



NEWS INTERNATIONAL

E-MAIL NEWSLETTER
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The decision has been made! The Federal Fiscal Court's ruling on corporate loans

Dear Sir or Madam,

Recent years have been demanding with regard to the determination or defence of interest rates for (international) corporate loans. A ruling by the Fiscal Court of Münster in 2016 downgraded financing companies located abroad to service providers and intended to primarily use the cost-plus method to determine the arm's length interest rate. The result was a limitation to a risk-free yield. Another cause of concern was a ruling from the Fiscal Court of Cologne in 2017: a collateralised bank loan was intended to serve as a benchmark for a subordinate and unsecured corporate loan.

There was also a significant question mark over the continued applicability of the common practice of using a rating tool for determining the creditworthiness of borrowers in corporate groups and then applying the result to the interest rates of corporate bonds in databases. According to the Fiscal Court of Münster, it was even "lacking in practical relevance" to consider a single company of the group and not the entire group regarding creditworthiness.

With a total of three rulings (I R 4/17 and I R 62/17, both passed on 18 May 2021, and I R 32/17 passed on 9 June 2021), the Federal Fiscal Court ensured calm. Although some questions remain unanswered, legal certainty prevails once more to a significantly greater degree. The essential statements can be summarised as follows:

- As a basic method of determining appropriate transfer prices, the comparable uncontrolled price method is not by definition precluded and is not necessarily replaced by the cost-plus method. Where appropriate, an internal price comparison with bank loans should be carried out. The subordinated status and a lack of collateral security of the corporate loan can be compensated by adjustment calculations.
- With proper justification, an external price comparison, in particular with corporate bonds, can be carried out in lieu of an internal price comparison.

The Federal Fiscal Court calls for adjustments to the interest rate subject to the specific circumstances, but leaves the question open of how to proceed here. In practice, conversions can be made based on data on interest rate swaps, yield curves and probabilities of default. Please feel free to contact us. We will be happy to support you.

Best regards

Prof. Dr. René

Dr. Henrik

- When determining creditworthiness in connection with corporate loans, rating tools can continue to be used. The average creditworthiness of the entire group does not need to be considered. In the case of relevant (strategic) importance of the borrowing group company, an adjusted stand-alone rating should be carried out.

Schäfer

Sundheimer

Find out more about this topic in our podcast (in German language):

"Tax News International"



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Prof. Dr. 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 earned his PhD (Dr. rer. oec.) in 2003.

In 2005, he passed his tax advisor exam. In 2008, he was awarded the title of Specialist Advisor for International Tax Law.

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

In 2009, he started lecturing at Saarland University on international tax law. In July

Dr. Henrik Sundheimer

Tax Advisor, Managing
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Dr. Henrik Sundheimer advises medium-sized family businesses and their shareholders as well as listed companies on all aspects of national and international tax law. His focus lies on tax planning and structuring, M&A tax advice and advice on international tax law. His clients include real estate companies, companies in the paper industry, IT companies, private equity companies and high-net-worth individuals.

After studying Business Administration at the University of Cologne, Dr. Sundheimer began his professional career as a tax assistant at Deloitte in Düsseldorf. At the same time, he worked as a research assistant for Prof. Roman Seer, holder of the chair "Tax Law", at Ruhr University Bochum. Having passed his tax advisor exam in 2014, Dr. Sundheimer joined KPMG in Cologne the same year as Manager/tax advisor. Alongside his employment at KPMG he earned his PhD (Dr. rer. pol.) at the University of Siegen in 2018.

After a brief stint at a medium-sized auditing company near Koblenz, Dr. Sundheimer was appointed partner at Ebner

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.

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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Stolz in February 2019.

In August 2021 he joined the DORNBACH Group as managing partner and heads our office in Bonn.

Specialisation

Tax planning and structuring / M&A tax advice / International tax law

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Company presentation



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