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German trade tax restriction on interest deductibility upheld

The ECJ has upheld the German disallowance of one-half of the long-term interest expense for trade tax as not conflicting with the Interest and Royalties Directive.

A German subsidiary received a long term loan from its Dutch parent. At the time, the Trade Tax Act disallowed one-half of all long-term loan interest paid as a business expense (the disallowance is now one-quarter of all interest paid). The subsidiary maintained that this disallowance thwarted the object of the Interest and Royalties Directive – the avoidance of double taxation on interest and royalty payments within groups – and appealed against its trade tax assessment. However, the ECJ has now held that the German Trade Tax Act disallowance is not in conflict with the Directive and therefore acceptable in community law. It reasons that the object of the Directive is to avoid legal double taxation in the hands of the income recipient. Nowhere does the Directive refer to the payer of the charge or to a concept of economic double taxation for a group. The trade tax disallowance of one-half the interest expense had no effect on the net proceeds received by the parent as interest creditor. It was therefore irrelevant to the Directive, rather than being in conflict therewith.

The ECJ case reference is C-397/09 *Scheuten Solar* judgment of July 21, 2011.

Schlagwörter

long term loan, long-term interest, trade tax