

White income through a loophole in a DTT (lawyers' LLP model)



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Agenda



1. Starting Situation – The case
2. Tax liability
3. Tax model
4. Chances / Risks

1. Starting Situation – The case



Private individual German (not married), resident and liable for taxation in Germany, has a non-equity share in a UK LLP and is at the same time only working for the permanent establishment of the UK LLP in Germany

The total annual income amounts to 1.200.000 EUR, thereof 300.000 EUR are allocated to the activities in Germany

2. Tax liability



According to the DTA Germany/UK:

- UK income 900.000 EUR should be taxed in UK
- Germany as residence country has the right to tax the world-wide-income
 - 300.000 EUR have to be taxed in Germany
 - 900.000 EUR from UK are subject of the tax progression in Germany (exemption method)

3. Tax Model (1) – in Germany



1. Step – Determination of tax rate

	EUR
Income in Germany	300.000
Profit in UK, subject to progression in Germany	900.000
Income basis for determination of tax rate	1.200.000
Notional tax amount	520.760
Tax rate on income basis	43,40%

3. Tax Model (2) – in Germany



2. Step – Taxation of income in Germany

	in EUR
Income in Germany	300.000
Tax rate	43,40%
Tax amount	130.200
+ Solidarity surcharge	7.161
Total tax amount (incl. Solidarity surcharge)	137.361
Total tax rate (incl. Solidarity surcharge)	45,79%

4. Chances / Risks (1)



What about the taxation in UK?

- Theoretically :
„UK income 900.000 EUR should be taxed in UK“
- Effectively:
UK does not require a tax declaration of the private individual from Germany due to lack of residence in U.K.
- Result: No taxes paid in UK!

4. Chances / Risks (2)



This approach of the UK authorities meanwhile came into knowledge of the German authorities, which lead to an adjustment in the DTA

- Exemption method in Germany for UK income applies only, if UK income is indeed declared (and paid)
- Otherwise Germany can make use of the overriding principle and withdraw the exemption of UK profits and tax this UK income in Germany

4. Chances / Risks (3)



In theory there is no more white income, but

- Do all taxpayers declare their foreign income?
- Do all tax inspectors know about this new rule in the DTA?
- Is the tax advisor liable for non taxed income in Germany if he does not check if the UK income has been taxed?

Does that model still work in your country?
What is your experience?

Thank you for your attention!



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