

By PwC Deutschland | 03 January 2017

Depreciation of wind turbines not before transfer of risk

Tax depreciation for wind turbines presupposes economic ownership of the asset. A change in economic ownership requires that any risks are transferred to the purchaser/customer.

The Supreme Tax Court held that economic ownership of an asset is not transferred at the time it generates income but rather when the risk of accidental destruction and accidental deterioration of the asset passes to the buyer. The contractual agreements to that effect are crucial.

A German partnership (KG) operated a wind farm consisting of five wind turbines. Each wind turbine on a farm is a separate asset which is to be depreciated, or amortised, separately. In December 2003 the KG entrusted a GmbH with the turnkey construction of the turbines. The purchase price was payable in installments. The GmbH in turn engaged another company with delivery and installation of the wind turbines and also to take them into operation. According to the contract, the risk of accidental destruction and accidental deterioration of the turbines should not pass before installation was completed. The turbines were first put into operation in November 2004. In September 2005 the wind turbines were inspected and accepted by the GmbH. The KG wished to depreciate the turbines from November 1, 2004 based on a useful life of 16 years. The tax office declined and demanded depreciation to begin from September 2005. This was confirmed by the Supreme Tax Court.

Although possession of the turbines was with the KG as early as November 2004 and the KG took advantage (use) of the turbines already from that day, the underlying insurance contract provided coverage to start not before acceptance of the turbines. The court went on to point out that the supplier of the asset still had to bear the risks until final acceptance, namely in the event of technical problems which might occur during the trial operation of the wind turbines. That payment of the full purchase price was made as early as December 2004 did not have an impact on the economic ownership and hence not influence the judgment of the court

Supreme Tax Court judgment IV R 1/14 of September 22, 2016 published on December 7

Keywords

depreciation, economic ownership, wind farm, wind turbine