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By PwC Deutschland | 14 April 2016

Tax reporting provision does not restrict freedom of establishment

The ECJ has held that an obligation on a German bank to report assets held by German customers of its Austrian branch to the German tax authorities does not restrict the bank’s freedom to establish itself in Austria.

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The Inheritance and Gift Tax Act requires banks to notify the responsible inheritance tax office of assets held for deceased German resident customers on the day of death. The requirement applies to banks operating in Germany and therefore, by implication to assets held for German customers of foreign branches. A German bank faced with a tax office demand for information under this provision protested its inability to comply in respect of accounts held at its Austrian branch as Austrian law, at the time, made it a criminal offence to do so. The Supreme Tax Court saw this conflict of laws as a possible hindrance on the German bank's freedom to establish an Austrian branch and referred the question to the ECJ.

The ECJ has now held that a reporting obligation of this nature on a bank in respect of accounts held at a foreign branch does not constitute a restriction on the bank's freedom of establishment, even though locally owned banks in the foreign country concerned are under no such obligation. It mentions that breach of the Austrian bank secrecy rules was a criminal offence, but offers no discussion on the implications of this clash of concept. It also offers no comments on the Austrian criminal or civil legal consequences of compliance with the tax office' request made before the current EU Council directive on administrative cooperation between member states in respect of bank accounts takes effect (2017).

The ECJ case reference is C-522/14 *Sparkasse Allgäu* judgment of April 14, 2016.

Keywords

bank secrecy, reporting obligation