

Tax Consolidation: Conditions and Regimes in Germany



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Background to the German term „Organschaft“

- **Literal translation of the terms**

- „Organschaft“:
 - relation to the organ of the human body
 - also used as a term for those persons/ groups through which the corporation acts (for example for the limited liability company: general manager, shareholders meeting and board of directors)
 - Different English translations: e.g. „integrated company“ or „tax grouping“
- „Organträger“ (parent company): carrier of the organ
- „Organgesellschaft“ (subsidiary): Organ-company

- **Differentiation between tax consolidation and tax integration**

- corporate tax → consolidation; VAT → tax integration
- Corporate tax group: subsidiary remains an individual legal subject; optional through a possible conclusion of the profit transfer agreement
- VAT group: only the controlling company is regarded as the entrepreneur; tax group automatically comes into effect if the requirements are met

Corporate Tax - Introduction

- **Subject:**

- all resident corporations (unlimited liability)
- non-resident entities earning German-sourced profits (limited liability)

- **Tax rate (corporate level)**

- Corporate Income Tax: 15%
- Local Business Tax / Trade Tax: \approx 15%
- Additional taxation on shareholder level (dividend payments or capital gains)

Corporate Tax – Group Taxation: Idea behind the „Organschaft“

- **Was developed in the 20th century by case law**
- **Was codified in 1969**
- **Aims at an intragroup loss compensation**
background: principle of separability
- **Avoiding double taxation of the distribution of earnings**

Corporate Tax – Group Taxation: Requirements

- I. Parent Company („Organträger“)**
- II. Subsidiary („Organgesellschaft“)**
- III. Majority Interest**
- IV. Profit Transfer Agreement**

Corporate Tax – Group Taxation Requirements:

I. Parent Company („Organträger“)

- Natural person
- Legal persons that are not exempt from corporate tax
- Commercial partnerships
- Potentially: legal subjects that have been founded under foreign law

Corporate Tax – Group Taxation Requirements:

II. Subsidiary („Organgesellschaft“)

- Societas Europaea (SE), stock companies or partnerships limited by shares
- Potentially: corporate entities that were established under foreign law
- Place of management in Germany
- Legal seat in the EU or EEA

Corporate Tax – Group Taxation Requirements:

III. Majority Interest / financial integration

- Parent company must own the majority of voting rights
 - In the subsidiary
 - Or in the intermediary company
- Ability of the parent company to enforce its decisions

Corporate Tax – Group Taxation Requirements:

IV. Profit Transfer Agreement

1. Formal legal requirements

- Written form
- Approval of the annual general meeting
- Entry in the commercial register

2. Material requirements

- Subsidiary: is obliged to transfer its profits and losses to the parent company
- Parent company: must offset losses made by the subsidiary
- Must be carried out for a minimum period of five years

Corporate Tax – Group Taxation: Consequences

- **Attribution of the income of the subsidiary to the parent company**
- **Intragroup loss compensation**
- **Both the parent company and the subsidiary are personally liable to tax, but the income of the controlled company is 0€**
- **Intra-group profits are subject to tax, e.g.: loans, transfer of assets**
- **No taxation of dividend distribution (if the dividend is distributed from one corporation to another corporation)**
- **Protection of Minority shareholders: Compensatory payment (annually)**

Corporate Tax – Group Taxation: Termination

- **When the aforementioned requirements are no longer met**
- **Differentiation between termination after and before the mandatory minimum duration of five years**
- **Defective transfer profit agreement**
 - Transfer of profits = hidden profit distribution
 - Offset of losses = constructive equity contribution

Corporate Tax – Group Taxation: Advantages & disadvantages

Advantages	Disadvantages
Offsetting of losses incurred by the subsidiary at the parent company	The limited liability protection for losses in the subsidiary is waived
Thin capitalization rules do not apply	Requirement for a minimum five-year-period for the profit transfer agreement
5% tax on dividends is avoided	

Value Added Tax – Group Taxation Requirements:

I. Financial link

- Majority of voting rights (more than 50%)
- Decisions can be enforced in the controlled company

II. Organizational integration

- Deviating formation of will at the subsidiary has to be excluded
- Differentiation between complete personal union, partial personal union and no interlocking of the management

III. Economic integration

- If there are not insignificant economic relations between the companies

Value Added Tax – Group Taxation

Consequences & termination

- **It was first introduced in 1934**
- **Consequences:**
 - The controlled company is not to be regarded as independent
 - The parent company is regarded as the entrepreneur & tax debtor
 - Intercompany sales are no longer subject to VAT
- **Idea & advantages:**
 - To simplify complex structures. Only the controlling company appears to the tax authorities as an entrepreneur
 - The creation of non-deductible input tax can be avoided
- **Termination:**
 - Terminated once one requirement is no longer fulfilled

Overview and comparison

	Financial Integration	Economic Integration	Organizational Integration	Profit Transfer Agreement
Corporate Tax	(+)			(+)
Trade Tax	(+)			(+)
Value Added Tax	(+)	(+)	(+)	

**Thank you for your
attention!**