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Partnership management fee subject to VAT

The Supreme Tax Court has held that an unlimited partner's fee for management, representation and for liability for the partnership's debts is subject to VAT as a single supply.

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The Supreme Tax Court has held that a fixed fee charged by a general partner to a partnership for management and related services, including an indemnity for accepting ultimate liability for the partnership's debts, is a single management service subject to standard rate VAT. The input tax on the related expenses is therefore deductible. The arrangement of a fixed, or largely fixed, fee for management services is typical of GmbH & Co KG structures where the GmbH general partner does not hold a significant capital share in the KG. The court reasoned that general partners cannot avoid liability and that only general partners may carry management responsibility. Management internally is, for practical purposes indistinguishable from representing the partnership externally. Thus, liability assumption, management and representation are inseparable and the fee charged by the general partner is for all three, regardless of how it is described in the agreement. The taxpayer did suggest at court that the liability assumption was similar to offering a guarantee and thus free of VAT as a banking service. However the court rejected that argument, saying that a general partner was at law responsible for the partnership's debts as his own. His discharge of that responsibility could not be compared with the assumption of a guarantee obligation by a third party. Thus, even a separate charge for bearing the liability based, in this case, on the issued share capital of the general partner (as a measure of the true risk carried), could not be treated separately from the other management charges.

Supreme Tax Court judgment V R 24/10 of March 3, 2011 published on May 4

Schlagwörter

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