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Commission requests Germany to recognise profit and loss transfer agreements concluded with other EU/EEA corporations

The EU Commission calls on Germany to recognise profit and loss transfer agreements concluded under the laws of another EU or EEA Member State.

Corporations established under the laws of another EU/European Economic Area (EEA) Member State, which transfer their place of management to Germany, cannot meet the formal registration requirements for a profit and loss transfer agreement which is a prerequisite for fiscal unity ("Organschaft"). The German tax administration requires that the agreement is registered at the seat of the company, while refusing to recognise the registration with a commercial registrar in another EU/EEA Member State as being equivalent with the registration with a domestic commercial registrar. As a result, such group of companies is treated less favourably than groups of which all the members have their registered offices in Germany. In the opinion of the Commission this deters companies established in another EU/EEA State from establishing a business in Germany: Germany had already modified its relevant law but these legislative amendments would be void if German tax administration continues to refuse the benefits of the tax consolidation on the grounds that the formal requirements of the profit and loss transfer agreement have not been met. These rules are, therefore, likely to dissuade corporations from exercising their rights relating to the freedom of establishment (Article 49 of TFEU and Article 31 of the EEA Agreement). If Germany does not act within the next two months, the Commission will consider the possibility of initiating further infringement proceedings.

Source

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Keywords

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