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By PwC Deutschland | 19. Oktober 2025

No trade tax exemption for profits from the sale of educational institutions

In a recent judgment, the Supreme Tax Court decided that the sale of educational institutions (training faculties) is not a service directly serving the purpose of schooling and education and is therefore not exempt from trade tax.

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Background

The plaintiff, a limited liability company, operated educational institutions in which it taught individual students on the basis of private law. In 2017 (the year of dispute), the plaintiff sold all assets, employment relationships, and contractual relationships belonging to the educational institutions (asset deal) to S-GmbH. After the acquisition, S-GmbH continued to operate the educational institutions without interruption vis-a-vis third parties using the acquired assets and contractual relationships in the same manner as before. The tax office took the plaintiff's profit from the sale as trading income subject to trade income tax because it was not exempt from trade tax as services provided by general or vocational training institutions. The Düsseldorf Tax Court agreed and rejected the appeal brought by the plaintiff.

Decision

The Supreme Tax Court also had no good news for the plaintiff. The tax court was correct to decide that the sale of educational institutions does not directly serve the purpose of schooling and education within the meaning of Section 3 No. 13 Trade Tax Act (TTA).

As regards the sale in question, the requirement to directly serve the educational purpose is not met and the capital gain is subject to trade tax in full. The profit from the sale of a business in principle is part of the trading income due to the legal form of the plaintiff as a corporation. The Supreme Tax Court had already decided earlier that the profit from the sale of a business, part of a business, or a business shareholding, always forms part of the business (trading) income of corporations (judgment of 5 September 2001 - I R 27/01).

By selling all its assets, employment relationships, and contractual relationships of the educational institutions, a corporation does not provide a service that directly supports the purpose of school as the sale precedes the actual educational activity.

Through the sale the plaintiff firstly (and only indirectly) allowed the teaching services to be provided by S-GmbH as the purchaser in a second step. In this respect, the plaintiff also pursued an economic success independent of the school and educational services which was directed towards obtaining the sales price.

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The plaintiff's contention that Section 3 No. 6 TTA exempts corporations that, according to their statutes and actual management, serve exclusively and directly charitable purposes (Sections 51 to 68 Fiscal Code) if they do not engage in any economic business operations was also not relevant for the Supreme Tax Court. These provisions do not apply in the case of dispute because the plaintiff's objective in selling the educational institutions was to secure the retirement pension of its managing partner. This is contrary to Section 55 Fiscal Code on tax-privileged charitable purposes according to which (quote) “the advancement or support shall be provided altruistically if it does not primarily serve the corporation’s own economic purposes, for instance commercial or other business or other profit-making purposes (…)“.

Source:

Supreme Tax Court, decision of 22 May 2025 V R 32/23 - published on 16 October 2025.

Schlagwörter

educational course, trade tax exemption