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No extended tax liability on move to existing Swiss workplace

The Supreme Tax Court has held that the treaty protection from extended tax liability for those moving to Switzerland for employment reasons applies to existing, as well as to new, employments.

The Swiss double tax treaty provides for extended German tax liability for the following five years for non-Swiss German residents moving to Switzerland. Extended liability in this connection means that Germany retains the right to continue to tax the German source income of emigrants regardless of contrary provisions in the treaty. However, this extended liability does not apply to those moving to Switzerland "for the exercise" of a Swiss employment.

A German resident employee of a Swiss company moved house to be near his place of work. He ceased to be resident in Germany as a consequence. Some nine months later, he lost his job and took up temporary employment in Germany as a cross-border commuter. The German tax office refused to allow him the benefit of the commuter provisions of the treaty, claiming that he was subject to the extended tax liability as he had not moved to Switzerland to "take up" employment there. The Supreme Tax Court has, however, now held that the "exercise" of a Swiss employment refers to existing employments as well as to new ones. The purpose and wording of the exemption were clear, the intent being to protect employees from the anti-avoidance provisions aimed at those emigrating for tax reasons. It was also clear in the present case that the taxpayer's move had been motivated by his employment - a ten-minute walk as opposed to an hour's drive to work every morning. Accordingly, he was entitled to the general treaty relief available to commuters during the first five years of his Swiss residence as well as thereafter.

Supreme Tax Court judgment I R 109/09 of October 19, 2010 published on March 30, 2011

Keywords

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