



NEWS INTERNATIONAL SPECIAL EDITION

E-MAIL NEWSLETTER 2019

Exit tax reloaded

Dear Sir/Madam,

In April this year, we informed you in a special edition of our newsletter that the German exit tax with regards to Switzerland had become less threatening. The reason for the good news was the ECJ judgment of 26 February 2019 - C-581/17 in the 'Wächtler' case. While in the case of departure to an EU or EEA member state, a legal regulation leads (or led) to hidden reserves in shares of stock corporations held by individuals with a stake of at least 1% not being subject to income tax, in the case of Switzerland, taxation occurred. However, with the ECJ judgment, by reference to the protective effect of the Agreement on the Free Movement of Persons between the EU and Switzerland, it was ensured that in specific situations, a departure to Switzerland should also not result in taxation.

As the Agreement on the Free Movement of Persons is only applicable in certain cases - for example, pure administration of the shares in question by those who have moved away should be viewed critically - a case-by-case approach was essential. Furthermore, while it should be assumed that, analogous to the EU/EEA case, an unlimited interest-free deferment of income tax on the deemed capital gain would be granted, security would likely be required.

Unfortunately, there is bad news to report. Not the legislator but the Federal Ministry of Finance (BMF) reacted to the ECJ judgment in its letter dated 13 November 2019. Although security will not be required, income tax on hidden reserves must be paid - on application of the taxpayer - in five equal annual amounts, which are interest bearing. The BMF's message is clear: taxpayers who are affected by the scope of application of Section 6 of the Foreign Taxation Act (AStG) on their departure to Switzerland must ensure by means of a redress procedure that the principles of the ECJ 'Wächtler' judgment are applied by the competent tax authority. It can be assumed that the suspension of proceedings will not be achieved. Provided the specific case in question is protected by the scope of the Agreement on the Free Movement of Persons, however, the chances of success are excellent.

Please contact us. We are happy to check whether the Agreement on the Free Movement of Persons applies to your case and are also happy to support you with a redress procedure if necessary.

Best regards

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The author

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Dr. René Schäfer completed his degree in Business Administration at Saarland University in Saarbrücken in 1999 as a Business Administrator. At the same time, he received the Diploma of the Ecole Supérieure de Commerce, Lyon after one year of study in France.

In 2003, he received a doctorate at the Chair for Business Management Studies, particularly Business Taxation from Univ. Prof. Dr. Heinz Kussmaul on the subject of "Taxation of a German-French company". Dr. Schäfer completed the examination for Tax Advisor in 2005. Since 2008, he has also possessed the title of "Specialist Advisor in International Tax Law".

In mid-February 2005, Dr. Schäfer began working as an employee in the tax department of DORNBACH GmbH, Saarbrücken branch.

In July 2007, Dr. Schäfer was made a person with full commercial power of attorney and on January 1st, 2011, he was accepted as a partner.

In July 2015, he was made an Honorary Professor in the subject of Business Administration at the Saarland University.

Specialisation

International tax law /
Corporate reorganisation tax law /
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Company presentation



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