



## Germany - Tax Treatment of Compliance Services Provided to Employees

The German Federal Fiscal Court recently decided that tax compliance services provided to employees at the cost of the employer are not regarded as a taxable benefit if certain criteria are met.<sup>1</sup>

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### WHY THIS MATTERS

Generally, fees for tax compliance services (e.g., preparation of income tax returns) paid and borne by employers for their employees constitute a taxable benefit-in-kind. For this reason, the costs need to be included in the employee's income. Especially in cases where a net salary agreement is in place, the additional tax costs on this benefit can constitute a significant cost factor for companies.

Tax saving opportunities may be possible; therefore it could be worthwhile discussing the new court decision with your professional tax adviser.

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### Context

In cross-border scenarios, employers often engage service providers to render tax compliance services, such as preparation of income tax returns for their mobile employees. As these employees are typically not familiar with taxation in an international context, engaging a tax service provider can help to limit the risk of any non-compliance by the employees as well as reputational risks for their employers.

In the past, it was common practice that tax compliance fees borne by employers were regarded as a taxable benefit-in-kind according to an older decision of the German Federal Fiscal Court<sup>2</sup> which was recognized and applied by the German tax authorities.<sup>3</sup>

## New Case Law

By explicitly reversing its prior decision,<sup>4</sup> the German Federal Fiscal Court has now ruled that tax compliance services (e.g., preparation of tax returns, review of income tax notices, filing of appeals, etc.) do not necessarily represent a taxable fringe benefit for the employees.

In the specific case before the German Federal Fiscal Court, a German (multinational) employer engaged a tax provider to render tax services to its expatriate employees inbound to Germany. Based on the employer's assignment policy as well as the assignment contracts, there was a net salary agreement between the employer and the employees. The tax service provider made sure that all tax refunds resulting from the individual annual tax assessment were directly remitted by the tax office to the German employer pursuant to a notice of assignment signed by the assignee. Furthermore, the employer only bore the tax preparation costs of the employee's employment income; additional tax costs triggered by the employee's private income were not borne.

According to the assignment policy, the employer did not bear the costs of a tax provider privately engaged by the employee.

Moreover, the employees made themselves liable for any claims against the employer if the employees did not work and cooperate properly with the tax service provider appointed by the employer.

Based on the aforementioned conditions (i.e., assignment policy/net salary agreement, tax refund automatically remitted to the employer, only employment income covered, only costs of engaged service provider borne by employer), the court ruled that this tax compliance service is primarily for the benefit of the company and not for the employee. This is because by engaging a professional tax provider engaged to supply tax compliance services, the employer seeks to reduce its tax costs and, hence, its own employment costs. Accordingly, the advantage to the employee is only peripheral and secondary.

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## KPMG NOTE

### Actions

The new decision has not been published by the German tax authorities in the Federal Tax Gazette yet. It therefore remains to be seen whether and to what extent the German tax authorities will recognize and apply the new decision.

However, it is strongly recommended that all employers and companies – especially those providing net salary agreements to their employees – verify how the new decision regarding the (non-)taxability of tax compliance fees could help to reduce tax and employment costs. In case of doubt, a binding ruling from the German tax office may be applied for.

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## FOOTNOTES:

- 1 For the full decision of May 9, 2019 (in German), click [here](#).
- 2 For the full decision of January 10, 2010 (in German), click [here](#).

3 For the last circular updated on May 3, 2018, issued by the German Ministry of Finance, see recital 303 (in German), click [here](#).

4 For the full press release (in German), click [here](#).

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## Contact us

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