Austria; Germany

Federal Finance Court: Voluntary Pension Contributions Not Fully Deductible Under Austria-Germany Tax Treaty

21 April 2023

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The Austrian Federal Finance Court (*Bundesfinanzgericht*) has ruled in Case No. GZ. RV/3100514/2015 published on 28 March 2023. The Court held that the fact that voluntary insurance contributions made by an Austrian resident to a foreign pension fund were not fully deductible is not incompatible with article 23(2)(a) and (d) of the Austria - Germany Income and Capital Tax Treaty (2000) (as amended through 2010). Details of the decision are summarized below.

(a) Facts. The taxpayer was a German doctor resident in Austria. For the years 2011 to 2013, he had claimed the full deduction of voluntary insurance contributions for foreign pensions.

The tax administration accepted these deductions only up to an annual amount of EUR 2,920, which is the maximum deduction for domestic countries.

The taxpayer appealed, arguing that he could not deduct the contributions in Germany because he had no income there. He also reasoned that there was a case of double taxation if the contributions were not fully deductible as the subsequent pension payments were fully taxable in Germany and Austria applied the exemption with progression method to avoid double taxation.

(b) Legal background. Article 18(3)(2) of the Austrian Income Tax Act provides for a maximum deduction of EUR 2,920 for voluntary contributions to domestic pension insurance.

Article 18(2) of the Treaty provides that payments received by an individual resident of a contracting state from the statutory social insurance of the other contracting state will be taxable only in that other state.

Article 23(a) and (b) of the Treaty provide that the exemption with progression method applies for the avoidance of double taxation of pensions taxable in Germany.

(c) Issue. The issues were:

- whether the voluntary contributions to the foreign pension insurance should be fully deductible; and
- whether a situation of double taxation existed.

(d) Decision. The Court first observed that under Austrian domestic law, foreign pensions based on voluntary contributions are taxable only to the extent that the pension payments exceed the amount of the contributions.

Subsequently, the Court considered that the fact that the pension payments were fully taxable in Germany was irrelevant to the case at hand. The Court considered that any disadvantage results from the parallel exercise of taxing rights by Austria and Germany and the fact that the taxing rights are allocated to Germany under the Treaty.

In this context, the Court also noted that EU law does not require EU Member States to coordinate their tax systems to avoid such disadvantages.

Therefore, the Court found no incompatibility with the freedom of movement for workers under article 45 of the Treaty on the Functioning of the European Union (TFEU).

Consequently, the Court ruled in favour of the tax administration and held that the limited deduction of the contributions does not lead to double taxation.

The text of the Court's decision can be found here (in German only).

Austria; Germany - Federal Finance Court: Voluntary Pension Contributions Not Fully Deductible Under Austria-Germany Tax Treaty (21 Apr. 2023), News IBFD.