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By PwC Deutschland | 16 February 2024

Partial waiver of a subsidised loan under the Upgrading Training Assistance Act to be treated as salary.

In a recent judgement, the Supreme Tax Court (BFH) ruled that partial loan forgiveness for professional development training constitutes taxable income from employment under Section 19 (1) Sentence 1 No. 1 of the Income Tax Act.

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Background

In 2014 and 2015, the claimant participated in various advanced training courses, which were subsidised by the “Investitions- und Förderbank Niedersachsen” (N Bank) via various grants and loans to cover the costs of the courses. Following the plaintiff’s application, loans for a course and examination fees were granted by the” Kreditanstalt für Wiederaufbau” (KfW). According to the terms of the loan agreement the borrower would be exempted from a certain percentage of the outstanding loan where the borrower passed the examinations. The tax office recognised the costs of the courses - partially reduced by the grants - as income-related expenses in 2014 and 2015.

Following the successful completion of the training courses, KfW waived 40 % of the outstanding loans for the plaintiff in 2018. The tax office increased the plaintiff's gross salary in the income tax assessment notice for the year in dispute by the amount of the waiver.

Decision of the Supreme Tax Court

The Supreme Tax Court confirmed the approach of the tax office. It referred to its established case law, according to which the reimbursement of expenses deductible as income-related expenses must be recognised as income of the type of income for which the income-related expenses were previously deducted.

This was also the case with the partial cancellation of the loans granted by KfW in the year in dispute. On the one hand, the plaintiff had deducted the course and examination fees as income-related expenses in previous years.

Secondly, the loan waiver – made under the terms of the Upgrading Training Assistance Act - had been granted for reasons connected to the profession of the plaintiff; the waiver, so the Court, depended solely upon the passing the final examination and was not related to the financial needs or personal circumstances of the borrower.

Reference:

Supreme Tax Court, judgment of 23 November 2023 (VI R 9/21), published on 15 February 2024, see press release 008/24.

Keywords

Income Tax Act, income from employment, loan