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By PwC Deutschland | 28 November 2023

Tax group and corporate reconstructions

In case of merger of a corporation into a partnership during the year the Supreme Tax Court decided that the acquiring legal entity as the ("new") controlling company also fulfills the requirement of financial integration as a prerequisite for a tax group („Organschaft“) of the former controlling company even if the conversion is not made with retroactive effect from the beginning of the financial year.

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Background

In the case of dispute, a tax group existed between A-GmbH (the plaintiff) as the controlled company and B-GmbH as parent (the controlling company). Following the acquisition in March 2015 by X-OHG of all shares in B-GmbH, B-GmbH was merged into X-OHG in November 2015 with retroactive effect from 1 April 2015. The plaintiff, whose financial year had already started on 1 January 2015, then sought to be treated as controlled company of X-OHG for the full year 2015. The tax office rejected this in accordance with the opinion published by the Federal Ministry of Finance. The appeal of the plaintiff before the tax court of Hesse was successful.

Decision

The Supreme Tax Court confirmed the decision of the tax court of first instance. The determining factor was not the tax conversion date, but a special provision of the German Reorganization Tax Act (RTA), which provides for a full transfer of the acquiring legal entity (X-OHG) into the legal position of the transferring entity (B-GmbH). This also applies with respect to the requirements under a tax group for corporation tax. It is sufficient if there is financial integration from the beginning of the financial year, first with the transferring legal entity and subsequently (to be continued) with the acquiring legal entity.

This follows from Sec. 12 (3) RTA whereby the acquiring company in its entirety steps into the shoes of the transferor. This principle also applies if the transfer date has no retrospective tax effect to the beginning of the business year of the controlled company.

Note: At the same time, three further BFH decisions were published on this subject matter. With these decisions, the Supreme Tax Court clarifies remaining doubts in connection with the establishment of tax group structures in the course of corporate reorganizations.

Source:

Supreme Tax Court judgment of 11 July 2023 (I R 21/20), published on 23 November 2023.

Keywords

merger, tax group