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Bundestag approves Future Financing Act

On Friday, 17 November 2023, the Bundestag passed the Federal Government's draft bill on financing future-proof investment.

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Draft law of the Federal Government

The so-called Future Financing Act is intended to provide for easier access to the capital market for start-ups, growth businesses and small and medium-sized enterprises (SMEs) and at the same time promote investment in renewable energy. *The Finance Committee made a number of amendments to the original text during the parliamentary process; these have been included in italics.*

In addition, the plenary session adopted a resolution by a majority, according to which the Federal Government should carry out an evaluation of the legal regulations after four years.

Draft law of the Federal Government

According to the German government, the adopted law will further develop regulations in financial market law, company law and tax law. From 2026, the government expects a reduction in annual tax revenue of EUR 960 million - EUR 387 million for the Federal Government, EUR 358 million for the Federal States and EUR 215 million for the municipalities. A total shortfall of EUR 595 million euros is expected in 2024 and EUR 850 million in 2025.

"Digitalisation, less bureaucracy and internationalisation should make the German financial market and Germany as a business location more attractive for both national and international companies and investors. Shares and listed securities are to become more attractive as a capital investment in order to strengthen the demand side (incentives for shares as a capital investment) and the supply side (increasing the number of listed companies in Germany)," stated the Government.

Deferred taxation

The scope of application of deferred taxation should be "significantly expanded". In future, it will be possible to defer taxation until the shares are sold provided the employer assumes liability for the wage tax incurred.

In future, companies will be allowed to go public with a minimum market capitalisation of EUR 1 million (previously: EUR 1.25 million). The obligation to have an underwriter as co-applicant, for example a bank, will no longer apply.

Share issues on a blockchain basis

In future, share issues will also be possible applying blockchain technology. This further development of the legal framework for crypto assets is intended to make Germany "a legally secure location for this future technology". Specifically, in future registered shares should be able to be issued both as securities listed in the central register and as crypto securities. Bearer shares will continue to only be available as central register securities.

Raising equity capital is also to be made easier by allowing companies to issue shares with multiple voting rights. Capital increases are also to be made easier by, inter alia, raising the limit for the simplified exclusion of pre-emptive subscription rights under company law from the current ten per cent of share capital to 20 per cent.

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Level playing field with other EU countries

VAT regulations for investment funds are to be harmonised with the regulations in other EU Member States. The aim of the German government is to achieve a "level playing field with other European countries". There are also changes in relation to liability regulations for crowdfunding projects.

International players should also be able to communicate with the German Financial Supervisory Authority in English in future. Communication with the authorities is also to be made easier through digitisation.

Changes at the committee stage

Millions of Germans are to receive better state savings incentives: The income limits for eligibility for the employee savings allowance are to be doubled, to EUR 40,000 for single people and EUR 80,000 for married couples. This recommendation follows an amendment in the parliamentary procedure in the Finance Committee. The doubling of the employee savings allowance was included in the Federal Government's draft bill as an amendment after several experts spoke in favour of it at the public hearing. This is intended to increase the number of people in Germany entitled to the allowance to 13.8 million. In addition to the increase in the employee savings allowance, one of the issues discussed was the promotion of employee participation in start-ups. Here, so-called restricted shares are also to be exempt from immediate taxation.

The option for property funds (simplification for open-ended real property funds) to invest in land on which only renewable energy plants) are located was removed from the draft bill. Originally, the intention was to "make it possible under supervisory law to also acquire land on which only plants for the generation, transport and storage of electricity, gas or heat from renewable energies are located".

Other changes in the extensive draft bill relate to crowdfunding, payment account comparison websites, consumer loan agreements and residual debt insurance, VAT exemption for the administration of loans and loan collateral by lenders and general terms and conditions exemption.

Opinion of the Bundesrat

In its statement, the Bundesrat (Federal Council) proposed numerous amendments to the draft bill. Among other things, the favourable tax treatment of employee shareholdings should also apply to registered shares with restricted transferability.

The Chamber of Federal States (Länderkammer) stated that with reference to the Income Tax Act (ITA): "In relation to start-ups, registered shares with restricted transferability are almost the only shares granted in employee participation programs. According to the draft law, it cannot be assumed in these cases that income (wages) will be realised because it is still impossible for the employee to dispose of the shareholding. Consequently, the purpose of Section 19a ITA, namely, to promote start-ups by improving employee recruitment and retention through attractive equity participation, would fail. The proposed amendment would mean that Section 19a ITA would also apply to shares with restricted tranferability."

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In its counterstatement, the German government signalled its willingness to discuss this. It stated: "The Federal Government will examine the Bundesrat's suggestion, taking particular account of the factual significance of the issue for the industry."

Reference

Bundestag online, post from 17 November 2023.

Schlagwörter

Blockchain, Income Tax Act, tax deferral