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By PwC Deutschland | 07. Oktober 2015

Post-dissolution profits and losses from foreign P.E. attributable to foreign country

The Supreme Tax Court has held that the profit from the release of a provision no longer required arising from a foreign permanent establishment long after closure falls under the business profits clause of the relevant double tax treaty and is thus taxable in the foreign country.

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A GmbH maintained a branch in Belgium up to 2000. In that year, it closed the branch, winding up the tax affairs of the Belgian permanent establishment, after charging a provision for anticipated costs against the Belgian profits. In 2009, part of this provision was released as being no longer required. The tax office maintained that the gain from this release was part of German taxable income, as there was no longer a Belgian branch to which it could be attributed. The GmbH disputed this point of view.

The Supreme Tax Court has now held for the taxpayer. The gain in question followed from the release of a provision originally charged against the Belgian taxable income from the branch. It was therefore attributable to the branch as a post-dissolution event and taxable under the double tax treaty in Belgium as business income. The amount to be deducted from the remaining income to be taxed in Germany was to be calculated under German accounting (tax computation) rules and was thus independent of the treatment in Belgium. However, in regard to this latter point, the court stressed that its present ruling could not be relied upon for years after 2009 (in the meantime fall-back and switch-over provisions have been introduced to make treaty exemption in Germany conditional upon actual taxation in the other state. However, these provisions are of disputed validity).

Supreme Tax Court judgment I R 75/14 (NV) of May 20, 2015 published on October7

Schlagwörter

branch, permanent establishment (PE), provision no longer required