

By PwC Deutschland | 14. März 2018

International private law also to be observed in tax law

Courts may not interpret contracts governed by foreign law according to German law. The legal terms used by the contracting parties in the text of the contract are to be given their proper meaning under foreign law. The German courts have to apply the foreign law in the way it would have been interpreted and applied by the courts of the relevant foreign state. Where necessary they must consult an expert for this purpose.

The plaintiff was a German film production company in legal form of a GmbH & Co. KG. It produced a motion picture and by a contract dated 20 September 2000 granted exploitation rights to a foreign distribution company until March 31, 2009. The contracts were in the main subject to Californian law. As consideration the distributor was to make certain fixed annual payments to the plaintiff, and a final payment on 31 March 2009 for the acquisition of the film rights by way of a call option.

Balance sheet treatment of the final payment due to the licensor for the temporary assignment of film rights

The question in dispute was whether and - where appropriate - to what extent the final payment due should be accounted for in the balance sheet of the plaintiff during the actual term of the contract. The tax office and the tax court interpreted the contracts according to the usual methods applicable in Germany. The Supreme Tax Court, however, took the view that the contract should have been interpreted in accordance with Californian law in accordance with the requirements of international private law. Another issue was whether Californian civil law recognised such terms as “maturity” (“Fälligkeit”), “condition precedent” and “condition subsequent” (“aufschiebende/auflösende Bedingung”), and whether it attached the same meaning to these terms as German civil law did. It was also necessary to clarify how terms such as "Call Option" and "Final Payment" are to be interpreted according Californian law.

Realisation of profit for time-related performance obligations - principles for pending transactions to be observed

Claims arising from a so-called pending transaction, i.e. a mutual contract, which is not yet completely fulfilled by the party obliged to provide the goods or services, should generally not be accounted for. During the period of abeyance, there is a rebuttable presumption that the reciprocal rights and obligations arising from the contract are equal in value. Disclosure in the balance sheet is only required if and to the extent that the equilibrium of such contractual relationships is "disturbed" by the advance performance or the performance in arrears of one of the contractual partners.

In the opinion of the Court the answer to question as to whether (and if so to what extent) the person obliged to provide services has actually performed the service so that his claim to remuneration is as good as certain, will depend upon the nature of actual service he is obliged to provide. This is to be determined through the interpretation of the underlying contract.

Remittal to the Tax Court

The assessment of the foreign rules could not be carried out by the appellate court itself because it was necessary to consult an expert; accordingly the matter had to be referred back to the tax court.

Source

Supreme Tax Court judgment of 7 December 2017 (IV R 23/14), published on 21 February 2018

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