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# Foreign partner receives business income from the interest on a shareholder loan to associated company

**The Supreme Tax Court has held that a foreign limited partner must accept attribution of the shares in a British distributor company held by the partners to the partnership. In consequence, the interest on a shareholder loan falls to the partnership, where it is requalified as trading income. The interest clause in the double tax treaty with the partner’s home country is inapplicable.**

One of the three limited partners in a GmbH & Co. KG was resident in Thailand. The GmbH & Co. KG operated an active business, selling at home through its own branches and abroad through a British selling company jointly held by the three partners. The partners granted the company interest-bearing shareholders' loans. The German partners attributed these loans to the partnership, as they were necessary for the finance of the British company and therefore to maintain the sales network of the partnership. The Thai partner protested that his share in the company as well as his loan were his Thai assets and were nothing to do with the German partnership.

The Supreme Tax Court has now rejected his appeal. The investment in the British company was for a German business reason. Neither the partnership nor the partners operated through permanent establishments in other countries. In particular, the Thai partner had no business operation in Thailand, and his asset management (of the shareholding and the loan) could not rank as such. The consequence was requalification of his interest income from Great Britain to trading income from Germany. This meant that the loan interest was full taxable. It was not protected by the interest article of the German/Thai double tax treaty as that only dealt with interest arising in the one state for a beneficiary resident in the other. However, the interest here arose in Great Britain and could not be attributed to a permanent establishment elsewhere as the British payer only maintained one single establishment. Any resulting double taxation (in Germany and Thailand) was to be accepted in view of the provisions of the German/Thai treaty (no reference in the "business profits" article to income falling under other articles and no "other income" provision).

Supreme Tax Court judgment I R 47/12 of June 12, 2013 published on October 30

**Schlagwörter**

interest income, partner, shareholder loan