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By PwC Deutschland | 05. Mai 2011

Relief or pension payments deductible as expenses of taxable employee relief fund

The Supreme Tax Court has held that payments from an employee relief fund in fulfilment of its purpose are deductible as business expenses if the fund is charged to corporation tax on an excess of assets.

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Contributions to employee pension and relief funds are, within limits, tax deductible for the employer. They are tax-free for the employee - he is taxable on the benefit when paid - and the fund is exempt. However, the fund loses its exemption if its assets at end of a three year period exceed its actuarially valued obligations by a set measure depending on the purpose of the fund, but, typically, 125%. If exemption is lost for this reason, the fund is taxable on the portion of its income attributable to the surplus assets. The Supreme Tax Court has now settled a long-standing professional controversy by holding that the income is to be computed after deducting the relief payments as business expenses. This, in the view of the court, was necessary to preserve the single deduction for the expense in concert with the single taxation of the income - the employer's expense of making the contribution and the employee's income from the relief payment. The court has also held that trade tax (if deductible at all - i.e. in no case in 2008 and later) is deductible in the same proportion as the income is taxable. Finally, the court confirmed that the valuation of the obligations to active employees must be based on a written promise (as with the deduction for a pension provision).

Supreme Tax Court judgment I R 110/09 of December 22, 2010 published on May 5, 2011

Schlagwörter

actuarially valued, exemption, relief fund