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By PwC Deutschland | 28 April 2021

Proof of payment of foreign wage taxes by employer's certificate sufficient

An employer's certificate is sufficient for the proof of taxation of wages in India in order to claim tax exemption under the relevant terms of the Double Tax Treaty between Germany and India. The submission of an official income tax assessment notice is not mandatory for claiming the exemption under the subject-to-tax clause of the German Income Tax Act.

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Background

In 2008, the plaintiff worked for his domestic employer in India during a total of 241 days but continued to have his place of residence in Germany. An Indian tax advisor working on behalf of the employer drew up a schedule stating the amount of Indian income taxes as referred to and accrued by the plaintiff. Also, payment receipts for the amounts paid by the employer existed. The plaintiff did not file an income tax return in India. The crux of the matter, which led to the dispute, was the subject-to-tax clause of Section 50d (8) sentence 1 Income Tax Act (ITA).

Section 50d (8) ITA provides that where employment income of a unlimited taxpayer is to be excluded from the tax base for German tax under the terms of a tax treaty, the exemption will only granted – regardless of the treaty – where the taxpayer proves that the tax is actually paid on the relevant income in the state with the taxing rights under the treaty or that the state in question has waived its right of taxation. For its application, Section 50d (8) ITA hence requires that the unlimited taxpayer had employment income, which was to be excluded from the German tax base according to a tax treaty. It does not require tax residence in Germany under the terms of the treaty, only the existence of an unlimited tax liability is decisive. This was the situation in the case of dispute.

The tax authorities in Germany took the view that the employment income for the work performed in India was taxable in Germany as part of the employee’s worldwide income. Tax exemption pursuant to Sec. 50d (8) ITA could not be granted because the actual tax payment abroad had not been evidenced by tax assessment notice or personal withholding tax certificate.

Decision of the district tax court

The Lower Tax Court (district tax court) of Muenster granted the taxpayer’s appeal. The court held that the Indian wages be exempt from German taxation but taken into account when setting the German rate of tax on the other income.

The wages earned in India were exempt from German income tax under the provisions of the German/Indian tax treaty because the plaintiff was present and worked more than 183 days in India. The plaintiff had sufficiently demonstrated that his wages were subject to wage tax in India. This was evidenced by the schedule provided by the Indian tax advisor, the payment receipts and the explanatory certificates issued by the employer.

There were no indications that the plaintiff had received a refund of the wage tax paid by way of an annual assessment. Such an assessment could not have been made in any case because the plaintiff did not have the required "permanent account number". Permanent Account Number, known as PAN, is a 10-digit alphanumeric number issued by the Income Tax Department to Indian taxpayers where all tax-related transactions and information of an individual against his permanent account number are recorded.

Even if the plaintiff had been obliged to file a tax return in India, the Indian wages would still be tax exempt in Germany because Indian taxation had taken place. The only decisive factor was that the wages were

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taxed at all.

Source:

Lower Tax Court of Muenster, decision 1 K 1035/11 E of 17 April 2020; the decision is final and legally binding.

Keywords

employment income, foreign wage taxes, income tax exemption, subject to tax clause