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Post Brexit: British limited company may still be party in tax court proceedings

Even after the United Kingdom's withdrawal from the European Union a British limited company is still subject to corporate tax and therefore also eligible as party to proceedings before the fiscal courts. According to the Supreme Tax Court the capacity to participate in tax court proceedings is not determined under civil law, but in compliance with the tax law.

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Background

The plaintiff is a British corporation in the legal form of a limited company. The management of the plaintiff is in the German home of its sole shareholder. In 2006, the plaintiff concluded an agreement with its sole shareholder under which the plaintiff reimburses the latter for his study expenses, including travel expenses.

The tax office held this to be a hidden profit distribution and increased the plaintiff's taxable income accordingly. The Regional Tax Court (court of first instance) agreed with the tax office and stated that the agreement concluded between the plaintiff and its sole shareholder did not stand up to either formal or material arm's length comparison. The appeal to the Supreme Tax Court was not allowed. The tax office points out that the plaintiff, as a British limited company, now qualifies as a third-country company. The plaintiff filed a complaint before the Supreme Tax Court against the non-allowance of the appeal.

Decision of the Supreme Tax Court

The Supreme Tax Court rejected the appeal, for reasons beyond doubt. The limited company with domestic administrative seat is liable to German corporation profit tax. The change of status following Brexit from an incorporated foreign corporation to a partnership (association) with legal personality does not affect the liability of the plaintiff to German corporation tax according to Section 1 (1) No. 1 Corporation Tax Act (CTA).

Since the United Kingdom's withdrawal from the EU, limited companies established under UK law with a seat of management in Germany can no longer invoke freedom of establishment under EU law. The question of their legal capacity is answered by referring to their registered seat. Following the case law of the Federal Court of Justice, the limited company is henceforth treated as a general partnership (*OHG*), civil law partnership (*GbR*) or, in the case of a sole shareholder, as a sole proprietorship.

The Supreme Tax Court held that the qualification of the British limited company as an entity subject to corporation tax is not affected, since, according to established case law, the decision for a foreign company as to a possible tax liability is to be based on the so-called comparison of legal types. From that it follows that the British limited company continues to be subject to corporation tax.

Regarding the subject matter of the complaint itself (hidden profit distribution), the Supreme Tax Court stated that substantiated explanations on the need to clarify a specific legal matter were lacking. The legal effects of the matter had not been sufficiently explained, which is why the appeal was rejected as unfounded and the Supreme Tax Court therefore refrained from further explanations.

Source

Supreme Tax Court, order of 13 October 2021 (I B 31/21), published on 3 February 2022.

Schlagwörter

British company, Limited