

Brexit: need for action for British Limited companies with a place of management in Austria

In recent years, Austrian entrepreneurs have often chosen the British "Limited Company" ("Ltd.") as a legal form for their business activities. The Ltd. was formally registered in the UK, but its place of management and its business activities are in Austria. As the Brexit will most likely lead to the non-applicability of most EU law regulations, those companies will lose their legal status, leading to legal and tax consequences.



The attractiveness of the British Ltd

Contrary to Austrian corporate forms with limited liability, the British Ltd. does not require a minimum capital. Hence, a Ltd. founded in the UK having its administrative headquarters and place of management in Austria is an attractive option for Austrian entrepreneurs. Typically in those cases, the Ltd. is only formally registered in the UK and has no business activities there.

The basis for the recognition of the Ltd. in Austria is the ECJ's case law on the freedom of establishment. Because of this case law, member states are obliged to recognize the legal and party capacity of all companies which are properly constituted and have their legal seat in a member state.

Corporate Tax Law

Due to the fact that they have the place of

management in Austria, the concerned British Ltd. are generally subject to unlimited tax liability in Austria. Furthermore, those companies are also tax residents of Austria in accordance with the double tax treaty between Austria and the UK. Insofar the business activities are actually performed in the UK, Austrian business activities might trigger limited tax liability and might give rise to a taxation right according to the treaty (e.g. in case there is a permanent establishment).

Brexit - Legal consequences

Due to the UK's imminent withdrawal from the EU, the freedom of establishment will not be applicable as of 1st January 2021. Accordingly, Ltd. companies which are registered in the UK but have their administrative headquarters in Austria will not be treated as separate legal entity anymore, but will be treated as partnership under civil law (GesbR) or sole proprietorship and thus lose their legal capacity in Austria. Consequently, all partners will become personally liable for the debts of the company with all their assets.

Brexit - Tax consequences

If no actions are taken a conversion into a partnership (GesbR) or a sole proprietorship will entail the tax consequences of liquidation taxation. This leads to taxation of hidden

reserves and goodwill at the level of the company. At the level of the shareholders capital gains taxation will be triggered.

Nevertheless, the Austrian Reorganization Tax Act (Umgründungssteuergesetz) offers various possibilities for tax neutral reorganizations in such cases. Due to the limited time until 31st December 2020 most options are however unrealistic. In our view the only remaining option at this point in time is a contribution under article III Reorganization Tax Act. Under this option, the business operations of the Ltd. are transferred to an Austrian GmbH. However, the exact procedure must be evaluated, and various tax and corporation law issues have to be clarified for the specific case. Hence, immediate action should be taken.

British Ltd. with head office in the UK

A Ltd. with its registered and administrative office in the UK is affected by BREXIT insofar as it will be considered as a third country company from 1st January 2021 onwards. Consequently, the tax advantages of the EU directives will cease to apply. For example, the Parent-Subsidiary Directive and the Interest and Royalty Directive, providing for a withholding tax exemption for dividends, interest and royalty payments among associated companies, will not be applicable anymore. Moreover, the Merger Directive and various specific provisions, which are only accessible to Austrian or EU taxpayers, will not be applicable anymore.

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