

By PwC Deutschland | 12. Februar 2014

No liability for tax on benefits granted privately

The Supreme Tax Court has held that the majority shareholder and managing director is not liable for the income tax on mass benefits granted to business partners and employees, but paid for from his private estate.

The majority shareholder and managing director of an important local company invited important customers, business partners, influential local worthies and, as hosts, high performing employees to a lavish jubilee celebration. The tax offices involved disallowed the costs of the event as a business expense on the grounds that it was the managing director's private affair – he did not charge the cost to the company – but insisted on income tax for the guests under a 30% flat rate rule for final settlement of the income tax liability on benefits in kind received in a business connection by a group of people. The tax office also requested that the lower court require the guests to attend the hearing on the grounds that their interests might be affected by the outcome. The lower court refused both applications.

The Supreme Tax Court has now confirmed the decision of the lower court and, in so doing, sided with the taxpayer. It accepted his argument, that some of the guests were from abroad, with the consequence that, for them, the benefit was not taxable in Germany. However, it also added that the flat rate rule could not be applied *per se*, as it was restricted to benefits received in a business connection. The invitations had, though, been sent by the managing director in his private capacity, and he had borne the cost of the event from his private estate. That cost had been disallowed as a business expense. It was therefore up to the tax authorities to collect for themselves any income tax due from the guests of the event as benefit recipients.

The court also upheld the refusal to order the guests to attend the hearing. Several thousand people were involved and the tax office had not supplied the full contact details. The tax office had failed in its duty to support the court and this released it from its own duty to fully investigate the facts.

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Schlagwörter

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