Downloaded from Blogs on 08.11.2026 05:57h

By PwC Deutschland | 16. Mai 2025

Interest on withholding tax levied in breach of EU law

Foreign companies as shareholders that are eligible for a refund of withholding tax in accordance with Art. 5 of the Parent-Subsidiary Directive are entitled to interest under EU law if the refund of the tax amounts is withheld from them in violation of EU law or if - for the same reason - tax is withheld from the outset. This was decided by the Supreme Tax Court in a recent judgment.

Downloaded from Blogs on 08.11.2026 05:57h

Background

The anti-treaty shopping rules in Section 50d (3) Income Tax Act (ITA) - as applicable in the years of dispute (2009 through 2012) - provide that a foreign company is only entitled to full or partial relief from withholding taxes under a double tax treaty or applicable EU directive (e. g. the Parent-Subsidiary Directive) if certain conditions are met, namely if the foreign company meets certain functional and substance requirements.

In the past, the Federal Central Tax Office (FCTO) had refused to refund withholding tax to numerous foreign shareholders on the basis of Section 50d (3) ITA which, according to the decisions of the European Court of Justice (ECJ) in the cases *Deister Holding and Juhler Holding* of 20 December 2017 - **C 504/16 and C 613/16** was in breach of EU law (against the freedom of establishment and in violation of the Parent-Subsidiary Directive - "PSD"). These judgments referred to the prior version of Section 50d (3) ITA (applicable until 2011).

Case of dispute

Profit distributions from a German stock corporation (AG) to its Austrian parent company were initially taxed at source. The refund of the withholding tax for three of the profit distributions was rejected by theFCTO which was not in line with EU law. For a further profit distribution, the Austrian parent company initially obtained an exemption certificate according to which the AG would not have had to withhold the tax. This exemption certificate was – again wrongfully - revoked by the FCTO with reference to Section 50d (3) ITA.

Following the above ECJ judgment *Deister Holding and Juhler Holding*, the FCTO refunded the withholding tax after the proceedings had temporarily been suspended. However, it rejected the applications for interest by the Austrian parent: Interest was not to be paid on withholding tax if the tax was refunded following a successful appeal procedure. The lower tax court, however, considered the claim to be partially justified and granted the payment of interest. In the opinion of the court, the interest period was to begin after the application has been processed by the FCTO, i.e. 4 months after the application was submitted.

Decision

The Supreme Tax Court held that the Austrian parent company was entitled to interest in accordance with EU law. The court considers the ECJ decision in the case*Gräfendorfer Geflügel und Tiefkühlfeinkost* (joint cases: **C?415/20, C?419/20 und C?427/20**, Rz 64) and *Dyrektor Izby Administracji Skarbowej we Wroc?awiu* (**C-322/22**, RZ 32 ff.) to be applicable in this context because the ECJ explicitly specified in these rulings how reasonable compensation is to be calculated. Key statement of the ECJ: The interest period runs from the payment of the respective advance payment to the refund of the unduly levied tax. The obligation to pay interest extends to the entire period during which

Downloaded from Blogs on 08.11.2026 05:57h

the amount was not available for the taxpayer.

In cases where a refund of withholding tax is applied for want of a prior exemption certificate and where a refund is denied in breach of EU law, the interest period commences three months after the submission of a formal and valid refund application. It ends on the day the tax is reimbursed. In cases where – also in violation of EU law - an exemption certificate is subsequently revoked by the FCTO with reference to Section 50d (3) ITA, the interest period runs from the date on which the tax is withheld by the AG and ends on the date the tax is repaid. Finally, the Supreme Tax Court clarified that the interest for the respective interest periods must be calculated to the day and at 6% p.a. for interest periods prior to 1 January 2019.

The tax court of first instance based the determination of the plaintiff's claims on interest periods that were too short. The Supreme Tax Court did not consider the (initial interest-free) time of four months and 10 days spent by the FCTO to process the application to be appropriate. Rather, Section 50d (2) sentences 6 and 7 ITA (as valid at the time; current version: Section 50c (2) sentence 6 ITA) specifies that the FCTO must decide on the application for a tax certificate within three months. The deadline commences following the submission to the FCTO of all evidence required to decide on the refund application.

Source:

Supreme Tax Court decision of 25 February 2025 VIII R 32/21 - published on 15 May 2025.

Schlagwörter

tax interest, withholding tax refund