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By PwC Deutschland | 15. September 2011

No requirement to exempt foreign service allowances for work in country of residence on same terms as those paid abroad.

The ECJ has held that the foreign service allowances paid to a German resident French civil servant are not exempt from a German rule taking them into account in setting the rate to be applied to the taxpayer's other income, despite complete German exemption for corresponding benefits paid to German civil servants abroad.

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A German resident French national taught in a local Franco-German school. She had civil service status and was paid from the French public purse. Her emoluments were taxable in France under the double tax treaty, but were taken into account when setting the rate to be applied to her other, taxable income in Germany. They consisted of scale rate pay and two foreign service allowances. The pay was taxable under French law, but the allowances were exempt. She claimed that they should also be fully exempt in Germany, that is they should left out of account when setting her other income rate. She based her claim on the free movement of workers requirement for equal treatment in the light of the full exemption in German law of corresponding payments to government servants abroad, but taxable in Germany under the relevant double tax treaty.

The ECJ has now held that there has been no discrimination, despite initial appearances. As a German resident French citizen, she has not been treated any worse than a German resident German citizen. That a German civil servant resident in another EU member state enjoyed complete German exemption on his foreign service allowances was not a relevant comparison as it ignored the secondary effects in the foreign state, in this case, the effect on the tax charge on the other, locally taxable income.

The ECJ case reference is C-240/10 *Schulz-Delzers* judgment of September 15, 2011.

Schlagwörter

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