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Profit pooling agreement must run for five full years

The Supreme Tax Court has held that a profit pooling agreement must run for five full years, i.e. 60 months, for tax recognition.

A company concluded a profit pooling agreement with its newly formed subsidiary to run from the date of formation until the end of the fifth business year. Since the first business year was slightly shorter than the full 365 days, the actual period of the agreement was slightly less than 60 calendar months. The tax office refused to recognise it as the basis for an *Organschaft* as it did not run for the five years laid down in the Corporation Tax Act. The Supreme Tax Court has now confirmed the tax office in this view.

The Corporation Tax Act sets the minimum term of a profit pooling agreement at “five years” without elaborating on whether business years, calendar years or full annual time spans are meant. On the other hand it refers to “business year” when setting the dates by which the agreement must be concluded and registered. The use of a specific and a general term in the same context implies, so the court, that the legislator intended to depart from the general understanding of “year” as a time span of twelve months only in the one connection in which the term “business year” was used. Thus the five year minimum period prescribed by law must be taken as being at least 60 months. If one of the business years within that period is less than twelve months the minimum running time will be six business years and between 60 and 72 calendar months.

Supreme Tax Court judgment I R 3/10 of January 12, 2011 published on April 13

Schlagwörter

Organschaft, profit pooling agreement, running time