

No duty on the part of the employer to point out tax advantages to a marginally employed person

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Decision

The Federal Labor Court was called upon on 13 November 2014 (8 AZR 817/13) to decide whether an employer has any obligation to inform a marginally employed person ("mini-jobber") as to the various taxation options available. Mini-jobbers may opt for flat rate taxation. This is generally financially more attractive for employees. However, the employee may also be taxed individually on the basis of his tax card. In the present case, the employer did not pay the flat-rate tax for the employee. Instead, the employee had to pay the appropriate rate of tax based on his tax card. In the particular case, this was disadvantageous for him. After he discovered through another source that the flat-rate tax option would have been more advantageous for him, the employee sought to recover damages for overpaid taxes. He was unsuccessful in all instances. The court emphasized that no statutory duty to inform exists. In addition, it should have been obvious to the employee

after he submitted his tax card that he would be taxed individually.

Relevance in practice

One has to agree with the Federal Labor Court's decision. It is consistent and in keeping with previous decisions on an employer's duty to inform. We provided detailed information in our Legal Update of October 2014 on the cases in which an employer is required to notify an employee of certain legal consequences in respect of the employment relationship. The basic rule is that an employee can only expect to be given information if the law makes express provision for this (e.g. § 613a (5) of the German Civil Code (Bürgerliches Gesetzbuch – BGB) or § 4a of the Occupational Pension Schemes Improvement Act (Gesetz zur Verbesserung der betrieblichen Altersversorgung – BetrAVG)). Accordingly, except in the cases provided by statute, employers will seldom have a duty to inform.

Legal Update

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Jens Völksen on +49 221 33660-503 or by email to jvoelksen@goerg.de. For further information about the author visit our website www.goerg.com.

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