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Partial tax-free payment of Dutch salary not subject to German income tax

The salary paid to a German resident employee for work performed in the Netherlands is exempt from German tax under Art. 14 para. 1 in connection with Art. 22 para. 1 letter a of the double tax treaty subject to the progression proviso. According to a most recent judgment of the Supreme Tax Court, this also applies if the employee received the salary tax-free based on the so-called 30% regulation under the specific Dutch expat scheme.

Background

Highly educated foreign nationals working in the Netherlands may be eligible for an annual tax-free payment from their employer of up to 30% of their salary. This is meant to compensate for the costs the expat has for moving to or from the Netherlands. Since 1 January 2024, the tax benefit has been gradually scaled back.

The plaintiff lived only in Germany. As an engineer, he received a salary from a Dutch employer who made use of the expat scheme and paid 30% of his salary tax-free without proof of actual costs incurred. In his income tax return for 2019, the plaintiff split his total salary (including the 30% share) based on the number of days worked in the Netherlands and other countries.

The tax office included the tax-free portion of the salary when determining the German income tax. It took the view that the exemption of 30% of the salary was not subject to Dutch taxation and should therefore be taxed in Germany in accordance with the provisions of the double tax treaty. The tax court of first instance dismissed the claim brought by the plaintiff. It saw the 30% regulation as a tax exemption and not as a lump sum deduction for income-related expenses.

Decision

The Supreme Tax Court upheld the plaintiff's appeal. The tax court had wrongly assumed that the part of the plaintiff's salary which was exempt from taxation in the Netherlands should be included in the basis for German income tax. Nevertheless, the tax-free amount is taken into account when establishing the tax rate applicable to the rest of the plaintiff's income.

The 30% regulation is meant to compensate for the costs of employees who take up employment with a Dutch employer and move to the Netherlands to carry out their work or - as in the case of dispute - travel daily from abroad to the Netherlands and thus incur additional costs because the cost of living in the Netherlands is higher than in their home country. Under certain circumstances, the employer can either reimburse these additional costs to the employee tax-free upon presentation of individually documented receipts or instead - as in the case of dispute - make a tax-free lump sum payment without further proof.

Thus, according to the Supreme Tax Court, and contrary to the opinion of the tax court of first instance, the 30% regulation is not a personal or material tax exemption that results in effective non-taxation, but rather - according to Dutch law, which is relevant in this respect - a flat-rate reimbursement of taxable expenses incurred by the taxpayer.

Source:

Supreme Tax Court decision of 10 April 2025 VI R 29/22- published on 3 July 2025.

Schlagwörter

basic tax-free allowance, employee option