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Maximum foreign tax credit to take account of personal allowances

The finance ministry has decreed that all assessments in which the foreign tax credit is less than that actually borne are to be issued provisionally pending a change in the law to reflect personal allowances in the calculation. Taxpayers may apply for a stay of execution on any amount at issue.

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The ECJ held in February 2013 that the German method of calculating the maximum foreign tax credit on income from abroad infringed the free movement of capital provisions of the TFEU (case 168/11 *Beker*, judgment of February 28, 2013). Its point was that foreign tax could only be credited up to the German income tax charge on the income concerned. This latter was established as a proportion derived from the ratio of total income earned to total German tax due before any foreign tax credits. This calculation tended to under-estimate the German tax as it ignored the effect of personal allowances on the tax charge. Rather, the maximum tax credit should be based on the overall net effective rate derived from the total tax due in proportion to the total taxable income after deducting all personal allowances including reliefs for special, unusual burdens.

The finance ministry has now reacted to this judgment with a call to tax offices to declare all assessment notices involving a restriction of the credit for foreign tax paid to a lower amount of German tax due provisional pending a change in the law. Applications by taxpayers for a stay of execution of the amount of tax at issue (i.e. the difference between the two methods of calculation) are to be granted. Potentially, all income tax assessments with an under-recovery of foreign tax are affected except those in which the foreign income is taxed at a flat rate (investment income from 2009) or those where no German tax is due. Corporation or trade tax assessments are not affected.

Schlagwörter

foreign tax credit, personal allowances, provisional