

6% Interest on Tax Arrears as of 2012 Hanging in the Balance

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German Federal Court of Finance (BFH) OKs Appeals as Interest Level Raises Constitutional Concerns

It all began over a taxpayer's complaint over the interest rate charged by the German government on his tax arrears from the year 2012. Now the matter has been brought before the country's financial courts, where it is being argued by Partner Dr. Christof Schmidt and attorney Dr. Thomas Griebel, both of the HEUSSEN law firm.

In its decision on the matter, the 11th Senate of the Financial Court in Munich ruled that the interest rate of 6% p.a., as mandated under Sect. 238 of the German Tax Code, is constitutional despite significant change in the level of market interest rates overall (Financial Court (FG) of Munich, decision from 12/07/2016, case no. 11 K 406/15). Enter the aforementioned taxpayer, who challenged the court's decision by arguing that, in the face of long-term negative interest rates, the government interest rate charges are exorbitantly high and therefore undue. In the taxpayer's case, the government interest rate charges on late tax payments affected the period from February 2011 to July 2012. Unshakable, the Financial Court of Munich even went so far as to deny leave to appeal against its decision. Following the taxpayer's appeal against denial of leave to appeal, the 10th Senate of the German Federal Court of Finance (BFH) – along with the 3rd Senate during parallel proceedings (case no. III R16/16) – has recently granted appeal in the case. This case now continues under case no. X R 15/17 in the form of appeal proceedings.

Hence, all taxpayers affected by government interest rate charges as of 2012 are advised to file tax appeals, citing the pending appeal proceedings.

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