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German Tax and Legal News

BFH confirms favorable trade tax treatment of dividends under tax group rules

The BFH has upheld a taxpayer-favorable decision by a lower court on the trade tax treatment of dividends distributed by a nonresident subsidiary to its German parent company that is a controlled company in a German tax group.

In a decision dated 17 December 2014 (I R 39/14), Germany's federal tax court (BFH) upheld the taxpayer-favorable decision issued by the lower tax court of Muenster on the trade tax treatment of dividends distributed by a nonresident subsidiary to its German parent company that is a controlled company in a German tax group. (See [Deloitte Tax News](#) for a write up of the decision of the lower tax court of Muenster.)

In the underlying case, the dividends received by the controlled German entity were treated as fully exempt from trade tax. The lower court concluded that German tax law does not provide for an addback of 5% of the dividend income for trade tax purposes in tax groups.

The BFH rejected the appeal of the tax authorities on the same grounds as the lower tax court of Muenster by applying the tax rules for calculating taxable income within a German tax group.

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