By PwC Deutschland | 09. Januar 2011

No requalification of pension to former partner

The Supreme Tax Court has rejected a tax office attempt to requalify a retirement pension paid to a former partner now living abroad to deferred business income.

The managing partner of a successful business sold his partnership share on reaching retirement age and moved to the USA. The partnership and its successor GmbH continued to honour a promise to pay him a retirement pension for life. The tax office saw the pension payments as delayed partnership income taxable in Germany. The Supreme Tax Court, however, sided with the taxpayer in insisting that the pension was a retirement pension in the spirit of the US double tax treaty, taxable as current income in the country of current residence. In this, it followed its previous case law. It also insisted that the treaty override provisions requalifying all payments to partners as partnership (business) income could not be applied for want of a specific reference in an otherwise precisely-worded provision. Thus it did not need to examine the legitimacy of the treaty override as such, or whether a former partner could still draw partnership earnings from a successor GmbH. (AM)

Supreme Tax Court resolution I R 106/09 of November 8, 2010 published on January 5, 2011

Schlagwörter

Pension requalification, deferred business income, delayed partnership income, former partner, retirement pension