By PwC Deutschland | 31. August 2025

No extended trade tax deduction in case of en bloc sale of property in third year after acquisition

A sale of five multi-family properties at the same time (“en bloc sale”) in the third year after acquisition is detrimental to the extended trade tax deduction as it violates the established three-property limit within a five-year period. This was decided by the Supreme Tax Court in a most recent judgment.

Background

Enterprises, which exclusively manage and use their “own real estate”, may - upon application - make a deduction of that part of the trading income which relates to the management and use of their own real estate. This alternative (i. e. the extended deduction) takes the place of the deduction under Section 9 No. 1 1st Sentence Trade Tax Act (TTA) as regards the lump sum deduction of 1.2% of the assessed value of the real estate.

The GmbH (plaintiff), which had been incorporated just one month earlier, acquired five developed properties in July 2016. In addition to the plaintiff, two other GmbHs belonging to the same group also acquired further real estate from the same sellers at the same time. The corporate group was active in the field of new real estate construction, property development, and property management. In August 2018 (the year of dispute), the plaintiff sold all five acquired properties to a third party GmbH.

The plaintiff believed the profit from the sale of the five properties fell under the extended property deduction pursuant to Section 9 No. 1 Sentence 2 TTA and was therefore not subject to trade tax. The tax office did not agree. The tax court of first instance dismissed the action.

Decision

The Supreme Tax Court confirmed the former decision. The tax court was correct to assume that the plaintiff was not entitled to the extended trade tax deduction in the year of dispute because its activity was commercial in nature and no longer constituted the management and use of own real estate. Exceeding the three-property limit indicated that the limits of personal asset management had not been observed. The sale to the same purchaser under a single contract (en bloc sale) did not make any difference. Also, albeit for other reasons, the plaintiff cannot apply the lump-sum deduction pursuant to § 9 No. 1 sentence 1 TTA in the version applicable in the year of dispute.

The intention behind Section 9 No. 1 Sentence 2 TTA is to grant the extended deduction to companies that generate commercial income solely by virtue of their legal form (i. a., as in the case of corporations) if they exclusively manage and use their own real estate or, in addition to their own real estate, their own capital assets - i.e., if their activities do not go beyond the private asset management. The extended deduction for corporations should bring them on equal footing with taxpayers who only engage in private asset management.

The requirement of sustainability for partnerships within the meaning of Section 15 (2) of the Income Tax Act ("an independent, sustainable activity undertaken with the intention of making a profit") is not relevant for corporations (here: GmbH) in order to determine whether its activities exceed the scope of the mere management and use of its „own real estate“ within the meaning of Section 9 No. 1 sentence 2 TTA.

Source:

Supreme Tax Court decision of 3 June 2025 III R 12/22 - published on 28 August 2025

Schlagwörter

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