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Three-month limit on subsistence allowance upheld

The Supreme Tax Court has upheld the three-month time limit on business travel subsistence allowances and also confirmed that an assignment only begins to run anew after an interruption of four weeks.

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The Income Tax Act allows those travelling on business to claim a subsistence allowance of € 24 for each day spent away from home and place of work. However, the same provision sets a time limit of three months on each assignment, mainly in view the possibilities generally open to those on longer assignments of accommodating to the new situation and so avoiding the additional costs of constantly eating in restaurants. A business consultant working as a free-lancer on a much longer project has attacked the three-month rule as arbitrary (and therefore unconstitutional) and also claimed that it only applies to full-time, five-day-week assignments. He worked for over a year on one assignment, although usually for not more than three days in each week on site. Thus each week saw the start of a new journey. The tax office argued that a new journey to the same place did not start unless there was an interruption of at least four weeks. It based this position on a passage in the official Wages Tax Guidelines applicable to the business travel of employees.

The Supreme Tax Court has sided with the tax office on both points. Tax-free subsistence allowances are available to those on business travel to cover the additional cost of eating out when away from home. The rule is a generalisation for simplicity and, as such, is not invalidated merely because it does not completely fit all circumstances. A three-month time limit is not manifestly inappropriate and has already been upheld by another chamber of the same court. There was no serious doubt that it was within the constitution and therefore no call to refer the matter to the Constitutional Court.

The court accepted that the four-week interruption period of the Wage Tax Guidelines was without an explicit statutory basis, but also pointed out that there was no statutory requirement either that each assignment run continuously throughout a five-day working week. A period of four weeks between separate assignments to the same place was generally not unreasonable in view of the purpose of subsistence allowances generally and of their three-month time limit. On the contrary, accepting any interruption of an assignment as leading to a new journey would effectively deprive the three-month rule of meaning. The four week period could therefore be accepted as a fair compromise.

Supreme Tax Court judgment III R 94/10 of February 28, 2003, published on May 15

Schlagwörter

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