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By PwC Deutschland | 21. Mai 2015

Estimated taxation on deemed income from non-transparent investment funds upheld

The ECJ has held that a German provision for the taxation of deemed income from foreign investment funds outside the EU that do not comply with the German disclosure requirements falls under the “grandfather” clause of Art 64 of the TFEU allowing restrictions on the free movement of capital to and from third countries on December 31, 1993 to continue in force.

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German law taxes unit holders in foreign investment funds that do not fully comply with the German disclosure requirements on the total of the actual distribution received and (now) 70% of the increase in the unit price over the year. This total shall not be less than 6% of the closing value at year end. A German taxpayer investing in Cayman Island funds through an account held with a Liechtenstein bank objected to this taxation on deemed income as a restriction on her freedom of capital movement. However, the ECJ has now held that investment funds essentially provide financial services and that the German legislation falls under the “grandfather” provisions of Art 64 of the TFEU, allowing continued application of restrictions on the free movement of capital in force on December 31, 1993. The present German legislation is substantially unchanged since that date.

The ECJ case reference is C-560/13 *Wagner-Raith* judgment of May 21, 2015.

Schlagwörter

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