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Double household relief and journeys to family homes of self-employed persons

In a most recently published judgment, the Supreme Tax Court held that a self-employed person is considered to maintain two households only if he or she maintains a separate household outside the location where he or she primarily carries out his or her business activities and also resides at the location where he or she primarily carries out those activities. In any case, the primary focus of the entire business activity of a self-employed person is at the place where he or she pursues the sole business (permanent establishment) in the context of Section 4 (5) Sentence 1 No. 6 Income Tax Act.

The plaintiff was self-employed and resident in K. During the period in question, he worked almost exclusively for T at its headquarters in H, where he performed his duties four days a week. In H, the plaintiff also rented an apartment. In addition to the rental expenses for the apartment in H, he claimed vehicle expenses in full as business expenses and declared withdrawals for personal trips. **The tax office** did not recognize the expenses beyond the mileage allowance and reduced the additional expenses for meals. **The Supreme Tax Court** confirmed the lower tax court's earlier judgment dismissing the plaintiff's claim. The plaintiff's trips between H and K were trips to his family home as part of maintaining two households, which, pursuant to Section 4 (5) Sentence 1 No. 6 of the Income Tax Act (ITA) resulted in non-deductible business expenses.

As in parallel case VIII R 13/24, also published on 24 September 2026 (see blog post of September 27, 2026), the changes to the travel expense regulations for employees (in effect sinve 2014) also required a review of the principles applicable to self-employed individuals.

Return trips to his family home in connection with a business-related double household do not reduce taxable income as stated in Section 4 (5) Sentence 1, No. 6 Sentence 1 ITA unless otherwise provided in sentence 2 et seq. The purpose of this provision is to ensure that a person determining his or her taxable income cannot claim higher expenses for trips to the family home than an employee with a work-related double household arrangement.

Der Schwerpunkt der gesamten betrieblichen Tätigkeit eines Selbständigen liegt prinzipiell an dem Ort, an dem er im konkreten Fall seine einzige Betriebsstätte i. S. des § 4 Abs. 5 Satz 1 Nr. 6 Satz 1 EStG hat. Der Begriff der „Betriebsstätte“ entspricht hierbei nicht dem Begriff des § 12 AO, sondern dem spezifischen Begriff, der in dem Parallelverfahren VIII R 13/24 vom BFH erläutert worden ist. Familienheimfahrten eines Selbständigen im Sinne der Abzugsbeschränkung sind danach die Wege zwischen dem Ort, an dem er seine Tätigkeit schwerpunktmäßig erbringt und im Zweithaushalt wohnt, zum Ort des eigenen Hausstands und zurück.

In principle, the center of a self-employed person's entire business activity is located at the place where, in the specific case, he or she has his or her sole permanent establishment within the meaning of Section 4 (5) Sentence 1 No. 6 Sentence 1 ITA. The term “permanent establishment” (more in the sense of “business location”) used in this case does not correspond to the definition in Section 12 of the General Tax Code (AO) but rather adheres to the specific meaning explained by the Supreme Tax Court in the parallel case VIII R 13/24. Accordingly, with respect to the limitation of the deductible expenses, a self-employed person's trips home to visit family are defined as the journeys between the location where the work is primarily carried out and where the secondary residence is maintained to the location of their primary household, and vice versa.

Source: Supreme Tax Court, judgment of 19 May 2026 VIII R 15/24 published on 24 September 2026.

Keywords

Independence (Unabhängigkeit), double-household, fixed place of business, permanent establishment (PE)