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Permission to use company car privately is taxable benefit, but no presumption that prohibition on private use will be ignored

The Supreme Tax Court has held that permission to use a company car privately is, of itself, a taxable benefit, even if there is no actual private use. The benefit can only be valued at zero on the basis of a proper mileage log. On the other hand, there is no presumption of private use where this is prohibited, even if an infringement of the prohibition would be without labour law or other consequences for the employee. The court also held that golf club membership fees are a private benefit, even if the membership was taken out for business reasons.

The Supreme Tax Court has handed down four judgments on the private use of company cars. In three of the cases the company car was held by a managing director not subject to any particular supervision. Its use for private purposes was prohibited in the employment contract of the holder, although an infringement of this prohibition would not have led to any negative consequences for the employee in the circumstances – sole managing director of the company, managing director and 50% shareholder, and the head of a family business run through a group of closely held companies. In all three cases the payroll withholding tax auditor assumed that there must have been at least some degree of private use and caused additional assessments to be raised. These were based on the “1% rule” (valuing the monthly private-use benefit at 1% of the list price of the car when new) in the absence of adequate mileage logs of the business journeys made. The court held, however, that there could be no automatic presumption of a breach of a private use prohibition, merely because the prohibition was not supervised or because the driver was sufficiently senior within the company to have no fear of repercussions. Rather, such a finding could only be based on concrete evidence that the car had actually been used for private purposes. In any case, infringement of the prohibition by a shareholder or partner would lead to a hidden distribution of profits or to additional partnership income, rather than to taxation of an employee benefit.

In the fourth case, a qualified tax advisor and lawyer led a tax consultancy practice through a GmbH of which he was the managing director but not a shareholder. He held a series of company cars under an employment contract permitting their private use. He claimed, however, that he had made only minimal actual private use of the cars and sought to justify this claim with a list of the days on which he had taken the car on business trips. The tax office rejected this list as a “mileage log” and assessed the benefit on the 1% rule. The Supreme Tax Court confirmed this assessment on the grounds that the right to use the car privately was, of itself, a benefit, even if no private use was actually made. At least, the holder was saved the cost of maintaining his own car in a state of readiness. The Income Tax Act saw only two ways of valuing the benefit – the 1% rule and actual cost split between business and private travel on the basis of a proper mileage log. The log actually furnished was in no way adequate and had been rightly rejected by the authorities.

The same managing director had also joined a golf club at company expense in order to promote client contacts. He did not play golf, or at least not well enough to be allowed on the green unsupervised, and this was, in his view, the demonstration that his interest in club membership was purely professional. The court, though, pointed out that professional and private interests in a club membership of this nature were inevitably mixed. Within a club atmosphere, professional contacts could spring from private friendships, just as a business contact could develop into a private relationship. Since there was no way of valuing the two advantages, there was no way of splitting the cost between the business and private benefits. The entire cost thus ranked as private and its payment by the company was a taxable benefit to an employee. The court did mention that it might have come to a different conclusion had the managing director been put under pressure to join the club to the extent that he would necessarily be fearful of the consequences at his place of work of any failure to apply for membership. However, there was no suggestion of any such

pressure in the present case.

Supreme Tax Court judgments VI R 42/12, VI R 46/11 and VI R 31/10 of March 21, 2013 and IV R 23/12 of April 18, all published on July 10

Keywords

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