By PwC Deutschland | 26. September 2026

Full deduction of travel expenses for self-employed ship pilot in absence of permanent establishment

In a recent judgment, the Supreme Tax Court held that the plaintiff, as a self-employed marine and harbor pilot, does not maintain a permanent establishment within the meaning of Section 4 (5) Sentence 1 No. 6 of the Income Tax Act. Therefore, the deduction of business expenses for travel costs is not limited to the mileage allowance.

Initial overview:

Specifically, the Supreme Tax Court clarified that, even after the amended travel expense law for employees took effect (in 2014), a permanent establishment still requires a fixed, permanent business facility that the taxpayer visits not merely occasionally but with a certain degree of consistency; the key point is to determine the geographic center of the permanent business activity.

Section 4 (5) Sentence 1 No. 6 of the Income Tax Act (ITA) provides that, in the case of income from business profits, expenses for travel between one’s residence and a place of business are not deductible as business expenses in their entirety but only up to the amount of the mileage allowance.

Background:

The plaintiff earned income from self-employment as a marine pilot. In the majority of cases, the plaintiff’s pilotage assignments began at Pier D in his pilotage district. The plaintiff had rented a long-term parking space near landing stage E which is located across from landing stage D. He drove there in his own car. From there, he boarded a boat to reach the vessel he was to pilot and which he usually left again at pilot station K. Most of the time, after such a pilotage assignment, the plaintiff was also assigned to “return pilotage” for an incoming vessel. He regularly spent the different waiting periods between pilotage assignments at K pilot station. In addition to his actual pilotage duties as a so-called “navigational pilot,” the plaintiff provided radar services at K radar station two days a month during the years in question.

The plaintiff successfully appealed before the lower tax court to have the expenses for his trips from his home to the various piloting assignments, as well as additional expenses for meals, recognized in full as business expenses.

The Supreme Tax Court confirmed the lower court’s decision:

It therefore granted the plaintiff full deduction of his expenses for travel from his home to the various piloting assignments as business expenses and allowed the additional deduction of meal expenses as claimed.

For starters, the judgment may be summarized in brief as follows:

Neither a long-term parking place that the pilot uses to reach the respective ship nor a pilot station located within the pilotage area - provided no substantial activities are carried out there - constitutes a permanent establishment for the pilot under travel expense regulations. What is new though is that, contrary to previous case law, the pilotage area designated by regulation for such a marine pilot no longer constitutes a so called “large-scale permanent establishment” (i. e., a contiguous site of considerable geographic size) within the meaning of Section 4 (5) Sentence 1 No. 6 Sentence 1 ITA.

In detail:

A permanent establishment within the meaning of Section 4 (5) Sentence 1 No. 6 ITA requires a fixed permanent business facility that the taxpayer visits not merely occasionally but with a certain degree of consistency, that is, continuously and repeatedly, for the purpose of carrying out his or her professional activities. This requires identifying the fixed geographical center of the ongoing activity.

With this decision the Supreme Tax Court changes its case law. Considering the amended travel expense regulations for employees, it no longer adheres to its previously held position. The principle of equal treatment of employees and those who determine profits (taxable profit determined using the income-surplus method or the business assets comparison method), as intended by the legislature, is subject to the limits set by the statutory provisions as they apply in this context.

Based on the binding findings of the lower tax court, the plaintiff did not have permanent establishments either at his long-term parking space near landing stage (docking point) E or at pilot stations K and A (here: merely ancillary activities were performed; no center of operations). Likewise, the vessels to be piloted do not constitute permanent establishments.

Source: Supreme Tax Court judgment of 23 June 2026 VIII R 13/24 published on 24 September 2026.

Note: In a somewhat similar case (also published on 24 September 2026), the Supreme Tax Court decided on the double household relief and journeys to family home of a self-employed person and held that a self-employed person is considered to maintain two households only if he or she maintains a separate household outside the location where he or she primarily carries out his or her business activities (the permanent establishment)and also resides at the location where he or she primarily carries out those activities. (see **blog post from 25 September 2026**).

Schlagwörter

business expense, permanent establishment (PE), travelling expenses