



NEWS INTERNATIONAL

E-MAIL NEWSLETTER
First edition of 2022

Sailing close to the wind

Dear Sir or Madam,

Non-resident taxpayers often structure German property investments through the involvement of a foreign corporation. For example, a SARL in Luxembourg purchases and rents out a German property. Provided the foreign corporation does not have a permanent establishment, in particular a management permanent establishment in Germany, the rental income and, where appropriate, any gain from the sale of the property is only subject to German corporate income tax plus solidarity surcharge, but not to German trade tax. The relevant income tax rate is thus halved.

In its decision of 23 March 2022 - III R 35/20, the Federal Court of Finance (BFH) dealt with a similar case: The main shareholder and managing director of a property GmbH had his sole domicile in Luxembourg. The company did have a German legal form. Nonetheless, the BFH had to examine whether a German permanent establishment existed. The power of attorney of the property management company, which was resident of Germany, was so comprehensive that a transfer of the actual management to this company could not be ruled out.

However, the findings of the fiscal court did not permit a decision by the BFH. For this reason, the BFH referred the case back to the fiscal court. It must now consider whether decisions of relative importance arising in the day-to-day business of the property GmbH were made by the property management company or its managing director and who had the relevant decision-making authority. Based on the comments in the BFH decision, a management permanent establishment may have existed in the premises of the German contractor.

The decision shows that when hiring a management or services company, care must be taken to ensure that the underlying contracts are appropriately drafted and implemented. If the contracted German company effectively represents the property company to banks and the tax office, independently concludes and terminates rental contracts, and makes decisions regarding work and service contracts, there is much to suggest the existence of a German management permanent establishment and, consequently, liability for trade tax in Germany.

Best regards

Prof. Dr. René Schäfer



The author

Prof. René Schäfer completed his studies in Business Administration at Saarland University in 1999 and graduated with a master's degree. At the same time, he obtained a diploma from the École Supérieure de Commerce, Lyon, after a year of study in France.

After several years working as a research assistant at the Business Institute of Taxation and Entrepreneurship, Chair of Business Administration, in particular in the area of business taxation, as well as at the Institute for Start-Ups/SMEs of Saarland University (Director: Prof. Heinz Kußmaul), he obtained his doctorate in 2003 with a thesis titled 'Taxation of a German-French business'.

In 2005, he passed the tax consultancy examination. In 2008, he was awarded the title of Specialist Advisor for International Tax Law.

Prof. Dr. René Schäfer

Tax Consultant, Specialist Advisor for International Tax Law, Managing Partner

Since 2005, Prof. Schäfer has been working for DORNBACH GmbH in Saarbrücken and is currently employed there 'of counsel'. Additionally, he leads the DORNBACH Centre of Excellence for International Tax Law.

In 2009, he took up a teaching post at Saarland University and lectures on the topic of international tax law. In July 2015, he was appointed Honorary Professor at Saarland University in the field of business administration. In addition, he is a member of the expert committee Specialist Advisor for International Tax Law of the Chamber of Tax Consultants in the German State of Hessen.

Specialisation:

International tax law / Cross-border restructuring/ Relocation of private individuals and entrepreneurs into and out of Germany / Cross-border employment

Contact

DORNBACH GmbH, Saarbrücken
Fon +49(0)681 8 91 97 - 34
Mail rschaefer@dornbach.de

Company presentation



DORNBACH is a modern, client-oriented accounting and management consultancy firm with a history stretching back over 60 years.

Our staff of over 400 highly motivated and highly trained employees are at the very heart of our philosophy designed to provide a broad-ranging portfolio of services of unparalleled excellence.



This newsletter is provided by DORNBACH-group.
Detailed information on the group companies can be found here:

[IMPRINT](#)



Publisher: DORNBACH GMBH, Auditing, Tax consulting,
Anton-Jordan-Straße 1, 56070 Koblenz, Phone +49 (0) 261 94 31-438, Mail: international@dornbach.de

The newsletter is intended to provide general information on selected topics for our clients. Concrete action should not be taken without advice from your DORNBACH consultant.

If you want to cancel your subscription, **please click here.**

Copyright 2022 DORNBACH. All rights reserved.

The newsletter is not displayed correctly? **Please click here.**