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Tax office answer to a query binding for the assessment unless the converse is apparent

The Supreme Tax Court has held that an apparently definitive ruling by the tax office is binding for a future assessment unless its non-committal nature was apparent to the addressee.

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A serving soldier was given leave of absence in order to take up a post as an “international civilian consultant” with the NATO ISAF forces in Afghanistan. He asked the tax office for confirmation that his earnings would not be taxable in Germany, since they were paid by NATO, a supra-national organisation. The tax office replied after “consultation with its superior authority and with the agreement of the provincial finance ministry” that the earnings in question would not be taxable in Germany. This answer was, in point of fact, incorrect and the tax office later demanded a tax return showing the full earnings received. The taxpayer refused, saying he had relied on the accuracy of the information given.

The Supreme Tax Court has now sided with the taxpayer. His query was specific and the answer was definite and given after consultation with other authorities. There was no reason for a tax layman to believe that he could not rely on the information received. That the formalities associated with a binding ruling – in particular the requirements on the request and the fee payment – had not been observed was apparent to the tax office, but not to a taxpayer acting without professional assistance. However, his was the decisive perspective. The fact that he had not relied on the ruling in respect of its subject – he had already agreed to take up the Afghanistan post – was irrelevant to its validity.

Supreme Tax Court judgment I R 45/14 of August 12, 2015 published on December 23

Keywords

binding ruling