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Intercantonal double taxation – corporate tax jurisdiction

Introduction

The Swiss Constitution expressly prohibits inter-cantonal double taxation, which means that two cantons cannot levy a similar tax on the same taxpayer on the same basis and for the same period (Art. 127 para. 3 Swiss Federal Constitution). However, there may be situations in which two cantons dispute jurisdiction to levy the tax. The Federal Supreme Court ruling of July 16, 2025 (9C_496/2024) perfectly illustrates these potential tensions between cantons.

Issue at hand

Under Swiss tax law, companies are subject to capital tax and income tax in the canton where their registered office is located or in the canton where their effective management is located (Art. 20 para. 1 StHG).

In the case cited above, a company transferred its registered office from Zurich to Zug in 2016, before returning to Zurich in 2020. The canton of Zug claimed jurisdiction to tax the company on the grounds that its registered office was located in the canton and that the company had premises, staff and infrastructure there. Zurich argued that the company's place of effective management was not at its registered office and was thus located at the domicile of its sole director in the canton of Zurich. The jurisdiction to tax the company should therefore lie with Zurich.

Effective management

Federal court case law defines the effective place of management of a company as the place where the company's key decisions regarding its day-to-day management are made. Effective management is distinct from simple administration (bookkeeping, document management, etc.) and from strategic activities performed by the company's higher bodies, which in principle have no influence on the company's tax liability.

According to the Swiss Federal Supreme Court (SFSC), the private domicile of the company director may coincide with the place of effective management if the day-to-day management decisions are mainly taken there. In the case at hand, the Canton of Zurich argued that, since effective management at the company's registered office had not been proven, it must necessarily be located at the domicile of the company director. The SFSC clarified that the domicile of the director does not constitute a subsidiary tax jurisdiction by default. In other words, even if the company is unable to establish that its effective management is located at its registered office, it cannot automatically be transferred to the domicile of the director.

Burden of proof

The burden of proof in tax law follows the principles of civil law (Art. 8 of the Swiss Civil Code). This means it is up to the canton claiming taxing rights to prove the existence of the elements on which it bases its jurisdiction. In case of persistent doubt or insufficient evidence, that canton must bear the consequences. In our Zurich-Zug dispute, the SFSC held that the fact that the sole director mainly had business meetings in Zurich and Bern was not sufficient to prove that the effective management was located at his place of domicile. Furthermore, the fact that the company had its registered office in Zurich before and after the period in dispute did not constitute sufficient evidence in the opinion of the federal judges.

Consequences

As the canton of Zurich did not provide evidence that the effective management was located at the administrator's home, the canton of Zug remains solely competent to tax the years in dispute.

Conclusion

This ruling highlights the central importance of the criterion of effective management in determining the tax domicile of a company. It also illustrates two fundamental points: Firstly, the domicile of the person in charge of the effective management of the company cannot be used as a connecting factor without clear and concrete evidence. Secondly, the burden of proof lies with the canton claiming tax jurisdiction. If doubt remains, the company will be taxed at its registered office.

It is important to take these points into consideration when deciding on the location of the registered office when setting up a company.

Please do not hesitate to contact us if you have any questions.

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