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By PwC Deutschland | 10. Mai 2026

Permanent establishment of self-employed individual

In a recently published decision, the Supreme Tax Court clarified that the interpretation of a “permanent establishment” for business owners and self-employed individuals set forth in Section 4 (5) Sentence 1 No. 6 Income Tax Act and which differs slightly from that in Section 12 of the General Tax Code remains also applicable after the introduction of the new travel expense regulations in 2014 (Act on the Amendment and Simplification of Corporate Taxation and Tax Rules Governing Travel Expenses from 20 February 2013).

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The case in dispute covered the years 2015 to 2017 during which the new travel expense law was applicable. The new travel expense law in force since 2014 contained new rules for tax deduction of travel expenses. One major feature was to replace the (old) definition of the “regular workplace” by a “primary place of work”. The primary place of work, per definition, is the place where the employee is permanently assigned to, in a firmly established place of business of the employer, or a company or a third party determined by the employer.

During the years in dispute, the plaintiff worked as a self-employed broker. He had a number of employees who worked in his office. The plaintiff filed his tax returns for this office. He did not keep a logbook for his vehicle which was held as business asset. The one percent rule was applied. The tax office reduced the business expenses claimed for the car by using a flat rate of 0.03% of the list price to calculate the expenses for trips between the home and the business premises. The plaintiff believed, following the introduction of the new travel expense regulations effective in 2014, that the term “business premises” should be interpreted in the same way as the term “primary place of business.”

Decision

The Supreme Tax Court dismissed the plaintiff's appeal. Business expenses for the plaintiff's trips between his home and his office are only partly deductible because the plaintiff's office constitutes a permanent establishment.

The definition of a permanent establishment requires a fixed permanent business facility that the taxpayer visited not merely occasionally but regularly, that is, on a continuous and recurring basis to carry out his or her professional activities.

Second, the Supreme Tax Court notes that this previous interpretation of the term “permanent establishment” in its case law remains valid even after the new travel expense regulations came into effect.

The new regulations governing travel expenses, effective as of 2014, changed only the old provisions relating to income from employment. The relevant Section 4 (5) Sentence 1 Number 6 Sentence 2 Income Tax Act (ITA), however, remained unchanged. Section 4 (5) Sentence 1 No. 6 ITA refers only to the concept of a “permanent establishment” and not to the “primary place of work.” Furthermore, the detailed explanatory memorandum to the draft law refers only to cases involving employees. It does not indicate or suggest that the “first place of work” should be of significance for determining whether a “permanent establishment” exists. In this respect, there has been no change in the interpretation of the permanent establishment, the Supreme Tax Court said.

Source:

Supreme Tax Court, judgment of 5 February 2026 (III R 18/25) published on 7 May 2026.

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Schlagwörter

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