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By PwC Deutschland | 06. August 2014

DTT France – compensation for loss of employment taxable in state of employment

The Supreme Tax Court has held that compensation paid to a German resident employee of a French company for his redundancy is taxable in France by virtue of the particular wording of the employment income article of the double tax treaty.

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The Supreme Tax Court has repeatedly held that redundancy or compensation for loss of office payments to employees are employment income to be taxed in the current state of residence. The reasoning is that such payments are made in respect to the future (to persuade the employee to accept the termination of his employment) rather than the past. In particular they are not to be seen as further remuneration for services already rendered. However, the court has now held that this case law – which it continues to uphold – does not apply to the special case of a Germany resident employee of a French company in view of the particular wording of the dependent personal services (employment income) article of the double tax treaty. This article links all remuneration and benefits of any kind “stemming” from an employment to that employment and allocates the taxing right to the state where the work is or was actually performed (subject to special provisions for visitors and cross-border commuters). Thus, the compensation payment of the French subsidiary of a German company to its managing director seconded from the parent “stemmed” from the office exercised in France and was taxable there when paid under a negotiated settlement following the director’s resignation from both companies over a dispute on future business policy.

Supreme Tax Court judgment I R 8/13 of July 24, 2013 originally published on December 4, 2013 and republished officially on August 6, 2014.

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