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# Swiss social security pension premiums not deductible in Germany

**The Supreme Tax Court has held that the compulsory pension insurance contributions of a German resident employee working in Switzerland are incurred in connection with tax-free income and are therefore not deductible in Germany.**

A Germany resident worked in Switzerland, where his employment income was taxable under the double tax treaty. He was subject to the Swiss social security system and was therefore required to pay pension insurance contributions. He claimed a German deduction for these contributions on the grounds that the future income would be taxable in the country of residence, presumably Germany. The tax office refused because he had already deducted the payments in Switzerland as a business expense.

The Supreme Tax Court has now confirmed the tax office in its position, though with a rather different reasoning. It referred to previous case law under which it had previously seen the pension insurance premium as being directly connected to present employment income. This arose from both being the direct consequence of the same event, the Swiss employment. The Swiss employment income was tax-free in Germany; hence its directly connected expenses could not be deducted. This clashed with the concept of future taxation of the pension, although the connection with the present income was, for the court, more immediate. The taxpayer then claimed that disallowing him an expense deduction now would effectively lead to double taxation, given his future liability. However, the court pointed out that any possible double taxation had already been resolved with the Swiss deduction of the premiums.

Supreme Tax Court judgment X R 62/09 of April 18, 2012 published on July 18

**Keywords**

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