

URL: <http://www.deloitte-tax-news.de/german-tax-legal-news/federal-fiscal-court-confirms-residence-country-taxation-of-interest-income-from-rental-profits-in-cross-border-situations.html>

 24.06.2010

German Tax and Legal News

Federal Fiscal Court confirms residence country taxation of interest income from rental profits in cross-border situations

In a decision published 28 April 2010, the Federal Fiscal Court confirmed the view of several lower courts that interest income of a deemed trading partnership that rented out real property in the U.S must be allocated to its partners and is subject to tax in the country where the partners are resident, which in the case was Germany (case reference I R 81/09). The cash surplus resulting from the leasing activities was invested and generated interest income. Applying the interest article in the Germany-U.S. tax treaty, the court held that, from a treaty perspective, the interest income does not fall within the scope of the business profits article due to the fictitious "deemed trading" nature of the KG, or under the real estate article. The income is based on the use of capital, not on the use of real property. The Federal Fiscal Court's conclusions are supported in the tax literature.

The court also held that in the case of double taxation, a credit for any foreign tax paid is possible only if there is a binding decision of the tax authorities that the mutual agreement procedure would not resolve the issue.

Although the case involved an outbound situation, the decision should apply equally to inbound situations. In typical situations where foreign investors hold German real estate for rental purposes through a foreign entity (e.g. Netherlands B.V. or Luxembourg Sarl) or through a partnership deemed to be trading by virtue of law, interest income earned in connection with the real estate should, in principle, be subject to tax outside Germany (at the level of the foreign entity or at the level of the partners in the partnership, respectively).

Contact

[Dr. Bettina Lieber](#) | Düsseldorf

Diese Mandanteninformation enthält ausschließlich allgemeine Informationen, die nicht geeignet sind, den besonderen Umständen eines Einzelfalles gerecht zu werden. Sie hat nicht den Sinn, Grundlage für wirtschaftliche oder sonstige Entscheidungen jedweder Art zu sein. Sie stellt keine Beratung, Auskunft oder ein rechtsverbindliches Angebot dar und ist auch nicht geeignet, eine persönliche Beratung zu ersetzen. Sollte jemand Entscheidungen jedweder Art auf Inhalte dieser Mandanteninformation oder Teile davon stützen, handelt dieser ausschließlich auf eigenes Risiko. Deloitte GmbH übernimmt keinerlei Garantie oder Gewährleistung noch haftet sie in irgendeiner anderen Weise für den Inhalt dieser Mandanteninformation. Aus diesem Grunde empfehlen wir stets, eine persönliche Beratung einzuholen.

This client information exclusively contains general information not suitable for addressing the particular circumstances of any individual case. Its purpose is not to be used as a basis for commercial decisions or decisions of any other kind. This client information does neither constitute any advice nor any legally binding information or offer and shall not be deemed suitable for substituting personal advice under any circumstances. Should you base decisions of any kind on the contents of this client information or extracts therefrom, you act solely at your own risk. Deloitte GmbH will not assume any guarantee nor warranty and will not be liable in any other form for the content of this client information. Therefore, we always recommend to obtain personal advice.