By PwC Deutschland | 21. Mai 2015

10-year tax deferral on gain on transfer of assets to other member state not disproportionate

The ECJ has held that a German deferral of the tax on the gain on transfer of assets to another member state over a ten-year period is not a disproportionate measure to achieve a legitimate object.

A German partnership transferred a set of patents to a permanent establishment in Holland. The tax office insisted on recording the transfer at market value, but (relying on the then case law) allowed the partnership to spread the gain over the next ten years. The partnership objected that any taxation charge before the gain was ultimately realised was a hindrance on its freedom of establishment. The ECJ has now confirmed that charging a gain to tax before realisation is indeed a hindrance on the partnership's freedom of establishment, but has also held that that hindrance is justified by the need to preserve the balance of taxing rights between member states. The ten-year deferral of the burden is sufficient to alleviate undue hardship, particularly in view of the increasing risk of taxpayer default with the passage of time. In this connection, the court drew attention to an earlier judgment accepting a five-year capital gain deferral as sufficient – C-164/12 *DMC* judgment of January 23, 2014 – which would seem to suggest that the 2006 reduction of the deferral to five years should be acceptable under community law.

The ECJ case reference is C-657/13 *Verder Lab Tec* Judgment of May 21, 2015.

Schlagwörter

deferral, transfer of assets