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Compulsory product registration costs incurred on date of application

The Supreme Tax Court has held that the costs of registering a pesticide arise with the application. As part of the cost of developing the product, they are immediate expense in view of the prohibition on capitalisation of own intangibles.

The tax office refused a manufacturer of pesticides a provision for the costs of registering a new product with the Federal Biological Institute for Agriculture and Forestry. Registration is compulsory as a pre-condition for marketing a product, but can be refused if the Institute is not satisfied with the results of its tests. The registration fee arises with receipt of the application by the Institute; the amount is partially dependent on the processing costs of the Institute; the Institute has discretion to waive part of the amount if it refuses the application. The tax office saw the fee as a future marketing expense that could not yet be accrued as it related to future income.

The Supreme Tax Court has now sided with the taxpayer. Registration was compulsory if the owner wished to market the product and the right to claim a fee arose for the Institute on receipt of the application. The applicant had incurred the cost on submission of the application and an accrual, estimated as necessary, should be taken up immediately. By its nature, the cost of registration was part of the cost of developing a product, that is, it was an intangible asset. However, the prohibition on capitalising intangibles developed or produced by the owner required the expense to be written off against income as incurred.

Supreme Tax Court judgment IV R 5/09 of September 8, 2011 published on November 16

Keywords

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