By PwC Deutschland | 24. Oktober 2012

Foreign motor racing team taxable on receipts from German sponsors

The Supreme Tax Court has held a foreign motor racing team to be taxable on its receipts from a German sponsor in relationship to its participation in German events.

A foreign motor racing team signed a sponsoring agreement with a German supplier of motor vehicle parts and accessories. The team bore the sponsor's name and logo on its cars and on the drivers' helmets and overalls. The drivers were also expected to appear in sponsorship livery at press conferences and similar public events, and the sponsor was allowed to refer to the team in its own advertising. For this, the sponsor paid the team a fixed fee annually and also allowed it free of charge access to its products as needed. The tax office saw the arrangement as a taxable activity of non-resident sportspeople – insofar as appearances in Germany were concerned – and claimed from the sponsor the withholding tax that entity should have deducted from the sponsorship fee paid

The Supreme Tax Court has now held in support of a revised calculation by the tax office following the (presumably unwitting) assertion on behalf of the team that virtually the entire service provided was a taxable activity in connection with sporting events. The entire fee was thus taxable in Germany as the income from sporting performances insofar as the events took place in Germany. The split between taxable and exempt income was thus purely geographical, although the tax office had already allowed of its own volition a 10% deduction for non-taxable activities included in the sponsorship fee, such as the use of the team's name by the sponsor in its own advertising. The court also followed the lower court's inclusion of the value of the free-of-charge usage of the sponsor's products in the team's income tax and therefore withholding tax) base.

The court dealt with an apparent distinction between the drivers as sportspeople and the team as an organisation in some detail. In principle, only the drivers could make a personal appearance and thus only they could be taxed. However, as the court pointed out, the drivers and the team were inseparable linked. Each wished to win his own championship. However, the team could not do so without drivers and the drivers could not do so without a car. Accordingly, the amounts paid to the team were inseparable from the performance of the drivers and thus taxable – at the withholding level – as income in their hands.

The sponsor also attempted to claim that it the inclusion of Germany in the event calendar for the following year was uncertain when the fee was paid. At that time, no deduction of withholding tax was therefore conceivable. The court replied that the uncertainty was irrelevant; what mattered was what actually occurred. If an event took place in Germany, the participants were taxable on the fee portion deemed to have been earned here. An agreement in advance to hold an event in Germany did not lead automatically to a withholding tax obligation, but neither could the failure to withhold tax from an advance payment be explained away by reference to the as yet non-existent obligation of the team to appear in Germany.

Supreme Tax Court judgment I R 3/11 of June 6, 2012, published on October 24

Schlagwörter

German events, motor racing, sponsors