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German Tax and Legal News

BFH rules on constitutionality of 6% interest rate on tax payments

BFH considers statutory interest rate to be constitutional on tax payments during 2013

In a decision dated November 9, 2017 and published on February 27, 2018, Germany's Federal Tax Court (BFH) ruled that the annual interest rate of 6% on tax payments applicable during 2013 is in line with constitutional principles.

The 6% annual interest rate (0.5% per month) on tax payments and refunds was introduced into Germany's tax code in 1961. In a decision dated July 1, 2014, the BFH indicated that, to comply with constitutional principles, the legislature may be required to adjust the interest rate if the market rate has changed significantly and there is no indication that the rate will return to the level set when the prescribed rate was introduced into the tax code (see [GTLN dated 08/10/2014](#)).

In the current case before the BFH, the taxpayer argued that the amount of interest on tax payments depends on the time it takes the tax authorities to issue a tax assessment notice for additional tax due, and that the annual interest rate of 6% significantly diverged from market rates at the time and was no longer based on economic reality. The lower tax court of Duesseldorf rejected the taxpayer's arguments and the taxpayer appealed the decision to the BFH (see [GTLN dated 11/10/2016](#)).

The BFH agreed with the lower tax court of Duesseldorf and ruled, in accordance with its 2014 decision, that the interest rates on tax payments that it found compatible with the market rates for the period from 2004 - 2011 were still compatible with the market rates for 2013. According to the BFH, the market rates in 2013 ranged between 0.15% and 14.70% and, hence, did not change sufficiently in that year to warrant an adjustment by the German legislature.

The BFH's decision is in line with jurisprudence of the Constitutional Court, as well as decisions of other lower tax courts (e.g. a decision of the lower tax court Muenster dated August 17, 2017 concerning the period from 2011 - 2016 (see [GTLN dated 04/09/2017](#)) and a decision of the lower tax court of Thuringia dated April 22, 2015 concerning the period from 2006 - 2011; both decisions are still pending before the BFH).

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