aclanz RECHTSANWÄLTE

March 6, 2012

RECHT AKTUELL

CURRENT LAW

Edition II-2012

Focus in this edition: Real Estate and Tax Law

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1. Civil Law Partnership as Landlord: Termination of Lease Agreement for Personal Purposes of only one of the Partners

A GbR (*Gesellschaft bürgerlichen Rechts* / civil law partnership) may terminate a lease with the justification that only one of the partners needs the premises for his own personal purposes. This principle applies even if the partner concerned has entered into the partnership at a point in time after the conclusion of the lease agreement (*Bundesgerichtshof* / German Federal Court in Civil Matters, November 23, 2011 – VIII ZR 74/11). On the other hand, the principle will not apply in cases involving commercial partnerships (OHG – *Offene Handelsgesellschaft* / general partnership; KG - *Kommanditgesellschaft* / limited partnership with a non-corporate individual as general partner; see also CURRENT LAW 2/2011, article No. 6).

2. Municipality Liable for False Information to Real Estate Financer about Development Potential of Real Estate

A municipality can be held liable for misleading information about the development potential of a real estate (*Oberlandesgericht Brandenburg* / Court of Appeals Brandenburg, October 2011 – 2 U 35/09). In the case at hand, the real estate served as security for a construction loan. Upon inquiry the municipality stated that the property is situated in a residential area and qualifies for development. Therefore, the real estate financer assessed the value of the property at € 100,000.- and granted a loan in the amount of EUR 75,000. When the loan became default, it turned out that the property was actually situated in an undesignated area in the outskirts and thus had no development potential at all. The real estate financer received less than EUR 45,000 when the property was sold again. The municipality had to pay damages for the loan still in default.

3. No Commission for Real Estate Agent in Case of Disinformation

A claim to a commission is excluded if the real estate agent has provided false information about the real estate sold (*Landgericht Berlin* / District Court Berlin, September 22, 2011 – 5 O 430/10). In the case at hand, the real estate agent quoted the net rental income of the real estate would amount to EUR 30,000 p.a. However, actually the rental income was just about EUR 25,000 p.a. According to the Court, a purchaser is not obliged to pay any commission if the real estate agent has intentionally concealed essential information about the real estate or at least acted with gross negligence in this regard (analogous application of Section 654 BGB (German Civil Code).

4. Tax Exempt Lump-sum Premiums for Work on Sundays, Holidays and at Night?

Lump sum premium payments made for work performed on Sundays, holidays or at night are only tax exempt if they correspond with working hours that were actually performed and moreover, are accounted for duly before issuing the wage and tax statement, e.g. at the end of the respective calendar year (*Bundesfinanzhof* / German Federal Fiscal Court, December 8, 2011 – VI R 18/11). In the case at hand, the employer was not able to provide such accounting material to the tax auditor. Witness statements would not be sufficient. Thus, the employer was held liable for not having paid withholding tax on the salary of his employees.

5. Deductibility of Commuting Expenses for Detours

Commuting expenses for detours between home and the workplace may even be tax deductible in a case where they do not save any time (*Bundesfinanzhof* / German Federal Fiscal Court, November 16, 2011 - VI R 19/11). According to section 9 para 1 s. 3 No. 4 EStG (*Einkommensteuergesetz* / Income Tax Act) a tax deductible commuting allowance may be claimed only if the shortest or an "obviously more comfortable" connection is chosen. A connection may be considered to be "obviously more comfortable" if, e.g., the roads or the traffic light circuit are more smoother or if there is less heavy vehicle traffic. In contrast to the lower court, the Court has also confirmed explicitly that there is no general principle ruling that at least a time saving of 20 minutes would be necessary in this regard.

6. US-German Double Taxation: S Corporation to Be Qualified as Corporation and not as Partnership

Dividends of an S corporation according to Subchapter S of Chapter 1 of the US Internal Revenue Code (sections 1361 through 1379) paid to a tax resident of Germany are to be qualified as capital income and are therefore subject to German taxation according to the applicable Double Taxation regulations (*Finanzgericht Köln* / Fiscal Court of Cologne, September 28, 2011 – 5 K 4480/07). The case at hand shows that although the tax status of an S corporation may be that of a partnership in the US, this may not be true in Germany: The suing shareholder of an S corporation desired partnership taxation in Germany so that any dividends would have been considered only for the determination of the applicable tax rate (progressive proviso) in Germany as opposed to taxing them as such. However the Court ruled that an S corporation is no partnership from the German tax point of view and that any dividends would also be taxable as such in Germany. However, since no dividends had been effectively paid by the corporation to the suing shareholder, yet, there was also actually no tax to be paid in the case at hand so far.

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