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No inheritance tax if founders of trust have only limited powers

If the founder of an Anglo-American trust, validly established under Guernsey law, has not reserved any powers of control that would allow him to continue to freely dispose of the assets held in the trust, the assets concerned are legally considered to be independent (intransparent) and are not part of the founder's inheritance (legacy) upon his death. Inheritance tax is therefore not payable in such cases, the Tax Court of the state of Schleswig-Holstein said in a final decision.

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Background

In the second legal proceedings, the Schleswig-Holstein Tax Court had to decide whether the assets held in an Anglo-American trust (established in 1997) should be part of the legacy after one of the trust founders has died and, as a result, had to be taken into account for inheritance tax purposes. The tax court answered this question in the negative.

In the specific case, the trust had been established under Guernsey law. In particular, it had to be examined whether the founders had reserved for themselves such extensive powers of control over the assets of the trust that the trust was effectively unable to dispose of the assets freely. In such a case, the assets held in the trust would be treated as dependent (transparent) and therefore be part of the legacy for inheritance tax purposes.

This required clarification under the rules of private international law as to which law was applicable with respect to the legal relationships of the estate. The tax court had obtained a comprehensive legal opinion on this matter. The legal opinion concluded that the trust had been validly established under the relevant law of Guernsey and that neither the deed of incorporation nor a so-called “memorandum of wishes” conferred any harmful powers of control on behalf of the founders.

Decision

The tax court agreed with the conclusion of the expert opinion and ultimately granted the appeal. In the opinion of the court, actual powers of control could not be derived – at least not necessarily – from the fact that the asset-managing trustees had unanimously complied with the requests of the founders. Furthermore, there were only insufficient indications that the main purpose of establishing the trust was tax evasion, and that therefore the trust could not be denied recognition even on account of the „ordre public“ under Article 6 of the Introductory Act to the Civil Code which is a protective clause that permits foreign law not to be applied if this is incompatible with the fundamental values and principles of the legal system of the applying state. The assets held in the trust were therefore to be viewed as an intransparent estate which is not part of the bequest for inheritance tax purposes.

Source: Schleswig-Holstein Tax Court, decision of 10 October 2024 – case ref.: 3 K 41/17; no appeal was filed; hence the decision is final.

Schlagwörter

foreign inheritance, trust