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By PwC Deutschland | 18 June 2015

Non-residents need not be granted resident’s privileges in the year they take up employment elsewhere

The ECJ has held that a non-resident employee need not be granted the privileges of a resident in the year he moves to take up employment in another country.

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The taxpayer was a German national living in Germany, but working in Holland. Under Dutch law he was able to claim the privileges of a local resident – here a deduction for mortgage interest – on the basis that over half his annual income was taxable in Holland. On March 31, 2005 he moved to work in the United States. The Dutch authorities continued to regard his employment income for the first quarter as taxable in Holland as that was where the work was performed, but refused him a deduction for mortgage interest as his income of Dutch source was no longer the major portion of his worldwide income. He protested on the grounds that his personal and financial situation had remained substantially unchanged during the first quarter. He should therefore continue to be allowed a mortgage interest deduction for that quarter, the more so as his title thereto would have been undisputed, had he been a Dutch resident.

The ECJ has now held in support of the Dutch tax office. Generally speaking, personal reliefs were a matter for the state of residence as it was the authorities of that state that were best able to estimate a taxpayer's need for reliefs based on his or her overall ability to pay. The major exception was where a resident taxpayer earned the major part of his income in another state, with the result that not only were the home authorities not in a position to estimate the overall financial position worldwide, but there was also the danger that any reliefs they did grant would come to nothing for lack of locally taxable income against which they could be offset. This did not necessarily apply though in the year of leaving the state of employment. In the case at hand, the move to the USA at the end of March meant that the Dutch authorities were no longer in a position to take the taxpayer's overall circumstances into account. Thus, the question of personal reliefs in the year of the move was a matter for the former and future countries of residence, rather than for the former country of employment. That a Dutch resident in otherwise similar circumstances would have been entitled to a mortgage interest deduction for the first quarter of the year was irrelevant, the circumstances of a resident and non-resident being in this case objectively different. Similarly irrelevant was the question of EU membership of the state of immigration (the USA). That state's EU status had no bearing on the taxpayer's ability to pay.

The ECJ case reference is C-9/14 *Kieback* judgment on June 18, 2015.

Keywords

mortgage interest, non-residents, worldwide income