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By PwC Deutschland | 05. August 2015

Film pre-release marketing subsidy as profit-sharing loan

The Supreme Tax Court has defined a pre-release marketing subsidy paid by a film owner as a profit-sharing loan in view of the net proceeds-based licence fee payable by the distributor at the end of the fixed-term distributorship.

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A film owner granted an exclusive twelve-year distributorship against a fixed annual licence charge and a variable fee of 40% of the net proceeds realised by the distributor. The variable fee was payable in a lump sum together with the final fixed instalment at the end of the distributorship. The film owner also agreed to pay the distributor a fixed subsidy prior to the release of the film to cover 85% of the estimated marketing and other pre-release costs. Since the subsidy was not repayable under any circumstances, the film owner claimed that it should be deducted as immediate expense on the analogy of the initial costs of marketing a new product. The tax office saw the subsidy as expense deductible in equal annual instalments over the distributorship period.

The Supreme Tax Court agreed with neither view. Rather, it held the subsidy to be essentially a profit-sharing loan, despite an explicit contract reference to its non-repayment. It had been granted to ensure the commercial success of the film and was to be recouped by the film-owner at the end of the distribution period. The obligations of the distributor were supported by bank guarantee. Only the prohibition on judgments to the further disadvantage of the taxpayer prevented the court from disallowing the annual charge accepted by the tax office.

Supreme Tax Court judgment IV R 25/12 of May 21, 2015 published on August 5

Schlagwörter

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