

By PwC Deutschland | 05 September 2012

No withholding tax on payment to Austrian agency for broadcasting rights

The Supreme Tax Court has held that a payment to an Austrian agency for the right to broadcast sporting events is not subject to withholding tax as a payment to the athlete(s) appearing.

An Austrian distributor sold television broadcasting rights for sporting events in Germany and elsewhere to a German purchasing agency for TV stations. The German authorities saw the payments as subject to withholding tax under the artists and athletes clause of the double tax treaty. The distributor argued that the payments were royalties or “other”, neither of which was taxable in Germany.

The Supreme Tax Court has now held that the double tax treaty allows payments to artists and athletes to be taxed by withholding in the country of source regardless of where the event at issue occurred. This is evident from the wording of the treaty, but departs from the OECD model. However, in conformity with the model, the payment must be to or for the artist or athlete concerned, even if it is actually made to a third party. In this case, however, payment was not made to or for the athletes, but to the holder of the broadcasting rights for the use of those rights. Even if that holder is required to forward the amount received in whole or in part to the athletes, it does so within a separate contractual relationship and cannot be seen as acting as an agent on their behalf. There was no need for the court to establish the precise nature of the payment to the Austrian distributor as it was in no case subject to a German withholding tax under the treaty, be it a sale of rights, a royalty, business income or other income.

Supreme Tax Court judgment I R 41/11 of June 13, 2012 published on September v5

Keywords

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