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By PwC Deutschland | 16. Oktober 2014

No forgiveness of interest in view of compensating adjustment for different taxpayer

The Supreme Tax Court has held that a taxpayer cannot claim forgiveness of the interest due on the tax payment following a transfer pricing adjustment on the grounds that an associated company had no claim for interest receivable on the corresponding adjustment in its home country.

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A KG partnership traded with its associated company (GesmbH) in Austria. A tax audit revealed a transfer pricing adjustment to arm's length terms and the tax office raised an additional assessment accordingly. The tax office also charged interest on the amount now due in accordance with the general rules on interest on taxes levied (or refunded) in retrospect. A partner requested this interest charge be forgiven under the regulation allowing adjustments in favour of taxpayers where appropriate to avoid inequitable treatment. His argument was that the transfer pricing adjustment led to a corresponding tax refund in Austria, although Austrian law at the time did not credit interest on amounts repayable by the authorities. Thus the interest expense in Germany was not compensated with corresponding income in Austria and represented a net burden on the group, even though there had been no illegitimate tax deferral overall.

The Supreme Tax Court has confirmed the tax office in its refusal to forgive the interest charge. This charge was raised on the partner and the question of equity should be decided in the light of the situation of each taxpayer seen separately. The GesmbH was a separate entity and an income adjustment on that company did not directly affect the earnings position of its German shareholder, the partner in the KG. Accordingly, its circumstances could not be taken into account when considering equitable treatment of the partnership.

Supreme Tax Court judgment III R 53/12 of July 3, 2014 published on October 15

Schlagwörter

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