Real Estate Tax Newsletter

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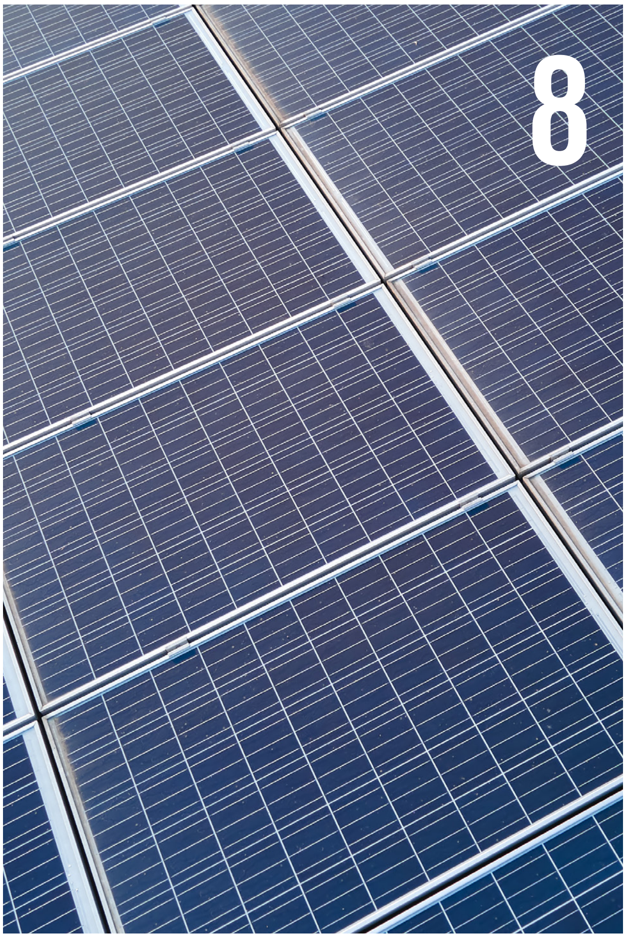
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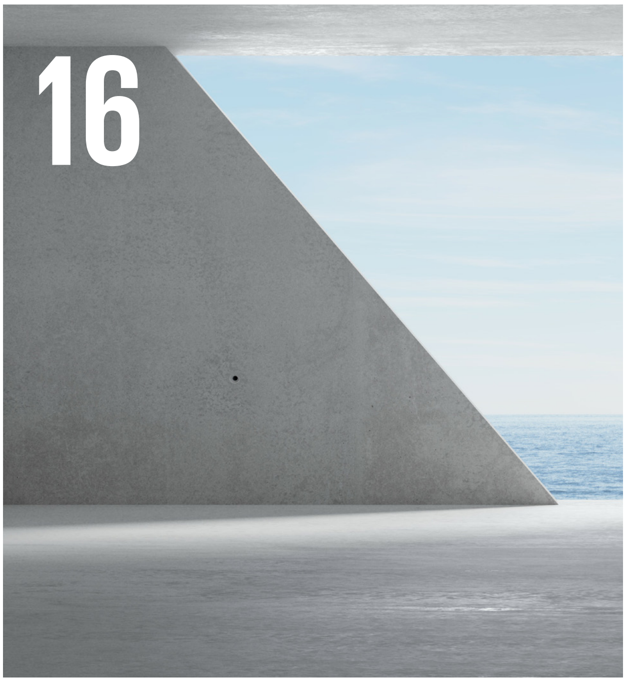
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01

Inbound-Structures – Relief from German withholding tax upon request (§ 50d (3) EStG) –

Substance criteria and electronic submission of applications

The current version of the German „Anti-Treaty Shopping Rule" (§ 50d (3) of the German Income Tax Act [EStG][1]) leads to legal uncertainties in practice due to numerous questions of doubt.

The provision mainly applies to foreign corporations that receive dividends and royalties subject to withholding tax from Germany (so-called inbound structures). Under Section 50d (3) EStG, relief from German withholding tax is essentially only possible if the foreign corporation meets certain substance criteria.

The following article presents the substance criteria and deals with the electronic application requirement.

Background

§ 50c (1) Sentence 1 EStG regulates the principle that dividend and royalty payments from a domestic to a foreign corporation are subject to withholding tax[2] in Germany even if the relief conditions under a DTT[3] or a directive[4] are met.

However, the foreign corporation may obtain a refund of the withholding tax (§ 50c (3) Sentence 1 EStG). In addition, a domestic corporation may waive withholding tax in whole or in part if the foreign corporation is in possession of an exemption certificate (§ 50c (2) Sentence 1 No. 1 EStG). Both the refund and the receipt of an exemption certificate require an application by the foreign corporation to the BZSt[5] .

In order to avoid cases of misuse (e.g., application by an intermediary EU letterbox company, because the original shareholder is not entitled to discharge under a DTT or directive), § 50d (3) EStG links the application to certain substance criteria.

Substance criteria

According to § 50d (3) EStG, a foreign corporation has a claim for relief from German withholding tax if at least the conditions of one of the following four alternatives are met (simplified depiction):

1. The source of income from Germany has a significant connection with an economic activity of the foreign company (so-called **material entitlement to relief**). In addition, the economic activity must be carried out with a business operation appropriately set up for the business purpose. A **passive holding company** (pure generation of dividend and royalty income, transfer to shareholders) does not carry out an economic activity;

or

2. The shareholders of the foreign corporation would be entitled to relief under the same provision in the case of direct purchases (so-called **personal entitlement to relief**) and carry on an own economic activity. The fact that it must be the same provision follows from the explanatory memorandum to the law.[6] It is also clear from the explanatory memorandum to the law that it is not sufficient if their shareholders are only personally entitled to relief, they must also carry on an own economic activity[7];

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1 *In the version of the Act on the Modernization of the Relief of Withholding Taxes and the Certification of Capital Gains Tax (Abzugsteuerentlastungsmodernisierungsgesetz - AbzStEntModG), promulgated in Federal Law Gazette I, on 8 June 2021, p. 1259.*
2 *26.376 % for dividends and 15.825 % for licenses.*
3 *Double tax treaty.*
4 *Parent-Subsidiary Directive, § 43b EStG for dividends; Interest and License Directive, § 50g EStG for licenses.*
5 *Federal Central Tax Office*
6 *See government draft of 17 March 2021, BT-Drucks. 19/27632, p. 59.*
7 *See government draft of 17 March 2021, BT-Drucks. 19/27632, p. 58.*

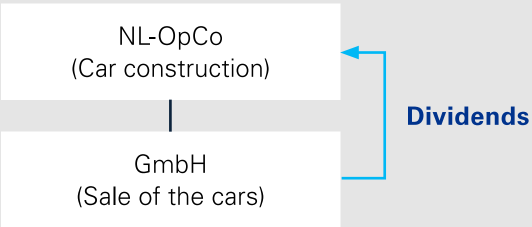
or

3. The foreign corporation itself is listed on the stock exchange (so-called stock exchange clause). According to the explanatory memorandum to the law, the fact that a shareholder of the foreign corporation is listed on the stock exchange is now only sufficient if he would be entitled to relief under the same provision in the event of direct purchase[8];

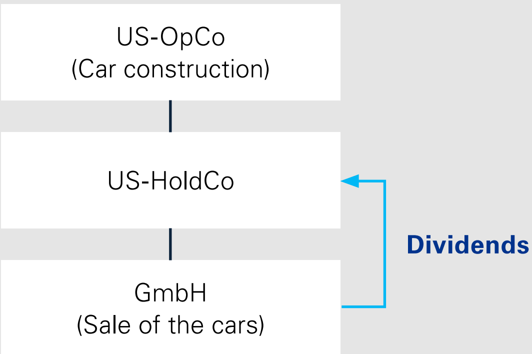
or

4. The foreign corporation succeeds in proving that none of the main purposes of its interposition is to obtain a tax advantage (so-called **counterevidence**).

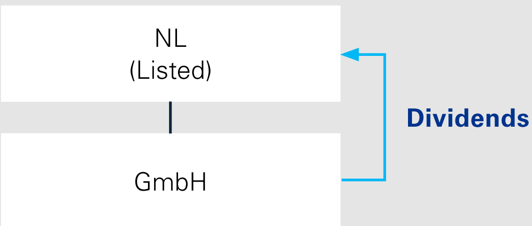
Examples:



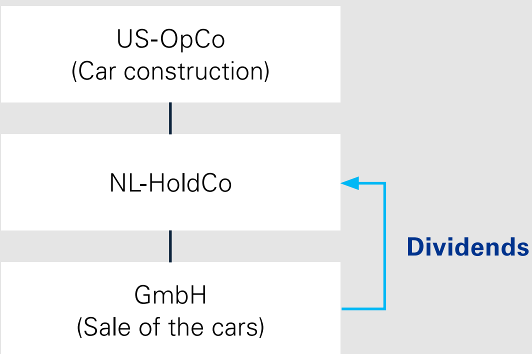
Solution: The requirements of the 1st alternative should be met, since Dutch-OpCo is "active" in the same industry as the GmbH[9].



Solution: The requirements of the 2nd alternative should be met, since the US OpCo would have the same right to relief as the US HoldCo (DTT Germany-USA) and is active in the same industry as the GmbH.



Solution: The requirements of the 3rd alternative should be met, since the Dutch company is listed on the stock exchange.



Solution: The requirements of the 4th alternative should be met where the US OpCo has a relief claim to zero according to the DTT Germany-USA in the case of direct purchase. In that case, in our view, there would be no tax advantage through the interposition of Dutch HoldCo[10].

8 *See government draft of 17 March 2021, BT-Drucks. 19/27632, p. 61.*
9 *In this direction also the government draft of 17 March 2021, BT-Drucks. 19/27632, p. 60.*
10 *In this direction also the government draft of 17 March 2021, BT-Drucks. 19/27632, p. 59.*

Selected questions of doubt

In practice, the case scenario is often encountered in which one or more "active" third-country companies are involved in a German corporation via a passive EU holding company. For direct purchase – e.g., a dividend from the German corporation – but they would only have a DTT relief to claim the 5 % WHT. The involvement of the EU holding company, therefore, in principle creates a tax advantage.

Here it should depend on the individual case, where either: claims that counterevidence exists and thus, relief can be availed of, reducing withholding tax to 5 %; or withholding tax applies in full (26.375 %). It likely depends on whether there are serious non-tax reasons for the interposition of the EU holding company that outweigh the tax advantage. However, a discharge to zero is reportedly possible, taking into account the particularities in the individual case, if the passive EU holding company had an "active" sister company in the same country (so-called transfer of activity).[11]

However, a holding company continues to carry out an own economic activity if it acts as a so-called active management holding company.[12] In addition to the distributing German corporation, it must manage at least one other subsidiary in Germany or abroad by making strategic management decisions. Experience has shown that proof of the performance of strategic management decisions is subject to dispute. As a rule, the BZSt requires in particular the submission of shareholder resolutions and documentation on the holding of „board meetings".

Electronic submission of applications

Since 1 January 2023, the refund application and the application for receipt of an exemption certificate by the foreign corporation must in principle be submitted electronically (§ 50c (5) Sentence 1 EStG). For the electronic transmission of the data, registration over BOP (i.e., the BZSt's online portal) is necessary. According to reports, however, there is an „internal grace period" (no official letter of the German Federal Ministry of Finance [BMF]), after which a submission in paper form is also possible until the end of June 2023. However, since the submission in paper form would be contrary to the formal requirement of § 50c (5) Sentence 1 EStG, this should only be made in exceptional cases and in consultation with the client.

Because there is a risk that an application in paper form does not meet the formal requirement and thus, possibly a time limit may occur.

Conclusion/Key Facts:

The explanations have shown that the substance criteria to be fulfilled under the current version of § 50d (3) EStG are complex and subject to dispute. To make matters worse, according to reports, no BMF letter on the current version of the standard is currently planned and there is hardly any case law yet. In addition, a long processing time with regard to the applications submitted (sometimes over 1 year) is not uncommon.

In particular, clients who are still in possession of an exemption certificate according to the old version of § 50d (3) EStG should check in good time whether they also meet the substance requirements according to the current version in order to be able to receive dividends / royalty payments from Germany that are completely exempt from withholding tax.

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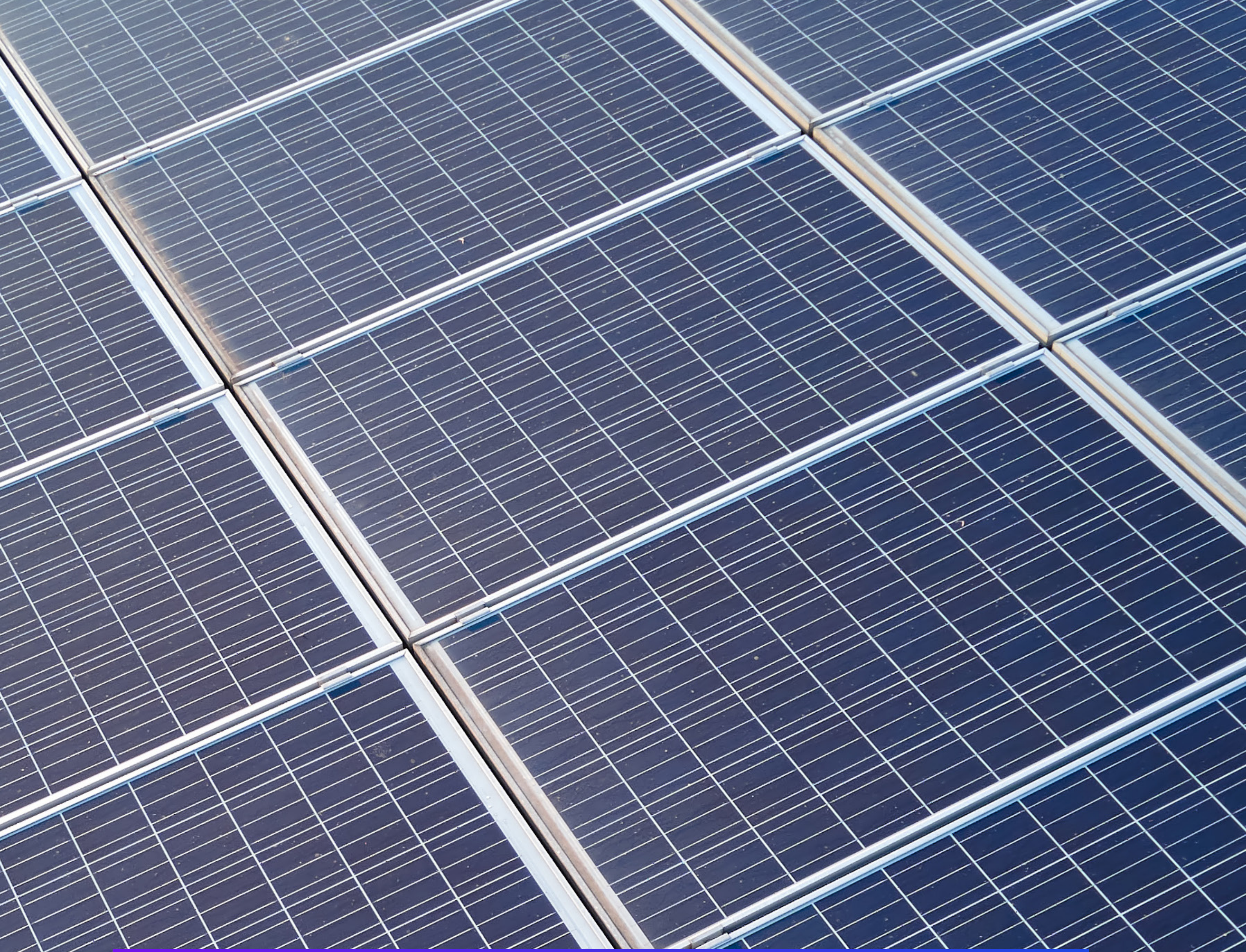
11 *The permissibility of a transfer of activity is not codified by law. However, the prohibition of the transfer of characteristics in § 50d (3) sentence 2 EStG old version was deleted without replacement.*

12 *See government draft of 17 March 2021, BT-Drucks. 19/27632, p. 60. There is no legal codification of the requirements for the existence of an active management holding company.*



02

Photovoltaic systems and real estate special investment funds –

Sec. 26 No. 7a InvStG – Tax developments and risks in connection with photovoltaic systems for real estate special investment funds

Climate change and the use of renewable energies are currently omnipresent. Politically and socially, it is undisputed that the expansion of photovoltaic systems is indispensable for achieving climate targets. Real estate special investment funds have extensive roof areas in their real estate portfolios that can be used for photovoltaic systems. From a tax point of view, however, there were and still are risks that make the real estate special investment funds act very cautiously in this context.

Active entrepreneurial management

In order to qualify as a special investment fund within the meaning of Sec. 26 of the German Investment Tax Act (Investmentsteuergesetz – InvStG), it must be ensured, among other things, that the special investment fund does not - to a significant extent - actively manage its assets in an entrepreneurial manner. The principles applicable in this context must be observed both in the ongoing activities of the Fund and in purchases and sales. Should a special investment fund nevertheless derive income from harmful active entrepreneurial management, far-reaching consequences are risked.

(i) While special investment funds are generally exempt from trade tax pursuant to Sec. 15 (2) InvStG, the income from active entrepreneurial management may constitute an economic entrepreneurial operation and be subject to trade tax. It should be noted that there is no infection of the remaining asset management income of the special investment fund. These remain exempt from trade tax.

(ii) If a special investment fund generates income from active entrepreneurialentrepreneurial management, there is a risk of losing its status as a special investment fund. The special investment fund would irrevocably switch to the taxation regime of Chapter 2 of the InvStG for investment funds. In accordance with Sec. 52 InvStG, this would lead to the establishment of a short financial year and a fictitious sale of the shares in the special investment fund and to a deemed re-acquisition as an investment fund with the realization of all unrealized gains within the special investment fund.

Since income from the operation of photovoltaic systems can regularly be assumed to come from active entrepreneurial management,[1] real estate special investment funds shy away from comprehensively equipping the roof space of their real estate portfolios with photovoltaic systems against the background of said tax risks.

New limits of Sec. 26 No. 7a InvStG

Already in the first issue of RE Tax News 01/2023, we pointed out the innovations of the Annual Tax Act 2022. Among other things, Sec. 26 InvStG was amended and (i) the fulfilment of the conditions for a trade tax exemption under Sec. 15 (2) and (3) as a prerequisite for a special investment fund was deleted from Sec. 26 sentence 1 InvStG and (ii) a new No. 7a was inserted.[2]

The new No. 7a explicitly incorporates the so-called de minimis limit of 5 % from Sec. 15 para. 3 InvStG for income from active entrepreneurial management into the investment provisions of a special investment fund. In the second sentence, this limit is then increased to 10 % for income from the generation or supply of electricity in connection with the rental and leasing of real estate and originating from the operation of plants for the generation of electricity from renewable energies within the meaning of Sec. 3 No. 21 EEG. According to Sec. 3 No. 21 lit. c) EEG, this includes, inter alia, photovoltaic systems. The prerequisite for the application of the increased 10 % limit is that the 5 % limit is exceeded by these revenues from renewable energies and not by other harmful revenues from active entrepreneurialmanagement.[3]

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1 See BMF of 21.05.2019, IV C 1 – S 1980-1/16/10010 :001, BStBl 2019 I p. 527, paragraph 15.17, 7. Indent inversely.
2 JStG 2022 of 16.12.2022, promulgation in Federal Law Gazette I 2022, p. 2294.
3 EEG of 21.07.2014, promulgation in Federal Law Gazette I 2014, p. 1066 z and last amended by Art. 6 G v . 0 4.0 1.2023 I No. 6.

Application of the new limits – a multitude of conceivable constellations

Since 01.01.2023, real estate special investment funds therefore no longer risk the loss of status – provided they do not generate any other income from active entrepreneurial management – if they generate income from the operation of photovoltaic systems, but this amounts to less than 10 % of their total income in the financial year. It should be noted, however, that if the 5 % limit is exceeded, an economic business operation is still estalished by the income from active entrepreneurial management, which is subject to trade tax. This would also apply to other income from active entrepreneurialmanagement, which was previously accrued below the 5 % de minimis limit.

There are therefore many conceivable constellations in connection with the new borders. For example, a real estate special investment fund could receive income of 3 % of its total income in a financial year from other active entrepreneurial management. So far, the 5 % limit has not been exceeded, so that neither under the 5 % de minimis limit of Sec. 15 para. 3 InvStG nor under the new Sec. 26 No. 7a Sentence 1 InvStG, which was already valid before 01.01.2023, there should be any harmful active entrepreneurial management. This should thus not risk trade tax or a loss of status.

Now, if revenues from the additional operation of photovoltaic systems, e.g., additional income in the amount of 3 % of the total income in the financial year, were accrued, trade tax as well as the loss of status was risked until 01.01.2023 . Since 01.01.2023, the income from active entrepreneurial management should still constitute an economic business operation and be subject to trade tax. However, the special investment fund should not lose its status. The remaining asset management income remaines unaffected.

However, if the 10 % limit is exceeded, whether through income from the operation of a photovoltaic system alone or in combination with other income from active entrepreneurial management, there is still the risk of loss of status.

We have summarized simplified examples of various conceivable constellations applying the new thresholds graphically below.

As a result, it should therefore be noted that although real estate special investment funds may receive income from the operation of photovoltaic systems on a somewhat larger scale without losing their status, they should however meticulously monitor and document all income that may come from active entrepreneurial management. This (i) to check for and, if necessary, avoid exceeding the 5 % and 10 % thresholds and (ii) to be prepared for the submission of a corresponding trade tax return if the 5 % threshold is exceeded.

Figure.: 01

This illustrating graphic shows a simplified and exemplary summary of conceivable constellations with regard to the new thresholds of Sec. 26 No. 7a InvStG. The x-axis shows income from the operation of photovoltaic systems, the y-axis shows income from other active entrepreneurial management activities.

Other \ PVA	0%	3%	5%	8%	10%
0%	No Trade Tax No Status Loss	No Trade Tax No Status Loss	No Trade Tax No Status Loss	NEW! Trade Tax No Status Loss	NEW! Trade Tax No Status Loss
3%	No Trade Tax No Status Loss	NEW! Trade Tax No Status Loss	NEW! Trade Tax No Status Loss	Trade Tax Status Loss	Trade Tax Status Loss
5%	No Trade Tax No Status Loss	NEW! Trade Tax No Status Loss	NEW! Trade Tax No Status Loss	Trade Tax Status Loss	Trade Tax Status Loss
8%	Trade Tax Status Loss	Trade Tax Status Loss	Trade Tax Status Loss	Trade Tax Status Loss	Trade Tax Status Loss
10%	Trade Tax Status Loss	Trade Tax Status Loss	Trade Tax Status Loss	Trade Tax Status Loss	Trade Tax Status Loss

Source: KPMG AG, FS Real Estate Tax, 2023

Conclusion/Key Facts:

As already indicated in the first issue of RE Tax News 01/2023, this article dives deeper on Sec. 26 No. 7a InvStG new version and shows that a welcome step in the right direction has been taken. However, the new regulation does not sufficiently reduce the tax hurdles and risks for real estate special investment funds. While real estate special investment funds would be financially and strategically prepared to make their extensive real estate portfolios more climate-friendly and, among other things, to install photovoltaic systems on the roofs, tax risks continue to have a dampening effect.

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03

Cross-border conversions – now also regulated by law –

The implementation of the EU Transformation Directive creates legal certainty for cross-border conversions. Corresponding regulations already existed in tax law.

Cross-border transactions are commonplace in business life and especially in the real estate business – especially within the EU. In view of this, it is surprising that German transformation law has not yet provided a comprehensive legal framework for cross-border conversion transactions. This is all the more remarkable given that tax rules have been in place for many years for many types of cross-border conversions.

The Act Implementing the EU Transformation Directive transposes Directive (EU) 2019/2121 into German law with regard to cross-border conversions, mergers and divisions (hereinafter referred to as „UmRUG").

As a result, these conversion processes are legally and fiscally secure.

The tax situation

Tax law has long had rules on cross-border conversion transactions. For mergers, hive-offs and split-offs, changes of legal form from corporations to partnerships, contributions and split-offs, transformation tax law contains provisions for domestic and comparable foreign transactions. In principle, these are therefore, legally secure from a tax point of view, even if complex regulations have to be observed in some cases.

There are no express rules in the Transformation Tax Act for the change of legal form of a German corporation into a foreign corporation or a German partnership into a foreign corporation (or vice versa). These cases can be solved with the help of general tax law, if necessary, it is advisable to apply for binding information on the tax treatment.

The right of transformation before the amendment

Before the UmRUG, the Transformation Act expressly only concerned legal entities domiciled in Germany, i.e., it was made for German companies. Only to the extent required by the EU Merger Directive did the Transformation Act provide for rules for mergers involving at least one company from the EU or EEA.

For the change of a relevant legal form, across a border in the EU in the field of real estate, e.g., the relocation of a GmbH to Luxembourg by changing the legal form to a Luxembourgish Sarl, legal structuring practice has found practical solutions with reference to the EU freedom of establishment.

The right of transformation after the amendment

On 1 March, the Act on the Implementation of the EU Transformation Directive (UmRUG)[1] came into force. With this, the legislator creates provisions for cross-border changes of legal form, division (split-up, split-off and hive-off) across one or more EU/EEA internal borders in the Transformation Act. Together with the rules on cross-border mergers, they form a completely new sixth book in the Transformation Act.

In the foreground of the UmRUG are regulations on the process of conversions. In addition, important provisions on creditor protection and workers' rights have been incorporated into the law.

In principle, the planned processes for the conversion are similar. A conversion plan must be drawn up in advance, which is subject to an examination and a conversion report is drawn up. Then the conversion is registered with the competent authority

1 *Federal Law Gazette I 2023, No. 51 of 28.02.2023*

(the competent registry court). If a company has only one partner or the shareholders waive compliance with the regulations, this process is facilitated.

It should be noted that the new rules mainly apply to corporations that have been incorporated under the law of an EU or EEA member state and have their registered office or central administration or principal place of business in the EU or EEA. Commercial partnerships are only eligible as absorbing companies of a merger.

Legal certainty is provided by the new law for the change of legal form of corporations within the EU and EEA. For example, according to the new regulations, a GmbH can easily change to a Luxembourg Sarl or Dutch BV or, conversely, the Sarl or BV can change into a GmbH.

Conclusion/Key Facts:

The UmRUG creates legal certainty for certain cross-border conversion processes in the EU and EEA. Where previously German transformation tax law made provisions for cross-border transactions that were not described with certainty under transformation law, today it is rather the opposite. For example, the case of the change of legal form of a GmbH in Sarl or BV (or other EU company) and vice versa with the UmRUG is now regulated by transformation law. Special transformation tax rules are still missing, so that applying for binding information from the authorities is still advisable.

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04

An extension of the extended trade tax relief, yes or no?

Note on FG Düsseldorf, judgment of 22. September 2022 – 9 K 2833/21 G

Double rental income and single rental expense, unjustified reduction or add-back? Where is the reduction and where is the add-back? When it comes to the trade tax treatment of intra-group rentals, the situation is sometimes similar to shell games. Recently, the Fiscal Court of Düsseldorf (FG Düsseldorf) issued a favorable ruling for taxpayers on the subletting model and helped to reduce the number of shells, at least in part.

1. Extended extended relief and addition of rental income

Every commercial business in Germany is subject to trade tax. Accordingly, the trade tax is intended to be raised on trade income and serve the municipalities as compensation for the burdens caused by commercial businesses.[1] Since corporations generate commercial income by virtue of their legal form, the taxation of commercial income is accompanied by the consequence that trade tax is also levied for asset management companies which, regardless of their actual activity, may be commercial only because of their legal form.

In context of this automatic levy of trade tax, it does not appear justified that a partnership holding real estate is not taxed with trade tax, while its counterpart, which is structured as a corporation, is subject to trade tax only by virtue of its legal form.[2] In order to take account of this circumstance, the trade income of companies may be reduced pursuant to § 9 No. 1 Sentence 2 GewStG by the part attributable to the management and use of their own real estate. However, only companies that exclusively manage their own real estate or their own capital assets benefit from this reduction (this is referred to as the „extended relief" or „erweiterte Kürzung"). As a result, trade tax usually does not arise effectively in these cases.

In addition, the reclassification of the trade income is achieved by the additional provisions of § 8 GewStG.[3] Among other things, part of the rent and lease interest for the use of immovable assets is added back to the trade income (§ 8 No. 1 lit. e) GewStG). The purpose of this provision is to achieve equal treatment for businesses that operate their business with their own assets.[4]

2. Specifics in fiscal unities

Due to the pursuit of equal burdens and equal treatment, German tax law lives from its exceptions – this is also the case in detail with trade tax. This is because the extended relief is excluded in particular where real estate serves the business of a shareholder or if the taxable trade income results from rents between controlled companies. The exclusion of any add-backs or reductions takes place against the background that there should be no unjustified relief from or charge to the tax base. That exception was, in essence, the subject of the present case-law.[5]

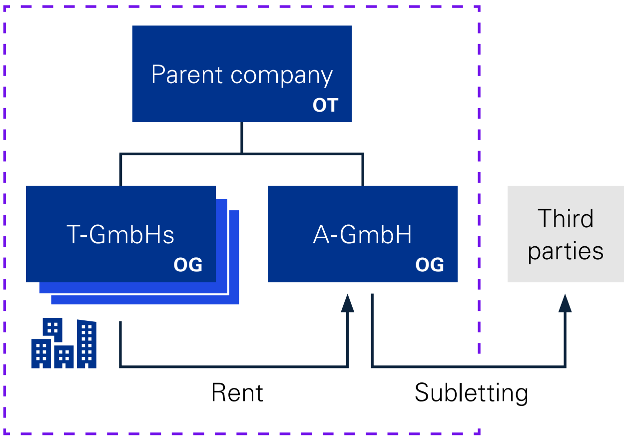
1 *See Hey in: Tipke/Lang, Steuerrecht, 24th ed. 2021, paragraph 12.1.*
2 *Cf. Federal Fiscal Court, decision v. 25.09.2018, GrS 2/16, BStBl. II 2019, p. 262; Reaper in: Frotscher/Drüen, GewStG, § 9 Rz. 33; Hidien in: Lippross/Seibel BasisK Steuerrecht, § 9 Rz. 32.*
3 *The additional provisions are also intended to stabilise the tax revenue of the municipalities and to secure it against cyclical fluctuations.*
4 *See BT-Drucks. 16/4841, p. 31.*
5 *See BFH, decision of 29.07.2004, I B 69/03, BFH/NV 2005, p. 72; BFH, judgment of 18.05.2011, X R 4/10, BFH/NV 2011, p. 1610, paragraph 38; BFH, judgment of 30.11.2014, IV R 9/11, BFH/NV 2015, p. 227, paragraph 19.*

3. The judgment of the Fiscal Court of Düsseldorf

3.1 The facts

The special feature in the case of the Fiscal Court of Düsseldorf was that properties were also rented to third parties. The facts of the case before the Fiscal Court of Düsseldorf were a group of companies that were organized in a tax group for income tax purposes and operated a subletting model. The parent company (controlling company) held shares in several subsidiaries (controlled companies) that held their own real estate portfolio. Furthermore, the parent company held a stake in another controlled company, which did not hold its own real estate portfolio, but rented from the other controlled companies. At the same time, that company leased the properties to third parties outside the group.

The taxpayer and the tax authorities disagreed over the add-backs and reductions in the fiscal unity. In the view of the tax authorities, an add-back should be included, and extended relief denied.



3.2 Judgment

The Fiscal Court of Düsseldorf decided that the individual controlled companies can certainly take advantage of extended relief. The principle that business transactions within the group do not in principle lead to trade tax add-backs or deductions does not require a complete denial of extended relief in the subletting model. However, the Fiscal Court of Düsseldorf permits extended relief only to the extent that it is not offset by the omitted add-backs by the renting company pursuant to § 8 No. 1 lit. e) GewStG.[6]

4. Opinion

With its opinion, the Fiscal Court of Düsseldorf weighs in on the existing Federal Fiscal Court case law on the refusal of the extended relief in lettings between controlled companies. As the Fiscal Court of Düsseldorf rightly points out, the double tax burdens and unjustified tax relief resulting from the consolidation of the trade income of individual companies because of the group-related consolidation must be corrected.[7] In contrast to the present case however, the previous Federal Fiscal Court case dealt purely with internal lettings, so that the modification of a letting to external parties remained unanswered by case law.

Instead, this question was taken up in the literature and such a complete refusal of the extended reduction did not seem appropriate, since there can be no unjustified relief in the case of (partial) lettings to third parties. A double relief through rental expenses and extended relief is out of question in such cases.[8]

Nevertheless, the decision of the Fiscal Court of Düsseldorf does not fit seamlessly into previous Federal Fiscal Court case law, since extended relief was not fully permitted despite letting to third parties – namely, in the amount of the omitted add-back according to § 8 No. 1 lit. e) GewStG. The decision is partly criticized in the literature, as the extended relief would have to be granted in full.[9] The Fiscal Court of Düsseldorf first admits that, regarding deductions, the external relations of the group must be taken into account and internal cash flows must be corrected.[10]

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6 The appeal was admitted and is pending at the Federal Fiscal Court under AZ III R 41/22.
7 See FG Düsseldorf, judgment of 22.09.2022, 9 K 28333/21 G, EFG 2023, p. 136, paragraph 20; BFH, judgment of 18.05.2011, X R 4/10, BFH/NV 2011, p. 1610, paragraph 39; BFH, judgment of 30.10.2014, IV R 9/11, BFH/NV 2015, p. 227, paragraph 26.
8 See Duttiné, DStR 2011, 2033 (2035); Güroff in: Glanegger/Güroff GewStG, § 9 Rz. 19a.
9 Gl.A. Wagner, DB 2023, 228.
10 See FG Düsseldorf, judgment of 22.09.2022, 9 K 28333/21 G, EFG 2023, p. 136, paragraph 20.

However, the Fiscal Court fails to recognize that a correction of the previously unsuccessful add-back is not necessary. In view of the classification of the controlled companies as permanent establishments of the controlling company (§ 2 Sec. 2 Sentence 2 GewStG), the real estate was not economically leased into the structure, but merely rented out. In the fiscal unity, there is no economic rental expense to be added back, but only a rental income that would have to be reduced. According to the purpose of the add-back and reduction provisions, there is no need for an add-back in order to ensure the taxation of the commercial business. Rather, a reduction is required, since there is no commercial business, and as a result only an asset management activity.

Conclusion/Key Facts:

Despite letting to third parties the Fiscal Court of Düsseldorf, contrary to expectations, did not grant the extended relief in full. Therefore, the extended relief – despite confirmation of the subletting model by the Fiscal Court judgment – requires a particular sensitivity as soon as it comes to internal lettings within a fiscal unity. The appeal verdict remains to be seen.[11]

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11 Pending at the Federal Fiscal Court under III R 41/22.

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