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By PwC Deutschland | 16 January 2025

Special up-front leasing payment to be allocated over the term of the lease

In a most recent decision, the Supreme Tax Court held that the actual costs for business mileage with a leased car in case of an up-front lease payment must be allocated to the individual assessment periods during the term of the lease agreement.

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Background

As part of his employment as a sales representative, the plaintiff leased a BMW passenger car in December 2018. Also in 2018, he made a special lease payment (up-front payment) of € 15,000 and paid for the vehicle accessory costs, additional services and a set of tires. The tax office applied the mileage rate of € 0.93/km determined for an annual mileage of 32,717 km to the proportionate annual mileage (1,025 km) for business trips made by the plaintiff with the vehicle in the period from 20 December 2018 to 31 December 2018 according to the mileage log.

For the following year (year of dispute 2019), the plaintiff used the mileage rate of € 0.93/km again and claimed income-related expenses for his employment income. The tax office did not recognize the amount of the travel expenses. It believed the mileage rate determined for 2018 was not applicable in the year in dispute as the circumstances had changed significantly compared to the previous year. In the absence of any other calculation for the year in dispute the flat rate of € 0.30/km was to be applied.

The tax court of first instance granted the claim brought by the plaintiff.

Decision

The Supreme Tax Court upheld the tax office's appeal and referred the case back to the lower tax court. When determining the actual costs for the plaintiff's business trips the tax court wrongly used the mileage rate determined in the previous year by taking into account, among other things, the up-front lease payment made in 2018.

When determining the share of the total annual costs incurred by business travel the total costs must be accurately recorded and be allocated to the respective periods of use.

An up-front leasing payment is a prepaid usage fee meant to reduce the leasing installments during the entire term of the lease contract. The special leasing payment therefore also significantly finances the use of the vehicle for - as in the case of dispute - business trips as well as private trips in the years to come.

Insofar as the special lease payment is used to finance the car use in the subsequent (assessment and lease) periods it will also be included pro rata temporis in the total annual expenses for business travel in the respective assessment period despite the fact that no payment has actually been made.

The tax court of first instance did not establish the mileage required to determine the proportionate deductible expenses for the plaintiff's business trips in the year of dispute. Nor did it establish whether the accessories and additional services covered the period of the leasing contract. The case was therefore referred back to determine in detail the partial amount of the total annual costs of the BMW that is equal to the proportion of the annual mileage to be taken into account.

Source:

Supreme Tax Court, judgment of 21 November 2024 (VI R 9/22) – published on 16 January 2025.

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Keywords

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