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By PwC Deutschland | 05. September 2012

Provision for future tax audit support

The Supreme Tax Court has held that a large company is entitled to provide with tax effect for the costs of supporting a future tax audit in respect of all years ended on balance sheet date.

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Companies faced with a tax audit are obliged to answer the tax auditors‘ questions, provide them with documents and information and to accord them all necessary facilities – including appropriate office facilities – for them to carry out their tasks on site. No charge can be made for this support. Visits by the tax auditors therefore lead to irrecoverable costs for the company, even if there are no negative audit findings. The Supreme Tax Court has now held that a company classified as a “large company” for tax audit purposes is entitled to provide with tax effect for the costs of meeting its obligation to support the tax auditors in respect of all business years already ended on the balance sheet date.

A “large company” for this purpose is one classified as such. Classification is once every three years, so a company meeting the criteria at the start of a classification period (January 1, 2013 is the next cut-off date) will not lose its large company status until the end of the three year period, even if its business declines in the meantime. The classification criteria vary by activity; the 2013 annual turnover limits for large manufacturers and distributors are €4,300,000 and €7,300,000 respectively. In theory, all large companies should be regularly audited in respect of every year, and finance ministry statistics suggest that about 80% of all large companies are regularly audited in practice. A large company thus faces a greater probability of audit than of exemption and thus meets the requirement for a provision for the fulfilment of an uncertain obligation. The costs of auditing a business year are a business expense for that year; thus provision can be taken up at year-end, even though the audit notification will not yet have been issued.

The tax office also argued against allowing full provision on the grounds that some of the taxes subject to audit were, themselves, not deductible (corporation tax and now trade tax). Cost associated with these taxes should thus also not be deducted. The court held, though, that all costs of a corporation were business expenses by definition and were thus fully deductible in the absence of a specific provision to the contrary. Tax auditor support was a public duty, but not a specifically disallowable supplementary tax charge. Its cost was therefore allowable as a business expense.

Supreme Tax Court judgment I R 99/10 of June 6, 2012, published on September 5

Schlagwörter

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