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By PwC Deutschland | 28 July 2023

German tax consequences on the removal of British limited company from the UK commercial register

The German Federal Ministry of Finance has commented on the tax consequences of a UK limited company which has been removed from the British register of companies (Companies House) after 31 December 2020.

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Background

Forming a British limited company as a vehicle for a German operation was, in the past, sometimes seen as an easier and quicker alternative to the GmbH as a means of incorporation. It also avoided the German minimum capital requirement. However, the company must observe regular reporting and compliance requirements, even if it is not resident in the UK, e.g. by virtue of its German place of management. It is also to be registered in the UK Companies House.

Companies House is the executive agency of the British Government that maintains the register of companies, employs the company registrars and is responsible for incorporating all forms of companies.

The circular of the Ministry of Finance (MoF)

The following is a brief summary of the main issues addressed in the ministerial decree.

A. Post-Brexit treatment of the limited company under civil law

Since the United Kingdom's withdrawal from the EU, „private companies limited by shares“ (Limited) established under UK law with a seat of management in Germany can no longer invoke the fundamental freedoms of the Treaty on the Functioning of the European Union (TFEU), namely the freedom of establishment. From a German perspective, the limited companies are henceforth treated as a third-country companies.

For companies from third countries, the applicable company statute is determined by virtue of their place of management (administrative headquarters). For that matter a limited company established under the law of the United Kingdom with its administrative seat in Germany is subject to German company law from 1 January 2021. Since German corporate law does not recognize the "Limited" as a particular form of company, the Limited is to be qualified based on the so-called comparison of legal types and irrespective of the name of the company. This can be in the legal form of a general partnership (*OHG*), civil law partnership (*GbR*), sole proprietorship or natural or legal persons.

B. German tax consequences for limited company after Brexit

For income tax purposes, a limited company with its statutory seat in the United Kingdom and its place of management in Germany and which has **not** been deregistered from Companies House, continues to be viewed and treated as a corporation based on the comparison of legal types. This change of status following the Brexit does not affect the unlimited tax liability to German corporation tax according to Section 1 (1) No. 1 Corporation Tax Act (CTA). If seat of management is outside Germany, the Limited is subject to the restricted tax liability pursuant to Sec. 49 Income Tax Act (ITA) and Sec. 2 No. 1 CTA.

C. Impacts of the deregistration from Companies House

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1. Treatment under British company law

Upon deregistration the Limited ceases to exist and its UK assets fall to the Crown. In the case of a "restoration" (i. e. re-establishing the registration in the Companies House, see further below under C.3.), which can be requested by the directors or shareholders or the creditors within six years from the dissolution of the company, the company is treated as if the dissolution and removal from the register had not taken place.

2. German tax implications after removal from the register

The Limited no longer exists as a foreign corporation after its deregistration from Companies House. Under civil law, this has no effect on the *GbR* or *OHG* or the *sole proprietorship* which continue to exist in Germany. As a result, the deregistration of the Limited does - from the perspective of civil law - not constitute a liquidation (winding up) of a corporation with unlimited tax liability in Germany.

For corporate income tax purposes, however, there is no longer a subject of taxation within the meaning of Sec. 1 et seq CTA. In lieu of a liquidation and in absence of a taxpayer with unlimited tax liability the specific tax regulations for liquidations in Sec. 11 (1) CTA (i. e. taxation of profit realized during the period of winding-up) and insolvency procedures in Sec. 11 (7) are not applicable here.

The deregistration from Companies House therefore leads to a final taxation of the limited company with the realization of the hidden reserves and subsequently to a distribution of the equity capital following the disclosure of all hidden reserves. To the extent the distribution is not made from the tax contribution account it is subject to withholding tax, which may have to be claimed by way of notice of liability.

If the participation was held as private assets, the deregistration of the Limited is treated as a dissolution pursuant to Sec. 17 (4) ITA and Sec. 20 (1) No. 2 ITA (full distribution) at the level of the shareholders whereby the full distribution is subject to the partial income method (exempting 40% of the distribution from tax) or the final flat rate withholding tax. Subsequently, there is a contribution to the *GbR* or *OHG* or to the *sole proprietorship* from the private assets and at values recognized at the time the hidden reserves were realized. This would usually be the fair market value (ongoing-concern value – *Teilwert*). If the participation in the limited company was held as business assets, taxation takes place at the level of the shareholders according to the general rules applicable to dissolutions of corporations.

When evaluating the **Value Added Tax (VAT) consequences** following the deregistration, the general principles and scope of tax for taxable persons (businesses) laid down in Sec. 2 VAT Act are to be observed. The removal from Companies House and the corresponding change of legal form do not constitute a taxable exchange of services with respect to VAT as there is no consideration given.

3. „Restoration“ (re-registration) – a particular case

In the case of a "restoration" the Limited will be treated under UK law as if the deregistration never took

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place. The notification of the "restoration" (according to Section 1027 Companies Act) constitutes a retroactive event within the meaning of Section 175 (1) sent. 1 no. 2 of the German Fiscal Code: „*A tax assessment shall be issued, cancelled or amended (…) to the extent that an event which entails tax implications on periods already elapsed occurs (event with retroactive effect)*“. Any previously terminated tax liability is then reinstated. The notices of assessments (determination of taxable income) which were issued in the meantime to the *GbR* or *OHG* must be anulled, and tax assessments in respect of the sole legal successor be amended accordingly.

D. Application

This MoF letter is to be applied to all situations where the removal (deregistration) of the limited company from Companies House takes place after 31 December 2020. The earlier circulars from 6 January 2014, and 19 October 2017 continue to apply in cases where the limited company was deregistered before 1 January 2021.

Source:

Federal Ministry of Finance circular of 19 July 2023 (IV C 2 - S 2701/19/10001 :004)

Keywords

Limited, post-Brexit