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By PwC Deutschland | 02 May 2025

Tax group: Management holding partnership as parent company

In a recently published decision, the Supreme Tax Court held that a commercial activity as stated in Section 14 (1) no. 2 sentence 2 Corporation Tax Act also exists if the controlling partnership acts exclusively as managing holding company. Intra-group services for other additional commercial activities are not required.

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Background

As regards the requirements for a tax group, Section 14 (1) sentence 1 Number 2 Corporation Tax Act (CTA) provides that the parent may also be a partnership with its management in Germany if it exercises an activity within the meaning of Section 15 (1) No. 1 ITA (i. e. if it carries on its own active business).

The plaintiff, a GmbH, is a member of Z-Group. The sole shareholder of the plaintiff until 2007 was A-GmbH (also a member of Z-Group). A tax group for corporation tax purposes existed between A-GmbH as the controlling company and nine controlled companies including the plaintiff. A-GmbH acted as a wholesaler for the tax group.

In 2008, there was a two-stage restructure with tax effect as of 31 December 2007 by way of transfer of a business segment (“wholesale operations“) from A-GmbH to a subsidiary (B-GmbH). All employees of A-GmbH (except for the managing directors with multiple functions) were transferred to B-GmbH. A-GmbH received a share in the company in return. Subsequently, A-GmbH contributed its remaining assets (including the shareholdings in the plaintiff and B-GmbH) to the newly established X-KG in return for a share as a limited partner. The general partner of X-KG was a foundation. X-KG also took over the profit and loss transfer agreement concluded with the plaintiff.

The tax office did not recognize the tax group for corporation tax purposes because X-KG had not yet commenced any commercial activity of its own in the year of dispute (2008). The lower tax court upheld the action brought by the plaintiff.

Decision

The Supreme Tax Court held the tax office's appeal to be unfounded. The lower tax court had correctly decided that X-KG had already fulfilled the requirements of Section 14 para. 1 sentence 1 no. 2 sentence 2 CTA in the year in dispute and that a corporation tax group existed between X-KG as the controlling company and the plaintiff as the controlled company.

X-KG had already carried out an (original) commercial activity within the meaning of Section 14 para. 1 sentence 1 no. 2 sentence 2 CTA in the year of dispute. This condition (“true business activity“) is also fulfilled if the controlling partnership acts exclusively as management holding company. No additional commercial activities, such as intragroup paid services or other commercial activities, are necessary (in contrast to the Ministry of Finance circular of 10 November 2005). A managing holding company also participates in common economic transactions through an identifiable uniform management.

In its decision, the Supreme Tax Court expressly adheres to its case law on economic integration and applies it accordingly to the requirements for a controlling partnership. However, the court points out that the requirements for a management holding company conferred in its decisions on economic integration are not to be understood as a pre-set

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"catalogue" of criteria and do not have to be fulfilled cumulatively. Instead, these are indications that must be considered as part of an overall assessment of the circumstances in each individual case.

In particular, the publicly exercised uniform management leads to the participation of the controlling partnership in general economic transactions. The required presence on the market in return for payment cannot only be achieved through the conclusion of paid service agreements with the subsidiaries. However, the “overall circumstances of the activity” always plays a decisive role.

The question whether a managment holding company must necessarily have at least two subsidiaries to fulfill the „activity requirement“ was not relevant in the case of dispute (as there were nine subsidiaries) and could therefore be left open.

Source:

Supreme Tax Court decision of 27 November 2024 I R 23/21 - published on 24 April 2025.

Keywords

corporation tax group, management holding