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By PwC Deutschland | 10. August 2011

No trade tax double dip within Organschaft

The Supreme Tax Court has refused an Organschaft subsidiary the trade tax property company exemption because it only let within the Organschaft.

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An *Organschaft* subsidiary held and managed business property let to other members of the *Organschaft*. Companies in property management generally qualify for trade tax exemption if they do not have other sources of income. The subsidiary claimed this exemption – granted in the form of a full deduction of the net rental income from trading income, i.e. from the trade tax base – and thus reported trading income of nil to be added to the trading income of the parent. The tax office contested this position, as it would effectively lead to a rental “double dip” within the *Organschaft* – the tenants’ rent costs would be allowed, but the landlord’s income would not be taxed – and has now won its case before the Supreme Tax Court.

The court held that within an *Organschaft* it was correct to establish the trading income of each subsidiary separately and then to accumulate the results in a grand total. Effectively, the members of an *Organschaft* were to be regarded as branches of the parent, so trade between them could not lead to additional deductions or add-backs resulting from third-party transactions. In this the court is consistent with a previous ruling exempting an *Organschaft* from the interest add-back on internal charges.

Supreme Tax Court judgment X R 4/10 of May 18, 2011 published on August 10

Schlagwörter

Organschaft, double dip, property company