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By PwC Deutschland | 27. April 2022

Land tax charged to lessee is part of rent and subject to trade tax add-back

In a recently published decision, the German Supreme Tax Court held that land tax owed by the landlord but contractually passed on to the lessee is part of the rent and must therefore be added back in part to trading income subject to trade income tax.

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Background

According to Sec. 8 No. 1 letter e Trade Tax Act (TTA) one-eighth of the total of the rent paid for the use of immovable fixed assets in the ownership of another is added back to the trading profit subject to trade income tax insofar as the total exceeds €100,000.

The appellant, a GmbH (limited liability company), had rented a company building from its shareholders. In the lease contract, it was agreed that the GmbH, as lessee, would bear the land tax. The tax office was of the opinion that the property tax contractually apportioned and charged to the appellant was part of the rent payable and therefore had to be added back for trade income tax purposes. The Regional Tax Court of Cologne did not concur and upheld the claim.

Decision of the Supreme Tax Court

The Supreme Tax Court, however, took a different view and allowed the appeal of the tax office.

The term rent and leasehold interest in Sec. 8 No. 1 letter e TTA must be interpreted in economic terms. Hence, the rent also includes expenses of the lessee (tenant) which would have to be borne by the landlord but are contractually charged to the lessee. This was the case here. The debtor of the property tax is the owner, i.e., the landlord. Under civil law, however, the property tax may be passed on to the tenant. It is thus included in the rent and it follows from this that it also must be added back for trade income tax purposes. The add-back cannot therefore be reduced in such a way that the tenant bears costs which would have to be taken by the lessor (landlord) and that the landlord thereby accepts a correspondingly reduced rent in return.

Source:

Supreme Tax Court decision of 2 February 2022 - III R 65/19 published on 21 April 2022.

Schlagwörter

add-back, land tax, property rental, trade tax addback