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Hotel entertainment in own restaurant subject to general restriction

The Supreme Tax Court has ruled that a hotel entertaining customers in its own restaurant is subject to the general 30% disallowance of otherwise reasonable business entertaining cost.

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A hotel arranged a gala reception for local business and other people able to take entertaining decisions, nominally to celebrate its tenth anniversary. It also invited selected individuals to meals in its own restaurant. The tax office saw these activities as business entertaining and disallowed 20% of the cost under a specific provision allowing only 80% (now 70%) of business entertaining expense reasonably incurred. The hotel argued that it should be allowed a full deduction for its costs as it had not entertained, but, rather, had demonstrated the quality of its services to selected actual and potential customers.

The Supreme Tax Court has accepted the product demonstration argument as a distinction from business entertainment, but has held that it can only be applied restrictively. Tasting sessions of specific products in the hope of selling precisely those products would qualify for the exception if organised by, or for, suppliers. Airline meals as an ancillary to a paid service – the flight – are also not „entertaining" in this sense. However, a hotel or restaurant seeking to promote its own services does so as entertaining and must therefore accept the 20% (now 30%) disallowance of the cost. It could only claim a full deduction, if it sought to promote specific products, such as particular meals.

Supreme Tax Court judgment I R 12/11 of September 7, 2011 published on January 25, 2012

Schlagwörter

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