Downloaded from Blogs on 08.11.2026 20:57

By PwC Deutschland | 05 June 2022

Free movement of capital inapplicable in case German company being fully owned by Japanese company

In a most recent decision, the Regional Tax Court of Düsseldorf dismissed the claim of a Japanese corporation for a refund of withholding tax on the grounds that the case was within the scope of the EU principles for freedom of establishment which the plaintiff, being a resident of a third country, could not invoke.

Downloaded from Blogs on 08.11.2026 20:57

The receipt of dividends by the plaintiff, who has a decisive influence on the decisions of the distributing German company, falls exclusively within the scope of the freedom of establishment (Art. 49 TFEU), which does not apply in relation to third (non-EU/EEA) countries.

The plaintiff is a Japanese corporation and received dividends in 2009 through 2011 from its German subsidiary, in which it held a 100% stake. In accordance with the German/Japanese double tax agreement, a German withholding tax of 15% was withheld from the dividends. The plaintiff applied for a refund of the withholding tax, claiming that a German corporation in a comparable purely domestic situation would have been entitled to the exemption of dividends from corporate income tax and full credit of the withholding tax. Since the German authorities rejected the application, the plaintiff brought the case before the Regional Tax Court. The latter dismissed the action as being unfounded.

According to the Regional Tax Court, the circumstances of the specific case must be considered in a second step, because the case concerns outbound dividends. In a case where a company resident in a third country holds a controlling interest in a company resident in the EU, the market access of the parent company is at stake. However, this market access of a third country company cannot be subject to the same protection under the fundamental freedoms as the market access of a company resident in the EU.

The appeal against this judgment is pending before the Supreme Tax Court (case no. I R 16/22).

Source:

Regional Tax Court of Duesseldorf, decision of 2 March 2022 (7 K 1424/18 KE).

Note: This post contains to a large extent excerpts from an article published in *Pwc EU Tax News – March/April 2022 - issue nr. 3*. - A download of this issue can be found **here**.

Keywords

free movement of capital, freedom of establishment, withholding tax refund