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By PwC Deutschland | 17 April 2012

Fixed monthly wage supplements not tax-free

The Supreme tax Court has held that fixed wage supplements for work at night, on weekends or on public holidays are only tax free if adjusted to actual and if this deviating practice was mutually agreed upon in advance.

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An employer granted his employees wage supplements for work at night, on weekends and on public holidays. The supplement was paid regularly and at fixed amounts without allowing for actual work done at the times requested. The employer exempted these portions of the salary from wage tax up to certain limits. The tax office refused on the grounds that the supplements had not been paid for specific work and absent of detailed time records. The Supreme Tax Court upheld the position of the tax office: Detailed time records must be kept and the remuneration actually paid should follow these. It should be easily comprehensible that payment is actually made for the benefit-related work and remuneration is not for job performance in general. A global payment monthly would be acceptable only if adjusted to actual at the end of the year or at time of retirement, whichever comes first. This adjustment should, at the very least, involve taxing in retrospect any part of supplement that had not actually been covered by night, holiday or weekend time. Based on previous court jurisdiction, relief from the annual adjustment would only be available if, in the course of the year, the employee worked almost exclusively at night times, i.e. from 8 p.m. through 6 a.m., and if - taking into consideration any time off for vacation and sickness - the lump-sum payments covered the actual working hours during that time. (mh)

Supreme Tax Court judgment VI R 18/11 of December 8, 2011 - published on February 15, 2012

Keywords

Fixed wage supplement, global wage payment, night work, public holiday, time records, weekend