

Lower tax court upholds constitutionality of interest rate applicable on tax payments

Lower tax court of Duesseldorf considers the interest rate of 6% per annum during 2013 to be in line with constitutional principles

The lower court of Duesseldorf published a decision on March 10, 2016, in which it concluded that the statutory interest rate on tax payments and refunds, currently set at 0.5% per month, is in line with constitutional principles. The 0.5% rate was introduced in 1961 and has remained unchanged since that time.

In the case before the lower court, the taxpayer had argued that the amount of interest on tax payments depends on the time it takes the tax authorities to issue a tax assessment notice that assesses an additional tax due and that the monthly interest rate of 0.5% significantly diverges from market rates and is no longer based on economic reality.

The lower tax court of Duesseldorf rejected the taxpayer's argument, in particular, that the monthly interest rate of 0.5% is not in line with market rates for the period April – July 2013.

The lower court's decision is in line with jurisprudence of the federal tax court (BFH) (see [GTLN dated 08/10/2014](#)), as well as Germany's Constitutional Court. Prior decisions referred only to periods before 2013 – this is the first decision that addresses 2013 and specifically includes a statement about the compatibility of the monthly 0.5% interest rate with market rates. In its decision dated 1 July 2014 (see [GTLN dated 08/10/2014](#)), the BFH indicated that the legislature may be required to adjust the interest rate if the market rate has changed significantly and there is no indication that the rate will return to the level set when the prescribed rate was introduced into the tax code. The lower court of Duesseldorf case has been appealed to the BFH, so the BFH now will have to rule on whether the market rate changed enough in 2013 to warrant an adjustment by the legislature.

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