

By PwC Deutschland | 03. Juli 2014

Notarial fees may not be charged for the state on change in legal form

The ECJ has held that a provision requiring notaries to surrender to the state part of their fees for registering changes in legal form conflicts with the prohibition on “other taxes” in the Capital Duty Directive.

On June 28, 2007 the ECJ held that notarial fees payable to register a capital increase were a tax if the notary was required to surrender to the state budget all or part of the fees received. Compulsory notarial fees were therefore in breach of the prohibition in the Capital Duty Directive on taxes other the capital duty defined therein, if the notary was employed as a civil servant and required to surrender 15% of his or her fee receipts to defray state expenditure (C-466/03 *Reiß Beteiligungsgesellschaft*). The province of Baden-Württemberg, where the notaries are civil servants, reacted in December 2011 to this judgment with a waiver of the surrender requirement with retrospective effect to June 1, 2002. However, it did not waive the surrender on fees for registering changes in legal form before January 1, 2009, because, in its view, the Capital Duty Directive expressly excluded changes in legal form from its scope. A notary is contesting the continued fee surrender requirement.

The ECJ has now held in the notary's favour. The Capital Duty Directive does not expressly exclude changes in legal form from its scope altogether; it merely prohibits a charge for capital duty on changes in legal form (from one type of corporation to another) without any increase in share capital. However, it does prohibit additional charges on a company's capital, whether at the time of the increase, or later. A charge for a change in legal form without a capital increase is therefore an effective burden on the existing capital and thus, by implication, prohibited by the directive if the revenue from the charge falls wholly or partially to the state.

The ECJ case reference is C-524/13 *Braun* judgment of July 3, 2014.

Schlagwörter

capital duty directive, notarial fees