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By PwC Deutschland | 12 November 2025

Taxation of portfolio dividends for family foundation

In a recent decision, the Hamburg Tax Court commented on the deduction of income-related expenses in connection with dividends from portfolio investments paid to a family foundation who itself is not exempt from corporation tax.

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Background

The plaintiff is a family foundation with unlimited corporate tax liability. It invests its assets primarily in capital investments and, in the years in dispute from 2013 to 2021, generated dividend income from shares, interest income, distributions from investment funds, and gains on the sale of shares, bonds, and shares in investment funds. These are not shares that are attributable to the trading portfolio of a credit, securities, or financial services institution within the meaning of Section 8b (7) sentence 1 Corporation Tax Act (CTA) or to current assets within the meaning of Section 8b (7) sentence 1 CTA.

During the period in dispute, the plaintiff incurred expenses for office equipment, office space, the salaries of the executive board and the remuneration of the advisory board members as well as asset management costs such as bank account fees, custody fees, and ongoing legal and tax consulting fees. Of these income-related expenses, significant amounts are related to remunerations from portfolio dividends within the meaning of Section 20 (1) no. 1 Income Tax Act (ITA) and are taxable dividends from portfolio investments according to Section 8b (4) CTA.

The plaintiff sought full deduction of the income-related expenses incurred in connection with the portfolio dividends. The tax office took these income-related expenses into account only up to the amount of the investor's allowance (savings allowance) of €1,000.

Decision

The Hamburg Tax Court saw the claim as unfounded and rejected the appeal.

When determining the income of the plaintiff, who is subject to unlimited corporation tax liability pursuant to Section 1 (1) No. 4 CTA, the income-related expenses at issue could only be taken into account up to the amount of the savings allowance. The portfolio dividends led to income from capital investments for the plaintiff within the meaning of Section 20 ITA and were not to be considered as ordinary business (trading) income.

The presumption of trading activity under section 8 (2) CTA (whereupon the entire income of taxpayers with unlimited tax liability is to be treated as trading income) does not apply to the plaintiff because the foundation is not a taxpayer within the meaning of section 1 (1) nos. 1 to 3 CTA but rather is covered in no. 4 of Section 1 CTA ("other legal persons of private law"). A restriction of these provisions in the case of portfolio dividends of a foundation is not possible. According to the explanatory memorandum to the legislation, the savings allowance should be applied when determining the income of corporations outside the cases of capital investment income mentioned in Section 8 (10) sentence 2 CTA where the standard tax rate instead of the separate flat rate of 25 per cent for income from capital assets is applied.

Section 8b (1) CTA providing tax exemption (i. a.) for dividends, is applicable in the present case. However, Section 8b (5) CTA (regarding the exemption of 95 per cent of the

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dividend income) only covers business expenses and not personal income-related expenses. Furthermore, this provision does not apply to portfolio dividends according to Section 8b (4) sentence 7 CTA.

The court was also not convinced that such treatment was unconstitutional. There was no violation of the general principle of equality under Article 3 (1) of the Basic Law.

The provisions at issue neither violate the principle of taxation taking the personal ability to pay into account nor do they constitute unconstitutional treatment in comparison to foundations that hold more than 10% of shares in corporations or generate income from other income categories. Furthermore, the plaintiff is not at a disadvantage compared to other corporations to which Section 8b (2) CTA applies.

Source:

Hamburg Tax Court, decision of 27 June 2025 (5 K 9/25) - the decision is final since no appeal was filed by the claimant.

Keywords

family foundation, portfolio dividend