

By PwC Deutschland | 05 January 2011

No requalification of royalty income of US partner to business profits

The Supreme Tax Court has held that the treaty attribution of the royalty income charged by a US partner is to his US business. Accordingly, it is not taxable in Germany as partnership profits.

A US Inc. charged a royalty to a German partnership in which it held a minority share. Under the US treaty, royalties are taxable only in the country of residence of the beneficial owner. However, the Income Tax Act requalifies the income of non-resident partners from services performed for the partnership to business income, unless a treaty explicitly provides otherwise. The Supreme Tax Court has now effectively disappplied this provision in holding that the income in the case at issue remained attributable to the US establishment of the partner/licensor. The Inc. managed and marketed its licences worldwide from its US head office; thus under the treaty, the sole attribution could only be to that establishment. The Income Tax Act requalification might, or might not, represent an illicit treaty override, although it was in any case meaningless, given that even the requalified "business income" of a US establishment did not give rise to German taxation. (AM)

Supreme Tax Court judgment I R 74/09 of September 9, 2010 published on December 1

Keywords

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