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By PwC Deutschland | 23. April 2021

Unutilised maintenance expenses deductible under Para. 82b of the Income Tax Implementation Regulations fully deductible upon death

The Supreme Tax Court decided that where a taxpayer decides to set off major maintenance expenses over a period of several years in accordance with Para. 82b of the Income Tax Implementation Regulations ("EStDV") but dies before the full amount has been deducted, that part of the maintenance expenses not yet set off can be deducted as a rental income expense in the year of assessment in which the death occurred.

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This finding is at variance with Income Tax Guideline No. 21.1 Para. 6 Sentences 2 and 3 Income Tax Guidelines 2012 (EStR 2012)

Background

According to Para. 82b Income Tax Implementation Regulations, major expenses for the maintenance of a building that is not a business asset at the time of building works and which is predominantly used for residential purposes can be set-off evenly over a period of two to five years.

The husband of the appellant had died on 12 January 2016. The deceased was the owner of a two-family house. From this, he earned rental income. In this regard he had elected to set-off major maintenance expenses over a period of time in accordance with Para. 82b Income Tax Implementation Regulations. At the time of his death he had not set-off these expenses in full. In the year in dispute, the appellant was assessed for income tax together with her deceased husband.

In her income tax return for the year in dispute, the appellant declared rental income from the house for her deceased husband for the period from 1 January 2016 to 12 January 2016. As income-related expenses, she declared the remaining part of the maintenance expenses that had not been set off at the time of death.

In the income tax assessment for 2016, the tax office only allowed maintenance expenses in an amount corresponding to the share of the annual amounts incurred for 2016 attributable to the month of January.

The appeal to the Münster Tax Court was successful.

Judgement

The Supreme Tax Court followed the lower court and rejected the appeal by the tax office.

Income tax is a personal tax; thus, only the taxpayer who has incurred the expenses is the subject of income attribution under Section 2(1) of the Income Tax Act for the income earned by him. The part of the expenses not already set-off can therefore only be taken into account in the assessment period of the death. Otherwise, the reduction of the taxpayer's capacity to pay tax as a result of the expenses would not be reflected in the tax assessments affecting him. If the taxpayer dies before the full set-off under Para. 82b Income Tax Implementation Regulations, the part of the maintenance expenses not yet taken into account have to be deducted as income-related expenses in the assessment period of his death.

A death in this regard is comparable to the other situations expressly mentioned in Para. 82b (2) Income Tax Implementation Regulations. According to this paragraph, the part of the maintenance expenditure not yet set-off is to be deducted as income-related expenses in the year of the sale of the building. The same applies if a building is becomes a business asset or is no longer used to generate income.

Based on these legal principles, the lower tax correctly found that the part of the maintenance expenses not yet taken into account by the appellant's deceased husband were to be deducted as income-related expenses in the assessment year 2016.

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There is no legal basis for the transfer of the unutilised portion of the maintenance expenses borne by the deceased husband to his heirs, as asserted by the tax office.(Cf. Income Tax Guideline No. 21.1 Para. 6 Sentences 2 and 3 Income Tax Guidelines 2012 (EStR 2012)).

Source:

Supreme Tax Court decision of 10 November 2020 (IX R 31/19), published on 22 April 2021.

Schlagwörter

Principle of capacity, maintenance expenses, rental income