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US profit sharing loan interest to be taxed in Germany

The finance ministry has announced that application of a Supreme Tax Court judgment exempting US profit-based interest from German taxes to be seen against the treaty override provision of 2006.

In May 2010, the Supreme Tax Court held that profit related loan interest from the USA could not be taxed as a dividend in Germany under the letter of the treaty. The dividend clause of the treaty allowed such income to be taxed "as a dividend", whilst the "avoidance of double taxation" provision substituted a foreign tax credit for the general exemption of income from the other state only for "dividends". The income was therefore, doubtless unintentionally, exempt in both countries. The finance ministry has now issued a decree pointing to the 2006 treaty revision, which, among other things, introduced a new treaty override for income taxable in the other state but not actually taxed there for reasons of domestic law, "for instance because (the US) does not tax certain types of interest accruing to persons not fully liable to tax in the USA". Whether the ministry's override interpretation can be regarded as authentic, time will tell.

Keywords

profit sharing loan, treaty override