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## German Tax and Legal News

31.03.2010 – German Tax and Legal News

### Determination of active property dealing activities when sale is result of pressure from financing bank

The Federal Fiscal Court has ruled that personal or financial reasons for a sale of property are irrelevant in determining whether the property should be considered part of an active property dealing and management. This rule should apply even if economic constraints, such as pressure from compulsory measures.

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### Input VAT deduction on services with Germany property could be denied

Foreign SPVs carrying out business activities in Germany (e.g. property owning companies with immovable property in Germany) often do not have a VAT ID in their country of residence, which is a requirement as from 2010 to provide VAT-exempt services. Therefore, the service provider likely will charge VAT, which may not be creditable by the SPVs, if no VAT ID of the country of residence can be provided.

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### Finance Court of Schleswig-Holstein: Taxation of interest income from rental profits in cross-border situations

In line with several local tax court decisions, the Finance Court ruled that a deemed trading partnership will not be regarded as a business for tax treaty purposes. Therefore, interest income is taxable in the state of residence of the taxpayer even if it arises from a cash surplus as a result of property leasing activities in the other state. The decision could affect foreign investments in German real estate.

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25.02.2010 – German Tax and Legal News

### Lower Finance Court of Münster: Withholding tax obligation for payments on profit-participating loans

Withholding tax has become an important issue for foreign investors due to the strict substance requirements for exemption and relief applicable since 2007. The Lower Court of Munster has ruled on the distinction between fixed-interest bearing loans and profit-participating loans – only the latter are subject to withholding tax under German domestic law.

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