By PwC Deutschland | 30. August 2026

Statute of limitations for issuing a certificate of exemption

In a recent decision, the Supreme Tax Court held that, in the absence of an explicitly prescribed filing deadline, the general statute of limitations comes into play when requesting a withholding tax refund. The implementation of this provision does not constitute a violation of the free movement of capital.

Background

The plaintiff is a corporation domiciled in Cyprus that, in the year of dispute 2008, held more than a 7% stake in a German AG and received a dividend of approximately 6 million euros from that company in May of that year. The AG remitted the withholding tax plus the solidarity surcharge to the competent treasury. At the plaintiff's request, the Federal Central Tax Office reduced the withholding tax to 15% through an exemption and refund notice of 15 January 2009 and credited the difference.

After the "Act Implementing the ECJ Judgment of 20 October 2011 in the case C-284/09" had introduced the special refund procedure for foreign corporations pursuant to Section 32 (5) of the Corporation Tax Act (CTA), the plaintiff applied to the Federal Central Tax Office in November 2013 for a refund of the remaining withholding tax in accordance with this regulation. The authority rejected this request on the grounds that withholding tax on capital investment income incurred in 2008 was statute-barred as of 31 December 2012. This matter was subsequently the subject of further proceedings before the Supreme Tax Court. The tax court of first instance had previously dismissed the appeal.

Decision

The Supreme Tax Court concurred with the opinion of the lower tax court, in part considering the ECJ judgment of 15 June 2022, in the case **C-572/20** *ACC Silicones* regarding the restriction of the requirements under EU law.

Since an exemption notice is equivalent to a tax assessment, it follows from Section 169 (1) Sentence 1 of the General Tax Code (GTC) that its issuance is no longer permissible if the assessment period for the withholding tax on capital gains expired prior to the filing of the application. Only an application filed before the filing date could suspend the statute of limitations. Here, the assessment period for the tax withheld from the distribution received in the year in dispute expired on 31 December 2012, i. e., prior to the plaintiff's application in November 2013.

The statute of limitation (period for assessment) as regards the withholding tax on capital gains is four years. The earlier refund application filed by the plaintiff to reduce the withholding tax on capital gains under the Cyprus Double Taxation Agreement which was granted in full on 15 January 2009 did not interrupt the running of the assessment period. The scope and extent of its suspension is determined solely by the specific exemption application on which the original claim was based. As of 31 December 2012, the assessment of withholding tax for the year in question (2008) was no longer possible.

The Supreme Tax Court further clarifies that a retroactive amendment of tax laws (here: the Act Implementing the ECJ judgment of October 20, 2011, in the case C-284/09) does not constitute a retroactive event pursuant to Section 175(1) Sentence 1 No. 2 GTC.

Furthermore, it is consistent with EU law and within the framework of the so-called two-step procedure for distributions to shareholders with limited tax liability, to first withhold the tax on capital gains without applying the tax exemption and then refer the shareholder to a refund procedure upon application. Section 32 (1) No.2 CTA which excludes the obligation to file a tax return for tax assessment (with a credit or refund, as the case may be, of the withholding tax) in accordance with the general rules for shareholders with limited tax liability with dividend income does not impair the plaintiff's freedom of capital movement.

Source: Supreme Tax Court, judgment of 23 June 2026 (VIII R 38/23) published on 20 August 2026.

Schlagwörter

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