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By PwC Deutschland | 12 February 2020

# Supreme Tax Court discontinues proceedings with regard to the referral to the European Court of Justice on the State Aid character of tax privilege for public undertakings

**The Supreme Tax Court had asked (decision of 13.03.2019 – I R 18/19) the European Court of Justice (ECJ) whether Article 107(1) Treaty on the Functioning of the European Union (TFEU) was to be interpreted as meaning that State Aid existed where, under the rules of a Member State, (permanent) losses - incurred by a company from an economic activity maintained without receiving sufficient remuneration to cover its costs - are in principle to be regarded as hidden dividend distributions and accordingly may not reduce the profit of the company, but, in the case of companies in which the majority of voting rights are held directly or indirectly by legal persons governed by public law, those legal consequences are not to be applied to permanent losses arising if such “public” corporations carry on the activities for reasons of transport, environmental, social, cultural, educational or health policy.**

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By an order dated 29 January 2020 the appeal proceedings on which the order for reference is based were discontinued, after the appellant in the dispute withdrew the appeal.

This means that (for the present) there will be no clarification of the question of whether the tax privilege under Section 8 (7) Sentence 1 No. 2 CTA constitutes selective aid to certain undertakings or for the production of certain goods and is therefore to be considered State Aid subject to authorisation within the meaning of Article 107(1) in conjunction with Art. 108 (3) TFEU. Due to the appellant's withdrawal of the appeal the order for referral to the ECJ has no basis. However, this does not affect the right of the European Commission on its own initiative, to consider the compatibility of this tax privilege with the internal market within the framework of the procedure laid down for this purpose in Article 108 TFEU.

**Source:**

Decision of Supreme Tax Court of 29 January 2020 (I R 4/20) published on 6 February 2020.

**Keywords**

permanent losses, public service companies, state aid