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Accommodation and commuting costs abroad as travelling expenses

The Supreme Tax Court has held that an employee may deduct his accommodation and commuting costs while on secondment abroad from his employment income (if taxable) as travelling expenses.

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An AG seconded an employee to its subsidiary abroad in a non-treaty country. The initial assignment was for three years, although it was later extended to a total of six. The employee was tax resident under local law in the country of assignment and also retained his German apartment and therefore his German tax residence. His employment income was thus taxable in Germany with a credit available for the foreign tax paid. He was accompanied by his wife and children for the duration of the assignment. He claimed double household relief on the costs of his accommodation abroad and mileage allowance on the costs of driving to and from work each day. The tax office refused the double household relief claim because his family had moved abroad with him and allowed him only the employee commuter deduction (one half the amount claimed) for driving to work.

The Supreme Tax Court has held that the assignment was temporary despite its six year duration. Both parties had intended from the start that the employee should return to Germany once the assignment was over. The parent company continued to pay part of his salary and otherwise continued to act as his employer. His place of work therefore continued to be the head office of the parent company from where he had been seconded and to where he ultimately returned. In consequence all accommodation and travelling costs incurred in connection with his assignment to the foreign subsidiary were deductible as business travel costs from his employment income. This included the daily commute. Reimbursements by the employer were tax-free. The only exception made by the court was the cost of the accommodation of his wife and children. These costs were private and not deductible. This meant that the costs of the shared apartment abroad would have to be divided as appropriate in order to estimate the tax deductible portion reflecting that part of the accommodation occupied by the employee himself.

Supreme Tax Court judgment VI R 11/13 of April 10, 2014 published on July 16

Schlagwörter

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