By PwC Deutschland | 02. August 2019

Finance Bill 2019 gets green light from Federal Cabinet

On 31 July, the Federal Cabinet adopted a draft Finance Bill 2019 referred to as the "Act on the Further Tax Promotion of Electric Mobility and on the Amendment of Further Tax Regulations". As its name suggests the bill focuses on tax incentives for electro-mobility but includes legislation in numerous other areas of tax law.

We reported earlier on the draft bill published on 8 May 2019 (cf.our blog post of 14 May 2019). The Cabinet's draft bill of 31 July 2019 includes the following additions and amendments:

Changes to Real Estate Transfer Tax (RETT) regulations for so-called share deals

These rules - aimed at putting an end to RETT avoidance through so-called share deals - have been a focus of discussion for some time. They have now been incorporated into a separate bill.

Changes to Income Tax Act (ITA)

The regulation excluding money surrogates, and in particular money cards, from the definition of benefits in kind has been removed from the draft bill.

The upper rent limit on the discount on the benefits in kind valuation of employee apartments, which had already been contained in the original draft bill, has been increased from 20 to 25 Euros per square metre.

New in the draft is the addition of a subsection to Section 17 ITA. (This is the section dealing with the disposal of certain shareholdings in corporations). The proposed new subsection defines the acquisition costs of corporations in line with Section 255 of the Commercial Code. It also includes an exemplary enumeration of permissible additional acquisition costs. According to the proposed definitions, subsequent acquisition costs are to include:

- open and hidden contributions to a corporation (e.g. in the form of additional payments-in),
- losses arising from bad loans, where the decision to provide the loan or to leave it standing when the debtor company was in a crisis was motivated by the shareholder relationship, as well as
- losses resulting from recourse claims under guarantees and comparable claims where the grant of the relevant security or the decision to leave it in place was motivated by the shareholder relationship.

This new regulation is a reaction to the Supreme Tax Court judgments IX R 36/15 and IX R 5/15 and is to be applied for the first time to sales within the meaning of Section 17 (1), (4) or (5) ITA occurring after 31 July 2019 (the date of the cabinet resolution). The taxpayer may also make an application to apply the rule to earlier disposals.

A tax exemption for continuing education measures has also been newly included in the draft. This is to apply to continuing education measures provided by the employer under the terms of Section § 82 (1) and (2) of the Third Book of the Social Code (e.g. measures introduced to address problems resulting from structural changes due to technological advances), as well as to continuing education measures provided by the employer, which serve to improve the employability of the employee. However, the continual education should not have a predominantly remuneratory nature.

Changes to the VAT Act

The tax exemption for restoration services to seagoing vessels, which was originally intended to be removed from the draft bill, remains.

A value limit of 50 euros will be introduced on the VAT exemption applying to export deliveries in so-called non-commercial travel. The value limit is temporally limited. It expires at the end of the year in which export and customer certification is issued electronically for the first time in Germany.

Other changes

The amendment to General Tax Code originally provided for in the draft bill, which was intended to clarify which of the tax authorities' activities are to be interpreted as "the administration of taxes", was not incorporated in the draft government bill.

Source

Governmental draft of 31 July 2019

Schlagwörter

Finance Bill, Share Deals, acquisition costs