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Deductibility of double-household expenses incurred in advance

Expenses for an apartment are only deductible as double-household expenses incurred in advance if the taxpayer has made a conclusive decision to use the apartment in the future as part of a double-household deductible for tax purposes. Whether this is the case must be decided through an overall assessment of the objective circumstances of the individual case.

Background

The taxpayer had worked as a physician at a clinic in X since 1998, concluding a permanent employment contract in 2000. From 1998 she lived in an apartment in X.

In March 2010, the taxpayer gave birth to a daughter. In June 2010, she applied for parental leave for the period from July 2010 to March 2012. In December of the year in dispute (2011), she applied for an extension of her parental leave until March 2013.

After the birth of her daughter, the taxpayer moved to her partner (L) in Y. The taxpayer initially did not give notice of her apartment in X.

At the end of 2010, the taxpayer and L moved together to Z, where she took up a part-time position in 2011. During 2011 the taxpayer also supervised a research project in X and therefore spent about two days per month in her apartment there. The taxpayer did not earn any income from the supervision of the research project.

In March 2012, the taxpayer concluded an employment contract with the A-clinic for a full-time position as a research assistant starting on 1 April 1 2012. In April 2012, she gave notice of her apartment in X. In December 2012, the taxpayer also terminated her employment there at the end of her parental leave.

The taxpayer claimed the expenses for the apartment in X in her 2011 tax return as income-related double-household expenses. The tax office refused the deduction. The taxpayer's appeal to the tax court was successful. The tax office appealed to the Supreme Tax Court, which ruled in its favour.

Decision

According to established case law, expenses incurred before income is received may be deducted as income-related expenses incurred in advance, provided that there is a sufficiently specific economic (causal) link between the expenses and the type of income for which the deduction is claimed. Such a deduction is given from the point in time at which it can be determined on the basis of objective circumstances that the decision to obtain income of a certain type of income has been conclusively made and has not been reconsidered in the meantime. The expenses may then even be deducted as abandoned income-related expenses where, contrary to the taxpayer's plans, no income is generated, provided that there is a recognisable link to the income sought.

However, the requirements of Section 9 (1) Sentence 3, No. 5 ITA must also be observed if double-household expenses are to be claimed as (abandoned) income-related expenses incurred in advance. According to Section 9 (1) Sentence 1 in conjunction with Sentence 3, No. 5 ITA, expenses for an apartment are therefore only deductible as (abandoned) income-related expenses incurred in advance if the taxpayer has made a conclusive decision to use the additional apartment in future as part of a double household.

The mere assertion that certain expenses were incurred for professional reasons is therefore not sufficient.

Rather -according to settled case law- whether expenses are to be attributed to the professional or private sphere is rather decided by assessing all circumstances of the individual case.

Source: Decision of the Supreme Tax Court (VI R 1/18) of 23 October 2019, published on 13 February 2020

Keywords

abandoned income, advance expenses, double-household