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By PwC Deutschland | 26 February 2024

No tax exemption for accommodation and catering costs borne by employer during health days

The Supreme Tax Court ruled that free or subsidized accommodation and meals provided by the employer in connection with preventive health services are generally not tax-exempt under Section 3 No. 34 German Income Tax Act.

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Background

In 2011 to 2014 (years in dispute), the plaintiff enabled its employees to participate in so-called health days, which it organized in cooperation with three other companies. The participants stayed in a holiday resort or, alternatively, in a hotel. The events offered included, for example, an introduction to Nordic walking, courses on topics like back training and progressive muscle relaxation or nutrition courses.

The price calculated by the plaintiff for participation in the seminar, including accommodation and meals, varied between € 285 and € 280 per participant. The employees had to make a personal contribution of € 99, the remaining costs were borne by the plaintiff. The plaintiff treated these benefits as tax-free wages in accordance with Section 3 No. 34 of the German Income Tax Act (ITA). The tax office, on the other hand, held that the aforementioned tax exemption did not apply to fringe or additional benefits, such as the cost of meals and accommodation.

The action brought to the local Tax Court of Thuringia (Finanzgericht Thüringen) was successful. The Federal Finance Ministry had joined the proceeding before the Supreme Tax Court.

Decision of the Supreme Tax Court

The Supreme Tax Court upheld the tax office's appeal. The benefits from the preferential provision of accommodation and meals are not exempt from income tax.

According to Section 3 No. 34 Income Tax Act (ITA) in force in the years of dispute (2011 to 2014), exemption from income tax applies for benefits that are granted by the employer in addition to a consideration or employment compensation already agreed upon for the prevention and reduction of the risks of disease and for the promotion of preventive health in enterprises under the provisions of Sections 20 and 20b of the Sozialgesetzbuch - SGB V (the Fifth Book of the Social Code) in terms of quality, purpose, targeting and certification, provided the benefits do not exceed EUR 500 per calendar year.

The Supreme Tax Court held that accommodation and cost of meals are not included in these benefits covered by the provision, as they neither improve the general state of health of employees nor serve to support and enhance physical and mental health.

The plaintiff could also not invoke tax exemption by arguing that the health days constitute a "uniform and consistent measure". Rather, the requirements for a tax exemption provision must be examined separately for each benefit granted. As to the case of dispute it must be examined separately for each benefit whether it serves to improve the general state of health, whether it is provided by the employer in addition to the wages already owed and whether it meets the requirements of Sections 20 and 20a SGB V in terms of quality, intended purpose and targets.

Reference:

Supreme Tax Court, judgment of 23 November 2023 (VI R 24/21)), published on 22 February 2024.

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Keywords

benefit in kind, income tax exemption