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By PwC Deutschland | 15 March 2016

Constitutional complaint against trade tax interest add-back rejected

The Constitutional Court has refused to try a case against the trade tax interest add-back for want of a detailed explanation of its complaint by the referring court.

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The Trade Tax Act disallows one-quarter of all interest expense over €100,000 as a deduction from taxable income. Interest in this connection includes the interest element inherent in charges for rented or leased assets. A filling station operator protested that this add-back was unconstitutional in that it breached the principle of taxation according to the ability to pay by disallowing a legitimate business expense. A lower tax court adopted this position as its own and referred the matter to the Constitutional Court for a final decision. The Constitutional Court has, however, refused to tray the case because the referring court failed in its duty to explain its complaint in detail. There has always been some form of interest disallowance for trade tax, justified on the basis of trade tax as a charge on business for the benefit of the community for the use made of the local infrastructure, and the various disallowances – effectively increasing taxable income – have been the subject of a number of Constitutional Court and Supreme Tax Court cases in the past. There is also a wealth of literature on the subject. The referring court was duty bound to take existing case law and professional literature into account when coming to its conclusion. Merely citing an abstract principle was wholly insufficient.

Constitutional Court resolution 1 BvL 8/12 of February 15, 2016

Keywords

Trade tax interest, interest add-back, interest expense