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By PwC Deutschland | 28 June 2024

Calculation of tax-free bonus for night shifts

The bonus paid to employees for work performed outside regular working hours (here: during the night-shift) that are remunerated separately must be determined based on the salary paid to the employee for regular working hours and not on the remuneration for the night-shift.

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Background

According to **Section 3b (1) no. 1 Income Tax Act (ITA)** extra payments (bonuses) in addition to **the basic wage** for work performed (…) at night are tax-free, provided they do not exceed 25 percent of the basic wage. The basic wage is defined in **Section 3b (2) sentence 1 ITA** as the regular salary to which the employee is entitled for the relevant wage payment period; it must be adjusted and converted into an hourly wage and is set at a maximum of EUR 50 per hour.

The plaintiff runs a special school with an affiliated boarding school for children and young people with disabilities. The children and young people who are living in residential groups are taken care of and looked after by the staff also at night.

During January 2014 to December 2017, the regular weekly working hours of the full-time care workers averaged 39 hours. The regular monthly remuneration consisted of the standard monthly salary, the child allowance, and other allowances. The time spent on night supervision was treated as on-call duty („*Bereitschaftsdienst*“). According to the provisions of the employment contract, the additional time spent was factorized for the purpose of calculating the remuneration and only 25% was compensated as working time. In addition, employees received a time allowance of 15 % of the individual base pay for each hour on-call at night.

The tax office took the remuneration for the night-shifts as the assessment basis for the tax exemption. The appeal before the Tax Court of Lower Saxony was successful.

Decision

The Supreme Tax Court confirmed the judgment of the lower tax court and dismissed the appeal of the tax office as unfounded. The tax exemption of the bonus for night shifts is to be calculated by using the official wage tax tables for regular work, it is not - as the tax office opined - based on the remuneration paid for the time of work at night.

The official tax table for the calculation of the payroll deductions **is the basic salary** within the meaning of Section 3b (2) sentence 1 ITA and thus considered as the only relevant yardstick for calculating the tax-free amount. The law does not specify any other "assessment threshold".

The fact that the night-shift could only be ordered by the employer in accordance with the provisions of the employment contract, namely if it was to be expected "that work would be required, but that experience shows that time without work would predominate", is not relevant. Section 3b ITA does not require a specific (individual) strenuous work activity for the tax exemption of work on Sundays or on public holiday or night-shifts.

It is also not necessary that the employee at the same time is entitled to a basic wage for the work to which the tax-free bonus payment applies.

Note: This current decision is contrary to an earlier judgment of the Supreme Tax Court from 2002 (case

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ref. VI R 64/96). There, it was held that bonuses paid for on-call duty are only tax-exempt because of the lesser adverse effects on the employee compared to the difficulties involved in performing full-time work during the working period in question and to the extent that they do not exceed the percentages provided for in § 3b para. 1 ITA.

Reference:

Supreme Tax Court, decision of 11 April 2024 (VI R 1/22), published on 20 June 2024.

Keywords

employee taxation, night work