



# NEWS INTERNATIONAL

E-MAIL NEWSLETTER  
Third edition of 2025

## Saarland Fiscal Court strengthens defense advice on cross-border corporate financing

Dear Sir or Madam,

The ruling of the Saarland Fiscal Court of September 25, 2024 – 1 K 1258/18 shows that **interest-free and unsecured loans** are **possible** within an international group of companies under certain circumstances. In the case in question, the financing relationships involved the domestic parent company as the lender and two subsidiaries in Hungary and Romania as the borrowers. The latter were contract manufacturers for the parent company in the automotive supply and electrical appliance industries.

The tax court first clarified that the loans are to be treated as **debt capital** for tax purposes – only then can the amount of interest payments be relevant for tax purposes. Only then did it examine whether the loans were at arm's length. This preliminary step provides taxpayers with valuable information on the criteria to be observed for the desired classification as debt capital.

The court then concluded that interest-free and unsecured cross-border loans are not **at arm's length**. However, the tax authorities were unable to enforce an income adjustment in this specific case, as the tax court, referring to the **ECJ ruling "Hornbach-Baumarkt" (C-382/16)**, allowed economic reasons as **justification** for the lack of arm's length. It is important to note that the court generally accepts all reasons that are not tax-motivated.

At first glance, this sounds like an out of jail card – but it is not. The case in question involved a **very specific constellation**: the aim was to reduce production costs for assembly services in a contract manufacturing relationship, while the foreign subsidiaries were in the start-up or expansion phase.

The decisive factor was the court's finding, which it did not explain further, that **no tax advantages** were achieved in Germany. Therefore, the outcome could be different in similar but slightly different cases.

The ruling of the Saarland Fiscal Court represents a continuation of the **positive development** in national case law following the Hornbach ruling of the ECJ. It shows that economic reasons may, under certain circumstances, prevent an income adjustment in cross-border financing relationships. This strengthens the defense advice in tax audit cases – not only for **interest-free** loans, but also for **low-interest** loans and, in principle, for unrecognized partial write-offs on loan receivables, insofar as these (still) have tax implications.

The ruling can be used in structuring advice if interest payments are not possible or only possible to a limited extent due to economic constraints. Due to the very specific circumstances of the case, there is a tax risk that may be acceptable, but requires **particularly careful documentation** in advance.

Ultimately, every loan relationship requires mandatory careful **case-by-case examination**. In particular, the new legal provision in Section 1 (3d) AStG (Newsletter first edition of 2024), the OECD guidelines on transfer pricing aspects of financial transactions, and the corresponding announcements by the German and, depending on the country of residence of the loan transaction partner, the corresponding foreign tax authorities must be observed.

We are happy to assist you with **benchmarking and determining the terms and conditions** of financing relationships, their legally compliant **documentation**, and defense in the context of tax audits. In addition, **mutual agreement procedures** and, if necessary, arbitration proceedings can prevent double taxation following an income adjustment by the tax authorities in the area of transfer pricing for international corporate groups.

**Please feel free to contact us!**

Best regards



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