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Discussion draft on partnerships

The finance ministry has published a discussion draft decree on the tax treaty treatment of partnerships. Comments are invited by December 2, 2013.

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The finance ministry has published a discussion draft of a decree on the tax treaty consequences of investing in partnerships. The draft is based on the classic German view of a partnership as a transparent vehicle for income and corporation tax (though not for trade tax) and on the distinction between trading and other (e.g. asset management) partnerships. The income of a trading partnership is treated as the trading income of the partners earned through their permanent establishment in the country of the partnership's location; the income of other partnerships is attributed to the partners in profit sharing ratio without requalification. Conflicts of definition or concept with the other state are basically resolved by the switch-over provisions of German law substituting the credit method for the exemption method of avoiding double taxation where adherence to the exemption method would lead to effective exemption in both states. The draft makes, however, no mention of the Supreme Tax Court's doubts on the legality of the switch-over provision in the absence of a specific provision in the relevant double tax treaty or of the case it has laid before the Constitutional Court.

The draft classifies entities as partnerships by comparing the foreign legal form with its nearest German equivalent. The comparison is based on company law. Relief from German withholding tax will be primarily claimed by each partner under his, her or its relevant double tax treaty. If, however the partnership is treated as a corporation in its own country, the German relief will follow that classification.

Silent partnership income will be treated as a dividend if the silent partner has rights to the assets of the company (i.e. shares in a liquidation surplus) or as interest if he does not.

Qualification conflicts leading to total exemption of income are avoided by switching from the exemption to the credit method. Conflicts leading to double taxation are to be resolved in a mutual agreement proceeding with the competent authorities of the other state.

Those interested in commenting on the draft are invited to do so by e-mail by December 2, 2013.

Keywords

Tax Treaties, discussion draft, partnership