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By PwC Deutschland | 03 September 2024

Simultaneous payment of managing director's salary and regular pension payment

The Federal Ministry of Finance has published a circular with comments on the consequences of a Supreme Tax Court decision from 2023 on hidden distributions and has in one part adjusted its earlier circular from 2017 regarding the tax accounting of pension commitments.

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In its ruling I R 41/19 of 15 March 2023, the Supreme Tax Court has further expanded its case law on hidden distributions. A hidden distribution should not be assumed if, after the start of the pension only a reduced salary is paid in addition to the pension payment. However, this requires that full-time employment as managing director continues and the salary payment does not exceed the difference between the pension payment and the last active salary.

Following discussions with the highest tax authorities of the German Federal States, the Ministry of Finance (MoF) has now accordingly amended the relevant paragraph 10 of its earlier circular from 18 September 2017 dealing with the tax accounting of pension benefits granted without leaving the employment relationship.

However, the MoF could not endorse the view of the Supreme Tax Court - though it was not relevant to the decision at the time - that continued or subsequent employment with reduced working hours/areas of responsibility could cause the difference between the pension and the last active salary not to be fully exhausted without triggering a hidden distribution and that in this case a pro rata reduction of this ("harmless") amount is required.

The **MoF continues to adhere to its previous opinion** that part-time work is not compatible with the duties of a managing director.

Source:

Federal Ministry of Finance, circular dated 30 August 2024 (IV C 2 - S 2742/22/10003 :009).

Keywords

hidden distributions, pensions