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By PwC Deutschland | 23. November 2026

Business split and extended trade tax deduction for parent company upon provision of roof space to subsidiary

In a recently issued decision, the Supreme Tax Court held that the provision of roof space for the operation of photovoltaic systems as part of a business split from one corporation (parent company) to another corporation (subsidiary) precludes the parent company from claiming the extended trade tax deduction available to businesses exclusively administering and using their own property under Section 9 no. 1 2nd Sentence of the Trade Tax Act.

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I. Extended trade tax deduction

According to Section 9 no. 1 2nd Sentence of the Trade Tax Act (TTA), in place of the deduction under Section 9 No. 1 1st Sentence TTA (lump sum deduction of 1.2% of the assessed value of the real estate), enterprises, which exclusively manage and use their own real estate or their own capital assets in addition to their own real estate, may apply for (extended) deduction with respect to the part of the trading income which relates to the management and use of their own real estate.

II. Summary of the decision

Overall, the **Supreme Tax Court** clarified the conditions under which the provision of roof space for photovoltaic systems results in an operational integration between the property-holding entity and the operating company. According to the court, such material interdependence can also arise from the granting of purely obligatory legal rights; this includes contractual rights of use to roof space for the operation of photovoltaic systems. The key factor, however, is whether the rights of use constitute an essential business asset for the operating company. This is not the case if the operating company primarily acts as a service provider, revenue from the photovoltaic systems accounts for less than 1% of its total revenue, and the operation of the photovoltaic systems is not essential to the company's other business areas.

III. Background

The plaintiff, a real estate management company organized as a corporation, did not employ any staff of its own. It held all shares in W GmbH, a pure intermediate holding company. W GmbH, in turn, was the sole shareholder of S GmbH, which was formed in 2005. S GmbH primarily provided intra-group services for the management of residential and commercial buildings. In addition, it handled group financing and cash pool management within the corporate group. For trade tax purposes, a tax group existed between those companies in the years 2008 through 2010 (years in dispute).

In 2008, S GmbH began operating photovoltaic systems. For this purpose, it leased roof space from both the plaintiff and building owners outside the group. It fed the electricity generated into the public power grid for remuneration. Whereas it did not yet generate any revenue in 2008, photovoltaic revenue accounted for 0.38% of its total revenue in 2009 and 0.71% in 2010.

The tax office denied the extended trade tax deduction for the years 2008 through 2010. It assumed that the transfer of roof space constituted a business split between the plaintiff and S GmbH and that the plaintiff was therefore engaged in genuine commercial activities from the outset. The lower tax court upheld the plaintiff's claim in substantial part.

IV. Decision

For the year 2006 the Supreme Tax Court rejected the tax office's appeal as unfounded. As regards the years 2009 and 2010, the lower court's decision was reversed and returned for a new hearing and decision.

On the main issue of the dispute, the Supreme Tax Court upheld the decision of the lower tax court: In the

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absence of an operational connection, the use of the roof areas did not constitute a business split and therefore did not preclude the extended deduction from this point of view.

According to the Supreme Tax Court, it does not follow from its case law regarding business branches ("*Filialrechtsprechung*") that every asset assigned to the operating company that serves any operational function within it constitutes a material operational interdependence. It is not sufficient for the asset to be essential to a part of the business that, when viewed as a whole in the context of the operating company, is of merely secondary importance. Rather, the decisive factor is the economic significance of the asset for the operating company as a whole whereby the analysis is based solely from the perspective of the operating company and not on that of the property-owning company or the entire tax group.

Note: The so called "*Filialrechtsprechung*" refers to a line of rulings by the Supreme Tax Court where a single rented property counts as an essential business asset (*wesentliche Betriebsgrundlage*) in a multi-branch business.

V. Reasons for referral to lower tax court

In the opinion of the Supreme Tax Court, the referral to the lower tax court for the years 2009 and 2010 was necessary because the lower tax court, based on its previous findings, had wrongly denied that the (double) tax group status had any impact on the scope of the extended trade tax deduction. Business transactions within a tax group generally must not result in add-backs and deductions. If only individual assets within the tax group are made available for use, and the requirements for the extended deduction are met apart from this, a correction must be made to ensure that the parent company does not receive an unjustified tax benefit.

Based on the findings of the lower tax court, the Supreme Tax Court was prevented from making a final judgment as to whether the transfer of the roof space for consideration within the tax group had been properly taken into account. The denial of a business split does not yet constitute a final decision regarding the scope of the extended deduction for these two years in dispute.

Source: Supreme Tax Court, decision of 13 August 2026 (III R 12/25) – published on 19 November 2026.

Schlagwörter

business property, trade tax group, transfer of assets