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By PwC Deutschland | 01 March 2026

# No trade tax privilege for intercompany dividends in case of qualified share exchange during the year

**In a recently published decision, the Supreme Tax Court commented on the issue of recognizing prior ownership periods in the case of a qualified share exchange during the year with respect to the relief for dividends on qualifying holdings (trade tax intercompany dividend privilege). The court rejected a deduction of the dividend from the trade tax basis because the cut-off date “at the beginning of the period of levy” applicable under Section 9 (2a) TTA was not met since the plaintiff did not yet hold an interest in V GmbH at the beginning of the assessment period.**

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## Legal framework

**Section 4 of the Reorganisations Tax Act** (RTA) deals with the effects on the profit of the acquiring entity and Para. 2 Sentence 3 provides that “if the period for which an asset was held in the business is of importance for taxation, the period of holding by the transferring corporation is to be ascribed to the acquiring entity.“

According to **Section 9 (2a) of the Trade Tax Act** (TTA) the trading profit shall be reduced by “the profit distributions on shares in a non-exempt domestic company (…) if the investment at the beginning of the period of levy (i. e. the assessment period for trade tax) was at least 15 per cent (…) and the distributions were included in trading profit.“

## Case in dispute

The plaintiff was a limited liability company (GmbH) whose sole shareholder, V, also held a 100% interest in V-GmbH. The plaintiff was also the general partner of a GmbH & Co. KG (a limited partnership with no natural person bearing unlimited liability) whose sole limited partner was V. V's shares in V-GmbH were allocated and held as special business assets for the GmbH & Co. KG.

In April 2016, the plaintiff's shareholders' meeting agreed to increase the share capital. The capital contribution for the new share was by way of a share swap, whereby V, as the transferee of the new share, contributed its interest in V-GmbH with immediate effect to the plaintiff. The share contributed was treated by the plaintiff as a so-called qualified share swap and recorded at its book value. In September 2016, the plaintiff, now the sole shareholder of V-GmbH, received a profit distribution.

In the 2016 trade tax assessment notice, the tax office refused to reduce the trading income by the amount of the profit distribution because the shareholding in V-GmbH did not amount to at least 15% at the beginning of the assessment period and the requirements for the so-called participation privilege (relief for dividends on qualifying holdings in Section 9 No. 2a TTA) were therefore not met.

The appeal to the lower tax court was successful. The Supreme Tax Court, though, took a different view of the matter and granted the tax office's appeal.

## Final decision

The decisive requirement under Section 9 No. 2a TTA is whether the shareholding existed “at the beginning of the assessment period.” This is the cutoff date and subsequent changes are regularly not relevant.

The requirements of Section 9 No. 2a TTA for reduction of the dividends are not met in the case in dispute because the plaintiff did not actually hold an interest in V-GmbH at the beginning of the assessment period, i.e. on 1 January 2016, and therefore no attribution of prior ownership period as stated in Section 4 (2) Sentence 3 RTA was possible.

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Furthermore, with regard to the provision in Section 4 (2) Sentence 3 RTA, the Supreme Tax Court notes that, in the event of the trade tax privilege under section 9 No. 2a Sentence 1 TTA, only the beginning of the assessment period, i.e., a **point in time** and not a **period**, triggers legal consequences. If Section 4 (2) Sentence 3 RTA is not relevant for that reason from the outset based on its wording ("the period of holding"), the provision loses its validity and effectiveness in this respect.

**Source:**

Supreme Tax Court, judgment of 17 December 2025 (I R 9/23) published on 26 February 2026.

**Keywords**

Share exchange, intercompany dividend privilege, trade tax deduction