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# Regular weekend trips home do not break habitual abode

**The Supreme Tax Court has held that a Swiss resident working in Germany can be under unlimited German tax liability by virtue of her habitual abode, despite her regular weekend trips home.**

https://blogs.pwc.de/de/german-tax-and-legal-news/article/229186/

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A Swiss resident was under contract to moderate a TV programme. She was required to start her working week in the studios on Monday morning, but was free to return home to Switzerland on Thursday or Friday for the weekend. The programme was interrupted for two months in the summer and for some two weeks at Christmas, during which time she was free of all duties. Whilst in Germany she stayed in an hotel under a semi-permanent booking arrangement; however, she did not acquire or rent living accommodation. The tax office claimed she was under full German tax liability by virtue of her German habitual abode, notwithstanding her Swiss residence under Swiss law. The Supreme Tax Court has now confirmed the tax office in this view.

Under the Tax Management Act, a person has a habitual abode if he or she is physically present for longer than six months. Short-term absences do not interrupt this period; however short-term in this connection is undefined. The Supreme Tax Court has now held that it should not be defined by specific time limit, but rather by purpose of the absence away. In the present case, the moderator was in Germany to work. She regularly returned home to Switzerland for the weekend, but with the intention of coming back for the start of the next working week. These trips did not interrupt the six-month period as they did not detract from the overall appearance to a third party of a regular return to Germany for a specific purpose - to work. The Christmas break fell into the same category. Whether this also applied to the longer summer break, was no longer relevant to the decision, as the six months had already been exceeded in each year under review. The court emphasised that the six months were not tied to specific dates. Temporary absences apart, the period should be continuous, but could span a year-end. Teleworking (working from home) was not an issue.

Supreme Tax Court judgment I R 26/10 (NV) of June 22, 2011, published on October 12

**Schlagwörter**

habitual abode, resident