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No trade tax addback of rent paid for exhibition space at trade fair

There is no addback for trade tax purposes for amounts paid by a German company for grounds used in exhibition halls of trade fairs. The costs for renting such a booth can only lead to an add-back if the exhibition ground would be part of the fixed assets of the exhibiting company and under the assumption that it was owned by the exhibiting company.

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According to Sec. 8 no. 1 e Trade Tax Act one quarter of the total of (currently) one half of the rent paid for the use of immovable fixed assets in the ownership of another must be added back to the trading profit subject to trade income tax. In a case before the Supreme Tax Court the question arose if this would also apply for rentals paid to the trade fair company for the provision and use of grounds in exhibition halls.

The plaintiff is a limited liability company (GmbH) whose business is the development, manufacture and sale of machinery. It does not make the sales to the customers directly, but through an established network of traders. In the years in dispute, the plaintiff repeatedly and regularly rented exhibition space and premises at certain trade fairs in order to present its products there.

The rental expense was added back to trading profit by the tax office under the addback provision of the Trade Tax Act. The Supreme Tax Court, however, found that the add back is not justified.

An addback under the trade tax regime presupposes that the assets were to be fixed assets of the lessee had he been the owner himself (fictitious approach). However, this does not apply for the GmbH, since there would have been no reason for it to keep the specific exhibition ground constantly ready and for permanent use.

The Supreme Tax Court went on to say that, in order to be classified as a fixed asset, it is necessary to determine whether the business purpose of the company in question and the specific operational circumstances (e.g., the importance of the trade fair presence within the distribution system used by the company) require the permanent presence of a corresponding ground space. This does not hold true for the GmbH in the case of dispute, since there would be no reason for it to keep the specific exhibition ground constantly ready and for permanent use in light of the occasional short-term rentals and the specific business purpose of the plaintiff.

Reference

Supreme Tax Court, decision of 23 March 2022 (III R 14/21), published on 23 June 2022.

Schlagwörter

trade fair, trade tax addback