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By PwC Deutschland | 20 January 2011

Inheritance tax on foreign holding referred to ECJ

The Supreme Tax Court has referred to the ECJ on a refusal to grant the same inheritance tax allowance on a holding in Canada that would have been available on a domestic investment.

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The deceased sole shareholder in a Canadian company left his investment to his daughter. Both individuals were resident in Germany; thus the bequest fell to German inheritance tax. Had the investment been in a German company, it would have qualified for substantial relief of – now – up to 85% of its probate value, albeit subject to the continuing fulfilment of certain qualifying conditions for a set period of time. This relief is restricted in the Inheritance and Gift Tax Act to German investments. The heiress saw this as a discriminatory restriction on her freedom of capital movement, but the lower tax court rejected her suit on the grounds that the relevant freedom for a sole shareholding was that of establishment. That freedom, however, only applied within the EU/EEA and was irrelevant to a Canadian investment.

The Supreme Tax Court, on the other hand, takes the view that, at least on inheritance tax questions, the two freedoms co-exist and the one cannot eclipse the other. It therefore sees an impairment of the heiress' freedom of capital movement and also sees no justification for this impairment that would be acceptable under community law. However, it is obliged to lay the case before the ECJ because another national court has taken a conflicting view of the provisions of the EC Treaty.

Supreme Tax Court resolution II R 63/09 of December 15, 2010 published on January 19, 2011

Keywords

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