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1) Federal Minister of Finance intends to terminate double taxation treaty with Austria

As a representative of the Federal Ministry of Finance acknowledged at the end of August 2007, Germany intends to terminate its double taxation treaty with Austria in the field of inheritance and gift tax at the end of 2007. This announcement is a reaction to Austria's plans to completely abolish inheritance tax at the end of July 2008. In order to avoid tax evasion, the Ministry is reacting very hastily to the Austrian government's proclamation.

2) Federal German Tax Court: Legitimacy of a German tax audit of a millionaire after he abandoned his domicile in Germany

In a case decided by the German Federal Tax Court on July 26, 2007, a taxpayer appealed against an official order resulting from a tax audit on two main grounds. First, he argued that there was no necessity for an audit due to the fact that he only had income from dependent employment. Second, he claimed that Germany was an inappropriate place for the audit since he had moved to the US.

In regard to the first point, the Court held that the fact that the taxpayer declared only marginal income from capital investments although he earned more than one DM million each year (which was the German currency during the audited period) was sufficient reason for the tax authorities to conduct an audit.

As to the taxpayer's second argument, the Court held that the audit had to take place in Germany because German law allows an audit abroad only in very restricted cases. Such an exception could be justified, for example, if the other country involved allows the audit on its territory and the information required by the German tax authorities cannot otherwise be obtained.

3) Federal Ministry of Finance: A shareholder can only set off the losses of an acquired corporation against his own taxable profits if the corporation is not equipped with predominantly new assets during the first two years following acquisition

The utilization of the losses of a corporation, the shares of which have been acquired by a new shareholder, is laid down in section 8 (4) 2 Corporate Tax Code (Körperschaftsteuergesetz, hereinafter "KStG"). According to this provision, such losses can only be set off against the profits of the new shareholder if the corporation in question remains economically identical after the disposal. The tax authorities have interpreted this requirement in such a manner that the corporation is not allowed to be equipped with predominantly new assets in close temporal connection to the acquisition. A Ministry of Finance decree from April 16, 1999 further specified that five years would be seen by the tax authorities as a reasonable period of time in regard to the determination of a temporal connection .

In a decision from March 14, 2006, however, the Federal Tax Court held that for purposes of determining a close temporal connection, only a period of one year can be used.

In response, the Ministry of Finance published a new decree on August 2, 2007 first stating that the one-year period favored by the Federal Tax Court is not generally applicable to other cases and then stating that a two-year period will now be considered determinative for purposes of determining economic identity.

4) Federal Ministry of Finance: Exemption from corporate and trade tax is available for REITs from the beginning of the year of commercial registration

The law that allows the foundation of REITs (real estate investment trusts) in Germany has been enacted with retroactive effect from January 1, 2007. The Federal Ministry of Finance has reacted to potential difficulties arising from this retroactivity by issuing a decree, on July 10, 2007, which sets forth that the exemption from taxation will commence at the beginning of the fiscal year in which the corporation is registered in the commercial register for the first time. Since the documents necessary for the registration of a REIT (articles of association and the admission to stock exchange trading) must be presented to the commercial register for verification by this authority, it can be assumed for tax purposes that the conditions for exemption from corporate and trade tax will be fulfilled once a REIT is accepted for registration in the commercial register.

5) Federal Ministry of Finance: Decree regarding the obligation to prove the ownership of shares contributed to another corporation in a tax-free reorganization

The provisions regarding the taxation of a contribution of shares into another corporation have been changed with retroactive effect to January 2007. Under these provisions, the contribution of shares in return for shares in an absorbing corporation or as a non-cash contribution can still be constructed in a tax-free manner if the absorbing corporation shows the book value of the shares in its balance sheet and holds the shares for at least seven years after contribution. If, however, the shares are sold or if any transaction legally comparable to a sale occurs within the seven-year period, new Sections 22 (1) and (2) of the German Reorganization Tax Act (Umwandlungssteuergesetz, hereinafter "UmwStG") call for the retroactive taxation of the profit at the moment of the contribution as well as the taxation of the actual sale.

In order to avoid this retroactive taxation, the contributing corporation must annually prove the ownership of the shares in question and report this to the tax authorities by no later than May 31 in each year of the seven-year period. The mere fact that a shareholder exceeds these time limits (set forth in Section 22 (3) UmwStG), will lead to the retroactive taxation of the share contribution, notwithstanding the actual ownership of the shares.

In a decree dated September 4, 2007, the Ministry of Finance calls attention to this far-reaching administrative duty which contains no exemption for shareholders domiciled outside of Germany. Further details regarding the competent tax authority to whom the annual report is to be submitted, the form of the report and the legal remedies possible if a time limit is exceeded can also be found in the decree.

6) Federal Tax Court: Interpretation of a "permanent dwelling" (ständige Wohnstätte) according to Art. 4 (3) of the Germany -- Switzerland double taxation convention

Art. 4 (3) of the double taxation convention between Germany and Switzerland contains a provision allowing Germany to levy taxes on the basis of unlimited tax liability under certain conditions notwithstanding the fact that the taxpayer involved is a Swiss resident. The unlimited tax liability is possible only under the condition that the taxpayer has a permanent dwelling (ständige Wohnstätte) in Germany in addition to his residence in Switzerland.

The interpretation of this term, especially the distinction between permanent dwelling ("ständige Wohnstätte") and residence ("Wohnung") was the subject of a Federal Tax Court decision of June 5, 2007. In its decision, the court made clear that a "ständige Wohnstätte" as compared to a "Wohnung" means that the taxpayer uses the dwelling on a regular basis and that it plays a certain role in the taxpayer's business life.

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