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By PwC Deutschland | 18 January 2023

No input VAT deduction upon acquisition of luxury cars

The Supreme Tax Court dismissed the appellants' claim for input VAT for two luxury cars, on the basis that they were not allowable business expenditure for VAT purposes. An entrepreneur is only entitled to an input VAT deduction from an occasional purchase of a passenger car if there is an unambiguous connection with an intended business activity or if this contributes to expand his main line of business.

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Background

The plaintiff, a GmbH, is the managing general partner of a limited partnership (KG). As the general partner, it received a liability remuneration of € 2,500 per year. The sole shareholder and managing director of the GmbH as well as the sole limited partner of the KG is a natural person (P). P's business, which was initially operated as a sole proprietorship, was taken over by the KG by way of a spin-off.

In the year in dispute, the plaintiff acquired two automobiles for a total purchase price of €445,000 plus the statutory VAT. During a special VAT audit, it was found that both vehicles were not registered, locked, covered, and kept in a hall. The plaintiff claimed the input VAT on the purchase of these vehicles. This was rejected by the tax office, which held that, at the time of the acquisition of the vehicles in question, there had been no clear and unambiguous connection with an intended business activity of the plaintiff.

The lower tax court granted the claim. It reasoned that the plaintiff was entitled to deduct input tax because it was an entrepreneur when acting as the managing general partner of the KG.

Decision

The Supreme Tax Court disagreed with the conclusion of the lower tax court and decided in favor of the tax office. An entrepreneur is only entitled to an input tax deduction from an occasional purchase of a passenger car (which is not the entrepreneur's main line of business) if this represents an economic activity or if it otherwise directly, permanently, and necessarily expands the entrepreneur's main economic activity.

According to the opinion of the lower tax court, a mere intention to sell at the time of acquisition is sufficient to recognize an economic activity. The Supreme Tax Court, though, took a different view: The mere possibility of sale is not alone sufficient to assume an independent and separate economic activity. The acquisition of an item with the intention of generating profits by an increase in the value of the asset after a certain time is not sufficient. Rather, it is necessary that circumstances are demonstrated that the taxpayer acts like an entrepreneur. Thus, any attempts by the plaintiff to sell a vehicle six years after acquisition are negligible in the decision-making process. Moreover, the storage of an unregistered vehicle speaks in favor of its classification as a collector's item.

The Supreme Tax Court recalled that it is at the time of purchase that determines whether the vehicle is to be considered exclusively for business use. The plaintiff had from the outset no right to choose between an allocation of the cars either for business or for private purposes. Such a choice can only be made for the acquisition of assets which are used for mixed purposes. In the case of dispute, however, it had to be decided whether an item was acquired for an economic activity at all. In summary, the Supreme Tax Court concluded that there was not sufficient evidence to prove a sole business reason for the purchase of the vehicles which rendered the question of an allocation obsolete.

Source

Supreme Tax Court, decision of 8 September 2022 (V R 26/21), published on 12 January 2023.

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