



# NEWS INTERNATIONAL

E-MAIL NEWSLETTER  
Seventh edition of 2019

Dear Sir/Madam,

According to the decision of the Federal Fiscal Court (BFH) published on 17 April 2019 (BFH of 14 November 2018, I R 81/16) a tax payer's legal obligation to keep accounts based on foreign law must be assessed concurrently as an obligation to cooperate in German fiscal procedures. According to the provision of Section 140 of the Fiscal Code (AO) reporting and accounting obligations under laws other than tax laws are also important for taxation. This "transforms" in particular the legal obligations to keep accounts pursuant to the Commercial Code into fiscal cooperation obligations. With the judgment stated above, the BFH resolved that any foreign legal obligations to keep accounts shall also be transformed by means of Section 140 AO into fiscal cooperation obligations. The High Court decision was based on the following facts:

The claimant was a Liechtenstein stock corporation with German rental income which was obliged to keep accounts in accordance with Liechtenstein law. According to the findings in the court of first instance it had no permanent representative in Germany and was therefore only subject to limited corporation tax with its income generated from the rental of a property located in Germany.

The tax office wanted in accordance with Section 141 AO to oblige the claimant to keep accounts also in accordance with German law. The action before the Fiscal Court of Saxony-Anhalt was not successful. The claimant appealed against this.

The opinion of the BFH was that the appeal

The formulation used in Section 140 AO ("other laws") - just as the formulation in Section 4 AO ("Law shall mean every legal norm") - is not limited only to domestic legal norms. This is confirmed also by the purpose pursued with Section 140 AO to utilise as many non-fiscal obligations as possible for German fiscal law and thereby relieve the tax legislator.

The taxpayer in the case in dispute did not achieve its objective to avert an obligation to keep accounts in Germany. The BFH did declare the notice of the tax office regarding the commencement of the obligation to keep accounts pursuant to Section 141 AO to be unlawful, but concluded that the obligation to keep accounts - irrespective of quantitative thresholds - is already apparent from Section 140 AO. This is the opinion also of the fiscal authorities in their letter of 16 May 2011, BStBl. (Bundessteuerblatt - federal tax publication in Germany) I 2011, p. 530, margin no. 3, something which the tax office must have failed to consider and/or overlooked.

In practice, where there is an obligation to keep accounts under foreign law, the domestic obligation to keep accounts must in principle also be fulfilled. This could be particularly important for domestic permanent establishments of foreign stock corporations which have hitherto determined their profits by means of the net income method pursuant to Section 4 para 3 EStG (Income Tax Act). In addition - as already discussed in the case in question - foreign real estate investment corporations with German property could be routinely subject to foreign obligations to

was justified and that the claimant was already obliged to keep accounts under Section 140 AO in conjunction with the obligation to keep accounts under Liechtenstein law (including in Germany), meaning that there was no argument to establish an additional obligation to keep accounts pursuant to Section 141 AO.

With this decision the 1st Senate of the BFH shares the view according to which the regulation of Section 140 AO refers not only to domestic, but also to foreign obligations to keep accounts.

keep accounts. A notice from the tax office regarding the obligation to keep accounts does not have to be provided. The transfer of foreign accounting into German law can be time-consuming and requires cooperation with (our) foreign cooperation partners.

Speak to us and we will happily advise and support you.

**Best regards**

Rolf Groß



## The author

## Rolf Groß

Certified Public Accountant, Tax Advisor,  
Specialist Advisor for International Tax Law,  
Managing Partner

After completing his studies in business administration, specialising in taxation in 1995, Rolf Groß went on to complete his tax advisor exam in 1999. In 2004, Mr Groß qualified as a chartered accountant and in 2008 as a Certified Public Accountant. Since 2014 he has also held the title of "Specialist Advisor for International Tax Law".

### Specialisation

International tax law / Restructuring of companies / Corporate succession / Advising medium-sized companies and their shareholders

### Contact

DORNBACH, Coblenz  
Phone +49 (0) 261 94 31 - 121  
Fax +49 (0) 261 94 31 360  
Mail [rgross@dornbach.de](mailto:rgross@dornbach.de)

## Company presentation



DORNBACH is a modern, client-oriented accounting and management consultancy firm with a history stretching back over 60 years.

Our staff of over 400 highly motivated and highly trained employees are at the very heart of our philosophy designed to provide a broad-ranging portfolio of services of unparalleled excellence.



This newsletter is provided by DORNBACH-group.  
Detailed information on the group companies can be found here:

[IMPRINT](#)



**Publisher: DORNBACH GMBH**, Auditing, Tax consulting,  
Anton-Jordan-Straße 1, 56070 Koblenz, Telefon +49 (0) 261 94 31-438, E-Mail: [international@dornbach.de](mailto:international@dornbach.de)

The newsletter is intended to provide general information on selected topics for our clients.  
Concrete action should not be taken without advice from your DORNBACH consultant.  
If you want to cancel your subscription, [please click here](#).

Copyright 2019 DORNBACH. All rights reserved.

The newsletter is not displayed correctly? [Please click here](#).