By PwC Deutschland | 14. November 2023

Accomodation costs abroad deductible as part of a double household

In the case of double household abroad, it must be decided through an overall assessment of the objective circumstances of the individual case whether and to what extent accommodation costs are necessary. However, the Supreme Tax Court held in the case of an official residence assigned under civil service law that the actual amount of accommodation costs at the foreign place of employment are always deductible as income-related double household expenses.

Background

In general, double-household relief is available to those living away from home for professional reasons, both for the cost of the second accommodation and for weekly journeys between the two residencies. This is the case if the employee maintains his own household outside the primary place of work (the first place of work) and also lives at the first place of work; Section 9 (1) sentence 3 No. 5 Income Tax Act (ITA).

The claimant is a government official and works as an ambassador for the Federal Republic of Germany. He has worked in two countries (X and Y) in this capacity. The remuneration was treated by his employer partly as taxable and partly as tax-free. During his period of service and in compliance with the German civil service regulations, the Federal Foreign Office (FFO) designated apartments with floor areas of around 250 and 185 square meters in the respective premises of the FFO to the plaintiff. A compensating housing allowance was deducted from his salary.

The taxpayer claimed the expenses for the apartments in X and Y in the 2011 tax return as income-related double household expenses. The tax office refused the deduction. In pursuance of a decree from the Federal Ministry of Finance (MoF)T the tax office only recognized the accommodation costs claimed by the plaintiff for both apartments (i. e. official housing allowance and ancillary costs) in the context of double housekeeping on a pro rata basis in relation to a living space of 60 sqm. In a specific circular from 25 November 2020 dealing with the allowable employee travel expenses the MoF had decreed that in case of double-household abroad, the actual expenses for accommodation are necessary and acceptable for tax purposes, provided they do not exceed the usual local rent for an average apartment in terms of location and furnishings at the location of the first place of work with a living space of up to 60 square meters.

The appeal brought by the claimant was successful before the Tax Court of Rhineland-Palatinate and finally also before the Supreme Tax Court.

Decision

The Supreme Tax Court confirmed that the requirements for double- household for professional reasons were clearly met. The accommodation costs paid by the plaintiff for his second homes in X and Y must therefore be taken into account as income-related double-household expenses.

The specific limitation of €1,000 for the costs for accommodation incurred for a double household as provided in Sec. 9 (1) ITA No. 5 sentence 4 ITA is not applicable here. In view of the clear and unambiguous wording, the provision only applies to domestic situations („*actual accommodation costs incurred for a domestic double-household in Germany may be claimed up to a maximum of EUR 1,000 per month*)

An interpretation by way of typification that accommodation costs which do not exceed the average rent of a 60 sqm apartment at the place of employment are necessary - as was decided in purely domestic cases by the Supreme Tax Court in 2007 and 2017 regarding prior tax years up to 2013 - is not applicable to double households maintained abroad and thus also not in the case of dispute (contrary to the above mentioned MoF circular of 25 November 2020).

As far as double households abroad are concerned, it must always be determined on a case-by-case basis which accommodation costs are necessary and required for the specific purpose and be based on objective standards. In the case of an official residence assigned under civil service law, these are the actual costs. This conclusion is owed to the special aspects of public service law because a civil servant is obliged to move into the residences assigned to him or her if the official circumstances require it.

Note: It should be mentioned that the principles of this judgment cannot be applied one-to-one to employees in the private sector as there must be additional reasons presented to justify tax deduction of the costs incurred.

Source:

Supreme Tax Court judgment of 9 August 2023 (VI R 20/21), published on 9 November 2023

Schlagwörter

civil service, double-household