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By PwC Deutschland | 26 November 2015

Tax information obligation on foreign bank branches justified in overriding interest of fair taxation?

An ECJ advocate general has suggested the court rule that a German rule requiring a bank to submit information to the tax authorities on the accounts of German residents held in foreign branches is a hindrance on the freedom of establishment justified by the need to ensure fair and uniform taxation. If this obligation conflicts with the laws of the other state, that state should allow its fulfilment, provided that fulfilment is not excessive.

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A southern German bank maintained a branch in Austria, where a number of German residents held accounts. The German Inheritance and Gift Tax Act requires banks to inform the relevant tax authorities of the assets held or managed on behalf of deceased account holders. In 2008, the local inheritance tax office requested the bank for account information on all German resident account holders at its Austrian branch who had died since 2001. The German bank objected that it could not supply this information without infringing an Austrian bank secrecy rule making it a criminal offence to pass information on the affairs of an account holder to other than specified recipients without his or her consent. Tax offices were not one of the specified recipients and a deceased individual was no longer able to give consent.

This clash of laws brought the case before the ECJ. The advocate general has suggested that the court take the position that there is no direct clash of laws, given that the German rule is enshrined in a tax act, whereas the Austrian rule is a provision of the Banking Act with no specific mention of taxation. Rather, there is a restriction on the freedom of establishment to be found in the German rule, though this restriction is justified by the need to protect the integrity of the tax system and does not go beyond the minimum necessary to achieve that aim. The advocate general recognises that such a finding does nothing to solve the case at issue – the conflict of laws – and contents himself with the suggestion that the Austrian authorities be duty bound to apply, or disapply, their bank secrecy rule in a spirit of cooperation within the confines of European law. Quite how this could be expressed in an order by a European or German court in a case to which Austria is not a party, he does not say.

The ECJ case reference is C-522/14 *Sparkasse Allgäu* opinion of November 26, 2015.

Keywords

Foreign branch, account information, bank secrecy