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By PwC Deutschland | 04. Juni 2014

Employee withholding tax – tax office opinion not obviously wrong

The supreme Tax Court has held that a tax office opinion on tax to be withheld from employees' salaries should address the facts as presented and should not be obviously incorrect. However, the employer cannot use the procedure for the clarification of legal doubts.

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Employers are entitled to ask the tax office for information on their employee salary withholding tax obligations. The request must be answered correctly and the answer absolves the employer from further risk of non-compliance if he follows it. If, however, he does not, he is in danger of being held liable for failing to account for the full amount of tax due.

An employer requested a tax office statement on the withholding tax position on employee overtime hours carried forward for later time off or pay out. The tax office replied that, generally, no withholding tax need be deducted until payment was made. However, directors and shareholders with more than 25% were the exception. Employees of this status would not normally expect overtime payments, so any record of time to be carried forward for future settlement must be deemed a taxable benefit to be taxed when credited to the person concerned. This statement was in accordance with a finance ministry decree; however, the employer disputed it and turned to the courts.

The Supreme Tax Court has now held that the employer is entitled to accurate information. However, the purpose of the entitlement is to protect him from the consequences of having failed to properly withhold tax. Its purpose is not to resolve disputed questions of law. Thus, the answer given should address the facts as presented and should reflect the official view of the law, taking the relevant official pronouncements into account. It is for the employee to dispute the interpretation of the law, or the validity of any decrees on the subject, with his own tax office in the context of his own assessment to income tax. The court drew attention to the nature of the withholding tax as a payment on account of the final liability. Overpayments were refunded, thus there was no need for absolute protection against their incidence.

Supreme tax court judgment VI R 23/13 of February 27, 2014 published on June 4

Schlagwörter

employee withholding tax, tax office opinion, withholding tax