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By PwC Deutschland | 02. September 2014

Proposed tax amending bill

The finance ministry has published a draft tax amending bill, basically to enact ECJ judgments against existing provisions and to react to perceived abuses and anomalies.

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The finance ministry has taken advantage of the need to bring the customs duties sections of the Tax Management Act into line with the revised EU provisions to introduce a number of tax amendments unrelated to customs duties. It has now published a draft bill that has not yet received cabinet approval. Some of the proposals are purely editorial, others enact recent ECJ findings against existing German provisions and still others react to perceived shortcomings of the present tax legislation. In summary:

- The Income Tax Act is to be amended to disallow 60% of the losses (including refinancing costs) from loans granted to entities in which the lender holds more than one-quarter of the ownership rights. This mirrors the corresponding provision of the Corporation Tax Act, the 60% disallowance reflecting the fact that 60% of the income (interest) would be tax-free if the loan were held as a business asset. This also applies to losses from assets placed free-of-charge at a related party debtor's disposal.
- Payments by employers into pension funds to finance changes in company pension schemes from "pay as you go" to an asset-backed fund capital are to be taxable employment income. However, payments to fulfil for the first time the solvability criteria of the insurance rules are exempt as are payments to cover extraordinary losses of the fund.
- The range of tax-free benefits for employees is to be extended to include payments to social consultants to advise employees on personal or social matters. Employer payments to agencies to provide carers for children or infirm relatives are also to be exempt. This also applies to payments for the carers themselves as a short-term measure necessitated by the job. This latter, care exemption is to be limited to a total outlay of €600 p.a.
- The cost of employee outings and functions are basically taxable as a benefit in kind. The total cost of the event is to be divided by the number of participants. This cost per head is taxable in the hands of each employee taking part, the taxable benefit being the total cost falling on the employee and his or her companions. However the benefit is tax-free if the function was open to all employees and the total cost did not exceed €150 for each employee participating. An employer may hold no more than two tax-free employee events each year.
- The maximum foreign tax credit is henceforth to be calculated at the average tax rate applied to the total income after deducting tax-free personal allowances and expense deductions to alleviate hardship. This follows an ECJ ruling (case 168/11 *Beker* judgment of February 28, 2013). The change is to be applied to all open cases. A similar amendment has been made to the Corporation Tax Act; thus a company not paying corporation tax in the given year continues to lose its foreign tax credit.
- The definition of related-party business transactions open to income adjustment under the Foreign Tax Act is to be redrafted to encompass all transactions that would have had tax consequences for either party, had the transaction been conducted between two unrelated domestic taxpayers. This closes a perceived loophole, rather than being a substantive change in current practice.
- The finance ministry is to be given powers to extend the reverse charge on trade sales of specific

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goods to other goods not listed in the VAT Act if it becomes aware of fraudulent dealing in those goods. The extension requires the approval of the *Bundesrat* and may not take effect without European Commission approval. European Council (ECOFIN) approval must also be sought and the new reverse charge must cease if ECOFIN approval is not forthcoming within nine months.

Most of the amendments apply as of the 2015 tax year.

Schlagwörter

abuse of legal forms, amending bill, anomalies