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By PwC Deutschland | 26 April 2012

Interest on tax overpayments taxable income of corporations

The Supreme Tax Court has held that the interest paid to a corporation on an overpayment of corporation tax is taxable income in contrast to the position of income tax payers up to 2010.

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There has long been a feeling of injustice within the taxpaying community over the view of the tax authorities of interest on tax overpayments as taxable income whilst disallowing the interest paid on underpayments as a deductible expense. The Supreme Tax Court confirmed the disallowance of the deduction in 2008, as far as the taxes themselves were not deductible expenditure, but held that corresponding interest income could not be charged to income tax. Its reasoning was that income tax was a private, not a business, expense of the payer and thus directly related receipts and payments were also private matters outside the sphere of income-earning activity.

The Supreme Tax Court mentioned in its 2008 resolution that its reasoning was irrelevant to corporations, as these did not, by definition, have a private sphere. It has now elaborated on this position in a case specifically challenging the dissimilar treatment of income and expense in the hands of companies. A company, or other corporation, does not have a private sphere by definition. Thus every transaction is business related, including the payment of corporation tax. Corporation tax and related payments including interest are disallowed as deductions from the corporation tax basis of assessment by a specific provision in the Corporation Tax Act. However, corresponding income is not covered by that disallowance and is thus taxable as income from the business. In further explanation the court pointed out that the intent of the interest charge on tax payments was to compensate the beneficiary for being unable to use the capital represented by the debt. Had there been no overpayment, the taxpayer would have been able to invest the amount at issue. This would have earned the company income subject to corporation tax. Taxing the interest received from the tax office thus ensured like treatment with interest received from other sources.

The Income Tax Act was changed in 2010 to specifically include interest on tax overpayments in the catalogue of taxable interest income items. There is thus no longer a distinction between natural persons and corporations.

Supreme Tax Court resolution I B 97/11 of February 15, 2012 published on March 14

Keywords

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