Special Reports

German Ministry of Finance Releases Final Regulations on Employee Secondments

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The German Federal Ministry of Finance recently released the final version of "Principles for the Audit of Income Allocation Between Internationally Related Companies in Cases of Employee Secondments (Administrative Principles — Secondment)." The first draft of the regulations, which had been distributed to various business associations for comment, has been repeatedly analyzed in tax literature.[1] The ministry, taking into consideration some of those comments, has changed the final version. This article provides a brief summary of the new regulations and discusses the underlying principles of employee secondments (temporary transfers) and how costs should be allocated between the assigning and receiving companies. The analysis focuses primarily on changes that arose after the first draft.

I. The New Principles

The principles first explain why it is necessary to implement new regulations on employee secondments. Increasing globalization is seen as the most important reason in today's economy. The arm's-length principle is not relevant regarding the amount of an employee's wage because the relationship between an employer and an employee is, by its very nature, at arm's length. However, the drafters' intent is to allocate operational expenses between the companies involved by using the arm's-length principle.

Contrary to the first draft, the final version not only defines the concept of secondment, but also discusses cases in which an employee secondment should not be assumed. According to the new principles, an employee secondment exists if an employee reaches agreement with his current employer (the assigning company) to work for an affiliated company (the receiving company) for a limited period of time based on an employment contract between the receiving company and the employer. Alternatively, an employee secondment is deemed to exist if the receiving company acts as the employee's economic employer.

However, an employee secondment is not deemed to exist if an employee works for another enterprise to meet an obligation of the assigning company to perform work services and his remuneration is a component of the price for the service or work. In that case, the transfer pricing issue is the determination of an appropriate

[1]Kroppen/Roeder, "Germany Tackles Secondments Issues and Transfer Pricing," *TMTP* Vol. 9 (2000), No. 14, p. 434 ff; Kroppen/Roeder, Internationale Wirtschaftsbriefe, Transfer Pricing News No. 20, p. 979 f.

arm's-length remuneration, including a markup. It must also be determined whether the employee's activities result in the creation of a permanent establishment.

For purposes of the administrative principles, the term "employer" is related to its economic definition. Also, the term is defined differently under Germany's income tax treaties, wage tax law, civil law, or social security law. As a rule, under the new principles, integration into the receiving company should be assumed if the assignment exceeds three months.[2]

All direct and indirect expenses, insofar as they affect the results of the receiving and/or assigning enterprises, are to be allocated to the employee assignment, regardless of whether they are part of the employee's taxable wage. The expenses include:

- the employee's basic salary;
- current and nonrecurring remuneration (such as severance pay and gratuities);
- bonuses, vacation pay, and Christmas bonuses;
- taxes assumed;
- additions to pension accruals;
- social security contributions in the country of work and in the country of origin;
- foreign service allowances;
- remuneration in kind and other incentives (including company cars and stock options);
- reimbursement of increased maintenance costs and increased taxes;
- moving and travel allowances (including expenses for relatives); and
- expenses incurred for double housekeeping, school, and boarding school fees.

The administrative principles emphasize that profit markups on operational expenses related to the employee secondment are not admissible for tax purposes because expenses related to the employee assignment constitute primary expenses of the commercial employer, based on the principle of causation.[3]

The administrative principles also state explicitly that a transfer of know-how, which might occur as a result of the employee's activities on behalf of the receiving company, and given his experience, need not be remunerated additionally[4] because a transfer of an intangible is not deemed to occur.

The issue of 'secondment' is becoming more and more a discussion point in tax audits, and the trend can only get worse under the current administrative principles.

The evaluation criteria for income allocation have not changed significantly compared to those in the first draft. The new principles distinguish more precisely whether the employee's activities are performed solely for the receiving company or whether the assigning company might have a partial interest in the employee's work for the receiving company. This distinction might reduce the possibility that tax authorities will accept operational expenses as those of a German assigning company. Otherwise, the new rules could provide an opportunity for a German assigning company to take over a part of the operational expenses.[5]

According to section 3.1.1 of the administrative principles, it is assumed as a rule that an employee works in the interest of and for the account of the receiving enterprise. However, if the employee receives remuneration exceeding wage levels in the receiving company's country of residence, the assigning company might also be deemed to have an interest in the employee. The assigning company carries the burden of proof regarding any operational expenses it incurs, even if the employee's remuneration exceeds the wage level in the receiving company's country of residence.

In case of a tax audit of a domestic receiving company, the tax auditors should take into account that a prudent and diligent business manager would be willing to accept only those expenses he would have to bear if he engaged an employee from the local labor market. The domestic receiving company must demonstrate that any amount paid above normal wage levels is paid in its own interest; if the company is not able to prove that, the foreign assigning company would have to do so.[6]

In contrast to the first draft, the final regulations stress that the comparable uncontrolled price method is to be used preferentially for arm's-length purposes. The first draft of the regulations distin-

[2]Section 2 of the administrative principles.

[3]Section 2.3 of the administrative principles.

[4]Section 4.2 of the administrative principles.

[5]Section 3.1 of the administrative principles.

[6]Section 3.1.2 of the administrative principles.

guished between the internal, external, and hypothetical arm's-length test in its application to secondments. For the internal comparison, the regulations propose analyzing the expenses incurred by the receiving company for comparable employees. For the external arm's-length test, the regulations propose analyzing the expenses independent companies would be willing to bear under comparable circumstances, in the same country as the receiving company. Finally, the hypothetical arm's-length rule determines whether a prudent and diligent business manager of an independent company, under comparable circumstances, would have borne the expense for the secondment in full, or whether he would have demanded a cost-sharing agreement with the seconding company.

It must be emphasized that even when adequate employees are not available in the local labor market, the prudent and diligent business manager would have assumed additional expenses only if he could expect an appropriate benefit within a reasonable time frame. The authors of the administrative principles consider a three-year period reasonable.[7]

Section 3.4 deals with so-called special cases. One of the issues discussed is the implementation of a rotation system. A rotation system typically exists if a company has an underlying staff employment and development concept of group management, so that the receiving enterprise cannot freely decide to fill vacant positions as needed, but must fill certain positions with employees of the assigning enterprise. Whether such a rotation system exists is decided on review of the overall facts and circumstances. Indicators of the existence of a rotation system include the following:

- assignments are always one-sided, rather than reciprocal among group companies (from the parent company to subordinate companies);
- assignments have a typical duration of three to five years;
- certain management positions at the receiving enterprise are permanently filled with employees of other companies; and
- the receiving enterprise does not seriously attempt (for instance, by placing employment advertisements) to fill positions with employees from the local labor market, including employees it has trained itself.

The hypothetical arm's-length rule determines whether a prudent and diligent business manager of an independent company, under comparable circumstances, would have borne the expense for the secondment in full.

In the case of workplaces permanently filled by the assigning enterprise under a rotation system, it should be assumed that the assignment also serves the interests of the assigning enterprise and that the latter therefore must bear any expenses exceeding those that would have been incurred for a comparable local employee of the receiving enterprise. That rule might also apply in the case of expert secondments.

The final regulations include a new paragraph[8] regarding the application of a uniform allocation standard. If a tax audit reveals that the secondment of numerous employees served the receiving as well as the assigning company, an established uniform allocation standard can be applied to all employee assignments in the framework of a classifying tax treatment. Tax authorities, in coordination with the company, can base the tax assessment for the period under review and the subsequent period on that allocation standard, if the situation has not changed materially.

Finally, section 5 of the new principles refers to the documentation requirements that must be fulfilled to provide evidence regarding the total expenses incurred and the interests that guide the allocation of the employee's work, as well as the potential allocation of the total expenses. Taxpayers must provide evidence regarding those interests by means of, for example:

- an assignment contract;
- an additional service contract;
- a description of the receiving enterprise's business activity and its products and/or services;
- correspondence justifying the assignment;
- job descriptions for the assigned employees;
- precise proof of activity, such as reports or minutes that the assigned employee has prepared for the assigning company;
- employment advertisements;
- examinations of comparative salaries in the local labor market;

[7]Section 3.2 of the administrative principles.

[8]Section 3.5 of the administrative principles.

- profit expectations of the receiving enterprise;
- the employee's employment contracts with the assigning and receiving enterprises;
- evidence regarding wage expenses before assignment;
- a benefit test regarding wage expenses and profit contributions of the assigned employee;
- time sheets for type and extent of the work;
- travel expense accounts; and
- a functional employee organization chart.

II. Analysis

The following is an analysis of the modifications introduced in the new administrative principles, compared with the draft version dated September 2000.[9]

A. Definitions (Section 2)

It is a welcome change that secondment is now not only defined positively, but is also set off against an exchange of services on the basis of a service agreement. The administrative principles use the economic interpretation of the term "employer," rather than adopting the definition provided in the wage tax law, and thus correspond to the Federal Tax Court's legal practice and tax authorities' current interpretation. Under wage tax law, the definition of the term "employer" can be indirectly derived from the terms "employee" and "employment status (service)" within the scope of section 1 of the regulation regarding payroll tax;[10] the term employer is then defined as that person with whom a certain individual has an employee relationship.[11]

A Federal Tax Court decision dated 21 August 1985[12] ruled in a case involving Germany's income tax treaty with Spain that the wording of article 15, paragraph 2, lit. b DTT ("if remuneration is paid by one employer or for one employer") points to the use of the term "employer" as that entrepreneur who economically pays for the dependent work carried out for him, regardless of whether he pays the remuneration to the employee himself or if another enterprise poses as a substitute. The regional tax office in Nuremberg has agreed with that judicial position and allows the exemption in the scope of article 15 if the employee owes his service, if he becomes active under the management of the employer, if he is accountable, and if the wage is not part of the price for a delivery or plant output.[13] Unlike the approach to the term "employer" used in the civil law and the wage tax law, the question as to who pays the employee's remuneration is now the focus of attention.

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Therefore, the negative demarcation of an employee secondment and the chosen definition contribute to a clarification of the tax law. Because there is no "employee secondment," but rather, the provision of a service, taxation by the state where the service has been rendered is not appropriate, on the basis of article 15 of the OECD model treaty, in that the enterprise in the receiving country is not economically responsible for the employee's remuneration for the work performed if the wage is only part of a service remuneration. The use of the economic term "employer" is appropriate because it corresponds to the valuation in article 15 of the OECD model treaty. The principle that the right to taxation lies with the country whose tax substance is reduced by considering the operating expense relating to the employee an operating expenditure must be observed.[14]

The economic cost is borne by the enterprise that pays the wages and can thus claim the operating expenditure deduction. As a result, the state where that enterprise is located has the right to tax those wages, in counterpoint to the provision of operating expenditure deductions.

Unlike the original draft, the final version lacks the statement that personnel secondments will be treated as the provision of a service. That is a logical conclusion because there can hardly be a service provision by the assigning enterprise if the receiving enterprise becomes the economic employer. Whether a service is provided by the assigning enterprise is to be examined when the

[9]For an analysis of this first version, *see* Kroppen/Roeder, *supra* note 1 at 435.

[10]Lohnsteuerdurchführungsverordnung as of 10 Dec. 1989.

[11]For the term "employee" in a civil law sense, *see* Palandt-Putzo, *Bürgerliches Gesetzbuch* (München: Beck Verlag 2001), Einleitung zu section 611 note 6; Schmidt-Drenseck, *Einkommensteuergesetz* (München: Beck Verlag 2001) section 38 note 4.

[12]Ref. No.: I R 63/80, Federal Tax Bulletin 1986 II, p. 4, 5.

[13]Regional Tax Office Nuremberg reg. of 12 Sept. 1989, p. 1301-357, DStR 1990, p. 39.

[14]*See* Jacobs, *Internationale Unternehmensbesteuerung* (München: Beck Verlag 1999), p. 1036 f.

receiving enterprise is not the employer.

It is obvious that all the criticism directed at the first draft of the principles regarding the question of additional remuneration for the transfer of know-how has been taken into account.[15] An assigned employee's special knowledge does not necessarily lead to a remunerative transfer of know-how. A separate remuneration for know-how is then justified only if, for instance, samples, plans, or drafts are transferred. The necessary remuneration resulting from that transfer, however, is not associated with the employee's assignment. In fact, it would have been paid regardless of the secondment. The drafters of the administrative principles have settled for exactly that differentiation.

B. Evaluation of Operational Interests[16]

The preliminary draft took operational origin as its starting point for the apportionment of wage expenditures between the assigning and the receiving enterprise. The operational origin, especially the question whether the receiving enterprise would accept a higher total equipment of an assigned employee, should be judged according to the arm's-length principle. The final draft no longer emphasizes that approach. In fact, the allocation of income now directly refers to the arm's-length principle. The question of how the relationship between the inducement principle and the arm's-length principle is to be evaluated in a legal and systematic way is certainly not decisive for practical purposes. However, the new administrative principles are not as clear on that point as one would wish.

Still worth criticizing is the point[17] that the arm's-length principle is blurred with the correct understanding of the term "operational expenses" for evaluating the expenditures connected with the personnel secondment. The operational cause of the service — that there is an actual and economic connection to the enterprise[18] — is decisive for the deduction of operational expenses. If the taxpayer's operational origin can be clearly stated, the question regarding the amount of the operational expenses is no longer of interest. Thus, the administrative principles go astray when they question the amount of operational expenses for an employee; on the contrary, operational expenses need not be functional, common, or appropriate.

Regarding the evaluation of the cause of the assignment costs, the administrative principles only differentiate between the case of a German company assigning an employee[19] and the opposite case when a German company receives an employee.[20]

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The principles state appropriately that an assigned employee usually becomes active in the interest of the receiving enterprise. That is postulated only for German assigning enterprises; however, the assigning company can also have an interest in the assignment of the employee and will thus take on responsibility for part of the employee's remuneration (for instance when the employee accepts special functions by order of the local assigning subsidiary). It is then the correct result that the assigning foreign headquarters company accept part of the expenses of an employee who has been received by a local subsidiary. In the case of the local receiving subsidiary, that means that possibly only part of the operational expenses will be up for negotiation.

If the local headquarters company is the assigning company, it should carry the burden of proof and documentation for the operational origin of expenses that have been incurred locally. Otherwise, the local receiving subsidiary must prove that increased labor costs (additional expenditures) for the received employee (for example, because he has special professional skills) are actually in the interest of the receiving subsidiary.

There is an inconsistency in that argument, especially in the legal consequences, if appropriate proof cannot be furnished. If the assigning local (German) company cannot prove the operational origin, the costs must be borne in full by the receiving (foreign) subsidiary, even if they exceed the local wage level. Conversely, the assigning (foreign) parent is obligated to carry the additional expenditures if the local receiving

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[15]*See* Kroppen/Roeder, *supra* note 1 at 435.

[16]Section 3 of the administrative principles.

[17]*See* Kroppen/Roeder, *supra* note 1 at 436.

[18]Schmidt-Heinicke, *Einkommensteuergesetz* (München: Beck Verlag 2001), section 4 note 480.

[19]Section 3.1.1 of the administrative principles.

[20]Section 3.1.2 of the administrative principles.

company cannot demonstrate and prove the operational interests.[21]

There is no obvious reason for that unequal treatment. It is unacceptable that in one case the receiving company must bear the additional expenses, and in the other case, the assigning company must bear those expenses. It is problematic that the administrative principles lack consistent criteria for evaluation and instead aim at the interests of the assigning company on the one hand and at the local wage level of the receiving company on the other hand. Those two tests, however, are not congruent. Even if the wages are above the local level, that does not automatically indicate an interest of the assigning company. The assigning company can also have an interest if the wages are similar to the local wage level.

In our opinion, the conflict can only be resolved by consistent burden of proof regulations. Whether the German enterprise is the assigning party (doubtful with quite a few deductions abroad) or the receiving one (participation by the parent is doubtful when there are additional expenses) is certainly not a valid criterion.

C. The Arm's-Length Principle

The preliminary draft did not settle on a specific transfer pricing method; the administrative principles, by contrast, commit themselves predominantly to the comparable uncontrolled price method. That is quite remarkable because section 2.4.1 of the 1983 German Administrative Principles[22] states that there is no ranking of standard methods in the examination of transfer prices, a position the Federal Tax Court has explicitly emphasized in its decision dated 17 October 2001.[23]

The administrative principles differentiate among the internal, the external, and the hypothetical arm's-length principle. In our opinion, there is some danger that the internal or external arm's-length deal won't be practicable and that tax authorities therefore will return to the diffuse criteria of the hypothetical arm's-length deal. An internal arm's-length deal often will not be applicable to the secondment of experts because of the lack of comparable local personnel. The external arm's-length deal probably will fail because of a lack of comparable assignment situations among independent third parties. In the case of the hypothetical arm's-length deal, the criticism made so far still holds strong — that is, that the hypothetical arm's-length deal as described in section 3.2.3 resembles in its result the use of profit methods that, up to now, have been covered by the German tax authority.[24]

It is questionable whether the rules of the rotation procedure are at all applicable in the case of expert secondment.

It is also remarkable, in the scope of the hypothetical arm's-length test, that a prudent and diligent business manager will bear the additional expenses for an assigned employee in comparison with an available employee on the local labor market only if he "can expect an economically noticeable profit" over a manageable period of time.[25] One should note that the taxpayer once again is confronted with increased documentation requirements. Moreover, it remains ambiguous why a three-year period seems appropriate.

Finally, the principles are completely vague as to how an increase in profits should be comprehended. Imagine the assignment of a Czech expert to a production company. His activity in that company is so far removed from the actual profits from the sale of the products that one can hardly establish a connection. In practice, we fear, the test may result in skepticism on the side of tax authorities when an employee is assigned to a local company in Germany. If the company suffers losses, tax authorities will most likely question the deductibility of wage costs. In addition, tax authorities will face the question of whether the same criteria are valid for a local assignment to a foreign company suffering losses.

D. Rotation Procedure — Expert Secondment[26]

On the issue of expert secondments, several cases can be distinguished. If an expert cannot be recruited from the local labor market, the receiving company must bear all expenditures.[27] If an expert with comparable abilities

[21]Section 3.1.2, 2nd para. of the administrative principles.

[22]German administrative principles on the allocation of income of international related companies. For an English translation, *see* Kroppen/Eigelshoven, Chapter on Germany, in *Tax Treatment of Transfer Pricing* (Amsterdam 1987), ch. 8.2.

[23]Ref. No.: I R 103/00, Der Betrieb 2001, p. 2474, 2477.

[24]*See* Federal Ministry of Finance press release dated 13 July 1995, printed in DStR 1995, p. 1500, and Kroppen/Eigelshoven, *supra* note 22.

[25]Section 3.2.3 of the administrative principles.

[26]Section 3.4 of the administrative principles.

[27]Section 3.4.1 of the administrative principles.

can be recruited on the local market, the general rules should apply (that is, a division of expenditures should be made between the assigning and the receiving companies, in accordance with sections 3.1.1 and 3.1.2). The third case refers to the secondment of experts in a rotation procedure. Here, the rules of section 3.4.1 should also apply: The receiving company must bear all expenses if it cannot find a comparable employee on the labor market. Thus, it remains unclear how the difference between a "mere expert secondment" and secondment under rotation may be defined exactly. In both cases, the receiving company bears the costs.

The rule that, according to section 3.4.2, applies in a rotation procedure — that the assigning company also has an operational interest in the expert secondment and thus should bear a part of the costs — cannot be applied. If a suitable comparable employee cannot be found on the labor market, the interest of the receiving company may doubtlessly be assumed. A rotation system for the position filled by that expert certainly won't change anything in that regard. The assumption rule included in section 3.4.2 thus cannot be understood in its current form.

One should also note that the company will face substantial difficulties in finding an employee on the market who is comparable to the expert. An expert is usually defined as someone who has individual and specific abilities in a particular field. It is thus most likely that an enormous effort would be made to search for an adequate expert, an expenditure the taxpayer would have to pay. Once again, it is the taxpayer who must bear the costs for the documentation requirements and the burden of proof. Thus, it is questionable whether the rules of the rotation procedure are at all applicable in the case of expert secondment.

It should first of all be considered that an assigned employee who is part of a rotation system might become an expert. It is today quite common that employees are assigned so that the receiving company can have access to the technical and product know-how of the assigning company.

Furthermore, it remains unclear why the taxpayer should not be allowed to deduct the operational expenses related to the assignment. It is thus worth analyzing the definition. According to the administrative principles, a rotation system is deemed to exist if the company performs centralized human resource planning. The word "rotation" indicates a substitution of employees on a continuous basis. However, that understanding is not reflected in section 3.4.2 of the administrative principles. That criterion is considered only a starting point for determining whether a rotation must be assumed. The use of the phrase "rotation system" is in fact quite confusing.

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It is moreover questionable whether a continuous substitution of employees might discriminate against the receiving company. The administrative principles here view a period of three to five years in which a substitution takes place as common.[28] It must be carefully investigated whether the general labor turnover in the receiving company and the particular industry, respectively, deviates from the period mentioned in the administrative principles. In that respect, one should also consider the employee's operational area. Employees nowadays probably will not stay with one employer for their entire working life. Thus, it is not feasible to reject a potential deduction if the taxpayer considers the reality of today's business life, where rotation takes place on an ongoing basis.

E. Documentation

Section 5 deals with the documentation requirements the taxpayer must fulfil regarding cross-border employee secondments. Taking into account the decision of the German Federal Tax Court dated 17 October 2001,[29] however, it is questionable whether the taxpayer is required to provide specific documentation for secondments. The following documents might serve as examples:

- precise proof of activity, such as reports or minutes the assigned employee has prepared for the assigning company;
- examinations of comparative salaries in the local labor market;

[28] *Cf.* Kuckhoff/Schreiber, *Verrechnungspreise in der Betriebsprüfung*, (Beck München 1997), note 229.

[29] For a detailed analysis, *see* Kroppen/Rasch/Roeder, *Tax Notes Int'l*, 10 Dec. 2001, p. 1111, *2001 WTD 237-11*, or *Doc 2001-30307 (8 original pages)*; Kroppen/Rasch/Roeder, *Internationale Wirtschaftsbriefe Fach* 3 Deutschland, Gr. 1 p. 1787.; Wassermeyer, *Der Betrieb* 2001, p. 2465.; Baumhoff, *Internationales Steuerrecht* 2001, p. 751.

- evidence regarding the amount of wage expenses before assignment; and
- benefit tests regarding wage expenses and profit contributions of the assigned employee.

There are two main problems with those documents. First, the Federal Tax Court has clearly stated that German tax law does not require taxpayers to submit specific transfer pricing documentation. Thus, taxpayers — in spite of the rule of evidence as mentioned in the administrative principles — are not obligated to prepare any additional transfer pricing documents. It should be stressed once again that the taxpayer is only required to submit books, records, and business papers, and to answer questions.[30]

The Federal Ministry of Finance, once again, has failed to consider that domestic subsidiaries are usually unable to obtain information from foreign related parties. The Federal Tax Court held, in a decision dated 10 May 2001,[31] that an obligation of the taxpayer would only be acceptable if a third party would have requested the right to demand documents from the other party to the transaction. Therefore, it is likely that the taxpayer will not be able to provide any information about the amount of wage expenses before the assignment.

Moreover, it should be stressed that tax authorities ask for the impossible. The taxpayer will probably face difficulties in performing a so-called benefit test. First of all, the taxpayer will not be able to obtain the necessary data related to the particular employee if the taxpayer does not prepare specific documentation in that respect. Also, the assigned employee often will perform services that might not be reflected by any allocation keys. That applies in particular to administrative services and to highly aggregated operational areas.

III. Final Remarks and Conclusions for Practice

At first sight, it seems advantageous that German tax authorities are at the cutting edge when it comes to putting the allocation of costs between related companies on a basis that is at least binding on the tax authorities. However, after a closer look, the final result is far from perfect. Also, it remains unclear how other countries will react to the regulation of allocations. German tax authorities also must answer why they didn't first try to find a consensus at the OECD level. Surely it is permitted to make the point that such an important trading nation as Germany cannot allow itself to be underrepresented on the advisory board of the OECD.

It is encouraging that there now exists the possibility to negotiate a uniform allocation standard with tax authorities.

The problem of secondments has really come to the fore in the national area of secondment of employees of Japanese parents to German subsidiaries. However, the problem doesn't end there; in fact, just the opposite is true. The issue of "secondment" is becoming more and more a discussion point in tax audits, and the trend can only get worse under the current administrative principles.

It seems extremely strange to us that the so-called safe harbor rule included in the original draft version has not been included in the final version. A substantial number of enterprises are expected to make use of that regulation. The new regulation presupposes that in the scope of a standardized approach, the cost between the assigning and the receiving enterprise would have been appropriate if the assigning enterprise had borne 20 percent of the total costs. That rule had been particularly welcome by business representatives because an especially controversial audit issue would have been scotched immediately. Moreover, that standardization would surely have been compatible with the principle of taxation after efficiency. Such a regulation certainly would have made things easier, given that a presentation of the operational interests would have entailed considerable effort.

It remains to be seen how tax authorities will use the new administrative principles. In light of experiences from past audits, taxpayers should be armed against substantial conflicts with tax authorities. Thus, taxpayers are well advised to document secondment issues in as much detail as possible, and to show up operational interests, even if the legal basis of the documentation list is more than questionable. But it is encouraging that there now exists the possibility to negotiate a uniform allocation standard with tax authorities. That will certainly help mitigate arguments in audits. ✦

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[30] *Cf.* Becker, in Becker/Kroppen (Edit.), *Handbuch Internationale Verrechnungspreise* (Köln: Dr. Otto Schmidt Verlag, 1999/2001), U number 5.1.1, note 3 with further references, and Wassermeyer, in Flick/Wassermeyer/Baumhoff (edit.), *Außensteuerrecht* (Köln Dr. Otto Schmidt Verlag 1997/2001), section 1 AStG note 821.

[31] Ref. No: I S 3/01, DB 2001, p. 1180; for an in-depth analysis, *see* Kroppen/Eigelshoven, *International Transfer Pricing Journal* 2001, p. 226.