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Tax & Legal Newsflash

Publication of draft proposal regarding mandatory disclosure rules for cross-border tax arrangements in Germany

On 9 October 2019, the German Government passed the draft proposal regarding the implementation of mandatory disclosure rules for cross-border tax arrangements. The draft proposal was forwarded to the German Federal Counsel on 10 October 2019 for further consultation.

Material changes

The resolved draft bill is generally in line with the initial proposal published by the German Ministry of Finance on 26 September 2019 (see newsflash dated 30 September 2019) and only minor changes have been made.

As one change Sec. 102 para 4 General Tax Code shall be adapted pursuant to which certain information of the relevant taxpayer must be reported – although a legal professional privilege of intermediaries exists – even if this information would make the relevant taxpayer identifiable.

Moreover, changes have been made with regards to cross-border payments among related parties. As required by the Directive, the draft proposal now requires partially that such payments are tax deductible (hallmarks C.1 letter a and C.1 letter b ii)). However, for other hallmarks, also referring to cross-border payments made between related parties (i.e. C.1 letter bi), C.1 letter c and d), no tax-deductibility is still foreseen as a requirement. The explanatory notes of the draft bill are silent why there is a distinction between those hallmarks.

As DAC6 must be implemented by the EU Member States by 31 December 2019, Art. 5 of the draft bill states that the law implementing mandatory disclosure rules for cross-border tax arrangements shall come into effect by 1 January 2020.

Next steps

The German Federal Counsel will comment the draft proposal in a next step.

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