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No foreign passive income attribution for trade tax

The Supreme Tax Court has held that the foreign passive income attributed to a domestic parent is to be seen as stemming from a foreign business establishment and is therefore exempt from trade tax.

A German company held a subsidiary in Singapore. This subsidiary earned passive income – interest and exchange gains – to be attributed to the parent under the CFC rules. The tax office maintained that this attribution applied to all taxes on income and thus to trade tax as well as to corporation tax. The Supreme Tax Court, though, has now agreed with the taxpayer that the income attribution falls to a foreign permanent establishment and is thus to be deducted from the trade tax base. The court argued primarily from the wording of the Trade Tax Act, eliminating profits from “a” foreign business establishment. The “a” business establishment did not restrict the elimination to profits from an establishment of the taxpayer. The court added that if that interpretation was felt to be too abstruse, an income attribution from profits arising in a business establishment abroad presupposed the attribution of the establishment itself. In effect, the elimination of the income in question reflected the spirit of the Trade Tax Act of taxing income earned through German business establishments.

Supreme Tax Court judgment I R 10/14 of March 11, 2015 published on May 6

Schlagwörter

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