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By PwC Deutschland | 27. Februar 2013

Informal closedown of employee relief fund revokes tax exemption of previous years

The Supreme Tax Court has held that the simple transfer of a relief fund’s assets to a company which also assumed the related pension obligations shows that it was not previously assured that the assets would only be used for fund purposes. Accordingly, the tax exemption enjoyed in previous years must be withdrawn in retrospect for all years for which tax claims are not yet statute-barred.

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A company decided to close its employee relief fund and instructed the fund management to transfer substantially the entire fund assets to a company that also undertook to meet the related employee pension obligations. The fund regarded itself as having ceased its tax exempt activity on the day of the transfer. However, its governing board made no attempt to pass a resolution to that effect.

The Supreme Tax court has now interpreted the asset transfer as an indication that the use of fund assets solely for fund purposes had not been “permanently assured” in previous years. That this condition of tax exemption had been met must be apparent both from the fund’s charter and from its actual activity. Transferring assets to another body did not assure the exclusive use of those assets for fund purposes. Accordingly, the fund was to lose its tax exemption for all years in respect of which taxes could be assessed or re-assessed under the statute of limitations (assuming no form of wrong-doing, the statutory period runs for fours from the end of the year in which the tax return was filed). The fund attempted to argue that its decision to transfer its assets was equivalent to its dissolution or to its withdrawal from its tax exempt purpose. Accordingly, previous years should not be affected. The court, however, replied that a transfer of assets did not affect the legal existence of the fund. An interruption of exempt activities did not mean that the fund had already renounced them for all time. The case must therefore rest with the conclusion that the fund had not lost its legal personality; it had merely lost its tax privileges.

Supreme Tax Court judgment I R 78/11 of November 14, 2012, published on February 27, 2013

Schlagwörter

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