By PwC Deutschland | 15. Februar 2026

Tax abuse through bond stripping as part of business assets

The Düsseldorf Tax Court has decided that a so-called bond stripping model involving a partnership limited by shares (KGaA) as a shareholder in a Luxembourg Société d’Investissement à Capital Variable (SICAV) constitutes an abuse of legal form under Section 42 of the German General Tax Code (Abgabenordnung). Does this really mark the end of the legal proceedings that have been ongoing since 2018?

Background

Good things come to those who wait. Although the plaintiff had been in the waiting since the legal proceedings started in 2018 a disappointing outcome now seems in the offing. But first, back to when it all began:

The plaintiff was the sole limited partner of a limited partnership with a limited liability company as general partner (GmbH & Co. KG - hereinafter referred to as KG) and the sole shareholder and managing director of the general partner GmbH. In the year in dispute (2011), he generated a high profit in accordance with Section 17 of the Income Tax Act which he wanted to be taxed as low as possible. In order to implement a tax-motivated arrangement, the plaintiff participated directly and indirectly in several companies, some of which were newly formed including a partnership limited by shares (KGaA), to invest in a Luxembourg fund. The KG was the sole personally liable shareholder of this KGaA, and the plaintiff was its sole limited shareholder.

The KGaA was in turn the sole investor in a SICAV established in Luxembourg. In the year in dispute, the SICAV acquired several long-term German government bonds which it segregated into bond certificates and interest coupons. It sold the separated interest coupons and distributed the proceeds of the sale to the KGaA who then passed it on to the KG. In its commercial balance sheet, the KGaA thereafter wrote down its investment in the SICAV to the reduced value. In 2012, the plaintiff contributed 99% of his limited partnership interest to the general partner GmbH of the KG at market value with tax effect as of 31 December 2011.

Following a tax audit, the tax office denied the tax exemption under the double tax agreement with Luxembourg. In addition, in the KGaA's tax balance sheet the lower value of the investment in the SICAV was recognized. This partial write-down led to a reduction of the loss from contribution previously taken into account.

In 2018, the Düsseldorf Tax Court issued an interim decision confirming, among other things, that the distribution was tax-exempt. However, this decision was overturned by the Supreme Tax Court (judgment of 7 February 2024, I R 8/19) who held that the tax court had wrongly rejected the application of Section 42 of the General Tax Code (GTC).

Decision of the Düsseldorf Tax Court

After further review, the tax court dismissed the claim of the plaintiff as unfounded and decided that the abuse requirements of Section 42 GTC are met. If the individual transactions were considered in an isolated manner the claim would be successful. However, taking into account the overall circumstances of the case and the specific case law of the Supreme Tax Court on this matter, whereby separate legal transactions are combined into a single transaction for tax purposes (case law on the overall plan of transactions – *Gesamtplanrechtsprechung*) and which also applies to Section 42 GTC in force in the year in dispute, an inappropriate legal structure had been chosen which had led to a tax advantage for the plaintiff that was not provided for by law.

The individual steps taken in the structuring were cumbersome, complicated, and undertaken solely for the purpose of creating a deductible loss which avoided any financial burden for the plaintiff. In particular, he had at any time complete control over the entire process, failed to provide evidence of non-tax reasons, and the structuring made no economic sense.

Furthermore, the involvement of the KGaA in the chosen structure is not realistic. In an adequate structure, the KG would have held a direct interest in the SICAV. In this case, the SICAV's distribution would not be tax-exempt in Germany. The distribution would then be 40% exempt from taxation at the level of the KG due to the application of the partial income method. In addition, and under an adequate and sensible structure, the plaintiff would not have contributed a limited partnership interest. Either he would have participated in the KG as a limited partner with only 1% from the outset or he would not have made a contribution with retroactive tax effect as of 31 December 2011. In both scenarios, no loss from the contribution would have been taken into account in the year in dispute.

A further appeal was not admitted regardless of the previous appeal proceedings because the consideration of the overall circumstances when examining Section 42 GTT is the sole responsibility of the tax court as a court of fact. However, a complaint relating to non-admission has been submitted in the meantime (pending before the Supreme Tax Court under case no. IV B 5/26).

Source:

Düsseldorf Tax Court, decision of 5 November 2025 (2 K 3874/15 F); Newsletter February 2026.

Schlagwörter

Bond-Stripping, abuse of legal forms