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By PwC Deutschland | 22. Juni 2011

Health insurance premiums tax-free?

The Supreme Tax Court has held that employer contributions to employee health insurance policies are tax-free if required by statute and the employee is unable to encash the benefit.

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A farm hired seasonal workers from Poland. It paid them their agreed wage and took out a health insurance policy on their behalf. The tax office saw the premiums as a taxable cash benefit – payment of an employee debt – whilst management saw the cost as an expense of the farm, being “practically forced” into taking out the policy. The lower tax court held in favour of the tax office, but did not explain why. The Supreme Tax Court has now referred the case back to the lower court for further elucidation of the facts, but has also set the legal parameters for the decision. These are:

- the benefit is not taxable if the employer is the insured person, and the employee has no direct claim on the insurer.
- the benefit is a cash wage if the employee is able to opt for a cash payment. If he does not have that option, the benefit is taxable as a payment in kind. Payments in kind are not taxable in any one month by (or for) an employee with a monthly total of not more than €44.
- the nature of the „practical force” on the employer to take out the policy was not explained. If, it follows from a mutual agreement between the German and the Polish labour authorities, and if the German labour authorities were under a statutory obligation to conclude such an agreement, the employer’s premium could be tax-free under a specific exemption for employers’ social security contributions.

Supreme Tax Court judgment VI R 24/10 of April 14, 2011 published on June 22

Schlagwörter

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