Austrian permanent establishment due to cross-border cleaning contract

Under Art. 5 OECD Model Tax Convention a permanent establishment is defined as a fixed place of business, through which the business of a company is wholly or partly carried on.

The Austrian Ministry of Finance recently issued a written opinion, whether the provision of storerooms or broom closets in Austria for cleaning work of a German cleaning company trigger a permanent establishment in Austria (EAS 3333, 5 August 2013). In the case at hand, the German resident cleaning company provided cleaning services to several retail stores located in Austria on 6 days per week to the extent of 2 to 3 hours per day.

According to Austrian administrative practice, facilities that only have a preparatory or auxiliary character generally do not constitute a permanent establishment in Austria, regardless of the duration they are used. Furthermore, generally the existence of a break or locker room is not considered as a permanent establishment, provided that those facilities only have a preparatory or auxiliary character for the enterprise (Art. 5 para. 4 OECD Model Tax Convention).

Whether the provision of storerooms or broom closets trigger a permanent establishment in Austria under Art. 5 para. 1 Double Tax Treaty Austria-Germany or whether those facilities can be seen as preparatory or auxiliary facilities, depends mainly on the fact whether such cleaning work can from an economic point of view also be performed without such facilities.

Due to the intensity (6 days per week to the extent of 2 to 3 hours per day) of cleaning work performed for the Austrian retailer, the Austrian Ministry of Finance is of the opinion that the provided facilities are not of preparatory or auxiliary character for the German cleaning company but are necessary for work. Therefore, in the case at hand the activities of the German cleaning company trigger a permanent establishment in Austria.
Trade Watch

Global Developments
► European Union: Significant changes to the Generalised Scheme of Preferences
► Global: EY 2013 Global Transfer Pricing Survey shows significant gap between transfer pricing and customs planning
► Global: Negotiations to expand the Information Technology Agreement suspended
► Brazil: New supplement to the tariff nomenclature coming soon
► Brazil: REINTEGRA program extended
► Canada: The Canadian “iPod Tariff” update
► Peru: Peru ratifies Pacific Alliance Framework Agreement
► Vietnam: New advance ruling rules for tariff classification and customs valuation
► Germany: German Foreign Trade and Payments Act undergoes modernization
► Russia: Russia lowers tariff rates
► Ukraine: New transfer pricing law – implications for importers
► East African Community: Export processing zones – a key investor incentive in East Africa
► South Africa: Implementation of new Customs systems modernization program

Read more

EU Developments
► European Council’s lawyers opine FTT counterparty rule is contrary to EU law
► European Commission scrutinizes Member States’ tax schemes under State Aid criteria

Read more

Argentina
Country Updates
► Argentine House of Representatives approves tax reform bill
► Argentine tax reform submitted to Congress – significant changes to taxation of dividends and capital gains

Read more

Australia
► Australian Federal Court grants summary judgment against taxpayer in LILO financing structure based on GAAR

Read more

Canada
► Before 30 September, review income splitting prescribed rate loans
► Updated corporate and personal income tax rates for 2013
► Getting transfer pricing right is key to success in a globalized environment
► Unanimous shareholders’ agreement saves CCPC status

Read more
► Canada announces new measures for Duty Relief Foreign Trade Zone-type programs
► Canada releases draft legislation for 2013 budget measures
China
► China’s SAT issues fourth Advance Pricing Arrangement Annual Report
  [Read more]

Colombia
► Colombia issues guidance on application of income tax for equality (CREE) under country’s tax treaties
  [Read more]

Costa Rica
► Costa Rica approves Executive Decree on transfer pricing regulations
  [Read more]

Czech Republic
► Tax Newsletter: September 2013
  [Read more]

France
► French government updates blacklist of non-cooperative countries
  [Read more]

Germany
► Germany issues draft regulation for the profit attribution to permanent establishments for public discussion
  [Read more]
► Bundestag elections 2013: Key points relating to tax law in the German election platforms
► Increase in charges for binding rulings
► Amendment protocol with Norway signed
► Profit attribution to permanent establishments: Draft regulation issued
► German Ministry of Finance issues guidance on subject-to-tax-rules in tax treaties
► Sale of dividend rights by non-resident taxpayers
► Recent rulings on real estate transfer tax
► Lack of domestic nexus in case of subleases
  [Read more]

Greece
► New Income Tax Code (Law 4172/2013)
  [Read more]
► Recent transfer pricing regulatory developments in Greece
  [Read more]

India
► India’s tax authority lists required information to claim tax treaty benefit
  [Read more]
► India’s CBDT amends recently revised rules relating to furnishing information regarding payments to nonresidents
  [Read more]
► Reserve Bank of India issues guidance on foreign exchange rules
  [Read more]
► Mumbai Tribunal characterizes payment for computer software as royalty payment
  [Read more]
► Indian Tax Administration issues final rules on transfer pricing safe harbor  
[Read more]
► Bangalore Tribunal rules on applicability of transfer pricing provisions to assignment of contract  
[Read more]

Kenya
► Kenya Revenue Authority invokes force of attraction rule with respect to permanent establishments  
[Read more]

Korea
► Korea announces 2013 tax reform proposals  
[Read more]

Latvia
► Tax Newsletter: August 2013  
[Read more]

Liechtenstein
► Liechtenstein transitional regulations regarding holding and domiciliary company status expire on 31 December 2013  
[Read more]

Lithuania
► Tax Newsletter: August 2013  
[Read more]

Luxembourg
► New Luxembourg-Saudi Arabia tax treaty published  
[Read more]

Madeira
► EU Commission approves enhancements to Madeira International Business Center Tax Regime  
[Read more]

Mexico
► Mexican Supreme Court rules certain financial institutions must pay profit sharing on all profits  
[Read more]
► Mexico’s President presents tax reform proposal to Congress  
[Read more]
► Mexico’s tax reform bill includes introduction of mining royalty  
[Read more]
► Mexico’s tax reform proposal significantly affects maquiladora industry  
[Read more]
► Mexican tax authority increases focus on auditing supply chain structures  
[Read more]

Netherlands
► Dutch government extends application of substance safe harbor rules  
[Read more]
► Dutch government proposes partitioning legislation for participation exemption  
[Read more]
Slovakia
► Tax Newsletter: July - August 2013  Read more

United States
► Chief Counsel Advice issued on interest expense allocation and apportionment for foreign tax credit purposes under Code Section 864(e)  Read more
► IRS publishes final regulations on determining amount of tax paid for purposes of the foreign tax credit  Read more
► IRS issues proposed regulations addressing limitations on importation of net built-in losses  Read more
► US IRS disallows under Section 267(a)(3) interest deduction for payment funded by borrowing from foreign parent  Read more
► US IRS issues regulations applying straddle rules to certain debt instruments  Read more
► US tax reform: A status update
► IRS opens online FATCA registration system for financial institutions, issues related guidance
► Treasury/IRS release 2013 - 2014 Priority Guidance Plan; contains ongoing and new international tax projects
► IRS releases final cost sharing regulations
► IRS addresses application of the foreign base company sales branch rules  Read more

Vietnam
► Vietnam releases draft Circular on Advance Pricing Agreement  Read more
Contact

Business Tax
Andreas Stefaner
Phone +43 1 211 70 1041
andreas.stefaner@at.ey.com

International Tax
Roland Rief
Phone +43 1 211 70 1257
roland.rief@at.ey.com

Editor and owner of the medium:
Ernst & Young
Steuerberatungs- und Wirtschaftsprüfungsgesellschaft m.b.H. (“EY”) Wagramer Straße 19
1220 Vienna

Responsible Partner
Andreas Stefaner
Phone +43 1 211 70 1041
andreas.stefaner@at.ey.com

About the global EY organization
EY is a global leader in assurance, tax, transaction and advisory services. We leverage our experience, knowledge and services to help build trust and confidence in the capital markets and in economies the world over. We are ideally equipped for this task – with well trained employees, dynamic teams, outstanding client orientation and made-to-measure services. Our global purpose is to improve the functionality of economy-related processes by building a better working world – for our people, for our clients and for our communities.

The global EY organization refers to all member firms of Ernst & Young Global Limited (EYG). Each EYG member firm is a separate legal entity and has no liability for another such entity’s acts or omissions. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information, please visit www.ey.com.

In Austria, EY has four locations. In this publication, “EY” and “we” refer to all Austrian member firms of Ernst & Young Global Limited.

Information according to § 25 Austrian Media Act (MedG) can be accessed here.

© 2013
Ernst & Young Steuerberatungs- und Wirtschaftsprüfungsgesellschaft m.b.H.
All Rights Reserved.

Ernst & Young Steuerberatungs- und Wirtschaftsprüfungsgesellschaft m.b.H.
1220 Wien, Wagramer Straße 19
4020 Linz, Blumauerstraße 46
5020 Salzburg, Sterneckstraße 33
9020 Klagenfurt, Eiskellerstraße 5

This publication contains information in summary form and is therefore intended for general guidance only. Although prepared with utmost care this publication is not intended to be a substitute for detailed research or the exercise of professional judgment. Therefore no liability for correctness, completeness and/or currentness will be assumed. It is solely the responsibility of the readers to decide whether and in what form the information made available is relevant for their purposes. Neither Ernst & Young Steuerberatungs- und Wirtschaftsprüfungsgesellschaft m.b.H. nor any other member of the global EY organization can accept any responsibility. On any specific matter, reference should be made to the appropriate advisor.

Your e-mail address will not be disclosed to third parties and is used solely for the distribution of Ernst & Young publications. According to the Austrian Telecommunication Act (TKG, version from March 1, 2006) you can withdraw your authorization at any time if you do not wish to receive future e-mails.

www.ey.com/at