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By PwC Deutschland | 09 January 2011

Active business can be contracted out

The Supreme Tax Court has held that a Dublin docks reinsurance company that subcontracted its operation under a management agreement was an active business within the meaning of the Foreign Tax Act.

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An insurance group ran its international reinsurance business through an Irish insurance subsidiary in the Dublin docks area now known as the International Finance and Service Centre of Dublin. As a financial operation, the subsidiary was privileged with a rate of corporation tax of only 10%. However, it contracted out the actual performance of its business operation to a service company under a management agreement. The tax office of the parent in Germany saw the remaining operation of the subsidiary as passive and attributed the net profit retained in Ireland to the parent for taxation in Germany under the CFC provisions of the Foreign Tax Act.

The Supreme Tax Court has now granted the parent's appeal on the basis that the Irish subsidiary was running an active business. Subcontracting the actual day-to-day tasks did not detract from this; the business operation remained under its overall control and it continued to hold the operating licence and to meet the other conditions required of insurance companies. Activities under management, or outsourcing, contracts were routinely held to be attributable to the principal. The actual operation was not a sham, but, rather, was carried out with appropriate facilities provided by the subcontractor. Thus, there was no circumvention of the purpose behind the CFC rules. (AM)

Supreme Tax Court judgment I R 61/09 of October 13, 2010 published on December 15

Keywords

Active business, CFC provisions, Foreign Taxes Act, contracted out, management agreement, subcontract