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By PwC Deutschland | 24 July 2013

No allocation of input tax to intended tax-free turnover

The Supreme Tax Court has held that the input tax on general expenses cannot be allocated between taxable and tax-free turnover if, in the event, no tax-free turnover is achieved in the year in question.

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An investment broker regularly achieved both taxable and tax-free turnover. The taxable turnover resulted from the provision of information on the investing public for the managers of investment projects and the tax-free turnover resulted from commissions paid by the investing public for shares in new project vehicles. In the year in question, the only two projects failed before they could be launched, leading to the exceptional situation that the only turnover resulted from consultancy fees and was taxable in its entirety. However, the failures also meant that the expenses exceeded income by a considerable margin, leading to a net VAT recoverable. The tax office claimed that allocating the entire input tax to the low taxable outputs was not appropriate and sought to allocate it on the basis of planned tax-free to actual taxable turnover. The taxpayer objected that a comparison between two figures could only be appropriate if they had been established on a common basis.

The Supreme Tax Court has now held that there can be no allocation of input tax to different types of turnover, if the entire turnover achieved fell into a single category. VAT was an annual tax to be established on the basis of the inputs and outputs for the year. An intention might be relevant for the initial monthly (or quarterly) returns, but these were only provisional and lost their meaning once the annual return had been filed. Accordingly, the annual return could only be based on the actual figures for the year. The court brushed aside the tax office objection that the income was not nearly sufficient to cover the expenditure with the remark that the tax office had ignored the possibility of loss.

Supreme Tax Court judgment XI R 25/11 of April 24, 2013, published on July 24

Keywords

input tax, tax-free turnover, taxable turnover