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By PwC Deutschland | 24. Februar 2022

Federal Ministry of Finance produces draft bill for the amendment of rules on the interest on tax arrears/refunds

The Federal Ministry of Finance published a draft bill dated 14 February 2022, regulating the statutory interest rate for interest on tax arrears and tax refunds.

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*The provision is to be applied retroactively following a decision of the Federal Constitutional Court. In its decision of 8 July 2021 (see our **blog on the decision**), the Constitutional Court gave the legislature time until 31 July 2022 to create a new regulation in line with the constitution for interest periods from 2019 onwards.*

The present draft of a second law amending the German Tax Code (Abgabenordnung) and the Introductory Act to the German Tax Code (Einführungsgesetz zur Abgabenordnung) is intended to reduce the previously applicable interest rate for interest on tax arrears and refunds from 0.5% per month to **0.15% per month (i.e. 1.8% per year)**. The new interest rate should apply retroactively for interest periods from 1 January 1 2019, thus bringing it into line with constitutional requirements.

Where **different interest rates** are relevant for an interest period (e.g. interest periods running from 1 April 2018 onwards), the draft provision provides for a division into partial interest periods.

In order to ensure that the interest rate for interest on tax arrears and refunds remains appropriate in the future, **the rate is to be evaluated every three years,** taking into account the movement of the base interest rate under Section 247 of the German Civil Code. The evaluation will affect subsequent interest periods; the first evaluation is set for 1 January 2026. It should be noted, however, that an adjustment to the interest rate will only be made if the base interest rate applicable on 1 January of the relevant year of the evaluation deviates from the base interest rate applicable at the time of the last determination/adjustment by more than one percentage point. The introduction of a flexible interest rate was rejected, according to the explanatory notes to the draft bill, because it would likely be significantly more difficult to manage and plan, particularly when calculating longer interest periods.

The aforementioned new provisions are to be applied in principle to all proceedings pending as at the publication date of the Amendment Act. However, this is expressly subject to provision in the General Tax Code governing the protection of legitimate expectations. Under this rule (Sec. 176 (1) Sentence 1 No. 1 General Tax Code), where the Constitutional Court decides that a law is null and void, the amendment or revocation of any assessment (here the interest assessment) may not lead to any disadvantage for the taxpayer. Furthermore, when determining interest on refunds in cases of amendment, the interest rate that was used as the basis for the original determination for the refund interest shall be decisive. The rule on the protection of legitimate expectations is to be applied with the proviso that the overall result of the interest recalculation under the new rules may not result in the interest debtor being in a worse position than he was under the last interest assessment issued before application of these principles

The explanatory notes to the draft bill reiterate again that the Constitutional Court's decision **expressly does not extend** to other interest calculation situations under the General Tax Code to the detriment of the taxpayer, namely to interest on deferrals, on evasion and on suspensions. The question of whether and to what extent a new regulation of the interest rate should also be introduced for interest other than interest on arrears and refunds or for late payment penalties will still require detailed examination; it was not the intention to deal with these issues with the current draft provisions.

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In accordance with the requirements of the Constitutional Court, the new regulations should **come into force by 31 July 2022 at the latest.**

In addition to the regulations described above, the draft provides for further changes in the General Tax Code.

Source:

The draft bill was published on the homepage of the Ministry of Finance

Schlagwörter

interest, tax arrears, tax refunds