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By PwC Deutschland | 16. Januar 2014

Tax on gifts only if gift taxable income of recipient

The Supreme Tax Court has held that the provision for a flat rate tax on gifts to employees and others only applies to benefits taxable in the hands of the recipients. The €35 limit on deductibility for gifts to non-employees has no relevance in this regard.

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Under the provisions of the Income Tax Act, non-cash gifts to non-employees are only deductible as business expenses up to an annual limit of €35 for each recipient. The same act also provides for a 30% flat rate tax to be paid by the donor in settlement of the income tax obligation of the recipient. The rules for the flat rate tax do not set any upper or lower limits, though the view is sometimes taken that the same limit of €35 should apply, if only for the sake of consistency. The Supreme Tax Court has recently held in three cases before it that the flat rate tax is a form of collection and not a separate form of taxation in its own right. Accordingly, it is to be levied on all non-cash gifts that rank as a taxable benefit for the recipient. Specifically:

- there are no monetary limits on the taxation obligation,
- gifts to non-residents (employees of associated companies from abroad attending a group conference) are not chargeable to the tax, as the benefit is not chargeable to German income tax in the hands of a non-resident recipient, and
- employees detailed to attend customers invited to watch a regatta from a sailing ship did not receive a taxable benefit from the cost of their participation; thus the 30% is not due on their consumption whilst entertaining the guests.

Supreme Tax Court judgments VI R 52/11 (no limits by value), VI R 57/11 (non-resident recipients) and VI R78/12 (regatta) of October 16, 2013 published on January 15, 2014

Schlagwörter

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