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By PwC Deutschland | 21. November 2023

Bundestag approves Growth Opportunities Act

On 17 November 2023, the Bundestag approved the Act to Strengthen Growth Opportunities, Investment, and Innovation as well as Tax Simplification and Fairness (Growth Opportunities Act) in the form recommended by its Finance Committee. The Act will be presented to the Bundesrat on 24 November 2023. It cannot currently be ruled out that the Bundesrat will convene the Mediation Committee to discuss individual provisions of the Act (the climate protection investment premium, in particular, will probably be discussed).

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In its recommended resolution adopted on 15 November 2023, the Finance Committee proposed numerous amendments and additions to the government draft to the Bundestag, which have now been incorporated into the law. The main contents of the Growth Opportunities Act in the version that has now been passed are summarised below. Changes to the Federal Government's original draft bill of 29 August 2023 (see our **blog** 5 September 2023) are shown in italics.

Tax incentives for investments in climate protection

The Growth Opportunities Act provides for the introduction of a profit-independent investment premium as part of a (separate) law on tax incentives for investments in climate protection (Climate Protection Investment Premium Act).

Persons with unlimited and limited tax liability within the meaning of the Income Tax Act (ITA) and the Corporation Tax Act (CTA) are entitled to receive the investment premium if they generate taxable (profit) income within the meaning of Section 2 (1) Sentence 1 No. 1 to 3 ITA and are not exempt from taxation.

Under Section 2 Climate Investment Premium Act benefits will apply to investments (acquisition and production) in depreciable movable fixed assets as well as processes on existing movable fixed assets that give rise to additional acquisition or production costs and where the (subsequent) acquisition or production costs per asset amount to at least EUR 5,000.

Certain conditions must be met for the investment premium to be granted. Among other things, the (subsidised) assets must be used (almost) exclusively for business purposes in a permanent establishment of the taxpayer's business in the year of acquisition, production, or completion of the process and in the following financial year in accordance with Section 2 (1) No. 3 Climate Investment Premium Act. *While this originally had to be a domestic permanent establishment, the scope of the provision was extended on the recommendation of the Bundestag's Finance Committee and in response to permanent establishments located in a Member State of the European Union, a European Economic Area state, or a state in the Swiss Confederation.*

According to Section 4 (1) Climate Investment Premium Act eligible expenditure includes the proven acquisition and production costs, partial production costs incurred before 1 January 2030 and advance payments made on the acquisition costs of a preferential investment during the funding period as well as, *at the request of the Bundestag Finance Committee, subsequent acquisition, and production costs*.

The assessment basis for the climate protection investment premium is the total eligible expenditure, up to a maximum of EUR 200,000,000 in the funding period (Section 4 (2) Climate Investment Premium Act). The investment premium amounts to 15% of the assessment basis and thus a maximum total of EUR 30,000,000 in the funding period.

Entitlement to the climate protection investment premium generally arises at the time of acquisition or production of the subsidised investments in accordance with Section 5 (2) Climate Investment Premium Act. The application must be submitted electronically and separate from the tax return procedure to the

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applicant's local tax office. Each applicant can submit a maximum of four applications for investment premiums after 31 December 2024 and before 1 January 2032, whereby the relevant assessment basis for the application in question must amount to at least EUR 10,000 in each case (Section 5 (1), (3) Climate Investment Premium Act).

On the recommendation of the Bundestag Finance Committee, the introduction of the investment premium has been further postponed, thus shortening the funding period correspondingly. In accordance with Section 3 (1) of the Climate Investment Act in the version adopted on 17 November 2023, the investment premium will now be granted for a limited period for investments that the applicant makes after 29 February 2024 (previously 31 December 2023 or the day following the day the Growth Opportunities Act enters into force) and completed before 1 January 2030.

Changes to the Income Tax Act (ITA)

Changes to the interest barrier

The following changes to the interest barrier provided for in the draft law to adapt to the requirements of the ATAD (Council Directive (EU) 2016/1164 of 12 July 2016) are included unchanged in the version of the law passed by the Bundestag 17 November 2023

- Limited effect and partial adjustment of the grounds for exclusion in Section 4h (2) ITA for the application of the **interest barrier** (exemption limit in the amount of EUR 3,000,000, stand-alone operation, equity escape): All three exemptions should no longer apply in future if the interest expenses for a year have been increased due to interest carried forward from previous years. As a result, interest carried forward will only be deductible if there is sufficient EBITDA is available for offset. With regard to the reasons for exclusion themselves, a stand-alone operation will no longer be deemed to exist in future if there is solely no affiliation or no proportionate affiliation to the group; in future this exclusion only applies if the taxpayer is not a related party within the meaning of Section 1 (2) Foreign Taxes Act and the taxpayer does not have a permanent establishment outside its country of residence. *The so-called anti-fragmentation rule provided for in the government draft in Section 4h (2) Sentence 1 Letter (a) ITA, according to which similar businesses which are under the uniform management or controlling influence of one person or group of persons would be deemed to be one business for the purposes of the exemption limit of EUR 3,000,000 and which should benefit from the exemption limit in proportion to their share of the net interest expenses, was, however, removed on the recommendation of the Finance Committee.*

- Definition of interest: **Extension of the definition of interest expenses** (previously only remuneration for borrowed capital) to include commercially equivalent expenses and other expenses in connection with the procurement of borrowed capital within the meaning of the ATAD Directive and interest income to include economically equivalent income in connection with capital claims.
- Additional reasons for the (pro rata) **forfeiture of an EBITDA carry-forward** or an interest carry-

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forward to include the discontinuation or transfer of a business unit.

By the way: Changes to Section 8a Corporation Tax Act (CTA)

In future, all income for all corporate taxpayers will be deemed to be generated in one business for the purposes of the interest barrier. While this was previously only the case for corporations with unlimited tax liability, in future corporations with limited tax liability or corporations with unlimited tax liability within the meaning of Section 1 (1) Nos. 4 and 5 CTA will only be able to maintain one business for the purposes of the interest barrier.

The current requirements for application of the exclusion rule for corporations vis-à-vis shareholder debt financing in Section 8a para. 2 CTA will be eliminated in light of the modification of the stand-alone clause (Section 4h (2) Sentence 1 Letter b ITA; see above).

Corporations must also continue to observe the regulations on shareholder debt financing in Section 8a (3) CTA vis-à-vis the equity escape. On the one hand, these regulations will be adapted to meet the requirements of the ATAD by lowering the relevant participation threshold to "at least 25%" of the capital from the previous "more than 25%". Moreover, the wording has been amended in response to the Supreme Tax Court judgement (I R 57/13 of 11 November 2015), according to which remuneration for debt capital of the individual qualifying shareholders cannot to be added together when assessing the 10% limit for harmful shareholder debt financing. This codifies the previous administrative opinion in law and provides for an examination of the 10% limit in relation to the combined remuneration for debt capital to qualifying shareholders.

NEW: Adjustment of the rules for determining the arm's length price for financing relationships instead of introducing an interest rate cap

Surprisingly, the Bundestag's legislative resolution **no longer contains the interest rate cap** announced in the coalition agreement, which was envisaged as Section 4l ITA in the draft bill. In its place a proposal by the Bundesrat in its statement on the draft bill for an amendment to the regulations for determining arm's length prices in Section 1 Foreign Taxes Act was included. Through this proposal, the Bundesrat has adopted regulations whose introduction had already been proposed in the legislative process for the ATAD Implementation Act of 25 June 2021, but which were not included in the law at the time due to the many technical doubts.

The Bundestag's legislative resolution of 17 November 2023 now provides for the introduction of a new Section 1 (3d) Foreign Taxes Act and a new Section 1 (3e) Foreign Taxes Act. Instead of the absolute maximum rate for the deduction of interest expenses provided for in the interest rate cap, the interest deduction is to be limited to a so-called “group interest rate” through the determination of an interest rate whereby any interest rate in excess of this will be deemed to be non-compliant with the arm's length principle. The regulation contains a rebuttal option that requires proof that the rate derived from the corporate group rate complies with the arm's length principle. If proof can be provided, this must be

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considered when calculating the interest rate.

The **group interest rate** is the rate at which the corporate group could finance itself vis-à-vis third parties extrapolated from the rating of the corporate group. This limitation should apply to interest expenses from cross-border financing within multinational corporate groups. There is no restriction to cases in which the lender is a functionally weak company, as provided for in the draft law for the interest rate cap. Purely domestic constellations, on the other hand, are not affected by the regulation.

In addition to the limitation to a group interest rate, Section 1 (3d) Foreign Taxes Act provides for the introduction of increased obligations to provide evidence for the loan relationships concerned. According to this, the taxpayer must provide credible evidence that it could have provided the debt service (interest and amortisation) for the entire term of the financing relationship from the outset and that the financing is required commercially and applied for the purpose of the company. If these requirements are not met, the interest deduction is denied in full.

Furthermore, the legislative resolution provides for the introduction of Section 1 (3e) Foreign Taxes Act, according to which there is a rebuttable presumption that the arrangement or transfer of funds within a multinational group of companies amounts to a low-function, low-risk service for which remuneration can only be demanded on a cost-plus basis. The regulation should also cover cases in which a company in the corporate group assumes the management of financial resources, such as liquidity management, financial risk management, currency risk management or the activity as a financing company, for one or more companies in the corporate group.

The new provisions in Section 1 (3d) and (3e) Foreign Taxes Act are to be applied from the 2024 assessment and tax period.

New formulation of the regulations on the preferential treatment of retained profits.

As part of the Growth Opportunities Act, the regulations on the tax relief on retained profits (retention allowance) will also be revised. The government draft contained more stringent intended to counteract tax structuring:

- A retroactive application for a retention allowance will be treated as a retroactive event for the purposes of calculating the refund interest under Section 233a General Tax Code (GTC), meaning that no refund interest can be generated through this measure (Section 34a (1) Sentence 3 ITA).
- A gratuitous transfer will also be considered to have been made where a co-entrepreneur leaves the business with his business share accruing to the other co-entrepreneurs and leading to subsequent taxation (Section 34a (6) ITA).
- Furthermore, the sale of only part of a sole proprietorship or part of a co-entrepreneur's share as well as the contribution of part of a business or part of a co-entrepreneur's share in accordance with Section 20 Reorganisations Tax Act will in future also lead to (pro rata) subsequent taxation in accordance with Section 34a (6) ITA. This also applies to the gratuitous transfer of such assets to a

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corporation tax subject.

- Finally, Section 34a (7) ITA stipulates that an amount assessed to subsequent taxation no longer remains with the transferor in the event of the gratuitous inclusion of a natural person into a sole proprietorship or the gratuitous transfer of part of a co-entrepreneur's share but is rather transferred pro rata to the legal successor. In the case of a book value transfer of part of a co-entrepreneur's share in accordance with Section 24 Reorganisations Tax Act the amount subject to subsequent taxation should also be transferred pro rata to the new co-entrepreneur's share in future.

In contrast to the government draft and the views of the Bundesrat, which had only called for a selective modification of Section 34a (5) Sentence 1 No. 3 Sentence 2 ITA, the revised Section 34a ITA will now apply in its entirety for the 2024 period of assessment (and not 2025) per the recommendation of the Bundestag Finance Committee (Section 52 (34) ITA).

Changes to the tax loss utilization rules (Section 10d ITA)

For periods of assessment 2024, the **loss carry-back is to be extended** to the effect that negative income can be carried back to the third assessment period preceding the year of loss and deducted from the total amount of income (within the limits of minimum taxation). *In contrast to the government draft, the amount limits of EUR 10,000,000 or EUR 20,000,000 (for joint taxpayers) for loss carry-backs, which are relevant for minimum taxation and were increased during the coronavirus crisis, will now be retained for the 2024 and 2025 periods of assessment only, rather than permanently, following the recommendation of the Bundestag's Finance Committee. From the 2026 period of assessment, the maximum amount will be permanently increased from the previous EUR 1,000,000 or EUR 2,000,000 (in the case of joint assessment) to EUR 5,000,000 or EUR 10,000,000 (Section 10d (1) Sentences 1 and 2, Section 52 (18b) ITA).*

At the same time, the minimum taxation has been made somewhat more generous for a limited period by allowing the deduction of a loss carry-forward up to a total amount of income of EUR 1,000,000 without restriction and beyond that up to 75% *(the government draft provided for 80%)* of the total amount of income exceeding EUR 1,000,000 (Section 10d (2) Sentence 1 ITA). The legislative amendment is to apply from the 2024 assessment period and will be withdrawn with effect from the 2028 assessment period (Section 52 (18b) ITA).

Further changes to the ITA

Introduction of a tax-free limit for income from letting and leasing: A tax-free limit for income from letting and leasing in the amount of EUR 1,000 is to be introduced in Section 3 No. 73 ITA. The relief can be rejected upon application where the expenses directly related to the income exceed the income.

Increase in the value limit for gifts: The value limit in Section 4(5) Sentence 1 No. 1 Sentence 2 ITA for gifts to persons who are not employees will be increased from the current EUR 35 to EUR 50 with first-time application for financial years beginning after 31 December 2023.

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Company car taxation: According to Section (1) No. 4 Sentence 2 No. 3 and Sentence 3 No. 3 ITA, only a quarter of the gross list price is to be applied for the private use of purely electric vehicles. *The maximum amount applicable in this respect for vehicles purchased after 31 December 2023 (Section 52 (12) ITA) will only be increased by EUR 10,000, i.e. from the previous EUR 60,000 to EUR 70,000, under the law that has now been passed. Furthermore, the alternative range limit of 80 km for electric vehicles purchased after 31 December 2024, previously provided for in Section 6 (1) No. 4 Sentence 2 No. 5 and Sentence 3 No. 5, will no longer apply.*

Valuation of contributions of recently acquired assets out of business assets: T*he acquisition cost principle provided for in Section 6 (1) No. 5 Sentence 1 Letter (a) ITA for assets acquired or manufactured within the last three years prior to the date of contribution to business assets is restricted to assets contributed from private assets following the ruling of the Supreme Tax Court (I R 32/17 of 9 June 2021) for assets contributed after the date of the entry into force of the Growth Opportunities Act. In this judgement, the Supreme Tax Court ruled, inter alia, that hidden contributions by a domestic parent corporation to a subsidiary domiciled in an EU Member State under Section 6 (6) Sentence 3 ITA in conjunction with Section 6 (1) No. 5 ITA only have to be recognised at the depreciated acquisition or production cost where these assets were acquired or produced within the last three years.*

Immediate write-off of assets and collective item method: The maximum limit for immediate write-off of low-value assets in Section 6 (2) Sentence 1 ITA, which has applied since 1 January 2018, has been raised from EUR 800 to EUR 1,000. In addition, the upper limit for recognising collective items under Section 6 (2a) ITA will be increased from the current EUR 1,000 to EUR 5,000 and the reversal period will be reduced from 5 to 3 years. The new regulations apply to assets that are acquired, manufactured, or added to business assets after 31 December 2023.

Temporary reintroduction of the declining balance method of depreciation for movable assets: The declining balance method of depreciation - extended for the last time with the Fourth Corona Tax Assistance Act - in the amount of 25%, up to a maximum of 2.5 times the straight-line depreciation, for movable fixed assets will be reintroduced for a limited period for assets that are acquired or manufactured after 30 September 2023 and before 1 January 2025.

Straight-line depreciation of residential buildings: As part of the Finance Act 2022, the annual straight-line depreciation rate for residential buildings completed after 31 December 2022 was increased from 2% to 3% of the acquisition or production costs, thereby shortening the depreciation period from 50 to 33 years (Section 7 (4) Sentence 1 No. 2 ITA). The amendment to the references in Section 7 (4) Sentence 2 ITA, which was omitted at the time, will be rectified as part of the Growth Opportunities Act.

Introduction of a declining balance depreciation option for residential buildings: In Section 7 (5a) ITA, a declining balance depreciation of 6% is introduced for residential buildings whose construction began after 30 September 2023 and end before 1 October 2029 or whose acquisition is based on a legally binding contract concluded after 30 September 2023 and before 1 October 2029. If use is made of the declining balance depreciation option, deductions for extraordinary technical or economic wear and tear are not

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permitted. In contrast to declining balance depreciation in accordance with Section 7 (5) ITA, the corresponding application of Section 7 (1) Sentence 4 ITA is specified, meaning that depreciation must be applied pro rata temporis in the year of acquisition or production. In the event of a change to straight-line depreciation in accordance with Section 7 (4) ITA, *further depreciation is calculated on the basis of the residual value and the relevant percentage in accordance with Section 7 (4) ITA, taking into account the remaining useful life (according to the explanatory memorandum = difference between the depreciation period on which the flat-rate percentage in accordance with Section 7 (4) ITA is based and the previous depreciation period of the building in relation to the residual value).*

Special depreciation for the construction of new rental apartments: *On the recommendation of the Finance Committee of the Bundestag, the upper limit for construction costs (Section 7b (2) ITA) and the maximum assessment basis (Section 7b (3) ITA) for the construction of new rental apartments in accordance with Section 7b ITA will be increased to EUR 5,200 and EUR 4,000 respectively in view of the dynamic development of construction costs. In addition, the temporal scope of application of the special depreciation option (Section 7b (2) and Section 52 (15a) Sentence 3 ITA) will be extended to apartments for which the building application or building notification is submitted before 1 October 2029.*

Special depreciation allowance in accordance with Section 7g (5) and (6) ITA: The percentage for the special depreciation option regulated in Section 7g (5) and (6) ITA is increased from 20% to 50% for depreciable movable fixed assets acquired or manufactured after 31 December 2023 for an unlimited period of time.

Avoidance of multiple taxation of retirement income: The statutory provisions on the taxation of retirement income from the basic pension (Section 22No. 1 Sentence 3 Letter (a) Double Letter (aa) Sentence 3 ITA) will be adjusted in response to the Supreme Tax Court judgements X R 33/19 and X R 20/19 of 19 May 2021 (slower increase in the taxable portion) Due to the slower increase in the taxable portion of pensions from the basic pension in light of the above change, the allowances for pension payments pursuant to Section 19 (2) ITA will also be adjusted. The same applies to the old-age relief amount pursuant to Section 24a ITA. Section 19 (2) Sentence 3 and Section 24a Sentence 5 ITA are to be applied to tax deductions from wages for the first time from 1 January 2024.

Set-off of tax deductions: *The provision on the crediting of tax deductions in Section 36 (2) Sentence 1 No. 2 Letter (b) ITA during the assessment process is extended to include DTA cases.*

Application of Section 36a ITA to dividends received via a foreign permanent establishment: *Section 36a ITA must also be applied when withholding tax on capital yields is credited based on a claim for credit of the withholding tax levied resulting from a DTA.*

Extension of the limited tax liability to income from employment: The limited tax liability pursuant to Section 49 (1) No. 4 Letter (a) Sentence 2 is extended to income from employment accruing after 31 December 2023 for cases where the activity is not carried out in Germany but in the taxpayer's country of residence or in one or more other countries and where a DTA concluded with the country of residence or an

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inter-governmental agreement assigns Germany a right of taxation for the activity carried out in the country of residence or in one or more other countries. *According to the recommendation of the Finance Committee, this does not apply to taxation rights assigned to Germany in relation to income from employment carried out on board a ship in international traffic.*

Increase in the exempt threshold for royalty/licence income of limited tax liability taxpayers: The exempt threshold in Section 50c (2) Sentence 1 no. 2 ITA as a prerequisite for applying the exemption procedure for limited tax liability taxpayers with income from the transfer of rights under Section 50a 1) No. 3 ITA will be increased from the current EUR 5,000 to EUR 10,000 for income accruing to the limited tax liability taxpayer after 31 December 2023. If the exempt threshold is exceeded, the revised Section 50c (2) Sentence 1 No. 2 ITA states that tax must be withheld and paid on the remuneration that exceeds the threshold of EUR 10,000 in the amount of the tax due on this remuneration. Remuneration that has already been received which does not lead to the limit of EUR 10,000 being exceeded, either separately or together with other remuneration that has already been received, remains covered by the exemption from withholding and remitting tax - i.e. no tax should have to be withheld and remitted retrospectively for this remuneration (meaning that it is no longer necessary to correct tax returns).

Repeal of the provisions regarding the taxation of so-called December aid: Sections 123 to 126 ITA are repealed.

Amendments to the Corporation Tax Act (CTA)

Option for corporation tax (Section 1a CTA)

With regard to the corporation tax option provided for in Section 1a CTA, the government draft provides for the following changes:

- **Personal scope of application:** *The extension of the personal scope of application to all partnerships (previously "commercial partnerships and partnership companies") provided for in the government draft was withdrawn on the recommendation of the Bundestag Finance Committee. The scope of application of the corporation tax option will now only be extended to registered GbRs (Gesellschaft bürgerlichen Rechts = civil law association). Thus, the Finance Committee of the Bundestag followed a proposal by the Bundesrat.*
- **First-time option:** Newly established partnerships can now submit an application up to one month after concluding the partnership agreement with effect for the current financial year. Previously, they could opt for their second financial year at the earliest, as the application had to be submitted no later than one month before the start of the financial year for which the option was to take effect, without exception. Similarly, when a corporation changes its legal form to that of a partnership, a seamless continuation of corporation taxation will be possible provided the application is submitted to the competent register by the end of one month after the change of legal form itself was registered.
- **Shares in the general partner:** In order for the option to be implemented in a tax-neutral manner,

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all essential business assets must be contributed in accordance with the previously applicable reorganisations tax regulations. The fact that the shares in the general partner GmbH also had to be contributed in individual cases (although the option has no effect under civil law) was seen as a significant obstacle to the option. This is now remedied by an explicit provision according to which the mere retention of the shareholding in a general partner of the opting company does not exclude the tax neutrality of the option.

- The **inflow of profit shares** in the opting partnership is restricted in such a way that an inflow of income including the withholding tax liability on capital yields will not be considered to occur as soon as the right to receive payment arises, but rather only if the income is actually withdrawn. In this respect, according to the explanatory memorandum, the inflow of income may in individual cases be assumed even later than in the case of an enterprise that is also organised as a corporation under civil law, where an inflow of income to the controlling shareholder is assumed when the resolution is passed and not only when it is paid over.

The amendments to Section 1a CTA are to be applied from the day after the Growth Opportunities Act comes into force.

Tax consolidation groups: Repeal of the prohibition on recognising losses in Section 14 (1) Sentence 1 No. 5 CTA

The prohibition on recognising the negative income of the controlling company or the controlled company contained in Section 14 (1) Sentence 1 no. 5 CTA will be repealed with effect from the 2024 period of assessment following the introduction of Section 4k (4) ITA. The Finance Committee of the Bundestag is thus responding to an amendment proposed by the Bundesrat in its opinion.

Tax deduction on investment income of non-profit organisations with limited tax liability (Section 32 (6) CTA)

With the newly created Section 32 (6) CTA (draft), the tax exemption pursuant to Section 5 (1) No. 9 CTA for foreign non-profit organisations based in EU and EEA states is also replicated for the purposes of withholding tax relief. Due to the free movement of capital, non-profit organisations in third countries are also to become entitled to claim for a refund, provided there is no direct investment. Section 32 (6) CTA will be subordinate to other existing bases for relief (e.g. DTAs). In addition, this refund claim is subject to various other conditions (including exchange of information, administrative assistance in recovery, unlimited tax liability without the option to choose, Sections 50d (3) and 50j ITA do not apply, no credit/deduction of withholding tax at the creditor level).

The provision applies in all open cases and therefore retroactively.

Changes to the Trade Tax Act (TTA)

Trade tax add-backs of rental and leasing interest (including leasing instalments) for the use of

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certain hybrid electric vehicles.

The minimum electric range of 80 km (contracts concluded after 31 December 2024) or 60 km (contracts concluded before 1 January 2025), as an alternative requirement for halving the generally applicable add-back amount for rental and lease payments (including leasing instalments) for the use of movable fixed assets in the amount of one fifth vis-à-vis contracts for the rental of externally rechargeable hybrid electric vehicles, will be repealed from the 2025 tax period onwards. The reduction to half of the add-back can then only be made on condition that carbon dioxide emissions do not exceed 50 grams per kilometre driven.

Extended property reduction

In the case of the extended property deduction (Section 9 No. 1 Sentences 2 et seq. TTA), the threshold for harmless ancillary income from the operation of systems for generating electricity from renewable energies and from the operation of charging stations for electric vehicles and electric bicycles will be raised from 10% to 20% of the income from the leasing of property (Section 9 No. 1 Sentence 3Letter (b) TTA-draft). The amendment will apply from the 2023 tax period.

Trade loss (Section 10a TTA)

Analogous to the ITA, the provisions on minimum taxation are more generously worded to the effect that the relevant trade income in excess of EUR 1,000,000 is to be reduced by up to 75% *(the government draft envisaged 80%*) by unutilised losses from previous periods of assessment (Section 10a Sentence 2 TTA). The new regulation is to apply - in line with the new regulation in the ITA - for a limited period for the periods of assessment 2024-2027. From the 2028 tax period, the set-off limit relevant for minimum taxation will be reduced back to 60% (Section 36 (5a) TTA).

Changes to the Reorganisations Tax Act

Tightening of the so-called post-sale ban after demerger.

In response to the decision of the Supreme Tax Court (BFH I R 39/18 of 11 August 2021), the Growth Opportunities Act amends the so-called post-demerger sale barrier pursuant to Section 15 (2) Sentences 2 Reorganisations Tax Act et seq. According to the new regulation, a demerger at book or interim value is prohibited where the demerger concludes or prepares for a sale (of the transferred assets) to an outside party. An "outside" party is defined as any person who has not held an interest in the transferring corporation for an uninterrupted period of five years prior to the demerger (according to the explanatory memorandum, the relevant date is the date the demerger becomes effective under civil law).

A sale to outside parties through the demerger is expressly limited to cases in which the transaction causes a shift in value in favour of these persons (otherwise a demerger could never occur at book value if the outside parties held interests in the transferring legal entity).

According to the new regulation, the "preparation of a sale" to an outside party will also be considered for events in the future:

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- where there is already a concrete intention to sell at the time of the demerger or at least a sale is not only hypothetically considered and a sale of at least one share of the corporation involved in the demerger to outside parties is realised within five years of the tax transfer date (i.e. where the 20% threshold has not been exceeded) (Sentence 4) **or**
- where shares in a corporation involved in the demerger that account for more than 20% of the value of the shares in the transferring corporation on the transfer date for tax purposes are sold to outside parties within five years of the transfer date for tax purposes (Sentence 5). Where this criterion, which essentially corresponds to the regulatory content of the previous Sentence 4, is met, the preparation of a sale through the demerger is to be irrefutably presumed.

Affiliated companies within the meaning of Section 271 (2) Commercial Code are not deemed to be outside parties for the purposes of Section 15 (2) Reorganisations Tax Act. Intra-group reorganisations in connection with the demerger or following the demerger therefore do not generally constitute an event triggering the lock-up period (group exception to the post-demerger lock-up).

Section 15 (2) Sentences 2 to 7 Reorganisations Tax Act are to be applied for the first time to demergers for which the application for entry in the public register relevant for the effectiveness of the respective transaction is made after 14 July 2023 (Section 27 (19) Reorganisations Tax Act).

Changes to value added tax legislation.

Introduction of a mandatory electronic invoice

In the area of VAT, the introduction of mandatory electronic invoicing for services between entrepreneurs (B2B) is the most relevant change. The electronic invoice must be issued, transmitted and received in a specific structured electronic format and enable electronic processing. *On the recommendation of the Finance Committee, the requirements for the structured electronic format of an electronic invoice were designed to be more technology-neutral compared to the government draft. In addition to adapting existing EDI procedures to CEN standard EN 16931, invoice issuers and invoice recipients can now alternatively agree on the use of a different (new) structured electronic format if the information required for VAT purposes can be extracted correctly and completely from the invoice format used in such a way that the result corresponds to or is compatible with CEN standard EN 16931. If this is ensured, invoices issued via EDI procedures in particular, whose formats do not comply with the requirements of CEN standard EN 16931, nevertheless fulfil the format requirements for electronic invoices.*

The obligation to issue electronic invoices applies to businesses based in Germany that invoice a service recipient also based in Germany for a service that is taxable in Germany. Section 27 (39) Value Added Tax Act (VATA) contains various transitional provisions. T*he general transition period provided for in Section 27 (39) No. 1 VATA has been extended from one to two years compared to the government draft and the transition period for smaller entrepreneurs with a total turnover of up to EUR 800,000 in the previous calendar year has been extended from two to three years in accordance with Section 27 (39) No. 2 VATA.*

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Further changes

In addition, the law passed on 17 November 2023 contains, inter alia, various bureaucratic reliefs, especially for small and micro entrepreneurs (basic exemption of small entrepreneurs from the obligation to submit advance VAT returns and annual VAT returns in accordance with Section 19 VATA, a new regulation of the deadlines for waiving the small entrepreneur regulation and its revocation, the increase in the total turnover threshold in accordance with Section 20 Sentence 1 No. 1 VATA from the previous EUR 600,000 to EUR 800,000 and the threshold for a VAT return of up to EUR 800,000 and the threshold for a possible exemption from the obligation to submit advance returns from the previous EUR 1,000 to EUR 2,000 as well as an extension of the simplification rule in Section 13b (5) Sentence 8 VATA for certain cases of erroneous application of the transfer of the tax liability to Section 13b (2) no. 6 VATA (transfer of rights in accordance with Section 3 No. 3 of the Greenhouse Gas Emissions Trading Act and certain other rights, certificates, etc.). *In addition, the version of the law that has now been passed provides for the end of the application of the reduced VAT rate on gas and heat supplies to be brought forward by one month to 29 February 2024 (Section 28 (5) and (6) VATA).*

Changes to the Real Estate Transfer Tax Act (RETTA)

The transitional regulation in the Act for the Modernisation of Partnerships (MoPA) (no violation of the subsequent retention periods under Section 5 (3) Sentence 1, Section 6 (3) Sentence 2 and Section 7 (3) Sentence 1 RETTA solely due to the extensive abolition of the concept of joint ownership ("Gesamthandsvermögen") as a result of MoPA as of 1 January 2024) provided for in the government draft in Section 23 RETTA is no longer included in the law now passed by the Bundestag. Rather, a new Section 24 RETTA provides, initially for a limited period of the 2024 calendar year, that partnerships with legal capacity are to be regarded as joint owners and their assets as jointly owned assets for the purposes of real estate transfer tax. This is to counter the risk that, as a result of the MoPA coming into force on 1 January 2024 and the associated abolition of the concept of joint ownership ("Gesamthand"), property transfers from or to a partnership will no longer benefit from Sections 5, 6 and 7 RETTA from this date. For property transfers carried out in the past, the entry into force of the MoPA also prevents the automatic violation of current retention periods. However, the regulation is limited to one year, probably in order to gain time for an examination of the concerns under tax, constitutional and state aid laws.

Changes to the Research Allowances Act

The amendments to the Research Allowances Act (RAA) were adopted unchanged in the law passed by the Bundestag:

- Increase in the eligible value of the hours worked for "own services" (i.e. self-worked hours) from the current EUR 40 to EUR 70 to increase the attractiveness of the research allowance for sole proprietors as well as a corresponding increase in relation to the limitation of eligible expenses as part of the performance agreement between co-entrepreneurs (Section 3 (3) Sentences 2 and 3 RAA).

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- Extension of the eligible expenses for financial years beginning after 31 December 2023 to the loss in asset value resulting from the use of depreciable movable fixed assets, insofar as:
    - the relevant asset was acquired or manufactured after 31 December 2023 and
    - the relevant asset was used exclusively by the business in the subsidised research and development project and
    - the relevant asset is required for the implementation of the research and development project (Section 3 (3a) RAA).

Low-value assets to which the valuation provisions of Section 6 (2) and (2a) ITA apply are not to be covered by this regulation.

- Increase in the proportion of eligible expenditure for commissioned R&D projects within the meaning of Section 2 (5) RAA from the current 60% to 70% of the remuneration incurred by the beneficiary for the contract (Section 3 (4) Sentence 2 RAA).
- Deferral and increase of the maximum assessment basis for eligible expenses incurred after 31 December 2023 to EUR 12,000,000 (Section 3 (5) RAA).
- Increase in the research allowance for certain small and medium-sized enterprises within the meaning of the General Group Exemption Regulation from 25% to 35% (Section 4 (1) Sentence 2 RAA).

Introduction of an obligation to report domestic tax arrangements (Sections 138l General tax Code et seq.).

The provisions of Sections 138l to 138n General Tax Code (GTC), which for the first time introduce an obligation to report certain so-called domestic tax arrangements, have been incorporated into the law passed by the Bundestag with essentially no changes to their content. The regulations are largely based on the statutory provisions on the obligation to report cross-border tax arrangements in accordance with Sections 138d to 138h GTC (DAC6 implementation). *Compared to the draft bill, only the provisions on the substantive reporting obligation have been amended in certain areas on the recommendation of the Finance Committee.*

Changes to existing notification and reporting obligations.

Regarding the existing regulations on the reporting obligation for cross-border tax arrangements (Sections 138d GTC et seq.), the final legislation does not contain any significant changes compared to the original draft bill. As a result, there are only selective adjustments to the existing regulations (e.g. the intermediary subject to a statutory duty of confidentiality and not released from it must not only inform the user about the relevant personal data (within the meaning of Section 138f (6) Sentence 1 No. 2 GTC) to be reported and provide the user with the registration and disclosure numbers issued to him immediately after receipt of the notification of the disclosure number, but in future must also inform the Federal Central Tax Office on

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request). Furthermore, the sanctions for reporting violations by users will be extended (in future, an administrative offence will also be deemed to have been committed if the user has not released an intermediary subject to a statutory duty of confidentiality from this duty and does not properly comply with the resulting obligation for the user to report the personal data and also the registration and disclosure numbers provided to him by the intermediary).

Regarding the **notification and cooperation obligations** in Section 138 GTC, the law, in line with the original draft bill, provides in particular for a new Section 138 (1) Sentence 5 GTC, according to which entrepreneurs who have neither their place of residence, registered office nor their place of management in Germany are subject to a notification obligation for the commencement of a "VAT'able" activity in Germany. In addition, the notification obligation under Section 138 (1b) GTC is extended to taxable persons who are not natural persons and to whom Section 138 (1) GTC does not apply (Section 138 (1b) Sentence 4 GTC). In addition, exceptions to the notification obligation are provided for in Section 138 (1) and (1b) GTC where the activity to be notified has no or only minor impact (Section 138 (1c) GTC). The exceptions are to be defined in more detail in a Federal Ministry of Finance circular yet to be published. *On the recommendation of the Finance Committee of the Bundestag, Section 138 (2) Sentence 1 No. 5 GTC was deleted and transferred to Section 138 (2) Sentence 2 GTC. In future, the taxpayer must also disclose the type of economic activity of the business, permanent establishment, corporation, association of persons, asset pool or third-country company in cases of numbers 1 to 4 of Section 138 (2) Sentence 1 GTC.*

Further changes to the GTC.

The regulations on the introduction of an **international risk assessment procedure** in Section 89b GTC remain unchanged in the law passed by the Bundestag.

The same applies to the creation of a legal framework for the utilisation and provision of special forms of administrative assistance in relation to third countries in Section 117e GTC.

Changes to the EU Administrative Assistance Act (EUAAA).

The planned introduction of a definition for the simultaneous audit in Section 12 EUAAA and the establishment of a legal framework in Section 12a EUAAA for conducting joint audits remain essentially unchanged in the law passed by the Bundestag.

Amendments to the Valuation and Inheritance Tax Act

The amendments to the Valuation and Inheritance Tax Act (as well as the Land Valuation Act) contained in the law passed by the Bundestag are primarily consequential adjustments to the legal changes introduced by the Act for the Modernisation of Partnerships (MoPA).

Based on the recommendation of the Finance Committee of the Bundestag, a "clarifying" provision was included in Section 7 (9) Inheritance Tax Act, according to which the increase in the value of an interest held by a general partner in a partnership limited by shares (Kommanditgesellschaft auf Aktien/ KGaA), which a natural person or foundation with a direct or indirect interest in the company (the beneficiary) obtains

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through a payment made to the company by another person (the donor), is also deemed to be a gift.

Schlagwörter

Corporation tax, Growth Opportuity Act, Income Tax Act