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By PwC Deutschland | 30 December 2022

Donation receipts for membership fees to music club not recognized for tax purposes

Membership fees paid to a charitable organization that promotes cultural activities which mainly serve the furtherance of recreational and leisure activities are not deductible as special personal expenses for income tax purposes.

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Background

The dispute concerned a non-profit (charitable) association (the plaintiff) that maintains a wind orchestra for adults and one for young people. The tax office was of the opinion that the plaintiff was not allowed to issue donation receipts for the membership fees. The Regional Tax Court of Cologne, however, which was appealed in the first instance, upheld the claim of the plaintiff. It considered the legal restriction for membership fees to be inapplicable because the association – apart from promoting leisure activities - also furthered the education and training of young people.

Decision of the Supreme Tax Court

The Federal Ministry of Finance joined the appeal proceedings. It did not make any request but supported the position of the tax office in the matter.

The Supreme Tax Court granted the appeal brought by the tax office by noting that the Regional Tax Court wrongly interpreted the relevant provision of Sec. 10b (1) Sentence 8 No. 2 Income Tax Act as not being applicable if the corporation pursues different purposes and one of them is not in the field to support leisure and recreational activities. The wording of that provision is sufficiently clear insofar as membership contributions to non-profit corporations that promote cultural activities primarily for recreational purposes are not deductible. It does not matter whether the corporation also promotes other (privileged) purposes in addition to the cultural activities described, since the requirement for the non-deductibility of membership fees is already fulfilled if such cultural activities are promoted at all.

By operating the amateur orchestra, the plaintiff promotes cultural activities that primarily serve the purpose of leisure. The Supreme Tax Court went on to say that it would hardly be justifiable if taxpayers could only claim their expenses for leisure activities for income tax purposes because the leisure activities are carried out by means of an association, while most taxpayers would have to cover their recreational expenses from taxed income.

Source

Supreme Tax Court judgment of 28 September 2022, case X R 7/21 published on 22 December 2022.

Keywords

charitable organization, donations, membership