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By PwC Deutschland | 02. Dezember 2024

Taxation of benefits from a Swiss family foundation

The Supreme Tax Court decided that the one-time cash payment and distribution of shares to the plaintiff from a Swiss-based foundation in 2017 (year in dispute) was subject to German income tax as income from capital investment pursuant to Section 20 (1) no. 9 of the German Income Tax Act. In its decision the court explained under which circumstances the income from such a benefit is economically comparable to a regular profit distribution.

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Background

The dispute concerned the question of whether the statutory payment made by a family foundation from Switzerland to the plaintiff was subject to income tax. The foundation had initially assumed that the payment could be subject to gift tax. The plaintiff did not declare the income in his income tax return.

In his earlier judgment of 3 July 2019 (case II R 6/16) the Supreme Tax Court decided that a benefit granted by a foreign foundation to a domestic recipient who has no rights to or claims on the foundation's assets or income in accordance with its articles of association is not subject to German gift tax. The tax authorities then held that such payments are subject to income tax in accordance with Section 20 (1) no. 9 Income Tax Act (ITA).

Decision

The Supreme Tax Court shared the view of the tax authorities.

The economic equivalence of a contribution from a foundation to a profit distribution requires that the economic position of the recipient of the contribution corresponds to that of a shareholder. The benefit must also be a distribution of the surplus earned (confirmation the case law set by the Supreme Tax Court in its ruling of 28 February 2018 – case VIII R 30/15). The status of the recipient of the benefit from a foundation economically corresponds to that of a shareholder if the latter meets the requirements set out in the foundation's articles of association for beneficiaries of the foundation, i.e. if they belong to the group of eligible beneficiaries and no compensation is due in return.

However, it is not necessary for the beneficiary to have property or organizational rights such as those to which shareholders of a corporation are entitled.

The legal entity established under foreign law must be comparable in its essential basic features to a domestic corporation, association of persons or estates as listed in Section 1 (1) Nos. 3 to 5 Corporation Tax Act (CTA) and not be exempt from corporation tax.

In the case of dispute, the Swiss family foundation is a specific type of foundation of private law within the meaning of Art. 80 et seq. and Art. 335 of the Swiss Civil Code and as such comparable to „other legal persons of private law“ as enumerated in Sec. 1 (1) No. 4 CTA.

Source:

Supreme Tax Court, decision of 1 October 2024 (VIII R 25/21) – published on 28 November 2024.

Schlagwörter

distribution, foreign foundation