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By PwC Deutschland | 31 August 2025

Tax treatment of marital lease with part of rent paid into joint “family account”

The Supreme Tax Court decided that rental agreements between spouses are not generally considered as “fictitious transactions” even if the rental payments are returned to the business via intra-family money accounts (cycles).

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Background

It is about a case that, as described in more detail below, still awaits a final decision. It involves a marital lease agreement which resulted in business expenses for the tenant husband, a lawyer and notary, and rental income for the landlord wife who is employed in the public sector. Due to a strong decline in law firm revenues partial amounts of the rent were transferred to an account held by the wife and then transferred from there to another account held by the wife into which her salary was paid and which held the couple's savings as well as withdrawals from the law firm. This was the “family account” used to cover living expenses.

Amounts from this account were transferred to the law firm of the spouse, some of which even exceeded the rental payments. The tax office had refused to recognize the rental agreement for tax purposes. The tax court of first instance had refused to recognize the rental agreement between the plaintiffs for the years in dispute due to a lack of arm's length and had left open the question whether the rental agreement between the plaintiffs constituted a fictitious transaction within the meaning of Section 41 (2) of the German Fiscal Code.

Decision

The Supreme Tax Court annulled the former judgment following an appeal by the plaintiffs. It first examined the question of whether the back-and-forth payment of rent by way of deposits constituted a fictitious transaction for tax purposes pursuant to Section 41(2) of the German Fiscal Code and decided that this was not the case. The compensation for the law firm's decline in turnover through “deposits” from the “family account” was not to be regarded as a transaction in which the spouses did not want the economic consequences of a rental to occur from the outset.

However, the tax court's overall assessment of arm's length principles contains legal errors in several respects.

Despite the execution of the lease agreement, the tax court had wrongly included the plaintiff's use of funds in its assessment (unbilled ancillary costs, the amount of rent, the partial change of use of the law firm's premises in the disputed years 2014 and 2015 due to the renovation, and the use of parts of the premises by the plaintiff's daughter). Furthermore, there is no legal principle that requires a reduction in rent or even free use of the property in the event of economic problems on the part of the tenant spouse. The Supreme Tax Court is not in a position to conclusively determine whether and to what extent the plaintiff earned taxable income from his work as a lawyer.

For these reasons the Supreme Tax Court overturned the ruling of the tax court and referred the case back for further hearing and final decision.

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Keywords

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