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Commencement of pension payments in case of internal split between ex-spouses

If a civil service pension is split internally under the Pension Equalization Act, the tax-free allowance for pension income and also the additional allowance must be calculated for the person eligible for equalization in the year in which the claim arose, i. e., the year in which that person first was entitled to receive the pension. With its decision, the Supreme Tax Court confirmed the opinion of the Federal Ministry of Finance (BMF) published in October 2013.

Case of dispute: Some time after the divorce from her husband, the plaintiff received pensions through a pension equalization arrangement; that is, her statutory pension which she received since 2010 increased while her ex-husband's pension benefits received since 2007 decreased. Due to an internal division of her ex-husband's pension benefits, the plaintiff received a lower pension effective in 2016 but in return received pension benefits for which a tax-free pension allowance was granted. The plaintiff requested that the pension allowance be calculated based on a pension commencement date in 2007 while the tax office took the view that the pension commencement date was 2016.

The lower tax court ruled in favor of the plaintiff. However, **the Supreme Tax Court** upheld the tax office's appeal.

The lower tax court was wrong to calculate the plaintiff's pension exemption and the supplement to that exemption based on a pension commencement date in 2007. The tax office, on the other hand, correctly assumed that the plaintiff's pension commenced in 2016. The year in which pension benefits first became payable is, in principle, the year in which the pension benefits arose.

Reason: With the implementation of pension equalization, the pension entitlements acquired during the marriage or registered partnership in the various pension systems are split within the respective system, and separate pension entitlements are created for the person entitled to equalization which are maintained separately within the respective system and independent of the pension entitlements of the person obliged to compensate.

It is not possible to calculate the tax-free pension allowance and the additional allowance based on commencement of the pension payments of the person obligated to pay spousal support. Section 19 (2) Sentence 10 of the Income Tax Act permits a subsequent correction of the pension allowance and the supplement calculated at the start of pension payments only due to special circumstances that result in a reduction or increase in the pension recipient's pension benefits. However, the case of an internal split is not comparable to this because the pension of the person liable to compensate does not increase but rather is established for the first time.

Source: Supreme Tax Court, judgment VI R 19/24 of 24 June 2026 published on 27 August 2026.

Keywords

allowances, income splitting, pension