

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.**

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