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By PwC Deutschland | 11. Juni 2025

MoF: Non-application of Supreme Tax Court judgment on combination of business operations of public bodies

In a current circular the Federal Ministry of Finance (MoF) stated that it does not follow a judgment of the Supreme Tax Court on the requirements for the combination of business operations of public bodies with regard to Section 4 (6) sentence 1 Corporation Tax Act.

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I. Background

In its decision of 29 August 2024,**the Supreme Tax Court** (STC) held that the economic activities of a legal entity must generally be assessed separately for tax purposes to avoid any distortions of competition. It follows from this that a combination in accordance with Section 4 (6) sentence 1 Corporation Tax Act (CTA) and a potential offsetting of profits and losses is only possible if the requirements for combination are met between all business operations of the public body whose income is to be determined and assessed jointly (more information on the decision and the wording of Section 4 CTA to be found in our **blog post of 25 November 2024**).

This decision of the STC was some cause for alarm insofar as it was contrary to previous administrative practice and dismissed the more favorable combination of several business operations of public bodies (so called „chain combination“ or successive combination in which several business operations of the public body are combined).

Up to now, the MoF has explicitly not called for any organizational integration in accordance with Section 4 (6) CTA but rather the submission of a uniform tax return for all of the various business operations. Neither the wording of Section 4 (6) sentence 1 CTA nor the legislative background and history indicate a requirement for organizational integration.

II. The MoF circular

The MoF does not share the interpretation of the Supreme Tax Court.

According to the result of the discussion with the supreme tax authorities of the Federal States, the principles of the aforementioned decision are not to be applied beyond the individual case decided.

Section 4 (6) sentence 1 CTA is meant to cover not only the business operations of public bodies which already exist within the meaning of Section 4 (1) CTA but also a new business operation which – in a first step – emerged from the application as a result of a combination. In a second step it must then be examined whether it can be combined with other business operations.

Section 4 (6) sentence CTA is understood to cover not only the business operations of public bodies existing from the outset within the meaning of Section 4 (1) CTA but also a new one that only arises in a first step after application of precisely these combining principles and which must then be examined in a second step to determine whether it can be combined with other business operations.

In the opinion of the MoF this appears necessary already for reasons of equal treatment because there is no objective basis as to why business operations of public bodies combined in accordance with Section 4 (6) sentence 1 CTA should be subject to stricter requirements than original business operations of public bodies.

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MoF, circular of 6 June 2025 (IV C 2 - S 2706/00061/002/081).

Schlagwörter

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