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By PwC Deutschland | 18. März 2015

Employee relief fund surplus based on total obligations

The Supreme Tax Court has held that the returnable surplus of an employee relief fund is to be based on the total obligations of the fund, rather than on those in respect of individual member employers.

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Employee relief funds are exempt from corporation tax, provided they retain sufficient assets to cover the actuarially calculated future obligations. If the assets exceed 125% of that amount at year end, the surplus must be returned to the parent employer or otherwise put to an appropriate purpose. Usually, relief funds are founded by employers for the benefit of their employees, although some funds are regional or sectoral and thus provide cover for the employees of a number of different enterprises. These multi-employer funds generally segregate their assets and obligations by employer-parent, mostly as a basis for setting the annual contributions.

A multi-employer fund established a surplus of more than 125% of the actuarial liability in respect of some of its employer segments. Accordingly, it paid out the excess to each employer affected as a return of contributions. However, it did not have an excess in total as some segments were well below the upper limit. The tax office saw the fund as a whole and withdrew its corporation tax exemption for having returned contributions to its members and thus depriving beneficiaries of the necessary asset cover. The Supreme Tax Court has now confirmed this result on the basis that the fund was a single entity liable towards all actual or potential beneficiaries. Its asset surplus could therefore only be calculated globally. Piece-meal distributions were barred if there was no excess overall. If they were made despite the bar, the fund had failed to maintain the necessary asset cover and forfeited its tax-exempt status.

Supreme Tax Court judgment I R 37/13 of November 26, 2014 published on March 18, 2015

Schlagwörter

relief fund, surplus