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By PwC Deutschland | 19 October 2025

No trade tax exemption for training courses provided by independent instructor at an educational institution

A limited liability company (GmbH) that holds training classes at an education institute through its sole shareholder-managing director is not a vocational education organization qualifying for trade tax exemption under Section 3 No. 13 Trade Tax Act.

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Background

The plaintiff, a limited liability company, through its sole shareholder and managing director as a lecturer provided instruction courses at an education institute which offered nationwide preparation for examinations administered by chambers of industry and commerce and for this purpose engaged a large number of lecturers on a fee basis. The tax office took the plaintiff's total profits from its services into account when determining the assessment basis subject to trade tax.

According to Section 3 No. 13 of the Trade Tax Act (TTA), private schools and other general or vocational training institutions are exempt from trade tax insofar as they provide services directly related to school and educational purposes.

Decision

Whilst the tax court of first instance had confirmed tax exemption under Section 3 No. 13 TTA, the Supreme Tax Court saw things differently and overturned the decision of the former court and dismissed the appeal of the plaintiff.

First and foremost, the Supreme Tax Court explained that only the training institute itself can be regarded as the operator of a vocational training institution. Quite clearly, the plaintiff was not a qualified institution as defined in the trade tax provision.

Furthermore, a lecturer who teaches at a qualifying institution under Section 3 No. 13 TTA based on a legal agreement with that institution, but not on the basis of a legal relationship with the students, is not an institution within the meaning of this provision.

When interpreting Section 3 No. 13 TTA, particular attention must be paid to its legal history and previous reference to Section 4 No. 21 of the Value Added Tax Act. This erstwhile VAT provision initially only favored the operators of private schools and other general or vocational educational institutions but not freelancers who taught at these schools or similar educational institutions. Although Section 4 No. 21 VAT Act was subsequently extended to include teaching services provided by self-employed teachers it is nevertheless irrelevant for the trade tax exemption

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which does not dynamically refer to VAT law, in particular due to the elimination of the explicit reference to Section 4 No. 21 VAT Act.

Source:

Supreme Tax Court, decision of 15 May 2025 V R 33/23 - published on 16 October 2025.

Additional note: The legal situation with regard to trade tax differs from the interpretation under VAT law. This was confirmed by the Supreme Tax Court in a parallel proceeding (judgment of 15 May 2025 V R 23/24, published on 16 October 2025). As to the VAT exemption for educational services that currently applies, the Supreme Tax Court held that a self-employed teacher provides (exempt) teaching services at a vocational training institution that directly serve the purpose of schooling and education in accordance with Section 4 No. 21 letter b double letter bb VAT Act if this service is based on a legal relationship with the institution and he personally teaches the students of the institution.

Keywords

trade tax exemption, training seminars