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By PwC Deutschland | 07 November 2012

Staff sales benefit to be based on local net retail price

The Supreme Tax Court has allowed employees to base the benefit in kind from their staff rebate on purchases of company goods on either of the two alternative methods laid down in the Income Tax Act, taking the lowest locally available retail price net of all rebates in both cases.

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The Income Tax Act taxes the benefit in kind enjoyed by employees from their cheapened staff purchases as the difference between the price paid by the employee and the local “usual retail price, net of usual price reductions”. However, a more specific rule applies to staff purchases of products manufactured or regularly dealt in by the company. This bases the benefit on the comparison between the price actually charged and 96% of the net price regularly offered by the employer or his nearest customer on the local retail market. This latter benefit is further reduced by a general allowance of €1,080 p.a. In most cases, this special provision for staff sales of company goods is more favourable to the employee, although it might not be if the nearest local retailer is able to charge more than his competitors. There is also debate on the definition of the net retail price when applied to motor vehicles. The finance ministry initially took the view that this meant the list price less 50% of the average discount given by retailers, but has since raised its discount allowance to 80%.

Two motor industry employees have challenged the tax office calculation of their benefits from their participation in the staff car purchase scheme run by their employers. The first claimed that his benefit should be reflect the full discount regularly offered by the relevant retailer, whilst the second added that he should be allowed to choose between the alternative calculations of the benefit. This would, in his view, allow him to claim a dealer’s rebate of up to 20% as “usual” and therefore tax-free. He substantiated the 20% with press reports.

The Supreme Tax Court has now held that the net retail price taken into the comparison should be after deduction of all rebates available to unrelated customers on their purchases of the goods in question. It has also held that the second, “company product” comparison is a variation on the first, intended to privilege qualifying employees. Thus the tax office cannot insist on it, if, in the circumstances, it runs to a taxpayer’s disadvantage. On the other hand, an employee’s presentation of locally available discounts must be specific to the goods, place and time at issue. Press reports formulated in general terms are inadequate as support for such claims.

Supreme Tax Court judgments VI R 30/09 and VI R 27/11 of July 26, 2012 published on November 7

Keywords

benefit in kind, rebate, staff sales