Branches have to pay taxes in Spain although the invoices were issued by the Head Office located abroad

Spanish Supreme Court has supported the Spanish Tax Agency criteria and has stated that the sales of the Spanish branch of a nonresident multinational company will be taxed in Spain, although the invoices were issued outside the country, by the Head Office.

According to the Sentence 1475/2016 of 20th June 2016 by the Supreme Court (link) a company dedicated to software/hardware products online sale having a branch located in Spain doing the activities of marketing, sale and attract clients, order and logistics management, marketing and advertising for all Head Office clients in Spain, storage and logistics, installation services, collection management of all Head Office clients in Spain, and solvency and credit control is considered to have a permanent establishment in terms of Corporate Income Tax.

Thus, companies' criteria has been rejected. Their point was that branches were simply commission agents, so they had to pay just for the sales commission rather than all operations done and billed. With this Sentence, now multinational companies selling online will pay taxes in the country where the operations were done and benefits will not be transferred to the country of the Branch Office.

In accordance with the Parent Company opinion, the branch is an independent company under the article 5.7 of the Double Taxation Treaty between Spain and Ireland, with no remarkable activity in Spain and moreover the business activities specific to its corporate purpose were carried out through the Head Office located in Ireland. Pursuant to the Supreme Court there is a permanent establishment of the Parent Company taking into account the Article 5 of the Double Tax Treaty and the two assumptions regarding permanent establishment that are stated under the same article:

1. "A fixed place of business through which the business of an enterprise is wholly or partly carried on.

(…)

5. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, where a person - other than an agent of an independent status to whom paragraph 7 of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph "

In line with the Decision, regardless of the fact that the Head Office could have carried out certain activities in Ireland with employees working there, the activities carried out by the Parent Company in Spain have been done through the branch, in its premises, and with employees of the branch highlight that the branch does not work as a simple assistant of the Head Office. The fact that the nonresident Parent Company has access to the premises through the branch, which carries out under its supervision, activities that are the core of its corporate purposes, involves that these premises are available to the Head Office.

The Supreme Court, has stated that it is true that the activities carried out by the parent company in Spain were done by means of the branch, in its premises (availability) and with employees of the branch. That means that this company had a permanent establishment in Spain and all the profits obtained for sales in Spain will be taxed on the Spanish Corporate Income Tax although the invoices were issued by the Head Office located in Ireland.

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