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Energy tax rebate for aircraft not dependent upon official registration as airline

The Supreme Tax Court has held that an aircraft operator qualifies for energy tax refund on the fuel used for flying goods and freight for group companies even if it does not hold a licence to operate an airline.

A subsidiary company owned an aircraft which it used to ferry personnel and to deliver urgent packages for other group companies. It also used the aircraft for flight instruction on behalf of third parties. It flew as required and charged a set fee per hour based on flying time. It did not hold a licence to operate as an airline and was therefore unable to fly commercially for anyone except related parties. It applied for refund under the Energy Tax Act of the excise duty on the fuel consumed on its commercial flights. Customs refused as the company was not registered as an airline and could not fly commercially.

The Supreme Tax Court has now held that the company is entitled to a refund in respect of all flights involving the ferrying of goods or passengers charged at going commercial rates as provided by both the Energy Tax Act and the EU Excise Duties Directive. Neither instrument made the refund conditional upon the status of the applicant as an airline. On the other hand, flight instruction flights, test flights and flights to a maintenance centre did not qualify, as they were not directly concerned with the fare-paying transport of personnel or goods. Thus the flights for associated companies qualified for refund, provided only that they were carried out for consideration. This applied regardless of the association.

Supreme Tax Court judgment VII R 29/12 of May 20, 2014 published on August 6

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