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Rental income of foreign residents

The finance ministry has issued an explanatory decree for foreign businesses following a change in the law reclassifying their income from German property from rental to trading income.

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From January 1, 2009 income earned by non-residents from German property held as a business asset automatically ranks as income from a trade or business. The main consequence of this is that the non-resident landlord is subject to a German bookkeeping obligation in respect of the German property if either:

- he is required to keep books under other provisions, including the statutes of his own country, or
- his annual results in Germany exceed €500,000 turnover or €50,000 profit.

The finance ministry has issued a decree for the guidance of foreign residents affected by the change. Since corporations earn trading income by definition, individuals and partnerships are the main addressees in practice, though the decree does not explicitly make the point. However, individuals and partnerships with property income from assets held privately (asset management) are not affected. It should also be borne in mind that property income in Germany includes interest on a loan secured by mortgage, although in such cases the tax on the income is limited to the maximum permitted to Germany under the interest clause of the double tax treaty. In summary the decree states:

- The bookkeeping obligation is independent of any German permanent establishment or permanent representative.
- The books must be maintained in Germany unless the tax office permits otherwise.
- If books are not required, the taxable income may be computed on a cash basis.
- The opening balance sheet as of January 1, 2009 is to be based on the acquisition cost of the property less amortisation claimed to date. If the property has been held since January 1, 1994, its market value on that date is to be taken in place of its acquisition cost.
- A single tax office is to be responsible for any one taxpayer. This is to be the tax office in whose territory the most valuable of the taxpayer's German properties lies. This tax office is also to assume responsibility for the taxpayer's German VAT.
- The classification of property income as trading income does not, of itself, found a permanent establishment. Thus it does not trigger a trade tax obligation.

Schlagwörter

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