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By PwC Deutschland | 19 March 2014

No refund of electric power tax on customer bad debt

The Supreme Tax Court has held that a electricity distributor cannot claim a refund of the electric power tax included in irrecoverable amounts billed to customers, whether on the grounds of unfair taxation or on grounds of unequal taxation by comparison with the refund available to wholesalers of fuel oils.

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A regional electricity company claimed a refund of the electric power tax implicit in its bills to customers that had since become irrecoverable through death or bankruptcy of the debtor. The customs office refused for lack of a legal provision and declined to accept arguments based on general principles. The Supreme Tax Court has now confirmed this position.

Electric power tax, like other excise taxes and duties, is constituted as a tax on the supplier to be passed on to the final consumer through its effect on the price charged. However, there is no direct link through the invoicing chain and the amount involved is not shown separately. The company argued that it regularly suffered from customer bad debts and that in these instances the purpose of the tax was missed, it being left with the burden. It should therefore be entitled to a refund under the provision in the Tax Management Act allowing a tax office to waive a tax charge otherwise due, though manifestly unfair in the circumstances. To this the court replied that customer bad debt was a general feature of the operating circumstances of electricity companies and that at some 0.12% the present company's bad debt ratio was not exceptional. A refund could not be granted under a provision intended for special circumstances, and a claim could also not be based on a perceived failure of tax purpose merely because the burden could not, in the event, be passed on. As the court pointed out, any business was faced with the possibility of not being able to pass on to its customers all excise duty borne on its costs, but this did not invalidate the concept.

The company then argued that it should be entitled to a refund under the equal treatment requirement of the constitution by analogy to the refund available to suppliers of fuel oils (petrol and diesel) on default of their customers. The court refused this, too, saying that the two sets of circumstances were not the same. The excise duty on petrol and diesel was some 50% of the price charged to the filling station (author's note: electric power tax is charged at a flat rate of €20.50/MWh which is well below 10% of the price charged to households) and the refund mechanism had been enacted specifically at the request of the oil lobby. In any case, the petrol duty refund was only available for individual amounts over €5,000.

Supreme Tax Court case VII R 8/12 of December 17, 2013 published on March 19, 2014

Keywords

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