



# NEWS INTERNATIONAL

E-MAIL NEWSLETTER  
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## Reform of the controlled foreign corporation (CFC) rules: booby trap in basement level five

Dear Sir or Madam,

At times, the tax differential between Germany and other countries causes domestic taxpayers to pack 'passive' income into corporations domiciled in low-tax countries. Where resident taxpayers hold a majority holding in such companies, the previous rules on controlled foreign corporation lead to an increase in taxation to - or, in the worst case, above - German tax rates. In the case of asset management, even the smallest holdings will have this effect.

The German CFC rules have now been reformed. One of the most important changes that will generally apply from 2022 is the revision of the control criterion. A shareholder-based approach taking into account associated persons will replace the provisions on resident control. This is intended to avoid unpleasant surprises in the future, as accidental control by residents should be ruled out.

Passive income was and is defined by means of a catalogue of active income. In certain areas, this catalogue already contained regulations which pose multiple challenges in terms of their practical implementation. The changes that have now been implemented - many of which are seemingly harmless - can lead to fatal consequences: in future, restructurings at any downstream group level, for example in the case of sub-sub-sub-sub-subsidiaries abroad, will have (even greater) potential to result in a tax burden for the German parent company. It

Another important issue concerns a change that has not been implemented: after years of discussions regarding the redefinition of the threshold from which low taxation abroad is assumed, the legislator has now after all retained the current threshold of 25%. The grounds stated for this are amusing and therefore absolutely worth reading. Unfortunately, this can nevertheless still result in overall charges exceeding the domestic income tax rate. And it is no consolation that the option to present evidence to the contrary remains essentially limited to the EU/EEA zone and is extended by tighter provisions which are not even required by the relevant EU directive.

The above is only a short overview of the new regulations. Existing structures and, not least, planned restructurings must be examined as soon as possible in the light of this reform. We will be happy to assist you.

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.

## Prof. Dr. René Schäfer

Of Counsel, Tax Advisor,  
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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.

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