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No tax deduction for ordinary private (personal) clothes even if expected in the profession

The Supreme Tax Court held that a business expense deduction for common civil clothing is excluded even if it is usually worn when carrying out the work as funeral speaker.

Background

The plaintiffs were self-employed funeral speakers. While calculating their taxable profits, they claimed expenses for, among other things, black suits, blouses and sweaters as business expenses. The tax office refused the tax deduction for these expenses. The Berlin tax court dismissed the appeal: Deduction as business expense was excluded due to a possible and potential private use of the clothing.

Decision

The Supreme Tax Court followed suit and confirmed that the expenses for clothing are generally not deductible as being essential and indispensable lifestyle expenses. This follows from the general rule in Section 12 No. 1 Sentence 2 Income Tax Act (ITA). The wording of the statute is unequivocal:

The following expenses may not be deducted from the various types of income or from the total amount of income...

1. the amounts spent on the taxpayer's household and on the support of the members of his family. This also includes the expenses for the way of living, incurred as a result of the economic or social position of the taxpayer, even if they are made in furtherance of the taxpayer's profession or activity....

If, therefore, the clothing can also be worn privately, it can no longer be recognized as working clothes (*Berufskleidung*) for tax purposes.

Neutral clothing such as white T-shirts for example do not qualify as work clothing. To claim a deduction of the costs for clothes, the clothes must be mandatory for the job and - which is important here - unsuitable for everyday wear. Hence, if the clothes can also be worn privately, it is no longer recognized (as *Berufskleidung*) for tax purposes. This would even apply, for example, to the concert clothing of musicians as the Supreme Tax Court explained in its current judgment.

In the case of dispute, the costs for clothing could only be deductible as business expenses if the the clothes are typical professional clothing within the meaning of Section 9 (1) sentence 3 no. 6 ITA ("typical working clothes"). Black suits, blouses and sweaters do not fall under this category, as they are middle-class clothing that can also be worn privately. No business expense deduction is to be granted for these, even if the clothing is used exclusively in the exercise of the profession and the wearing of black clothing is expected by the mourners.

Also, increased wear and tear of civic clothing caused by work cannot, in principle, lead to a deduction as business expenses.

Source:

Supreme Tax Court, decision of 16 March 2022 (VIII R 33/18), published on 23 June 2022.

Keywords

business expense, private expenses