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*German Tax and Legal News*

## **Lower tax court upholds constitutionality of 6% interest rate applicable on tax payments during period 2011-2016**

Case now pending before federal tax court

In a decision published on 17 August 2017, the lower tax court of Muenster concluded that the statutory interest rate on tax payments and refunds of 6% per year is in line with constitutional principles. The rate, introduced into the tax code in 1961, has remained unchanged despite low market rates since 2009.

In the case before the court, the taxpayer argued that, based on the low market rates, the interest rate for the period 2011-2016 should range at around 3% (a maximum of 4%), and because of this significant divergence, the 6% rate is not in line with constitutional principles.

The lower tax court of Muenster rejected the taxpayer's argument that the annual 6% interest rate is not in line with market rates for the period 2011-2016. The court pointed out that the rate intentionally has not been revised over time for simplification purposes. The court also referred to the fact that the interest rate does not start to run until 15 months after the end of the relevant fiscal year, and this would need to be considered when determining whether the 6% rate is still reasonable for constitutional purposes.

The lower tax court's decision accords with jurisprudence of the federal tax court (BFH) (see [GTLN dated 08/10/2014](#)) and the Constitutional Court, as well as decisions of other lower tax courts (e.g. decision of the lower tax court Duesseldorf dated 10 March 2016 (see [GTLN dated 11/10/2016](#)) and decision of the lower tax court of Thuringia dated 22 April 2015, both of which are pending before the BFH). However, the lower tax court of Muenster's ruling is the first decision that addresses periods after 2014 and that specifically addresses the compatibility of the annual interest rate with market rates for those years. In its decision dated 1 July 2014, the BFH indicated that 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 that prevailed when the rate was introduced into the tax code in 1961 (see [GTLN dated 11/10/2016](#)) and [GTLN dated 08/10/2014](#)).

The lower court of Muenster's decision now is pending before the BFH, and it is likely that the BFH will have to rule on whether the market rate changed sufficiently over the last seven years, i.e. during the period 2011-2016, to warrant a legislative adjustment.

Affected taxpayers that suffered interest payments on additional tax payments in Germany should monitor developments and keep relevant periods open (e.g. by filing an objection and applying for the suspension of the proceedings with regard to the cases before the BFH). Likewise, taxpayers may wish to consider making voluntary upfront payments to stop interest from accruing with respect to tax payments that may become due in the future.

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