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By PwC Deutschland | 14 January 2025

Notice of a tax assessment to a dissolved partnership

The validity of an assessment notice on the separate and uniform determination of the tax bases (profit assessment notice) for 2013 which was issued after a partnership had been fully terminated was in dispute before the tax courts. In its most recent decision, the Supreme Tax Court disagreed with the view of the tax court of first instance who has held that a profit assessment notice issued to a fully terminated partnership is always null and void.

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Background

The profit assessment involves B KG, a limited business partnership with no natural person bearing unlimited liability. The general partner of B KG was B GmbH. The sole limited partner was the plaintiff. In 1999, the plaintiff was appointed as the authorized representative of B KG as regards the tax assessment proceedings. He was also the sole managing director of B GmbH with sole power of representation.

In 2016, the plaintiff transferred his limited partnership interest in B KG and his share in B GmbH to O KG in exchange for company rights. As a result of the subsequent withdrawal of B GmbH, O KG, as the only remaining shareholder, took over the assets of B KG by way of accrual as of 31 December 2016. B KG was removed from the commercial register at the beginning of January 2017.

Following a tax audit, an amended profit assessment notice for 2013 was issued for B KG in January 2018 which was sent to the plaintiff. The income was allocated between B GmbH and the plaintiff. B KG was mentioned below the address field. The notice included the information that it was issued to the plaintiff as the authorized recipient with effect for and against all parties involved in the assessment.

The Munich Tax Court (court of first instance) found the profit assessment notice addressed to a fully dissolved partnership to be always null and void.

Decision

The Supreme Tax Court took a different view.

The content of a profit assessment notice is in any way understood to be addressed to the partners (co-entrepreneurs) irrespective whether the partnership still exists or has already been fully dissolved at the time of issue. For an assessment notice to be legally effective and enforceable it must disclose the persons for which the profit is determined and the profit share of the individual partners.

The fact that a dissolved (no longer existing) partnership is shown in the address field of the assessment notice does not prevent the effective designation of the addressees if the further details of the partners can be obtained from the notification document. The indication of the company is merely a collective term for the partners and does not imply to include an incorrect party as being liable for tax. The assessment notice must clearly and unambiguously indicate the persons involved and the taxable amounts established by the tax office. This was the case here.

Source:

Supreme Tax Court, decision of 30 October 2024 (IV R 4/23) – published on 9 January 2025.

Keywords

assessment basis, assessment procedures