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By PwC Deutschland | 12 November 2013

Failure to relieve loss on sale of property abroad does not inhibit free movement of capital

The ECJ has held that the denial of relief in a member state of residence for a loss made on the sale of property in another member state is not an unjustified restriction on the free movement of capital.

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A resident of Finland owed property in France which he sold at a loss. This loss went unrelieved in France, both as a matter of law and from the practical consideration that the taxpayer had no other taxable income in France against which it could be offset. Finnish law would have allowed him a loss offset against capital gains from the sale of securities had the property been located in Finland. As it was, the tax office refused him a deduction because the double tax treaty allocated the sole taxing right on capital gains from the sale of property to the country of location. The taxpayer saw this attitude as discriminatory and claimed that his freedom of capital movement had been restricted.

The ECJ has now held that the difference in treatment in the country of residence between losses on the sale of local property and on that sited abroad is a restriction on the freedom of capital movement. However, that restriction is justified by the need to preserve the allocation of taxing rights between member states. If Finland does not tax a gain she does not need to relieve a loss. The court added, though, that the refusal of French law to allow a loss incurred in France was a matter for France alone. Certainly, there was no obligation on Finland to relieve a French loss merely because no local offset was available.

The ECJ case reference is C-322/11 *K*, judgment of November 7, 2013.

Keywords

free movement of capital, losses, sale of property