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By PwC Deutschland | 26. März 2022

No claim for refund of withholding tax for Canadian pension fund

The Regional Tax Court of Munich rendered its final decision in the case of the College Pension Plan of British Columbia which is a pension fund in the legal form of a trust under Canadian law. The court held that the pension fund is not entitled to relief from withholding tax on dividends from domestic portfolio holdings. The court saw no violation of the free movement of capital. This judgment was preceded by a decision of the European Court of Justice (ECJ) as a result of a preliminary request submitted by the Munich tax court.

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The College Pension Plan claimed to be discriminated because in a comparable situation a German pension fund would have the possibility to deduct for tax purposes its technical provisions which it had to account for in respect of its future pension liabilities. Whilst it is true that a German pension fund also had to pay corporate income tax of 25% in 2007 and 15% as of 2008, the tax base was much lower due to the deduction of the technical provisions. Therefore, the College Pension Plan claimed a refund of the entire withholding tax paid.

Upon referral by the Regional Tax Court of Munich, the ECJ held in its decision of 13 November 2019 (*College Pension Plan of British Columbia*, **C-641/17**), that Articles 63 and 65 TFEU preclude national legislation, such as the German rules in question, provided that the non-resident pension fund allocates dividends received to make provisions for pensions which it will have to pay in the future, this being a matter for the referring court to ascertain.

Having examined the financial statements of the claimant, the Regional Tax Court of Munich found that no dividends were allocated by the fund to make provisions for future pension payments. Moreover, the pension commitments shown in the “notes to the financial statements” could not be considered as equivalent to provisions for pension payments because they were calculated without considering the dividend income received.

The court therefore dismissed the claim and disallowed the appeal against the judgment. The plaintiff has filed a complaint against the non-admission of appeal which is now pending with the Supreme Tax Court (case no. I B 4/22).

Source:

Regional Tax Court of Munich, decision of 6 December 2021 (case ref. 7 K 1435/15)

Note: This post contains to a large extent excerpts from an article published in Pwc EU Tax News – January/February 2022

Schlagwörter

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