Downloaded from Blogs on 08.10.2026 03:12h

By PwC Deutschland | 16. November 2016

Schematic loan and return of securities

The Finance Ministry has decreed on a Supreme Tax Court judgment regarding securities lending schemes and provides some guidance as to when a transfer of economic ownership of the securities takes place.

Downloaded from Blogs on 08.10.2026 03:12h

On August 18, 2016 the Supreme Tax Court rejected a scheme involving the loan of securities and held that - under certain circumstances - the economic ownership of the securities might remain with the lender. In the case before the Supreme Tax Court a German GmbH - under a general master agreement concluded with a UK company (lender) – received dividends from the transferred securities and was obliged to make compensation payments to the lender equal in time and amount. The GmbH received the dividend tax free and also claimed deduction of the compensation payments as business expense. The Supreme Tax Court refused and held that the economic ownership had not passed as it was not meant to generate income for the GmbH from the outset. Following this judgment the Federal Finance Ministry has now issued a decree elaborating on the principles of this judgment.

What happens under a securities lending scheme? In exchange for the transferred securities the borrower is obliged to make payments equal in time and amount and must return securities of the same type, quality and quantity on maturity date.

Short term ownership excludes transfer of economic ownership: Under the economic (beneficial) ownership concept the borrower must exercise effective control over the securities in such a way that he can, as a rule, economically exclude the owner (lender) from any influence on the securities and that he has the economic benefit from the transaction as a whole. On the other hand, the economic ownership will remain with the lender either if the stock is transferred for a period of less than 45 days following the dividend record date or if the ownership position of the borrower appears to be purely formal.

The Finance Ministry has further identified and listed some of the criteria under which an attribution to the borrower would be excluded from a tax point of view:

- There is a clear tax advantage for the parties involved or for third parties and the tax benefit is taken into account when setting the total fee for the securities transaction.
- There is no cash flow benefit for the borrower.
- There is only a limited voting right or voting rights were excluded from the outset and the borrower, therefore, had no benefits whatsoever under company law.
- The rights of the borrower from the securities transaction can be withdrawn at any time, given notice within three banking days.

Note: Recently, the Lower Fiscal Court of Nuremberg in a judgement dated 7 June 2016 (file no. 1 K 904/14) has confirmed the above judgment of the Supreme Tax Court . The lower court held that the guiding principles also apply with respect to stocks transferred as collateral under a stock lending agreement. Thus, the Lower Court of Nuremberg rejected the transfer of beneficial ownership if stocks are booked into a (domestic) collateral account close to the record date and removed shortly after. The judgement of the Lower Cort of Nuremberg is final as the plaintiff did not launch an appeal before the Supreme Tax Court.

Downloaded from Blogs on 08.10.2026 03:12h

Schlagwörter

beneficial owner, economic owner, loan of securities, securities lending