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By PwC Deutschland | 07. September 2011

Handling fee on subsidised loan immediate expense if not refundable on early repayment

The Supreme Tax Court has held that a handling fee charged on the grant of a publicly subsidised loan should be taken to immediate expense if not partially refundable on earlier loan repayment, or where earlier repayment is confined to instances of contract cancellation for good cause.

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A factory took out loans from banks with interest subsidies from public funds. In some cases the bank charged a handling fee payable when the loan was granted. The taxpayer saw this fee as a single charge for the grant and thus as immediate expense. The tax office saw it as a charge for the finance over the agreed term to be treated as prepaid interest.

The Supreme Tax Court has now held the treatment to be dependent on the reason for charging the fee. If it was intended as part of the overall cost of providing finance over a set period, it should be spread over that period. If it was intended as a one-time only charge in recognition of a specific service, it should be taken to expense immediately. The court saw the distinction as a question of fact, turning on the agreed provisions for early loan repayment. If the handling fee was partially refundable on early repayment, it was part of the charge for the provision of finance for a given period. The same applied where the borrower had no early repayment option; that is, the contract was only cancellable for good cause (such as the insolvency of the other party) and there was no reason at the time of contract signature to suppose such cancelation for good cause to be anything more than a purely theoretical possibility. If, on the other hand, the customer had an early repayment option without a claim to partial refund of the fee, the charge was an immediate expense. The court also called for accounting consistency between bank and customer, but did not go into the steps needed to ensure this.

Supreme Tax Court judgment I R 7/10 of June 6, 2011 published on September 7

Schlagwörter

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