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By PwC Deutschland | 18 December 2013

No provision for the costs of following an official injunction until the deadline has passed

The Supreme Tax Court has held that no provision for the costs of following an official demand may be made until the deadline for complying with that demand has passed.

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A hirer of commercial aircraft provided for the future costs of complying with official instructions to modify certain items of the aircraft equipment. The tax office rejected the provision on the grounds that it was for future costs, which should not be taken to expense until actually incurred. The Supreme Tax Court has agreed with the tax office in respect of the cost of the modifications to be completed by a set date in the future, but agreed with the taxpayer in respect of those for which the deadline for completion had already expired at balance sheet date. The court's reasoning was that the modifications were rquired primarily in the public interest and therefore led to business expense when they were carried out. From the point of view of the business, their purpose was to ensure the future viability of the operation. If, however, the deadline had already passed, there was a current public duty at balance sheet date. The cost of meeting this duty was an expense of the period (s) then ending.

It should be noted that the modifications in question did not lead to any particular benefit for the business (other than its being able to continue operating) and were not capitalisable. Thus, in the circumstances, there was no need to reduce the provision in the light of an incremental future benefit.

Supreme Tax Court judgment IV R 7/11 of October 17, 2013, published on December 18

Keywords

aircraft, future costs, provision