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EU/Swiss agreement – country of income must grant full allowances to non-resident

The ECJ has held that a couple resident in Switzerland but earning their entire income in Germany must be granted the full range of personal reliefs available to residents.

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A self-employed German couple moved their home to Switzerland but continued to earn their entire income in Germany. As cross-border commuters, they regularly worked in Germany by day, returning home to Switzerland in the evening. Under the German/Swiss double tax treaty, their income was taxable in Germany as the country of source. The German tax office, however, denied them the “income splitting” relief generally available to married couples (effectively, each spouse is taxed on one-half of the joint income, thus ensuring the best use of allowances and, particularly, the progressive rate scale) on the grounds that they were not resident. It cited the EU/Swiss agreement on the free movement of citizens which allows each state to grant reliefs to its own residents whilst denying them to non-residents.

The ECJ has now held the German tax office view to be acceptable as a general principle, given that residents and non-residents are not generally in comparable situations. However, their situations become comparable if they earn their entire – or nearly their entire – income in the country in which they are not resident. This is because they cannot take advantage of the personal allowances and reliefs granted in their country of residence if they receive no income there. In such an event, it behoves the country where the income is earned to grant them the full reliefs available to residents, as otherwise they would lose their entire claim altogether. This, though, would be discrimination contrary to the EU/Swiss free movement agreement. The couple in the case at issue were therefore entitled to the income splitting generally only available to resident married couples.

The ECJ case reference is C-428/11 *Ettwein*, judgment of February 28, 3013.

Keywords

couple, income splitting, married couple, personal reliefs