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By PwC Deutschland | 24. August 2011

No multiple regular workplaces with same employer

The Supreme Tax Court has revised its case law to hold that an employee may be without a regular place of work at all, but in no event can have more than one.

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Travel between home and regular place of work is only partially recognised for tax in the form of a distance-based deduction independent of the actual cost or mode of travel. Other business travel not reimbursed by the employer is deductible at cost (public transport) or at a fixed rate of 30 ct. per km driven (private car). The private car business travel rate is double the deduction for getting to work. The distinction has been explained in various ways over the years; the version currently favoured by the Supreme Tax Court is that the employee can get used to a regular journey to the same place of work. This enables him to reduce his costs by taking short cuts, clubbing together with colleagues to go to work in the same car, and other measures not immediately open to an employee sent on an occasional trip.

The Supreme Tax Court has previously held that an employee's regular place of work must be central to his functions and must be somewhere to which he regularly returns in the course of his duties. It is therefore possible for an employee to have more than one regular place of work with the same employer, such as in the case of a bus driver operating from various depots, or an ambulance crew member on shift work between various stations. The court has now reconsidered its position in two cases just published and redefined the regular place of work as that place forming the centre of an employee's functions. An employee may therefore be without a regular place of work at all (all unreimbursed travel is then deductible as business expense), but can never have more than one (there can no longer be unrecognised expense of travelling between two regular places of work). In the view of the court, this new definition fits better the explanation for the distinction between the two categories of deduction, as a person with more than one workplace is unlikely to be able to regularly travel to work in the same car as a colleague.

The first case concerned the managing director of a GmbH. He lived some distance away from GmbH's main office; however, he had it rent a cellar for the company's computer in the same building as his home. He regularly visited the computer and claimed the cellar to be his regular place of work. Journeys between his home and the GmbH's main premises were therefore business trips. The Supreme Tax Court referred the case back for further investigation of the director's working style as a basis for finding his one and only regular place of work. However, it also made the point that the regular place of work had to be a business establishment of the GmbH, and that the GmbH could not have a business establishment in an employee's home. The director would therefore have to leave home in order to get to his regular place of work. If he were able to get to the cellar through the garden, for example, he would not leave home to get there and it could not qualify as a business establishment of his employer or as his regular place of work.

The second case was brought by a district manageress of a supermarket chain. She was directly responsible for 15 stores, in each of which she had an office, and each of which she visited regularly. Her regular place of work was the office she mainly used, i.e. the one at the centre of her functions. If no single office was central in this manor – that is, she communicated and performed her admin duties from where ever she happened to be at the time – she would have no regular place of work and all travel for her employer would rank as being on business.

Supreme Tax Court judgments VI R 55/10 (managing director) and VI R 36/10 (supermarket manageress)

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of June 6, 2011 published on August 24

Schlagwörter

business travel, regular place of work, regular workplace