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By PwC Deutschland | 18. Dezember 2018

Draft bill - Brexit Ancillary Regulations

On 13 December 2018 the Federal Ministry of Finance published a draft bill for the enactment of tax and other regulations for Brexit (“Brexit Bill”)designed to alleviate certain legal consequences arising by reason of Brexit alone.

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Effective date

The Brexit Bill is intended to come into force on 29 March 2019 (date of Britain's departure from the EU). It is intended to cover both the scenario of an implementation deal and a no deal scenario. Where a deal is agreed the regulations will come in to force once the UK is treated as a third country at the end of the transition period on 31 December 2020.

Overview of planned provisions

Where a taxpayer created a balancing item after transferring a fixed asset to a UK branch (i.e. to mitigate the impact of exit taxation), the balancing item would have to be fully released upon Brexit. To avoid this the Brexit Bill provides that balancing items created before Brexit comes into force may continue to be released over the term of the remaining period (5 years maximum). Furthermore, the tax neutral release of the balancing item where the asset is returned to Germany within the 5 year period will continue to apply where the assets were transferred to the UK before Brexit.

The Brexit Bill also envisages an amendment to the Reorganisations Taxes Act. Where a taxpayer has transferred his business to a company or exchanged shares in a company for shares in another company and has applied to treat the transfer as one occurring below fair market value, the lapse of certain conditions within a seven year period will result in the retroactive taxation of the gain. One of the conditions is a condition of EU residency. The draft provision provides that the EU-residency condition will not be deemed to have been breached where the lapse of EU-residency provision is solely a result of Brexit without any action on the part of the taxpayer himself. The provision is intended to apply to transactions where either the transformation/conversion resolution was made before Brexit or where the contribution agreement was concluded before that date.

The Income Tax Act provides for the postponement of the taxation of hidden reserves where specific business assets are sold and other specific assets are acquired which are to be to attributed to a branch of the taxpayer in another Member State; upon application the tax may be paid in 5 equal annual instalments. The Brexit Bill provides for a continuation of this provision provided the application to postpone the tax is made before the UK leaves the EU.

The Corporation Tax Act imposes an exit taxation (by way of a deemed liquidation) upon German resident companies, which leave the German tax net by moving their registered office or place of management to a third country. The Brexit Bill provides that no charge to tax under will arise merely because a company's registered office or place of management becomes located in a third country by reason of Brexit alone.

Likewise, the Foreign Taxes Act imposes an exit taxation on an individual who moves his tax residence outside Germany and who, inter alia, holds a shareholding of 1% or more in a German resident company. The Foreign Taxes Act provides for a postponement of the tax where the individual moves to another Member State or an EEA state. The postponement is revoked, when, inter alia, the individual moves his residence outside the EU/EEA. The draft Brexit Bill provides that the postponement will not be revoked

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merely because the individual is no longer an EU resident by reason of Brexit alone.

The postponement will however be revoked where there is a withdrawal or other transaction, which does not lead to a release of the hidden reserves per se, but, by reason of which, the shareholding is no longer attributable to a permanent establishment of the taxpayer in the UK or the EU/EEA (e.g. where the shares are transferred from a permanent establishment of the taxpayer in the UK to one in a third country). A change of residence from the UK to a third country will also give rise to a revocation of the postponement, insofar as, following the move, no tax obligation exists in the UK or EU/EEA similar to the German unlimited income tax obligation.

Other provisions intended to alleviate any negative consequences of Brexit include a provision in relation to subsidised pension property (old cases) under Section 93 (1) Income Tax Act and a provision to prevent undue hardship in relation to adjustments to Riester claims.

The Brexit Bill also includes regulations in the area of finance intended to alleviate problems in the case of a No Deal.

In addition to the rules referred to above the Brexit Bill provides for a necessary editorial change to the VAT Act as well as transitional rules in relation to the Mortgage Bond Act and Building and Loan Associations Act, which should provide certain grandfathering rights.

Schlagwörter

Brexit