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Taxation of statutory retirement pensions not unconstitutional - well not yet

Although both of the plaintiffs lost their cases before the Supreme Tax Court, the current ruling has far-reaching consequences for future generations of pensioners, such as those now in their mid-40s. In both of its decisions, the court provided concrete guidelines on how double taxation of pensions must be avoided in the future.

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The Tenth Senate of the Supreme Tax Court, dealing with both cases, found that the basic exemption must not be taken into account when calculating tax-free pension payments. This serves to secure the minimum subsistence level and may not be used a second time as a tax-free pension payment. Health and long-term care insurance contributions that the taxpayer pays himself must also be disregarded in future. The court also clarified that, for systemic reasons, there can be no double taxation of pensions from private investment products outside the basic pension scheme (private pensions), which - unlike statutory old-age pensions - are only taxed at the respective “return-portion” on a rising scale.

In the **case X R 33/19**, the Supreme Tax Court for the first time defined precise calculation parameters for determining double taxation of pensions. The appeal of the plaintiff - who has been receiving a pension with a correspondingly high pension allowance since 2007 - was not successful. However, on the basis of the precise calculation guidelines provided by the court, it becomes obvious that in the future retirees are likely to be affected by double taxation of their pensions. This follows from the fact that the pension allowance applicable to each new pensioner cohort becomes smaller with each passing year. In many cases, it will therefore no longer be sufficient to compensate for the pension insurance contributions paid from taxed income.

In a second decision re. **case X R 20/19**, the Supreme Tax Court clarified numerous further disputes regarding the problem of so-called double pension taxation. The court has not only ruled on the treatment of benefits from voluntary higher insurance for the statutory old-age pension and questions of the so-called opening clause. In the decision it was also clarified that, for systemic reasons, there can be no double taxation of pensions from private investment products outside the basic pension scheme (private pensions), which - unlike statutory old-age pensions - are only taxed at the respective “return portion”. In addition, the court held that tax-free pension benefits include not only the annual pension allowances of the pension recipient, but also those of any longer-lived spouse from his or her survivor's pension. The plaintiffs' appeal, which had objected to double taxation of part of the pensions drawn, was unsuccessful.

Sources:

Supreme Tax Court, decisions X R 33/19 and X R 20/19 of 31 May 2021; German language press releases no. 019/21 and no. 020/21 of 31 May 2021.

Schlagwörter

Income Tax Act, retirement pension