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Payment recipient must be clearly identified

The Supreme Tax Court has held that the requirement that a payment recipient be precisely identified on demand as a condition for the deduction of the expense refers to the ultimate beneficiary.

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The Tax Management Act contains a provision that the recipient of a payment must be named “precisely” on the demand of the tax office. Failure to satisfy this demand leads to non-deductibility of the expense or liability. The tax office has discretion as to whether it makes the demand. The Supreme Tax Court has now expanded on these principles in a case involving an investment in Spain held through a Liechtenstein letterbox. The German taxpayer acquired the shares in the Liechtenstein company for nearly ten-times the amount that company had paid a year earlier for the Spanish shares bought from another Liechtenstein letterbox. The Spanish venture proved unsuccessful over the course of the following three years, at the end of which the Liechtenstein shareholder was put into liquidation. The German taxpayer received the (by now worthless) Spanish shares as a liquidation dividend in kind in final settlement of its claims on the liquidation estate. The tax office cited the Tax Management Act and demanded to know the identity of the persons behind the letterbox to which the company had paid for its investment. The company claimed to be unable to provide this information, but did offer its written assurance that none of its German related parties were direct or indirect beneficiaries. It also proffered the statement of the Spanish investment broker to the effect that he, the broker, held powers of attorney to represent the interests of all involved. Neither the tax office at the time, nor later the courts, were prepared to accept these statements as “precise” identification of the payment recipient. Accordingly, they disallowed the write-down on the worthless investment as a deductible expense.

The Supreme Tax Court confirmed this disallowance, making the point that the purpose of the identification provision was to enable the authorities to ensure that income did not go untaxed. Accordingly, the condition could only be met with the identification of the ultimate beneficiaries of the payment, be they the owners of the letterbox, or be they the persons for whom the letterbox was acting as agent. This identification must be sufficiently precise and extensive to demonstrate that the income was either not taxable in Germany at all, or, if taxable, that it had in fact been taxed. The court also made the point that there was no difference in principle between capital expenditure and outlays for current expense. Thus the deduction for a later write-off of an investment could be denied because of an unidentified recipient of the payment years earlier. It did add that the passage of time could make identification of ultimate beneficiaries more difficult and that tax offices should bear this in mind when exercising their discretion. However, this was not relevant to the present case of only a four-year time span within a single tax audit period.

Supreme Tax Court judgment IV R 27/09 of July 11, 2013 published on October 9

Schlagwörter

Liechtenstein, letterbox, payment recipient, precisely identified