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By PwC Deutschland | 27 January 2025

No extended trade tax deduction if entire property is sold during assessment period

According to a judgment of the Supreme Tax Court, the extended trade tax deduction pursuant to Section 9 No. 1 Sentence 2 of the Trade Tax Act is not available if a corporation has sold all of its real estate one day before the end of the assessment period (in the case of dispute: “at the beginning of 31 December”) because it was not exclusively and continuously active in real estate management during the whole assessment period.

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Background

According to Section 9 No. 1 Sentence 2 of the Trade Tax Act (TTA) enterprises which exclusively manage and use their “own real estate”, may - upon application - make a deduction of that part of the trading income which relates to themanagement and use of their own real estate. This alternative (i. e. the extended deduction) takes the 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).

The plaintiff (a GmbH) - who was active in property management - had sold its sole and last property with effect “from the beginning of December 31”. Apart from the property management activity carried out until then the GmbH maintained two bank accounts which had a considerable credit balance but were non-interest bearing. The question therefore arose as to whether the plaintiff had carried out a harmful subsequent activity on 31 December (i.e. for one day). The tax court of first instance was of the opinion that only those subsequent activities are harmful in the aforementioned sense that are relevant for the earning of income. The mere holding of non-interest-bearing receivables and their collection which does not generate (capital) income within the meaning of Section 20 Income Tax Act is not detrimental to the extended trade tax deduction.

Decision

The Supreme Tax Court, however, confirmed the view of the tax office.

The entrepreneur must pursue the preferential activity in Section 9 No. 1 Sentence 2 TTA during the entire assessment period (period of levy). This follows from the nature of trade tax as an annual tax.

The extended deduction cannot be granted on a pro rata temporis basis. If a non-qualifying activity is carried out during any part of the assessment period the requirements for the extended deduction are not met and do no longer apply for the entire assessment period. The prerequisite of exclusive management and use of own real estate is therefore not met if an entrepreneur sells the last or his only property before the end of the tax period and thereafter only carries out other activities.

For these reasons, the plaintiff did **not exclusively** engage in the management and use of its own real estate because it failed to carry out the tax-privileged activity on one day during the assessment period (on 31 December 2016). In lieu of other exceptions (e.g. for technical reasons) the condition of exclusivity is not met, and the plaintiff could not benefit from the extended trade tax deduction.

However, the plaintiff is entitled to the basic lump-sum deduction pursuant to Section 9 no. 1 sentence 1 TTA of 1.2 % of the assessed value of those real estate which is not exempt from property tax.

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Keywords

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