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By PwC Deutschland | 09. Oktober 2012

Concession cannot be withdrawn on audit

The Supreme Tax Court has held that a tax office cannot withdraw a concession on the basis of a tax audit finding.

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A farmer applied for an extra-statutory concession allowing him to value his growing crops at zero by filing a tax return showing a loss from the full write-off of the opening balance with a reference to the regulation governing the grant of that particular concession. The tax office issued assessment notices for that and the following years on the basis of the returns as filed without further comment. The assessments were subject to audit.

Subsequently, the tax auditors found that the concession should not have been granted and issued a report recommending re-assessment on the basis of its withdrawal. The tax office followed this recommendation to the disadvantage of the taxpayer. The Supreme Tax Court has, however, now held that the grant of the concession was final and could not be revoked on audit. The grant was implicit in the acceptance of the tax return as filed, given that the claim to the concession was openly shown. The subject to audit condition noted on the assessment notice did not refer to the concession, but to the remainder of the return and the accounting records in its support. Doubts as to the taxpayer's entitlement to the concession should have been resolved when reviewing the application; in the present case, the zero valuation of growing crops was a concession in the interests of simplicity and arguably not relevant to a taxpayer who had already valued them in his accounts. However, it was not open to the courts to review the grant of a concession after the event, even if the grant had been in conflict with the law.

Supreme Tax Court resolution I R 32/11 of July 12, 2012 published on September 19

Schlagwörter

audit, concession, extra-statutory