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By PwC Deutschland | 16 March 2016

No centre of vital interests in Switzerland for employee working in Liechtenstein

The Supreme Tax Court has refused leave to appeal against a lower court decision that an employee of a Liechtenstein company living in Switzerland was resident in Germany where his family home was and to which he returned at weekends.

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A German resident took up employment in Liechtenstein and rented a two-room flat close by in Switzerland. However, he retained his German home to which he regularly returned to spend the weekend with his family. The lower tax court held him to be resident in Germany rather than in Switzerland and refused him leave to appeal against that decision. The Supreme Tax Court has now confirmed the lower court's refusal.

The Supreme Tax Court saw the issue as a question of interpretation of the facts rather than as a point of law. The lower court's decision was logical and took the full facts into account. That the taxpayer took a different view was not, as such, a ground for appeal. As the Supreme Tax Court went on to state, the taxpayer's family ties were to Germany, where his family remained resident. He had no personal, or lasting economic, ties to Switzerland separate from his Liechtenstein employment. Accordingly, his salary was taxable in Germany, his country of residence.

Note: Germany and Liechtenstein have since concluded a double tax treaty. However, this provides for German taxation of Liechtenstein employment income in the hands of a German resident with a credit for the Liechtenstein tax borne. Thus, the treaty does not affect the validity of the court's ruling as a guide to other, similar cases.

Supreme Tax Court resolution I B 94/14 (NV) of October 22, 2015

Keywords

Liechtenstein, Switzerland, centre of vital interests