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By PwC Deutschland | 19. Dezember 2014

Tax amendments 2015 finalised

The Bundesrat passed a tax amendment bill on December 19, 2014 to enact a few minor changes to the tax acts for 2015.

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After a series of political disputes, the *Bundesrat* gave its approval to a Bill to Amend the Tax Management Act to conform to the EU Customs Code and to Alter other Tax Rules in its final session of the year on December 19, 2014. There are no major changes to existing law. Among the minor amendments are:

Income Tax Act

The foreign tax credit due on foreign source income may not exceed the German tax notionally due on the same income. Up to now, the credit was limited to the proportion of the tax due on the total taxable income falling to the foreign source income. This averaging calculation was rejected by the ECJ on December 18, 2013 (case C-168/11 *Beker and Beker*) because it effectively apportioned personal allowances between foreign and domestic source income and therefore curtailed them in proportion to the taxable income earned abroad. The new bill replaces the income apportionment with the average rate falling on the taxable income with the intention of taking the personal allowances out of the calculation altogether. Unfortunately, the wording of the bill is deficient, with the result that *Beker and Beker* will not be fully implemented into domestic law. Further legislative action is to be expected.

The basic tax-free allowance of €110 per head against the benefit in kind from staff outings and similar functions has been given a new legal basis in the Income Tax Act as opposed to the Wages Withholding Tax Guidelines. Unfortunately, the cost basis now includes the cost of facilities as well as the cost of the actual consumption, so the number of cases of taxable benefits arising will increase. The main effect is to complicate the administrative burden on employers.

Shareholder loan losses are now only 60% deductible under the partial charge system for dividend income if the loan was granted on favourable terms by a shareholder acting in the interests of his company, in other words on shareholder loans seen as substituting share capital. This restores the previous position of the tax authorities overturned by the supreme Tax Court in April 2012 (judgments X R 5/10 and 7/10 of April 18, 2012). It has no effect on corporations as lenders.

Foreign Tax Act

The profit correction provision has been amended to remove all foreign/domestic considerations from third party comparisons. This follows from attempts to deny the validity of an unfavourable third party comparison because one of the parties to it was a local resident.

VAT

A securities-based asset management service (managing portfolio investments on behalf of customers without reference back to them on specific transactions) is henceforth a taxable transaction in Germany when performed for a customer in a non-member state of the EU. This responds to an unsuccessful attempt to claim the contrary before the ECJ (case C-44/11 *Deutsche Bank* judgment of July 19, 2012).

Other changes

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In the same session the *Bundesrat* gave its approval to provisions for less generous treatment of tax evaders coming forward. The restriction follows from improved methods of detection.

Open issues

Proposals that have not been passed, but which remain on the agenda – for 2015 or later – include

- a prohibition of a business expense deduction for an outlay that has been or will be deducted abroad. This is primarily intended to counter hybrid financing schemes.
- taxation of the capital gains of companies from the sale of portfolio shareholdings. This demand of the *Bundesrat* reflects that body's view of a capital gain as a direct substitute for a dividend.
- an extension of the intra-group exemption from the loss forfeiture rules for share transfers between related parties.

Schlagwörter

tax amendments