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By PwC Deutschland | 08. Dezember 2025

Extended trade tax deduction in case of property rental together with operating equipment (freight elevator in a department store)

Operating equipment is not part of the real estate for valuation purposes, its joint rental together with the real estate is harmful to the extended trade tax deduction pursuant to Section 9 No. 1 Sentence 2 Trade Tax Act. This also applies if the operating facility is permanently attached to the land or building. The only exception to this rule is if the joint-letting of the operating equipment permanently attached to the land or building is considered a secondary activity that does not affect the tax benefit, the Supreme Tax Court said in a most recent judgment.

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Background

The plaintiff, a limited liability partnership, owned various properties and was per se commercially active until 2005. Since then, it has been solely engaged in leasing of properties and has continued its operations by way of a leasing of business operations. Part of this rental activity included the freight elevators (as operating equipment) which were permanently attached to the building.

One of the disputes before the tax courts was whether the continuation of the business by way of lease of a business was itself detrimental to the extended trade tax deduction pursuant to Section 9 No. 1 sentence 2 Trade Tax Act (TTA) and, furthermore, whether the business lease which included the business equipment should prevent the extended trade tax deduction.

Decision

Operating equipments are not considered real estate for valuation purposes and a lease, even to an insignificant extent, together with the relevant property is harmful for the extended trade tax deduction.

However, in the case in dispute, the joint letting of the freight elevator does not, as an exception, affect the trade tax relief because it serves the administration and use of the taxpayer's own real estate in the stricter sense and is an essential part of the economically sensible management and use of the taxpayer's own real estate.

The suitability of the rental property in question is characterized by its location in a downtown area and ideal for use as a warehouse. The property is developed with a commercial building that has sales and storage areas on various floors and is equipped with a loading ramp, a passenger elevator, and a freight elevator which was already installed when the building was constructed in 1987. The plaintiff had operated a department store in the property until 2005. Accordingly, the building is designed in a pragmatic, efficient, and functional manner for the operation of a multi-story department store or warehouse.

On this basis, the necessity of jointly leasing the freight elevator for the purpose of economically sound property management and use cannot be denied because leasing as a department store or warehouse is only possible if the building has a freight elevator. This is the only way to ensure the proper transport of goods between the sales and storage areas spread over several floors. Ultimately, the freight elevator is part of the typical infrastructure of a multi-story department store or warehouse that must be provided by the landlord for technical or structural reasons.

According to Section 11 (1) sentence 3 no. 1 TTA, the trading income (...) of partnerships is to be reduced by a tax-free amount of EUR 24,500. In that regard, the Supreme Tax Court notes that the deduction of the tax-free amount from the positive trading income

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shall only be applied after taking into account any unutilized losses. Therefore, any loss relief shall also be possible if the trading income is below the tax-free amount.

Source:

Supreme Tax Court, decision of 25 September 2025 (IV R 31/23), published on 4 December 2025.

Schlagwörter

extended trade tax deduction