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By PwC Deutschland | 18 March 2015

Foreign employment income of German resident taxable in Germany if work done in third country

The Supreme Tax Court has held that work performed in Austria by a German resident is taxable there under the double tax treaty. However, any work performed in a third country is taxable in Germany as the country of residence.

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A German resident worked in Austria as a reporter for a German magazine. She also visited neighbouring countries to gather news. The Supreme Tax Court has now held that the right to tax the employment income falls to Austria to the extent the work was performed there and to Germany for the time spent on business in third countries. The apportionment was a matter of physical presence and not of legal obligation or employment status. This ruling is subject to a need for further investigation of the taxpayer's residence status under the treaty. If she also has living accommodation in Austria, she could be tax resident there rather than in Germany (focus of vital interests) in which case the German taxing right to this employment income would cease altogether.

Supreme Tax Court judgment I R 27/13 of November 25, 2014 published on March 18, 2015

Keywords

German resident, employment income, third country