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By PwC Deutschland | 29. April 2024

Two-step trade tax allocation if permanent establishment is based in more than one municipality

The trade tax allocation of permanent establishments extending over more than one municipality ("multi-municipality permanent establishments") must by way of typification consider the specific character and nature of the permanent establishment and the interests of the municipalities involved. The Supreme Tax Court held that, in the case of permanent establishments constituted through a natural gas pipeline, the volume of natural gas supplied in the respective communities can be a suitable approach for allocation of the trade tax.

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Background

Trade tax is due to the municipality in which the trading facility is located. If the business has permanent establishments in more than one community, the tax measure is shared proportionally. Each then taxes its own share at its own local rate - Section 28 (1), Sentence 1 Trade Tax Act (TTA). The trade tax assessment amount is allocated based on the specific keys provided for in Sec. 29 TTA. The principal trade tax allocation formula is based on the ratio of the sum of the total wages paid to the employees to the wages paid to the employees working in the permanent establishments in the individual municipality - Sec. 29 (1) TTA.

Case of dispute

A municipality (the plaintiff) in whose local area natural gas reached Germany through a pipeline and was fed into the German long-distance gas network by using a compressor station objected against the trade tax allocation notice issued by the tax office for 2012. The plaintiff argued that, in the case of multi-municipality permanent establishments, the operating facilities located there must always be included as a yardstick for the allocation in addition to the principal trade tax allocation formula (ratio of the sum of the wages).

The tax office treated the existing natural gas pipeline network as a **multi-municipal business establishment** according to Section 30 TTA. In a first step (principal allocation), the trade tax assessment amount was apportioned to the various municipalities based on the wages paid. In a second step (ancillary allocation), the portion attributable to the relevant permanent establishment was split in equal parts between the share of wages paid and the gas sales volume.

Decision

The Supreme Tax Court confirmed the two-stage approach taken by the tax office and rejected the appeal of the plaintiff.

Not only was the tax office correct to allocate the trade tax based on the two-step calculation (principal and ancillary allocation method) but also by allowing the quantity of natural gas supplied to be included in the tax allocation formula. Finally, the 50:50 apportionment of the sum of the wages paid to the employees and the quantity of gas supplied seems to the Supreme Tax Court appropriate and not against the intention of the law.

If the permanent establishment extends over several municipalities, the trade tax must be apportioned to the municipality using the two-stage method, while adhering to the special local circumstances and conditions, but also by taking into account the municipal burden arising from the presence of the permanent establishment.

According to the required uniform approach to be taken by way of typification, it is in any case not inappropriate to assume a higher burden for the municipality if the quantity of gas supplied in the municipal area is higher.

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Reference:

Supreme Tax Court, decision of 14 December 2023 (IV R 2/21), published on 25 April 2024.

Schlagwörter

trade tax charge