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By PwC Deutschland | 09 October 2013

# Employee events: fewer costs to be taken into account

**The Supreme Tax Court has confirmed the tax-free limit of €110 for the benefit in kind from participation in staff outings and parties, but has reduced the cost items to be taken into account and has also taken the costs attributable to accompanying persons out of the calculation.**

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Many employers foster employee relations and boost morale with staff parties, outings and similar functions. Obviously, there is a degree of personal benefit for participants and the Supreme Tax Court has long seen €110 per staff member/participant as the acceptable limit beyond which the event can no longer be seen as being “mostly” in the interests of the employer. If this limit is exceeded, the entire amount is taxable as an employee benefit in kind, in most cases at a flat rate of 25%. Legally, the taxable value is the local retail price of the services supplied; in practice this is generally taken as the actual cost to the employer (cases of self-supply being the main exception). In two recent decisions, the Supreme Tax Court has confirmed the €110 limit, but has narrowed the scope of the expenses to be taken into account. In both cases, this brought the taxable value below €110 per head and thus rendered the entire cost a fully deductible expense for the employer with no tax consequences for the employee.

The *first case* concerned an invitation to the entire staff to join in a celebration of the company’s 125th anniversary. Because of space considerations, the celebration was held in the local football stadium and was organised by a professional event manager. Busses were laid on to take the staff to the stadium and to bring them back afterwards. The entire cost exceeded €110 per participant and the tax office raised an assessment to 25% payroll withholding tax on the full amount as the deemed benefit. However, the Supreme Tax Court held that the taxable benefit could only be the cost of those items which enriched the employee. Essentially, this covered items for personal consumption only, in this case being the cost of the food, drink and music provided. The event manager’s fee, the hire of the stadium and the transport costs were necessarily incurred by the employer – in view of the large number of participants – but did not enrich the employee. Accordingly, they were taken out of the calculation and the cost per head fell below the €110 limit.

The *second case* was on a smaller scale. It involved a summer barbecue for all staff and their families. About half the employees turned up and rather more than half of those that did brought one or more family members. The direct costs to the employer – food, drink, music and a children’s entertainer – were less than €110 for each person attending; however they were above this limit for accompanied employees if the costs falling on the family members were attributed to the person accompanied. The tax office made this attribution, calling on previous case claw. The Supreme Tax Court has now clarified its attitude by holding that the costs of family members accompanying employees to staff functions are a cost to the employer, but not a benefit for the employee. Rather, they are incurred in the interests of the employer in encouraging family support for employees. Thus the costs of the function were to be determined per participant, but only those falling to employees could be seen as a taxable benefit in kind. Since the cost per participant was less than €110 there was no attribution of benefit to any employee. The court did, however, add the rider that the costs of family members could be attributed to the persons accompanied if the invitation was to an outside function with its own market value. Communal visits to “musicals or to concerts by performers of world renown” were cited as examples.

Supreme Tax Court judgments VI R 94/10 (football stadium) and VI R 7/11 (barbecue), both of May 16, 2003 and published on October 9

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**Keywords**

Employee events, accompanying persons, staff outings