



NEWS INTERNATIONAL

E-MAIL NEWSLETTER
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Imminent additional tax load for international payments

Dear Sir or Madam,

The German Anti-Treaty/Anti-Directive Shopping Provision is expected to be significantly tightened in May. Section 50d (3) of the German Income Tax Act (EStG) targets configurations intending to reduce withholding taxes on dividend, interest and licence payments by involving companies which do not have significant substance and functions in EU states or in states with which Germany has entered into double taxation agreements.

The provision has become notorious abroad owing to its focus on transactions which were not remotely fraudulent. It meant it was only possible to avoid withholding tax with great effort, if at all.

Particularly in view of its violation of EU law, the regulation has an extremely turbulent history. Ultimately, rulings by the European Court of Justice and German financial jurisprudence led to the outcome that the current version will now only apply in exceptional cases.

The regulation now planned is unexpectedly restrictive and will lead to significant tightening in many cases. In the explanatory memorandum, this is attributed to rulings by the European Court of Justice in 2019. Nevertheless, there are good arguments for the case that the new version of the provision is also in violation of EU law.

The option of legal counterevidence now included will be of great significance. Nevertheless, it is uncertain at present how this will be handled in practice. A forthcoming letter from the Federal Ministry of Finance will attempt to bring clarity to the matter. However, it is difficult to imagine this attempt being successful.

We recommend analysing existing structures, determining possible consequences and deciding whether action is required, not least with regard to existing certificates of exemption in the form of a disclosure requirement to the Federal Central Tax Office.

Best regards

Prof. Dr. René Schäfer



The author

Prof. René Schäfer completed his studies in Business Administration at Saarland University in 1999 and graduated with a master's degree. At the same time, he obtained a diploma from the École Supérieure de Commerce, Lyon, after a year of study in France.

After several years working as a research assistant at the Business Institute of Taxation and Entrepreneurship, Chair of Business Administration, in particular in the area of business taxation, as well as at the Institute for Start-Ups/SMEs of Saarland University (Director: Prof. Heinz Kußmaul), he obtained his doctorate in 2003 with a thesis titled 'Taxation of a German-French business'.

In 2005, he passed the tax consultancy examination. In 2008, he was awarded the title of Specialist Advisor for International Tax Law.

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Since 2005, Prof. Schäfer has been working for DORNBACH GmbH in Saarbrücken and is currently employed there 'of counsel'. Additionally, he leads the DORNBACH Centre of Excellence for International Tax Law.

In 2009, he took up a teaching post at Saarland University and lectures on the topic of international tax law. In July 2015, he was appointed Honorary Professor at Saarland University in the field of business administration. In addition, he is a member of the expert committee Specialist Advisor for International Tax Law of the Chamber of Tax Consultants in the German State of Hessen.

His areas of specialisation:

International tax law | Cross-border restructuring | Relocation of private individuals and entrepreneurs into and out of Germany | Cross-border employment

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Company presentation



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