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By PwC Deutschland | 28 January 2016

Home office must be a separate room

The grand senate of the Supreme Tax Court has held that a tax acceptable home office must be a separate room in the taxpayer’s home not used for any other purpose.

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Up to 2009 it was generally accepted that the prohibition on splitting costs between personal and business expenditure (a given outlay was incurred for personal or for business reasons, but never for a mixture of the two) meant that a tax acceptable home office had to be in a separate room in the taxpayer's home, not used for any other purpose. In 2009, the Supreme Tax Court sitting in grand senate (a committee of 11 judges, 1 from each of the senates (chambers) of the Supreme Tax Court) held that dual-use expenses could, indeed, be split between personal and business use (in a case involving travelling expenses incurred on a business trip when the taxpayer elected to stay on for a few days' holiday after his work was done). This raised the question as to whether a home office could be accepted as potentially leading to tax deductible expense, even if the office was used for other purposes (e.g. as an ironing room or for guests) for some of the time. A taxpayer has now brought the issue before the IX. Senate of Supreme Tax Court in a claim for an annual expense deduction for the €804 cost of a home office used as such for some 60% of the time. The IX. Senate felt it would be appropriate to allow a deduction of 60% of €804, but felt obliged to call a grand senate, rather than rule on such a momentous issue on its own.

The grand senate does not share the IX. Senate's view. The statute was imprecise, but the assumptions of the lawmaker of a home office as a separate room in the taxpayer's home seemed clear. There was also the question of verification; it would not generally be possible for a tax office to verify a taxpayer's estimate of the proportionate business use of a home office. Accordingly, the grand senate ruled in a decision binding the IX. Senate in the case before it that an expense deduction for the costs of a home office necessarily presupposes that the given room is used for no other purpose (marginal uses excepted).

Supreme Tax Court Grand Senate resolution GrS 1/14 of July 27, 2015 published on January 28, 2016

Keywords

Home office