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By PwC Deutschland | 09 January 2011

No income limit on option for full tax liability of EU resident spouses

The Supreme Tax Court has confirmed that the maximum foreign income limit for the option to treat a non-resident spouse as taxable does not apply within the EU.

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Persons with a German residence or habitual abode are fully taxable as residents. Non-residents may opt for taxation as residents - the usual reason for a non-resident spouse to do this is to spread the earned income in Germany over the couple, thus doubling the benefits of the lower end of the rate scale - but only if at least 90% of the non-resident's income falls to German taxation or the income taxable abroad is not more than the basic tax-free allowance in the Income Tax Act (€8,004 in 2010). These limits do not, however, apply to the exercise of the option by a non-resident spouse of a resident EU/EEA national. On the other hand, the wording of the latter provision is complicated and its import is often overlooked - as in a recent Supreme Tax Court case on the refusal of a tax office to grant full tax status to the wife of a resident taxpayer who continued to live in the family home in Poland where she earned employment income of more than the upper limit for the option. The Supreme Tax Court has now held on the letter of the law - and also taking account of its purpose - that the option is open to all non-resident spouses of EU/EEA nationals living in Germany and ordered the tax office to reissue the assessment accordingly. (AM)

Supreme Tax Court judgment I R 28/10 of September 8, 2010 published on December 22

Keywords

European Economic Area (EEA), Option, basic tax-free allowance, couple, full tax liability, tax option