up to certain limits which, in this instance, were not exceeded. The tax office refused on the grounds that the supplements had not been paid for specific work, but as part of an overall employment package involving duties outside normal working hours.

The Supreme Tax Court has now confirmed the tax office in its refusal to grant exemption. The exemption claimed referred to specific payments for work actually done. This contrasted with the present issue of a global payment in return for a commitment to work at the times requested, some of which would be at night or on the weekend. The night and weekend remuneration were based on average activity levels throughout the airline, and were not specific to the one individual. For this, detailed time records should be kept and the remuneration actually paid should follow these. A global payment monthly would be acceptable, but only if adjusted to actual at the end of the year. This adjustment should, at the very least, involve taxing in retrospect any part of supplement that had not been covered by night or weekend time actually flown. The captain pointed out that his airline, like all others, kept logs of all flight crew assignments and thus could offer the necessary evidence. The court, though, negated this statement with the point that the employer had not based the actual remuneration on these records; thus they could have been, but were not, a basis for the salary calculations.

Supreme Tax Court judgment VI R 27/10 of December 16, 2010 published on February 16, 2011

Schlagwörter

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