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By PwC Deutschland | 16 July 2024

Accrual and taxation of unpaid bonus for shareholding managing director

A management bonus for the majority shareholder and managing director of a limited liability company (GmbH) which is not recorded as a liability in the certified annual financial statements is not immediately subject to income tax, even if it is mandatory under generally accepted accounting principles to record a liability to this effect in the (certified) financial accounts.

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Background

The plaintiff is the sole shareholder and managing director of the GmbH. According to Section 3 of the managing director service agreement, the plaintiff receives a monthly gross salary for his work. In addition, he is promised a management bonus of 20% of the annual profit payable one month after the annual financial statements are approved by the shareholders' meeting and limited to 30% of the fixed remuneration (i. e. the salary).

The agreed bonuses were neither paid to the plaintiff in the years in dispute (2015 to 2017) nor did the GmbH recognize corresponding liabilities in its annual financial statements.

The tax office held that the unpaid bonuses were also taxable as wages in the agreed amount of 20% of the previous year's profit. In the case of a shareholder managing director, bonuses are deemed to have been received at the time the balance sheet has been set up. This would not be conditional on the fact that the due amounts were actually paid, as it was at the disposal of the shareholder-managing director to demand his bonus payments at any time thereafter.

Decision

The Supreme Tax Court first stated that in general the management bonus payments are subject to income tax in full upon adoption of the respective annual financial statements if no other due date was agreed in the employment contract. The GmbH in the case of dispute, however, did not record the plaintiff's bonus claim as a liability in its annual financial statements. The shareholders' meeting of the GmbH approved these annual financial statements accordingly (and unchanged). Consequently, the disputed bonus claims were not due. A breach of duty or gross negligence on the part of the GmbH can cannot give rise to the accrual of a bonus claim that is not included in the approved annual financial statements.

It is therefore also irrelevant whether this omission was the result of an accounting error or due to other reasons, e. g. because the bonus commitment was consensually canceled prior to the accrual of the bonus claims.

The tax court of first instance had neither established why the bonuses were not paid out nor why the plaintiff's corresponding claims were not recorded as liabilities. To the Supreme Tax Court, the findings of the tax court are hence not sufficient to finally decide if the bonus claims had accrued to the plaintiff considering a waiver of the bonus claims which might be treated as a hidden capital contribution to the GmbH. A hidden capital contribution is a disguised benefit to the company from a shareholder acting in that capacity.

There are no indications to the Supreme Tax Court to determine whether the plaintiff and the GmbH - prior to the date on which the entitlement for payment was due - had mutually agreed to cancel the bonus commitment by the end of each year, or whether the plaintiff had waived the bonus claims that had already arisen. Only in the latter case would a hidden capital contribution of the bonus entitlement to the GmbH be assumed.

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The Supreme Tax Court has therefore referred the case back to the tax court for further hearings and final decision.

Source:

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Keywords

bonus share, management agreement