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Leasing fee for foreigners only taxable in so far as object used in Germany

The Supreme Tax Court has held that the leasing fees paid to a Liechtenstein company for a German registered lorry are only subject to (withholding) tax to the extent the vehicle is actually used in Germany.

The owner-manager of a haulage company held a majority interest in a Liechtenstein company which owned the vehicles used in the haulage business. The drivers were independent contractors. The Liechtenstein company leased the vehicles to the German company which, in turn, leased each to its own driver for – in effect – the same amount. The German company also gave each driver a guarantee of full employment. The business risk from the arrangement thus fell, in the first instance, to the German company. The vehicles were registered in Germany and mostly used on long-haul routes between Germany and Spain. The tax office the reviewed the position and came to the conclusion that the Liechtenstein company had earned leasing income from a German lessee subject to withholding tax in the (then) absence of a double tax treaty.

The Supreme Tax Court has now accepted the tax office' position in so far as the vehicles were actually used in Germany. This proviso is important as the German part of the route to Spain was usually less than 10% of the whole. Thus in general terms over 90% of the leasing fee paid to Liechtenstein is tax-free. The case was referred back to the lower court for determination of the precise split; the inference was, however, clear – it is to be based on the distance driven.

Supreme Tax Court judgment I R 22/12 of April 10, 2013, published on August 14

Schlagwörter

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