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German Tax and Legal News

Local tax court of Rheinland-Pfalz questions EU law compatibility of German exit taxation rules

In a recent case led by Deloitte, the [local tax court of Rheinland-Pfalz](#) granted a suspension of execution of an exit tax assessment of an emigrating company (case reference: 1 V 1217/10). The case involved a Germany-based SE which held a participation in a Dutch entity and which relocated to Austria in 2007. The German tax authorities applied the exit tax rules, under which the loss of taxing rights by Germany resulted in a deemed sale of the assets. According to the tax authorities, the relocation resulted in a loss of taxing rights of the SE's assets because no permanent establishment remained in Germany. The tax was due within the standard time frame. The taxpayer objected to the assessment and requested a suspension of execution, arguing that EU law requires that Member States grant a deferral of payment in exit tax cases until the capital gains are actually realized (e.g. by a sale). When the tax authorities rejected the application, the taxpayer brought the case to court.

In its decision, the local tax court held that immediate exit taxation may constitute an infringement of freedom of establishment. The court agreed with the taxpayer that EU law restricts exit taxation on emigrating companies in the same way as exit taxes imposed on emigrating individuals; the European Court of Justice has ruled in the latter case that Member States can levy exit taxes but must allow payment of the tax to be deferred until the gains are realized. According to the lower tax court, the infringement procedures initiated by the European Commission against various Member States that levy exit taxes on emigrating companies raise doubts on the legality of the assessment. Germany's ability to enforce its taxing rights at a later point of time is feasible, according to the court, because Germany can impose information-reporting obligations on the taxpayers and can use the EU Mutual Assistance Directive and the directive on the cross-border enforcement of tax claims.

It is unclear whether the tax office will file an objection against the preliminary decision of the local tax court of Rheinland-Pfalz, which would be decided by the [Federal Tax Court](#).

If you have any questions, please contact the authors of the article at gtln@deloitte.de or your regular Deloitte contact.

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