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By PwC Deutschland | 25 November 2024

MoF draft: Questions regarding the income tax treatment of fund establishment costs as acquisition costs

On 15 November 2024 the Federal Ministry of Finance (MoF) has published the draft of an explanatory circular on various issues relating to the tax treatment of fund establishment costs and has sent a corresponding draft circular to certain associations to comment by 12 December 2024.

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In response to an earlier judgment of the Supreme Tax Court of 26 April 2018 (case: IV R 33/15) the Act on the Further Tax Promotion of Electric Mobility and the Amendment of Further Tax Regulations (Finance Act 2019 – “FA19”) provided for the introduction of a new provision according to which fund establishment costs to be paid by the investor in connection with the acquisition of a fund unit are to be retroactively allocated to the acquisition costs of the assets acquired by the fund and are therefore not to be immediately deductible in full as operating expenses or income-related expenses (Section 6e Income Tax Act). They must be capitalized as acquisition costs of the investment objects if the initiator of the fund provides a pre-formulated contract, and the investors have no significant influence on this in their corporate affiliation.

The draft circular provides information and comments on the following main issues:

I. Scope of application

II. General principles

- Extension of the definition of acquisition costs - Section 6e (1) ITA

- Standard (pre-formulated) contract

- Significant possibility of influencing the contract pre-formulated by the project manager

III. Fund establishment costs – Sec. 6e (2) ITA

- Scope of fund establishment costs (extension of the definition of acquisition costs)

- Beginning and end of investment stage

IV. Allocation of acquisition costs in case of multi-year investment phases and several purchased assets

V. Requirements for the deduction of business expenses or income-related expenses

VI. The comments in this letter also apply to individual investments with only one investor and for entire projects (investments)

VII. Section 6e ITA and relation to Section 15b ITA dealing with the restriction of loss utilization for tax deferral models

VIII. The principles of this circular are to be applied in all open cases

Note: We will provide further detailed information on the various issues once the final version of the MoF-circular has been published.

Keywords

acquisition, investment funds