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Upper limit for tax-free employee functions confirmed for the moment

The Supreme Tax Court has confirmed its continued acceptance of an upper limit for the costs of employee outings and similar functions, whilst hinting that it might later reconsider its overall approach.

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Employee outings, staff dinners and similar “jollies” entertain employees and are thus potentially a taxable benefit if the intention is to reward them for past or future services. As against this, it is often argued that there is no taxable benefit, because the intention is not to reward anyone for anything, but to encourage staff to foster their mutual relations with a consequent improvement in the working environment. Obviously, both propositions are subjective, and the Supreme Tax Court has resolved the clash in the past by setting an upper limit to the total cost of a jolly per participant. If the cost exceeds the limit – currently and at the time of the present case €110 per participant – the jolly is to be seen as an employee incentive and the entire amount is taxable. If the limit is observed, the event may be assumed to be in the employer’s interests – provided it is open to all employees without distinction by position, performance or length of service – and the entire cost will be allowable for the employer as a business expense and no benefit shall be deemed to accrue to employees.

A law firm organised a summer celebration for its staff at an actual cost of €175 per head. The outlay arose from room hire, food, drink, live music and transport to and from the location. The law firm claimed nevertheless that the employer interest continued to predominate and pointed out that the official upper limit of €110 was substantially unchanged from the DM 200 set in 1993. It had – in the view of the employer – not kept pace with inflation.

The Supreme Tax Court has now held that the overall upper limit of €110 for each participant can still be regarded as acceptable, but only just. It applies to all direct costs of the event other than those clearly attributable to other employer functions (meetings) in the wake of the main event or those incurred on behalf of individual participants to be taxed (or not) by them as their own benefits. The direct costs of an employee benefit did not, for example, include accounting or event manager costs. Taxi costs for participants returning home were individual and not to be included in the overall total. This total was to be divided by the number of actual participants. It the result was more than the current upper limit, the entire amount was taxable as an employee benefit. Given that other conditions were met, the tax could be paid (and borne) by the employer in a lump sum of 25% of the total, non-individual direct cost of the occasion. The court, however, also made side remarks (*obiter dicta*) suggesting that the tax administration review whether the present upper limit of €110 was still appropriate for the future and also reserving its right to completely reconsider its overall approach to the problem of distinguishing between the reward and the business purpose elements of employee jollies in a future case.

Supreme Tax Court judgment VI R 79/10 of December 12, 2012, published on February 20, 2013

Schlagwörter

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