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By PwC Deutschland | 01. April 2015

No spread of tax-free employee share benefit over all employees

The Supreme Tax Court has held that the tax-free employee share benefit is restricted to those employees with an actual benefit in the given year and cannot be claimed lump-sum for all employees participating in the programme.

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Employees receiving shares in their employer’s company gratis or at a discount off the market price receive a taxable benefit in kind. However the first (now) €360 is tax-free under a special provision of the Income Tax Act. An employer operated an employee ownership scheme under which staff were encouraged to buy packets of ten shares at market value following the annual general meeting of the company. The employee then received an additional bonus share free-of-charge at stated intervals throughout the following ten years, provided he had not left the company or sold his shares. New employees could also participate in an additional scheme under which they were granted five shares free-of-charge, but blocked for 10 years and forfeit if the holder left the company in the meantime. The company calculated the taxable benefit in a lump-sum for all employees taking a tax-free allowance for each employee into account. The tax office, and now the Supreme Tax Court, saw the tax-free allowance as specific to each employee. Thus it could only be taken into account in a lump-sum calculation in respect of those employees specifically entitled to it in the year in question – i.e. those who had actually received bonus shares in that year and only up to the market value of those shares on receipt.

Supreme Tax Court judgment VI R 16/12 NV of January 15, 2015 published on April 1

Schlagwörter

bonus share, employee shares