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No provision for cost of meeting future technical requirement

The Supreme Tax Court has held that no provision may be made for conversion costs to plant in order to fit it for environmental norms of the future.

A local environmental authority ordered a plank factory in 2005 to reduce its emissions of air pollutants to a set level by 2010. To achieve this it was necessary to equip its incinerator with an expensive filter assembly. The factory took up a provision for the expected cost in 2005. It more than doubled this provision in 2006 and raised the amount yet again in 2007 on the basis of the order finally placed with the supplier for delivery in 2008. The tax office rejected the provisions in the years under review (2005-7) as the reduced emissions level did not have to be met until 2010. The provision now would be for a future expense.

The Supreme Tax Court has sided with the tax office. Legally, the company was not required to comply with the stricter regulation until 2010. That the authority had already notified it of its future obligation did not bring the expense forward. Rather, that expense should be accounted for when the measures for compliance were taken (in 2008), or, in the absence of measures, when the requirement to comply became current (2010). Economically, too, a provision prior to 2008 was unfounded; the obligation was to fit the plant for future use and the cost of meeting it could not be charged against the results of earlier years.

The Supreme Tax Court deliberately ignored the suggestion from the tax office that a provision could not be made in any event for capital expense, saying that it was not necessary to distinguish between the revenue and capital expense of complying with a future requirement.

Supreme Tax Court judgment I R 8/12 of February 6, 2013, published on May 8

Schlagwörter

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