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MoF: Interpretation of agreements for avoidance of double taxation

In a most current circular, the Federal Ministry of Finance (MoF) revised its position on the application of the OECD Model Tax Convention when interpreting double taxation agreements (DTAs). This was prompted by the publication of a decision of the Supreme Tax Court of 5 December 2023.

Background

According to the previous administrative decree of 19 April 2023, and with reference to Article 31(3)(a) and (b) of the Vienna Convention on the Law of Treaties (VCLT) of 23 May 1969, the MoF held that the interpretation of an agreement is not, in principle, “frozen” at the time of its conclusion. Rather, the OECD commentary was to be taken into account for interpretation of provisions of the OECD Model Convention or corresponding provisions of DTAs between OECD member states in that respect. This was in particular relevant in cases of subsequent amendments and clarifications of the commentary.

For the interpretation of double tax agreements the MoF now provides the following comments:

It is established case law of the Supreme Tax Court that DTAs, as international treaties under Article 31(1) of the Vienna Convention on the Law of Treaties (VCLT) of 23 May 1969, must be interpreted in good faith in accordance with the usual meaning and in the light of its objectives and purposes (following said Supreme Tax Court decision of 5 December 2023). The wording of a provision of a DTA represents the limit (the maximum scope) for interpretation.

If the wording of a provision of a DTA concluded between OECD member states requires interpretation and if that provision is identical or at least comparable to a provision of the OECD Model Convention, the OECD Model Commentary on this provision, as implemented into German law, is to be regarded as refutable evidence of the practice of OECD member states in interpreting the provisions of their DTAs.

The OECD Model Commentary, in the version applicable at the time of application, reflects the understanding of the OECD member states with regard to the interpretation of the provisions of the OECD Model Convention. It is not equivalent to a statutory regulation but rather aims to avoid conflicts of interpretation and promote consistency in decision-making. Within the given limits of the interpretation the version of the OECD-Model Commentary as applicable at the time of application must therefore also be used for interpretation insofar as it provides clarifications and specifications compared to earlier versions of the OECD-Model Commentary.

If the wording of a provision of a DTA between OECD member states that is subject to interpretation is not identical to or at least not comparable with a provision of the OECD Model Convention, an interpretation based on the OECD Model Commentary is not possible (in accordance with the Supreme Tax Court decision of December 5, 2023).

If other administrative regulations (including the publication of decisions of the Supreme Tax Court in Part II of the Federal Tax Gazette) suggest a different interpretation of the agreement this interpretation takes precedence over that of the OECD Model Tax Convention.

The previous MoF circular from 19 April 2023 is now superseded by the current announcement.

Source:

Ministry of Finance, circular of 24 December 2025 - ref.: IV B 2 - S 1301/01508/004/038.

Keywords

OECD model