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By PwC Deutschland | 20 November 2026

Tax group for corporation tax and trade tax requires strict implementation of profit transfer agreement

In two judgments, the Supreme Tax Court once again clarified the requirements for a tax group under corporation and trade tax legislation. As one of the requirements, the profit transfer agreement (PTA) must be concluded between the parent and the subsidiary for a term of at least five years and be implemented throughout its entire term. The recent judgments deal with the applicable criteria for actual implementation of the PTA.

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I. A rough overview to begin with

Both judgments were based on cases in which the PTA had not been carried out during its first year of validity. Nevertheless, the respective tax court of first instance recognized a tax group for the subsequent years: In **case I R 18/23**, on the grounds that the specific PTA had been concluded for six years, so that the minimum contract term of five years was ultimately still being met and in the **cases I R 18,19/25** by noting that an amendment of a contract under civil law of the PTA had occurred during the minimum contract term which had resulted in a postponement of the effective period and the minimum contract term.

The Supreme Tax Court did not agree with either of these opinions; the appeals filed by the tax authorities were therefore upheld and the two actions seeking approval of the tax consolidation group were dismissed.

II. The conclusions of the Supreme Tax Court in brief

Case I R 18,19/25: *Failure to carry out a profit transfer agreement during the first year of the agreed minimum contract term precludes a tax group for corporation tax and trade tax purposes. A subsequent retroactive extension of the effective period and the minimum contract term under civil law cannot be recognized for tax purposes.*

The plaintiff (subsidiary) and the parent concluded a PTA on 22 November 2019. On the same day, the parent company acquired 85% of the plaintiff's shares; financial integration therefore did not take effect before that date but in any case, not at the beginning of the 2019 fiscal year. The PTA was not executed in the 2019 fiscal year; also, no profit was transferred to the parent company. The year in dispute is 2020.

Case I R 18/23: *Failure to comply with a PTA during the first year of the agreed minimum contract term precludes recognition of a tax group for corporation and trade tax purposes altogether (failed tax group – "verunglückte Organschaft"). This applies even if a minimum term of more than five years has been agreed upon and the PTA is actually implemented for at least five consecutive years of the remaining minimum contract term despite the failure to execute it during the first year of its term.*

The entry in the commercial register was made on 3 August 2012 which meant that the PTA took effect as of 1 January 2012. However, the agreement was not actually implemented until 1 January of the following year. The agreement could be terminated for the first time at the end of 31 December 2016. Years in dispute: 2013 through 2017. The failure to carry out the PTA during its first year of validity (2012) was viewed as irrelevant by the lower tax court.

III. Summary

In its decisions, the Supreme Tax Court made it clear that even the failure to implement a PTA during the first year of the agreed minimum term precludes recognition of a tax group for corporation and trade tax purposes altogether. According to the clear wording of the relevant regulations, this applies even if a minimum contract term of more than five years was agreed upon and the PTA -despite not being implemented during the first year of its term - was carried out and executed for at least five consecutive years of the remaining minimum term. Furthermore, a cure through a subsequent retroactive change of the

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validity period and the minimum contract term under civil law could cannot be recognized for tax purposes. The Supreme Tax Court sees no adequate legal basis for this.

In fact, the Supreme Tax Court had previously already ruled along these lines. This also includes the recognition of receivables and liabilities arising from the profit transfer agreement in the annual financial statements, as well as the timely settlement of these claims (generally within twelve months of their due date under civil law. The Supreme Tax Court explained the twelve-month period by referring to Section 355(2) of the German Commercial Code, according to which, in the case of ongoing business relationships, a statement of account must normally be provided after twelve months.

Further details on the major legal criteria set by the Supreme Tax Court in its earlier decision of 5 November 2025 to be found **here**.

IV. Takeaway

The Supreme Tax Court's legal findings demonstrate once again that PTAs must be strictly adhered to and implemented in practice to be acceptable for tax purposes.

With its two judgments, the Supreme Tax Court remains consistent with its previous case law according to which the requirement for recognizing a corporation tax and trade tax group must be met every year of the minimum contract term. This applies even if the implementation of the PTA was not taken into account in the first assessment period, and where the minimum contract term was extended. However, the Supreme Tax Court left open the question of whether a contractual extension of the minimum contract term above five years is legally valid. This issue did not need to be decided in the cases at hand because the minimum contract term had been observed.

Sources:

Supreme Tax Court, judgments of 14 October 2026 (I R 18/23 and I R 18, 19/25) published on 19 November 2026.

Keywords

profit pooling agreement, tax group