

31. March 2023

BFH RECOGNIZES INCONGRUENT RESOLUTION ON ADVANCE PROFIT DISTRIBUTION BREACHING ARTICLES OF ASSOCIATION

CONTRARY TO THE VIEW OF THE TAX AUTHORITIES, THE FEDERAL FISCAL COURT (BUNDESFINANZHOF - BFH) RECOGNIZES THE VALIDITY UNDER CIVIL LAW OF A UNANIMOUS RESOLUTION ON AN INCONGRUENT ADVANCE DISTRIBUTION, REQUIRING THE DISTRIBUTION RESOLUTION TO BE USED AS THE BASIS FOR TAXATION. IN CONTRAST TO THE TAX AUTHORITIES, THE BFH, IN ITS RULING OF 28 SEPTEMBER 2022 - VIII R 20/20 - SEES SUCH A RESOLUTION NEITHER AS A HIDDEN PROFIT DISTRIBUTION NOR AS AN ABUSE OF THE TAX SYSTEM UNDER § 42 GERMAN FISCAL CODE (*ABGABENORDNUNG* - AO). [\(more...\)](#)