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# Development aid employee tax incentive for employers in other member states

**The ECJ has held that a German development aid exemption must be allowed to residents employed in other member states on assignments that otherwise qualify.**

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A German resident Danish national took employment with a Danish company involving a three year tour of duty in Benin on a Danish development aid project. Had he worked for a German employer in otherwise similar circumstances, his employment income would have been tax free under rules exempting employment income on development aid projects involving an assignment of at least three months to a developing country with which Germany does not have a double tax treaty. This exemption is unilateral and is not dependent on taxation in the country of assignment. The Danish national obtained exemption in Denmark under similar rules and applied for the same exemption in Germany. This application was refused on the grounds that it was conditional on employment with a German employer.

The ECJ has now held that the German insistence on a German employer restricts the freedom of movement of workers. That freedom is relevant to assignments in third countries, provided the employment is sufficiently closely linked to another EU member state. In this case, the link was close enough – employment contract under Danish law, Danish employer, social security charges paid in Denmark, net salary paid to a Danish bank account. The German government accepted the discrimination, but argued that it was justified in the public interests of fiscal supervision and of restricting support to German development aid projects. The ECJ accepted neither argument. The fiscal supervision point was based only on the contention that a German tax office could not turn to a Danish employer for information as easily as to a German one. However, that contention ignored the possibility of turning to the employee himself as a German resident. Without giving him the chance to prove his case, one could not deny him the exemption sought. In any case, the German case was weakened by the court's reference to its practice – on the grounds of general difficulty – of not seeking confirmation from either the German development aid authorities or from sources in the country of assignment. The court brushed aside the reference to the restriction of support to German development aid projects with the remark that the German government had not attempted to explain why the furtherance of German development aid objectives required a German employer.

The ECJ case reference is C-544/11 *Petersen*, judgment of February 28, 2013.

**Keywords**

development aid, exemption, tax incentive