

By PwC Deutschland | 06. März 2015

Option for non-resident to be taxed as a resident for only part of a year?

An ECJ advocate general has suggested the court allow a non-resident meeting the requirements for taxation as a resident for only part of the year to opt for taxation as a resident for that period.

A German living in Aachen worked in Maastricht for many years. Because he had insufficient German income to cover his personal allowances, he elected to be taxed in Holland as a resident. In particular, this gave him a deduction for his mortgage interest on his house in Germany. At the end of March of his final year of German/Dutch residence he moved to the USA to take up employment there. The Dutch tax office refused to allow him to be taxed as a resident in the year of the move as his entire income had not been wholly or substantially earned in Holland. He therefore lost a deduction of three months' mortgage interest. The Dutch courts confirmed the tax office in its view of Dutch law but referred the case to the ECJ on a possible clash with community law.

The ECJ advocate general has suggested the court rule that the refusal to allow the taxpayer to continue to be taxed as a resident during the final three months of his Dutch employment is a hindrance on his freedom of movement within the EU. There is no overriding public interest to justify the hindrance, especially as the taxpayer's Dutch position during the first three months of the year was in no way different from that of a Dutch resident employee. During that period, he continued to earn substantially all his income in Holland and should therefore continue to enjoy his mortgage interest deduction as a deemed resident. His departure for the USA, a non-member state, at the end of that period had no bearing on his tax position up to that date.

The ECJ case reference is C-9/14 *Kieback* opinion of March 5, 2015.

Note: this case has a direct bearing on the corresponding German regulation, Sec. 1 (3) of the Income Tax Act, allowing EEA residents to opt for taxation as German residents if 90% of their income is taxable in Germany. Mortgage interest *per se* is, however, not deductible.

Schlagwörter

Option, non-residents