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By PwC Deutschland | 26. Februar 2021

Update: Instant write-off of certain digital assets planned

According to the results of a joint conference of representatives of the Federal Government and local states (Länder) of 19 January 2021 a significant improvement in the tax treatment of certain digital assets is planned. --- The reaction of the tax authorities was not long in forthcoming.

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In the joint discussion paper of the government and the Länder it is envisaged that certain digital assets may be written off immediately with retroactive effect from January 1, 2021. Specifically, the costs of computer hardware and software for data input and processing should in the future be fully taken into account for tax purposes in the year of acquisition or manufacture/production. It is envisaged that those working from home (home office) will also benefit from the anticipated regulation.

As foreseen in the draft paper, transposition of this measure should be by way of an administrative directive to ensure rapid implementation of the regulation. According to reports, however, some state finance ministers have expressed their reservations to the planned special depreciation allowance in a letter to the Federal Ministry of Finance. The Länder are of the opinion that such a significant modification of the depreciation rules should be done within the context of an amendment to the statutes rather than being implemented by way of an administrative decree. Furthermore, it is pointed out that the actual useful life of a digital asset is often longer than one year, according to expert opinions. Due to the veto raised by the states, the proposed amendment will now have to be renegotiated in the course of further discussions in a Federal-State Panel.

Update (26 February 2021)

The reaction of the tax authorities was not long in forthcoming. On 26 February 26 2021, the German Federal Ministry of Finance (BMF) published a circular letter allowing immediate depreciation of certain digital assets with retroactive effect from 1 January 2021. The useful life for computers previously included in the depreciation table for general fixed assets is reduced from three years to one year. The new definitions for the tangible assets "computer hardware" and the intangible assets "operating and user software" are explained in detail in the administrative circular.

Pro rata temporis depreciation in the case of acquisition during the year, e.g. in July 2021, is not possible under Section 7 (1) sentence 4 Income Tax Act because this provision assumes a useful life of more than one year. The BMF explains the term computer hardware in length over more than two pages and defines terms like "notebook", "desktop" or "docking station". It is interesting how much effort the BMF takes to explain in detail the term computer, for example. Possibly the administration is somewhat concerned that entrepreneurs will classify Internet-capable TV sets as business assets and depreciate them.

As already mentioned above, the circular is the result of a video conference between the Chancellor and the Minister Presidents. It has already received criticism from various federal states, which consider a statutory regulation to be the only viable course of action.

The circular applies for tax years ending after December 31, 2020. The new rules would also apply to assets acquired or manufactured in prior business years and for which a longer useful life was taken as the basis for depreciation.

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Federal Government, press release 17 of 19 February 2021

Schlagwörter

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