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By PwC Deutschland | 04. August 2022

Broadcasting license under the State Media Act not an intangible asset

Considering the general context and framework of the German media law, the “broadcasting license” issued to a private broadcaster of radio or television programs is not, from a purely tax point of view, to be treated as an intangible asset for which capitalization in the tax balance sheet is mandatory. According to the Supreme Tax Court this is for want of a sufficient enough economic transferability of the broadcasting license. The fees paid in connection with the admission as regional TV-station, as in the case of dispute, are in general immediately tax deductible.

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Background (Media legislation)

In Germany, the federal states are in charge of developing rules for media regulation, which are implemented and enforced by the independent state media authorities. State media laws, as part of media law, regulate the licensing and monitoring of private broadcasters and they exist in every German state. It involves media of all different types (e.g., TV, film, music, publishing, advertising, Internet & news media, etc.) and stretches over various legal fields, as it deals with the regulation of private and public (universal) information and communication and thus plays into public law, civil law, criminal law and, as described below, it also may affect tax law.

Facts of the case

The case of dispute involved the issuance of a broadcasting license in accordance with the Baden-Wuerttemberg State Media Act. The plaintiff claimed the fees for the permission as a regional television station as fully deductible in the year of dispute (2015). The tax office refused and held that the costs incurred for the broadcasting license be treated and capitalized as acquisition costs for an intangible asset "broadcasting license". The Baden-Wuerttemberg tax court granted the appeal.

Decision

The Supreme Tax Court also ruled in favor of the plaintiff and dismissed the appeal of the tax office.

From the outset the Supreme Tax Court held that the "broadcasting license" was not an intangible asset. Consequently, the broadcasting right could not be capitalized in this respect on the grounds that it is structured as a highly personal and non-negotiable right under media law and therefore lacks the sufficient economic transferability which is an essential feature to qualify as an intangible asset. To be precise and according to the unambiguous wording of Section 12 (4) sentence 1 of the State Media Act of Baden-Wuerttemberg, the broadcasting right of a private broadcaster of radio or television programs is not marketable and hence may not be traded or transferred.

Nevertheless, the Supreme Tax Court referred the case back to the Baden-Wurttemberg tax court for further review as to the amount of fees which can be deducted in 2015. The plaintiff had expensed most of the fees (consultancy fees paid in 2016) already in 2015 as a provision for contingent liabilities. The tax court must now take a closer look and determine whether these fees were, from an economic point of view, in fact incurred in 2015.

Source:

Supreme Tax Court, decision of 22 March 2022 (IV R 13/18), published on 28 July 2022.

Schlagwörter

broadcasting license, intangible assets, media law