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No trade tax disallowance of expenses of earning tax-free dividends within an Organschaft

The Supreme Tax Court has held that there is ultimately no trade tax disallowance of expenses directly connected with tax-free dividend income earned through an Organschaft subsidiary.

A German Organschaft parent held a 70% stake in an Italian S.p.A. through its German subsidiary. Had it held the investment directly, the dividend would have been free of corporation and trade tax against a standardised 5% expense disallowance to reflect the directly connected expenses. The actual directly connected expenses of the investment – such as financing and supervision costs – are deductible in full. The Supreme Tax Court has now come to the conclusion that the trade tax expense disallowance is effectively nullified where the investment is held through an Organschaft subsidiary by a clash of wording between the rules for corporation tax income computation and the provisions for trade tax adjustments. That this conclusion leads to a tax advantage for those investing abroad through an Organschaft subsidiary over those making direct investments was recognised by the court, but accepted as the two situations “were not comparable”.

Supreme Tax Court judgment I R 39/14 of December 17, 2014 published on March 18, 2015

Keywords

directly connected expenses, tax-free dividend, trade tax disallowance