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By PwC Deutschland | 18 May 2016

No de minimis exclusion for negative interest deduction for trade tax

The Supreme Tax Court has held that the €100.000 de minimis exclusion from the trade tax add-back for interest applies to positive amounts only.

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One-quarter of interest expense including interest costs implicit in leasing and royalty expenses is disallowed for trade tax. However, the first €100.000 in each year is allowed in full. The profit share falling to a silent partner ranks as interest for this purpose. Thus, the interest add-back can be negative, i.e. can increase the trade tax loss for the year, wherever a silent partner is required to assume a loss from operations.

In a case involving small amounts, the tax office refused to accept a net “negative interest” claim on the grounds that it was lower than €100.000. In the view of the tax office, the *de minimis* amount of €100.000 applied to both positive and negative sums and thus reduced both positive and negative add-backs. However, the Supreme Tax Court has now held in favour of the taxpayer that the exclusion applies to positive sums only. The official explanation of the provision laid before Parliament at the time of its enactment described the amount as an “allowance for the relief of smaller and medium-sized businesses”. This wording implies application of the provision to positive amounts only, both because an “allowance” necessarily reduces taxable income rather than increasing it, and because refusing the negative interest add-back for smaller amounts would burden rather than relieve the smaller business in particular.

Supreme Tax Court judgment I R 5/15 of January 28, 2016 published on May 18

Keywords

de minimis, interest, trade tax