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By PwC Deutschland | 21 November 2023

ECJ: No tax benefit if application of Merger Directive is subject to conditions not provided for by that directive

The European Court of Justice decided that Article 8(2) of Council Directive 2009/133/EC precludes a national legislation which makes the benefit of that provision subject to conditions relating to a reduction in the shareholding of the shareholder of the transferring company in that company or to a reduction in the share capital of that company, which are not provided for by that directive.

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Article 8(2) of the Directive stipulates that in the case of a partial division that falls within the scope of the Directive, the allotment to a shareholder of the transferring company of securities representing the capital of the receiving company shall not, of itself, give rise to any taxation of the income, profits or capital gains of that shareholder.

In the request for a preliminary ruling in an Hungarian case the CCJ essentially had to address two questions: **1)** whether the Directive could be applicable to purely domestic situations, and if so, under what circumstances, and **2)** whether the application of the tax deferral mechanism related to qualifying partial divisions of the Directive can be denied if the transaction is not reflected in the registered capital of the transferring company.

The **ECJ judgment** in the case C?318/22 *GE Infrastructure Hungary* to be found **here**.

The ***PwC EUDTG Newsalert*** provides a more detailed analysis of the judgment: PwC **EUDTG Newsalert - 17 November 2023 (1).pdf**

Keywords

merger