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By PwC Deutschland | 03. Dezember 2020

Germany: Higher penalties for organized tax evasion?

The representatives of the German provinces (the upper chamber of parliament - Bundesrat) would like higher penalties for organized tax evasion and further suggest improving the investigation of such crimes. On 27 November 2020 the upper chamber decided to introduce a corresponding bill in the German Bundestag to amend the German Fiscal Code.

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Organized tax evasion is not sufficiently covered in present tax law: A much stricter and severe penalty currently only exists for Value Added Tax or excise duty offences.

The upper chamber (Bundesrat) of the German parliament – which is made up of members delegated by the parliaments of the sixteen state provinces (*Länder*) – therefore would like to see higher penalties for organized fraud (tax evasion) and proposes to improve the investigation of such crimes. On November 27, 2020, it decided to introduce in the upper chamber (Bundestag) a corresponding bill to amend the German Fiscal Code.

Focus also on cum-ex trades

In addition, cum-ex tradings and similar tax evasive arrangements must be sufficiently punished in the opinion of the Bundesrat. Especially, as they are systematically planned by professional perpetrators and carried out in conspiratorial, partly international cooperation and often via fiduciary structures or a transfer of functional (organizational) units abroad.

The Bundesrat therefore proposes to change Section 370 of the Fiscal Code.

Section 370 of the Fiscal Code deals with **tax evasion** and - in its current version - Subsection 3 reads as follows:

"*In particularly serious cases, a penalty of between six months and ten years' imprisonment shall be imposed. In general, a particularly serious case is one in which the perpetrator*

(…)

5. *as a member of a group formed for the purpose of repeatedly committing acts pursuant to subsection (1) above, understates* ***value-added taxes*** *or* ***excise duties*** *or derives unwarranted VAT or excise duty advantages.*

The Bundesrat therefore proposes **to replace the term "value added tax or excise duties"** in Section 370 subs. 3 no. 5 of the Fiscal Code **with the general and more comprehensive term "taxes"**.

Outlook

The draft law was forwarded to the Federal Government, which will set up its own position paper on this issue and then submit both documents to the lower chamber for further views and final decision. At present there is no specific time target for the initiative.

Source:

Homepage BundesratKOMPAKT, announcement of 27 November 2020.

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Schlagwörter

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