

Breaking Tax News Tackling taxes



Will the Tax Exemption for Beneficial Activities of Expatriates survive (Sec 3 (1) 10 EStG)?

As reported in our BTN No 22 of October 27, 2010, the Constitutional Court (VfGH) has abrogated the tax exemption for beneficial activities of expatriates (Sec 3 (1) 10 EStG – Austrian Income Tax Act). According to this regulation, there had been tax exceptions for employees of an Austrian enterprise who perform certain professions abroad.

The abrogation of Sec 3 (1) 10 EStG will become effective after December 31, 2010. Because of this, the Austrian Government plans to adjust the tax exemption. A government bill referring to this will presumably pass the parliament on December 22, 2010. According to this government bill the payments in 2011 and 2012 for employees of several enterprises who perform certain profession are taxfree with the following limitation:

- In the year 2011 66 % of the foreign income regarding a certain profession is taxfree in Austria
- In the year 2012 33 % of the foreign income regarding a certain profession is taxfree in Austria

Enterprises who are allowed to enjoy the tax privileges are:

- Companies and permanent establishments of an employer who is a resident of the European Union, the European Economic Area or Switzerland, or
- Permanent establishments in the European Union, the European Economic Area or Switzerland, of an employer who is a resident in a third country

An additional precondition for a tax exemption according to Sec 3 (1) 10 EStG is providing a work in a certain profession. Such beneficial activities are construction work, assembling activities, supervision of construction work, maintenance of facilities, personnel secondment on the occasion of a construction work of other companies, as well as planning, consulting and instruction, if these activities are performed abroad. Further beneficial activities are the exploration and the exploitation of natural resources. Basically, the beneficial activities are the same as in the old rule.

Another precondition for the above mentioned tax exemption is, that the beneficial activities are performed at least for more than one month.

As the government bill only provides a rule until the year 2012, there have been negotiations for a permanent succession rule, which may include several time and distance rules, but no details are published by now. We will keep you informed in this connection.

Your Deloitte Tax Advisor will be happy to answer your questions.

Audit. Tax. Consulting. Financial Advisory.

Responsible for the contents: Deloitte Austria. This Newsletter merely contains general information that cannot substitute professional advice in individual cases. Accordingly, Deloitte expressly excludes and disclaims any warranty and liability for the newsletter and the information contained therein. Please contact us for personal advice. Please inform your advisor, if you wish this Newsletter to be transmitted electronically to any other staff member of your company, or if you do not want to receive this information in the future anymore. Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.