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By PwC Deutschland | 31 March 2011

EU/EEA company managed from Germany can be Organschaft subsidiary

In response to an infringement proceeding of the European Commission, the finance ministry has decreed that EU/EEA registered companies with their place of management in Germany are entitled to join an Organschaft as subsidiaries.

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Under the Corporation Tax Act as it stands, an *Organschaft* subsidiary must be a German registered company with its place of management in Germany. Companies formed and registered in other EU/EEA member states are thus excluded, even if they are tax-resident in Germany by virtue of their place of management. The European Commission sees this as a restriction on a company's freedom of establishment and has initiated infringement proceedings under the EU Treaties. The finance ministry has now reacted with a decree with immediate effect allowing a company registered in another member state, but managed from Germany, to join a German *Organschaft* as a subsidiary in respect of its entire domestically taxable income. The other conditions for joining an *Organschaft*, including the conclusion of a legally valid profit pooling agreement, must, of course, be observed.

Keywords

Organschaft, place of management, subsidiary