



NEWS INTERNATIONAL

E-MAIL NEWSLETTER
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Dear Sir/Madam,

In a partial renunciation of its previous ruling, the BFH (Federal Fiscal Court) recently ruled that, in the case of net pay agreements and transfer of tax refund claims, the assumption of tax consultancy costs does not represent taxable pay (cf. BFH judgement of 9 May 2019, VI R 28/17, BFH/NV 2019, p. 1160). This change in BFH case law is of particular relevance in (inbound) secondment cases.

In the underlying case to which the BFH's ruling relates, the domestic subsidiary of an internationally active company entered into net pay agreements with the company's employees posted to Germany. The employer assumed the costs for the preparation of income tax returns for the posted employees. The employees transferred their tax refund claims to the employer.

In its ruling, the BFH took the view that the tax consultancy costs were not borne as remuneration by the employee, but rather predominantly in the commercial interest of the employer. Owing to the net pay agreement, the employer was economically liable for the employees' income tax. Additionally, the employees had transferred their tax refund claims to the employer, meaning that only the employer, and not the employees, profited from the economic result of tax consultancy services.

Until now, the BFH has determined the predominant commercial interest in the assumption of tax consultancy costs solely on the basis of the motives for entering into net pay agreements and not on the economic ownership of tax returns. This had the result that the assumption of tax consultancy costs represented taxable pay. This position has not been entirely abandoned; however, the BFH now also requests that, where tax consultancy fees are borne by the employer, all the circumstances be considered for each individual case, as is the case in other instances of commercial interest. It is possible that this might also apply to purely domestic situations.

In this context, individual, tax-optimised arrangements would allow for tax advantages to be created - both for employees and employers. Please do not hesitate to contact us regarding this matter. We are happy to advise and support you at any time.

Best regards

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The author

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Dr. René Schäfer completed his degree in Business Administration at Saarland University in Saarbrücken in 1999 as a Business Administrator. At the same time, he received the Diploma of the Ecole Supérieure de Commerce, Lyon after one year of study in France.

In 2003, he received a doctorate at the Chair for Business Management Studies, particularly Business Taxation from Univ. Prof. Dr. Heinz Kussmaul on the subject of "Taxation of a German-French company". Dr. Schäfer completed the examination for Tax Advisor in 2005. Since 2008, he has also possessed the title of "Specialist Advisor for International Tax Law".

In mid-February 2005, Dr. Schäfer began working as an employee in the tax department of DORNBACH GmbH, Saarbrücken branch.

In July 2007, Dr. Schäfer was made a person with full commercial power of attorney and on January 1st, 2011, he was accepted as a partner.

In July 2015, he was made an Honorary Professor in the subject of Business Administration at the Saarland University.

Specialisation

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Company presentation



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