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By PwC Deutschland | 08 January 2014

Compulsory employer contributions to Swiss pension fund tax-free in Germany

The Supreme Tax Court has held that the employer contributions to a legally compulsory pension fund are tax exempt in Germany. Voluntary contributions are a taxable benefit.

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A German resident worked as an employee in Switzerland. In this capacity he was obliged to join a Swiss occupational pension scheme, funded by contributions from both employee and employer. The pension rights were enhanced voluntarily with supplemental contributions, again from both sides. The resident claimed the total employer contributions as a tax-free benefit under an Income Tax Act provision exempting employer contributions to compulsory schemes. The tax office saw the voluntary contributions as taxable income.

The Supreme Tax Court held in favour of the tax office, though for slightly different reasons. In principle, both sets of employer contributions were potentially a tax-free benefit, as the scheme was compulsory. However, the tax-free amount should not exceed, under the letter of the statute, one-half of the total contribution made. Since this limit had already been exceeded by the compulsory contributions no further scope remained for exempting those made voluntarily. For the same reason, there was no need to test the other limit set by the statute, that the total exemption should not exceed the exempt employer's contribution under the equivalent German scheme.

Supreme Tax Court judgment VI R 6/11 of September 24, 2013 published on January 8, 2014

Keywords

Swiss pension fund, employer contributions