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By PwC Deutschland | 28. Oktober 2020

Deductibility of costs for an office at home where employer operates a hot desking policy

Where the employer operates a hot desking / desk sharing policy, i.e. the employer does not allocate specific workspace to individual employees but rather provides a pool of workspaces, “other workspace” is nevertheless available to the employee, so that the exception to the general rule restricting the deduction of costs for an office in the home did not apply. This was decided by the Tax Court of Hesse in a recent ruling.

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Background

The plaintiffs are a married couple who are jointly assessed together for income tax. In the period under review, one plaintiff was employed as IT project manager with the A-GmbH and the other plaintiff was a civil servant. Both sources of income were classed as income from employment. In the 2017 income tax return, the plaintiffs claimed a deduction of 1,250 € each for an office in their home as income-related expenses deductible from their employment income. During the period of the dispute, the wife had a workspace at her disposal at the premises of her employer throughout. As a result of an illness she received permission from her employer to work from home two days a week. The husband relied on the office space policy of his employer. This included a desk sharing/hot desking policy according to which "due to the demand-oriented supply of workspaces, a fixed allocation of individual workspaces to certain employees does not usually take place; this presupposes that employees must usually share workspaces".

The policy further contained a regulation according to which the general rule would not apply to the allocation of a dedicated workspace for health reasons or other task-specific requirements. Furthermore, the policy set out that sufficient workspace would be available for each employee present. Finally, the policy allowed for an exception to the desk sharing principle, where workspace would be to permanently assigned to employees without health reasons or task-specific requirements, where the employee could demonstrate a legitimate interest.

In the income tax assessment 2017, the tax office refused the deductions. The plaintiffs appealed to the tax court.

Judgment

The Hesse Tax Court rejected the appeal. The tax office has rightly rejected the deduction of expenses for the office in the home with regard to both plaintiffs.

According to the relevant provisions of the Income Tax Act, a taxpayer cannot generally deduct expenses for an office in his home as income-related expenses. However, an exception to the general rule applies where the business or professional use of the office at home amounts to more than 50% of the total business or professional activity or if no other workspace is available for the professional activity.

In the context of the provision, "other workspace" basically means any workspace, provided it is suitable for the carrying out office work (Supreme Tax Court decision of 26 February 2014, VI R 11/12). Thus, a room that the taxpayer shares with other persons can also be an “other workspace” in this sense. This also applies if the workspace located in an open-plan office is not individually assigned to the taxpayer (Supreme Tax Court decision of 7 August 2003, VI R 17/01). The same applies to a pool workstation (Supreme Tax Court decision of 26 February 2014, VI R 37/13).

Access to the other workspace at any time is not mandatory. A pool workstation may therefore be available “other workspace” within the meaning of the provision if, based on the actual circumstances, a sufficient

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number of pool workstations exist to enable the employee to carry out his professional activities to the extent required. The provision of a sufficient number of workspaces can also be supplemented by specific allocations of use organised by the employer, (Supreme Tax Court decision of 26 February 2014 VI R 37/13).

If an employee does not use the workspace for medical reasons, this does not change the fact that other workspace is available.

Source

Tax Court of Hesse decision of 30 July 2020 (3 K 1220/19)

Schlagwörter

Home office costs, Income Tax Act, expense deduction