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Final confirmation - Online advertising not subject to withholding tax

The Federal Ministry of Finance has officially clarified in a circular published in April that fees or remunerations paid for the placement of online advertising are not subject to German withholding tax under Section 50a paragraph 1 No. 3 Income Tax Act.

In the past and in some individual cases, tax audits in Bavaria considered fees paid to foreign online companies for “advertising services” as the transfer of advertising rights. This caused irritation and some excitement with respect to a possible obligation to deduct German withholding tax from those payments. In the course of internal discussions and under the leadership of the Bavarian tax administration a joint agreement has been reached in March 2019 amongst the tax administrations of all German states (“Länder”) under the leadership of the Bavarian Finance Minister that local advertising companies do **not have to withhold tax on online advertising**.

The Federal Ministry of Finance finally confirmed this in its circular from April 3, 2019. Accordingly, the remuneration paid to the foreign online companies is **neither** for a temporary transfer of rights pursuant to Section 49 para. 1 No. 2 letter f Income Tax Act **nor** for the use of, or right to use, commercial, technical, scientific or similar experience, knowledge and skills (“**know-how**”) pursuant to Section 49 para. 1 No. 9 Income Tax Act.

Source: Federal Ministry of Finance circular of 3 April 2019 (IV C 5 – S 2411/11/10002), published on 10 April 2019.

Keywords

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