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Recultivation costs not rent for trade tax

The Supreme Tax Court has held that the costs of recultivating a quarry when borne by the operator are not part of the rent paid to the owner and do not therefore fall under the same trade tax disallowance.

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50% of the rent paid for immovable property is seen as a substitute for interest and is thus added to the total interest cost, one-quarter of which is to be disallowed for trade tax. The level of rent disallowance has varied during the course of trade tax history, although the court definition of rent has remained roughly constant at all amounts paid by the tenant to cover costs that tenants typically bear. A tax office used this definition to treat the allocations to the recultivation provision of a quarry as “rent”, its argument being that the operator was required, as was customary, to recultivate the land once the quarry had been exhausted, before returning it to the owner. The Supreme Tax Court has accepted that an allocation to a provision can be treated as an actual expense, but has refused to follow the tax office’ view of recultivation costs as “rent”. Its argument was that the recultivation obligation is a public duty resting on both the quarry operator and the owner of the land. If landlord and tenant are equally responsible in their different capacities, one cannot conclude that the tenant bore the cost on behalf of the landlord. If he bore the cost in discharge of his own obligation, the expense was not “rent”. This still applied if his discharge of his obligation also relieved the landlord.

Supreme Tax Court case reference IV R 54/09, judgment of June 21, 2012 published on July 18

Schlagwörter

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