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Interest on overpaid trade tax taxable as business income

Interest on trade tax refunds pursuant to Section 233a of the General Tax Code (AO) must be recorded as business income when determining taxable income. In a most recently published decision the Supreme Tax Court further stated that the treatment of interest that is not deductible (i. e. added back to income) as interest on arrears pursuant to Section 4 (5b) Income Tax Act versus interest refunds which are subject to income tax does not violate the principle of equality under the Basic Law.

Background

A civil law partnership (GbR) received interest for overpaid trade tax. Since, according to Section 4 (5b) of the Income Tax Act (ITA), trade tax and the ancillary payments attributable to it do not constitute operating expenses, the GbR took the view that, conversely, refund interest for trade tax did “likewise” not constitute business income.

The tax office and later the tax court took the view that the provision in the Income Tax Act merely prohibited the deduction of operating expenses and did not apply to business income.

Decision

The Supreme Tax Court dismissed the appeal as unfounded. Trade tax as such is a business tax and thus interest on trade tax refunds is also business-related. It is therefore beyond dispute that it is part of the business income. The necessary substantial connection between the interest payment and the business exists because the interest is paid based on the refund of trade tax as a business tax.

As to the provision in Section 4 (5b) ITA, the Supreme Tax Court explained that operating expenses related to trade tax - i.e., the actual tax payment and any default interest and similar charges - are added back off-balance sheet and are thus neutralized for tax purposes. Conversely, reimbursed trade tax is also not to be taken into account when determining taxable income. **However**, this does not apply to interest on tax refunds. Unlike trade tax that has been paid and refunded, **interest** on refunded trade tax is not the inverse of interest on arrears on trade tax that has been paid. Interest on tax refunds compensates the taxpayer for being denied the opportunity to use capital due to excessive tax payments rather than provide compensation for a previous payment (to the tax authorities) in the form of interest on arrears.

Since interest for tax arrears and interest on tax refunds are therefore different in nature there is **no violation of the principle of equality** under the Basic Law because the situations are not comparable, the Supreme Tax Court said. Rather, it would result in unjustified and unequal treatment if interest on trade tax repayments were not subject to tax. The interest compensates for the temporary withdrawal of capital. In this respect, the situation is comparable to that of a loan being granted. If interest is paid on such a loan it is subject to tax. There is no obvious reason why interest on repaid trade tax should be treated differently.

Source:

Supreme Tax Court, decision of 26 September 2025 (IV R 16/23), published on 5 February 2026.

Keywords

Trade tax interest, tax refunds