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By PwC Deutschland | 24. September 2026

Tax treatment of a market development payment to a related foreign company

Market development grants paid to a foreign associated company may comply with the arm’s length principle and qualify as deductible business expenses where they are intended to increase licence income and therefore do not constitute withdrawals. Expenditure on foreign market development expenditure may constitute the acquisition cost of an intangible asset comparable to goodwill, including where that asset is created for the first time through an acquisition for consideration.

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Facts

The plaintiff (a partnership – OHG), part of the "A" corporate group and global owner of the "A" trademark, licensed the trademark brand to foreign subsidiaries. In 2004, the plaintiff paid a "market development payment" to its French central company (A SAS) to support restructuring and continued operation of the French central company's French distribution subsidiaries. The expenditure was justified by a profitability calculation document projecting recovery through future franchise fees over 15 years. The plaintiff recorded this payment as an intangible asset ("right to continued operation of the French business") and amortised it over 15 years. The tax authorities challenged this, viewing the payment as a non-deductible withdrawal benefiting the group, not a business expense, and questioned its compliance with the arm's length principle. The Tax Court originally sided with the tax authorities, but the plaintiff appealed to the Supreme Tax Court.

Judgement

Business Motivation: The Supreme Tax Court found the payment to be a business-related expense, not a partner withdrawal. It emphasized that the plaintiff had a direct economic interest in securing and growing future franchise revenues in the French market, regardless of the lack of direct contractual ties with the distribution subsidiaries. Thus - rejecting the findings of the lower court - the Court held that a (direct) business-related reason for a payment must not be disregarded only on the grounds that the payer merely has an indirect contractual relationship with the recipient company.

Arm's Length Principle: The Supreme Tax Court held that the agreement respected the arm's length principle, rejecting the claim that the expenditure was non-arm's length due to there being neither direct contractual relations nor collateral. (The lower court had not objected to the amount of the payment.) The plaintiff's interest in long-term franchise income justified the payment, which was supported by a profitability calculation and was at arm's length. Nor did the Court consider it problematic that the plaintiff ultimately bore the French market development costs alone, rather than sharing them with the French distribution companies. Where market development measures are primarily aimed at enhancing or increasing the profile of a trademark, the associated costs must (essentially) be borne by the trademark owner.

Capitalization and Amortization: The plaintiff had acquired a market development right which constituted an asset similar to business goodwill. This created a sundry (economic) benefit, i.e. the market development of a specific market (France) and thus the future expected profit potential of that market. In particular, the Court noted that, under the agreement, the plaintiff was entitled to require the French distribution companies to intensify their market development efforts if they failed to meet the agreed turnover targets. Furthermore, the business in France had to be continued for at least 15 years, whereby the plaintiff would have been able to reclaim part of the payment in the event of early cessation of operations. This therefore constituted a secure legal position for the plaintiff. This "right to continue operating the French business" was "economically exploitable" and could be transferred with the business. The Court had no doubt that it had

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an independent value from the perspective of a potential purchaser of the business. As a result, the plaintiff was entitled to capitalise and amortise the payment under Section 6 (1) No. 1 and Section 7 (1) Income Tax Act.

Correction of Lower Court: The Supreme Tax Court found that the lower court erred by not properly considering the plaintiff's strategic interest in the French market, resulting in a flawed assessment of business motivation and arm's length compliance.

Source

Supreme Tax Court judgment of 20 May 2026, IV R 37/23 published on 24 September 2026.

Schlagwörter

arm's length, business expense, partner withdrawals, partnership