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By PwC Deutschland | 11. Mai 2022

Employment related expenses of an ambassador for official residence abroad

The Tax Court of Rhineland-Palatinate ruled that an ambassador who maintains an apartment in Germany and is ordered by the Foreign Office to move into an official residence at the foreign embassy can claim the costs of this apartment abroad as income-related expenses, regardless of its size.

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Background

The plaintiff, a German national, worked as ambassador of the Federal Republic of Germany in various countries in Asia in 2017, the year in dispute. As instructed by the Federal Foreign Office he lived in apartments located in the respective embassies. In addition to his gross taxable salary, the plaintiff received tax-free expatriate allowances, his salary was reduced by amounts referred to as "official housing allowance" (between approximately €1,500 and €1,800 per month). His wife lived in the plaintiffs' joint apartment in Germany throughout the year in dispute.

In their joint income tax return, the plaintiffs claimed income -related expenses of €25,000. This was the net amount, which had been reduced by the amounts designated as "official housing allowance". The tax office, however, held that the expenses were excessive and not "necessary" and only deductible to the extent that they would have been incurred for an apartment of a maximum of 60 m² in terms of location and furnishings.

Decision

The Tax Court stated that the costs claimed by the plaintiff were "necessary additional expenses" in the context of a double housekeeping. They had not only been incurred for work-related reasons but had also been unavoidable for him.

His employer had instructed the plaintiff to take up residence in the embassy, which included not only the permission but at the same time the obligation to move into the official residence. For this very reason, the official housing allowance by way of the official rental value of the housing had been deducted from the plaintiff's salary as "remuneration in kind".

In summary, the Tax Court held that the plaintiff had not been able to avoid living in the official residence nor had he been able to avoid having the residence allowance offset against his employment remuneration. Thus, he would not have been able to carry out his ambassadorial duties without occupying the official residence assigned to him.

Source:

Rhineland Palatinate Tax Court, decision of 22 June 2021 (3 K 1255/20); the appeal is pending before the Supreme Tax Court under Case No. VI R 20/21.

Schlagwörter

employment expense