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By PwC Deutschland | 25. Oktober 2024

Bundestag adopts Finance Act 2024

Following the recommendation of its Finance Committee, the Bundestag adopted the Finance Act 2024 (FA 2024) in an amended version on 18 October 2024.

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A total of 59 amendments made by the coalition parliamentary groups as well as some of the Bundesrat's proposals were included in the recommended resolution.

The main differences between the law that has now been passed and the government draft of 5 June 2024 (see our Blog of 7 June 2024) are shown in italics in the following summary of the main contents of the FA 2024.

Changes to the Income Tax Act

Income tax exemption for income and power extraction from photovoltaic systems (Section 3 No. 72 Sentence 1 Draft Income Tax Act “ITA-D”; Section 52 (4) ITA)

The conditions previously contained in Section 3 No. 72 Sentence 1 Letters a and b ITA for the application of the income tax exemption introduced with the Finance Act 2022 for income and power extraction in connection with the operation of photovoltaic systems installed on, against or inside buildings are to be combined into a single condition. By abandoning the distinction between single-family homes and other buildings, the exemption will apply to photovoltaic systems that are acquired, extended or put into operation after 31 December 2024, where the installed gross output according to the market master data register is up to 30 kW (peak) per residential or commercial unit (previously 15 kW) The total amount, however, still remains maximum of 100 kW (peak) per taxable person or partner. According to the explanatory memorandum to the draft bill, the new version is also intended to clarify that the maximum values have the effect of an exempt threshold and not a tax-exempt amount.

Tax exemption of recapitalisation income in cases of residual debt discharge (Section 3a (4) Sentence 1 and (5) Sentence 2 ITA)

According to the explanatory memorandum, the inclusion of a reference to Section 3a (5) ITA in Section 3a (4) Sentence 1 ITA is intended to clarify that even in cases of residual debt discharges, the amount of the recapitalisation income and the amounts reducing such recapitalisation income under Section 3a (3) Sentence 2 nos. 1 to 6 and 13 ITA are to be separately determined. According to the newly drafted Section 3a (5) Sentence 2 ITA-D, even in cases of a residual debt discharge, tax options to reduce profits must be exercised in accordance with Section 3a (1) Sentence 2 ITA and, in cases of joint taxation, the current income and loss carry forwards of the other spouse must be included when reducing the amounts in accordance with Section 3a (3) ITA.

Creation of balancing items in accordance with Section 4g ITA in cases of reorganisation (Section 4g (1) Sentence 4 ITA; Section 52 (8a) ITA)

According to the newly drafted Section 4g (1) Sentence 4 ITA-D, effective for all open cases the regulations on the creation and reversal of balancing items in accordance with Section 4g ITA will also apply to reorganisation cases in which there is a realisation of hidden reserves as a result of a restriction or exclusion of Germany's right to taxation.

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<>***E-balance sheet (Sections 5b and 52 (11) ITA)***

The scope of documents to be submitted electronically to the tax authorities together with the e-balance sheet is extended to account statements (for financial years beginning after 31 December 2024), fixed asset movement schedules and fixed asset registers as well as lists in accordance with Section 5 (1) Sentence 2 ITA and Section 5a (4) ITA (for financial years beginning begin after 31 December 2027).

Book value transfer of assets between partnerships with identical partners (Section 6 (5) Sentence 3 No. 4 ITA-; Section 52 (12) ITA)

The introduction of a new No. 4 in Section 6 (5) Sentence 3 ITA is intended to respond to the case law of the Federal Constitutional Court (2 BvL 8/13 of 28 November 2023), according to which gratuitous transfers of assets between the jointly held assets ("Gesamthandsvermögen) of different partnerships with identical partners must be possible at book value. The new regulation should apply to all open cases in accordance with the requirements of the Federal Constitutional Court. In order to apply the new book value rule to cases where the assets were transferred before the publication of the court decision on 12 January 2024, the acquiring partners will be able to amend their Section 180 (1 Sentence 1 No. 2 Letter (a) GTC tax assessments through a corresponding application under Section 174 (4) GTC; Section 176 (1) Sentence 1 No. 1 GTC should not preclude this. At the joint request of the partners at the time of the transfer – in order to protect legitimate expectations vis-à-vis transfers made before 12 January 2024 - the application of Section 6 (5) Sentence 3 No. 4 ITA for transfers before 12 January 2024 shall be excluded (Section 52 (12) ITA).

Tightening of the corporation tax clause for the transfer of individual assets and in cases of division of assets (Section 6 (5) Sentence 7 ITA; Section 16 (3) Sentence 5 ITA; Section Section 52 (12) ITA)

In respect of transfers of individual assets which are always to be carried out at book value in accordance with Section 6 (5) Sentence 3 ITA, Sentences 5 and 6 of Section 6 ITA require that the going concern value is to be recognised from the outset or retroactively within seven years where the transfer directly or indirectly establishes or increases the interest of a corporation, association of persons or estate in the asset. Section 16 (3) ITA contains corresponding provisions for divisions of assets. In response to statements made by the Supreme Tax Court in the decision IV R 36/18 of 15 July 2021 on the corporation tax clause in Section 6 (5) Sentence 6 ITA and in order to neutralise the making of tax arrangements, a new Section 6 (5) Sentence 7 ITA is to be introduced with effect for all open cases. In the opinion of the Supreme Tax Court, Section 6 (5) Sentence 6 ITA is – in view of the purpose of the law - intended to prevent or (teleologically) to reduce the tax-free transfer of hidden reserves from the income tax regime to the corporation tax regime. The new Sentence 7 is now intended to ensure that a direct or indirect creation or increase of a corporation's, association of persons' or estate's interest in a transferred asset within the meaning of Section 6 (4) Sentences 5 and 6 ITA also occurs, where this interest takes the place of a direct or indirect share held by another corporation, association of persons or estate. The same should apply according to Section 16 (3) Sentence 5 ITA, with respect to the corporation clause in the case of an asset division under Section 16 (3) Sentence 4 ITA. The tightening of the corporation tax clause was included in the recommendation of the

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Finance Committee of the Bundestag on the initiative of the Bundesrat. The new regulations are to be applied for the first time to transfers of assets which occur after the date of the German Bundestag adopts the legislation i.e. after 18 October 2024.

Extension of the scope of application of the tax realisation rule in Section 17 (6) ITA (Section 17 (6) nos. 1 and 2 ITA-D)

As part of the new version of Section 27 (3) Reorganisation Tax Act ("RTA") provided for in this act of amendment, the previous special regulations for old shares received in a contribution transaction (continued application of Section 21 RTA in the version of the Tax Reduction Act of 23 October 2000) are to be abolished with effect from the 2025 assessment period. As a result, the scope of application of the tax realisation regulation in Section 17 (6) ITA is to be revised and extended accordingly. In future, irrespective of the time of the contribution, the scope of application of Section 17 (6) ITA will apply also to all shareholdings of less than 1% that arise in the course of a (tax-privileged) contribution in kind or a (tax-privileged) exchange of shares.

Group clause for the deferred taxation of non-cash benefits from participations in an employer's business (Section 19a (1) Sentence 3 ITA-D)

The scope of application of the tax concession for income from employment in relation to participations in an employer's business (Section 19a ITA) is to be extended retroactively to 1 January 2024 by introducing a group clause modelled on Section 3 No. 39 Sentence 3 ITA.

In future, employers will also be able to give their employees shares in other companies that belong to the same group within the meaning of Section 18 Stock Corporation Act (parent, sister and subsidiary companies) on a preferential basis within the scope of Section 19a ITA. However, the share in a group company will only be tax-privileged to the extent that (i) the thresholds of Section 19a (3) ITA are not exceeded with reference to the total of all group companies and (ii) no company within the group was established more than 20 years previously. The regulation was already provided for in the so-called Future Financing Act but was not implemented. Rather the necessity of such a group clause was promised in a protocol declaration.

Cancellation of the separate loss set-off groups for losses arising out of forward transactions and receivables (Section 20 (6) Sentences 5 and 6 ITA)

The separate loss set-off groups and the restrictions on the amount of loss set-off from forward transactions and bad debts (Section 20 (6) Sentences 5 and 6 ITA) are to be cancelled for all open cases. Through this cancellation, the simplification element built into the flat rate withholding tax is to be emphasised again. At the same time, the constitutional concerns about the restriction on the set-off of losses are to be considered, see Supreme Tax Court decision of 7 June 2024 (VIII B 113/23 - ***see our blog****).*

Extension of private sales transactions (Section 23 (1) Sentence 4 ITA, Section 52 (31) ITA)

<>The Bundestag resolution provides for an extension to the provision in Section 23 (1) Sentence 4 ITA for

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all open cases, according to which the acquisition and disposal of an interest in a joint ownership pool ("Gesamthandgemeinschaft") and thus in particular an interest in a community of heirs ("Erbgemeinschaft") will be treated for the purposes of the taxation of private sales transactions under Section 23 ITA as an acquisition or disposal of the proportionate part of the assets. The extension of the legal regulation is a reaction to the case law of the Supreme Tax Court (IX R 13/22 v. 26.9.2023 - ***see our blog****), according to which the previous regulation only applied to in partnership interests, so that the application of the regulation to communities of heirs was ruled out.*

Electronic notification in the event of insufficient wage tax withholding (Section 41c (4) Sentence 1 ITA)

The notification to be made to the responsible tax office in cases where employers have withheld too little wage tax and are unable to withhold this tax retrospectively, must in future be transmitted electronically. According to the explanatory memorandum to the law an electronic form will be introduced for this purpose.

Taxation of remuneration granted before termination of the employment relationship for periods of irrevocable/revocable leaves of absence (Section 49 (1) No. 4 Letter f ITA; Section 50d (15) ITA)

According to Section 49 (1) No. 4 Letter (a) ITA, income from employment is subject to limited tax liability where the work is either exercised or utilised in Germany (or has been exercised/utilised in Germany). Section 49 (1) No. 4 Letter f ITA now states that remuneration granted for periods of leave of absence from work in connection with the termination of the employment relationship (gardening leave) will also be subject to limited tax liability where the employment activities would have been performed in Germany but for the leave of absence. This interpretation is supported by treaty law via Section 50d (15) ITA, Sentence 1 of which contains a new Letter f. According to Sentence 2, the latter provision should not apply if a Double Tax Agreement contains a provision which explicitly deviates from the constellation regulated in Sentence 1. According to Section 50d (15) Sentence 3 ITA, Section 50d (9) Sentence 1 No. 1 ITA and ordinances pursuant to Section 2 (2) Sentence 1 GTC remain unaffected.

Applications for an income taxation by way of tax assessment in accordance with Section 50 (2) Sentence 2 No. 4 Letter b ITA (Section 50 (2) Sentence 8 ITA)

*In future, the application for an income taxation by way of tax assessment pursuant to Section 50 (2) Sentence 2 No. 4 Letter b ITA will also be possible for persons with limited income tax liability who are nationals of the EU or the EEA who are resident or ordinarily resident in Switzerland as well as Swiss nationals who are resident or ordinarily resident in the territory of an EU member state or Switzerland state. With this the legislator is reacting to the ECJ ruling C-627/22 of 30 May 2024 (****see our blog****).*

Amendments to the interpretation of states' fund clauses in DTAs (Section 50d (7) ITA; Section 50 (2) Sentence 2 No. 4 Letter e ITA)

Section 50d (7) ITA regulates the application of treaty law allocation rules regarding public services. On the one hand, the new provision is intended to follow the case law of the Supreme Tax Court (I R 42/16 of 28

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March 2018), according to which Section 50d (7) ITA also applies to employment income which is only paid indirectly out of a domestic fund of a public law legal entity.

On the other hand, in future it will be provided that the standard applies not only to persons with limited tax liability, but also to persons with unlimited tax liability. Furthermore, in response to the case law of the Supreme Tax Court (I R 17/18 of 8 September 2021), the requirement that the financing must come entirely or substantially from public funds is to be removed. Finally, the new Section 50d (7) Sentence 2 ITA states that foreign taxes can be credited in Germany. The credit is granted for taxpayers with limited tax liability via Section 50 (2) Sentence 2 No. 4 Letter e ITA-D, which gives rise to the option of applying for taxation via an assessment, within the framework of which the set-off can then take place.

FASTER Directive reporting standard (Sections 45b, 45c, 52 ITA)

The reporting standard for combating abuse in the case of dividend payments in accordance with the Act to Modernise the Relief from Withholding Tax and the Certification of Capital Yields Tax will be adapted in line with the standardised reporting obligation under the Faster and Safer Tax Relief of Excess Withholding Taxes “FASTER” Directive.

Amendments to the Corporation Tax Act

Application of the attribution rule in Section 8b (4) Sentence 3 Corporation Tax Act (“CTA”) to genuine repurchase agreements (Section 8b (4) Sentence 3 Draft Corporation Tax Act (“CTA-D”); Section 34 (5 Sentence 4 CTA-D)

If a corporation transfers shares to another entity and the other entity must return these shares or similar interests, the shares are to be attributed to the transferring corporation for the purpose of determining whether the Section 8b (4) Sentence 1 CTA participation threshold has been met. With effect for all open cases, and through the amendment of Section 8b (4) Sentence 3 CTA, clarification will be given that the attribution rule aimed at the prevention of abuse shall also apply to genuine repurchase agreements within the meaning of Section 340b (2) HGB.

Amendment of the reference in Section 15 Sentence 1 no. 2a Sentence 5 CTA to include Section 20 (1) Sentence 5 Investment Tax Act (InvTA) (gross method for investment income):

A reference to Section 20 (1) Sentence 5 InvTA was added to Section 15 Sentence 1 No. 2a Sentence 5 CTA, which - according to the report on the recommendation of the Finance Committee - clarifies that the exception to the gross method set out therein also applies where the controlled company of a German tax consolidation group is a pension fund. According to the explanatory memorandum this amendment, this already results from the text in Section 20 (1) Sentence 5 InvTA, according to which Section 20 (1) Sentence 4 Number 1 InvTA, to which Section 15 Sentence 1 number 2a Sentence 5 CTA refers, applies accordingly to pension funds. However, the amendment is intended to ensure that pension funds are not taxed on the basis of a different understanding of the regulation contrary to Section 20 (1) Sentence 5 InvTA and thus - contrary to the system – being able to claim a higher partial share exemption of up to 80 per cent

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(if the controlling company is a corporation to which Section 20 (1) Sentence 4 InvTA does not apply) than life and health insurance companies whose investment income from equity funds is subject to the requirements of Section 20 (1) Sentence 4 No. 1 InvTA and thus - due to the exclusion from the gross method in Section 15 Sentence 1 No. 2a Sentence 5 CTA -is only entitled to a partial exemption of 30 per cent.

Cancellation of the initial determination of the balance of the tax contribution account in reorganisation cases (Section 27 (2) Sentence 3 CTA):

According to Section 27 (2) Sentence 3 CTA, when a corporation becomes an unlimited taxpayer, the balance of the tax contribution account existing at the time the tax liability first arises must be separately determined; the balance thus determined must then be recognised as the balance of the tax contribution account at the end of the previous financial year. Reorganisations (Section 29 CTA), during the course of which the acquiring corporation is newly created, will be excluded from the scope of the provision. An (initial) determination of the contribution account will not be determined in these cases and the transferring contribution account balance will be treated as a current addition in the first financial year, so that in the first financial year of the acquiring corporation newly created by the reorganisation it will not yet be available for set off in accordance with Section 27(1) Sentence 3 CTA.

Indirect Tax Consolidation Groups ("Organschaft"): effects on the tax contribution account (Section 27 (6) Sentence 3 CTA; Section 34 (9a) CTA) of surplus and reduced profit transfers arising during the term of the Organschaft:

In cases of an indirect Organschaft, and following the tax authorities' stated view, the legal consequences following on from surplus and reduced profit transfers, i.e. the contribution or the return of contributions, arising during the term of the Organschaft should now be carried through all levels of the participation chain. While this view vis-à-vis the effects of the surplus/reduced profit transfers on investment book values already has a legal basis in Section 14 (4) Sentence 4 CTA (as amended by the Finance Act 2022), no such amendment was made with regard to the effects on the tax contribution account. This gap is now to be closed by Section 27 (6) Sentence 3 CTA, according to which – in the case of indirect Organschafts - surplus and reduced profit transfers occurring during the term of the Organschaft will have a corresponding effect on the tax contribution account of the intermediary company(ies), i.e. they will reduce or increase their tax contribution accounts (with priority over other payments). If the controlling company has both a direct and indirect interest in the controlled company, according to the explanatory memorandum to the bill, the effects at the level of the intermediary company should only arise if the indirect participation is necessary to achieve the necessary financial integration. The new regulation is to be applied retroactively for all surplus and reduced profit transfers made after 31 December 2021.

Elimination of the declaration obligation pursuant to Section 29 (6) CTA for cross-border reorganisations at the level of the foreign corporation (Section 29 (6) Sentence 2 CTA-D):

In the case of cross-border reorganisations where previously no tax contribution account had to be

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determined for the transferring corporation or association of persons, Section 29 (6) Sentence 2 CTA provided that the provisions in Section 27 (8) CTA on the return of capital contributions were to be applied accordingly. In future, a determination of the contributions not made to the nominal capital of the transferring corporation or association of persons at the time of the transfer of assets will no longer be required at the time of the transfer of assets.

Federal Constitutional Court on equity reclassification at the time of the system change from the imputation method to the half-income or partial income method (Section 36 CTA)

In three rulings in 2022, the Federal Constitutional Court criticised individual steps in the reclassification of equity, which was necessary at the time of the system change from the imputation method to the half-income or (today) partial income method, as incompatible with the German Constitution. In all three rulings, the legislator was requested to retroactively eliminate the identified constitutional violations by 31 December 2023. The Federal Constitutional Court expressly left the specific form of the new statutory regulation open. In the current draft of the FA 2024 changes to individual reclassification steps in Section 36 CTA have now belatedly been made.

Section 36 **(4)** CTA in conjunction with. Section 34 (11) CTA has now been amended to the effect that remaining negative partial amounts from the EK 01 to EK 03 baskets will be set off against the partial amounts in baskets EK 30, EK 40 or EK 45 to the extent that the company has a positive balance of EK 04. Thus, where the balance of EK 04 is negative, the new regulation will have no effect. The amendment relates to the Federal Constitutional Court decision (2 BvR 1424/15), in which the incompatibility of Section 36 (4) CTA (in the version of Section 34 (13f) CTA in the version of the FA 2010) was found to be incompatible with the German Constitution insofar as the provision led to a loss of corporation tax reduction potential because partial amounts of the so-called EK 04 were not included with the set off of the unencumbered partial amounts.

In addition, a comparable restriction on the set-off of negative balances of the encumbered partial amounts against each other in the amount of a remaining positive EK 04 balance is included in Section 36 **(6)** in conjunction with Section 34 (11) CTA. Section 34 (11) CTA.

The Bundestag resolution amends Section 36 (6) CTA again to the effect that, in the case of a negative EK 40, not only a positive balance of EK 04, but also a positive balance of EK 01 - 03 must be considered to equalise the negative EK 40, in order to maintain the corporation tax reduction potential contained in EK 45.

In the Federal Constitutional Court decision **2 BvL 29/14,** the incompatibility of **Section 36 (6a)** CTA (in the version of Section 34 (13f) CTA in the version of the FA 2010) with the German Constitution was established insofar as the provision led to a loss of corporation tax reduction potential at the time of the system change, without this being fully compensated for by the simultaneous reduction in the potential to increase corporation tax. The Bundestag resolution provides for a repeal of Section 36 (6a) CTA, which provided for the reclassification of positive EK 45 into EK 02 and EK40.

The new provisions of Section 36 (4) and (6) CTA and the repeal of Section 36 (6a) CTA are to be applied

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to all open cases.

In a further decision the Federal Constitutional Court (2 BvR 988/16), ruled that the subsequent charge (independent of distributions) on the EK 02 basket under Section 38 (5) and (6) CTA (in the version of the FA 2008) in conjunction with the exception rule of Section 34 (16) Sentence 1 CTA (in the version of the FA 2008) - according to which certain housing companies and tax-exempt corporations could continue to apply the current law (distribution-dependent subsequent charge) instead of the procedure of a corporation tax increase independent of distributions paid - is incompatible with the Constitution. To this end, the Bundestag resolution provides for the personal scope of application of the exemption rule in the current Section 34 (14) CTA to be extended so that the conditions only applying to certain companies are removed so that the continued application of the distribution-dependent additional charge is possible for all companies. According to the explanatory memorandum to the Act, applicants, who fall within the scope of the regulation under the amendment, are to be reimbursed any additional charges to corporation tax actually paid. According to Section 38 (8) and (6) Sentence 8 CTA, the claim does not bear interest. However, Section 34 (14) Sentence 1 CTA only extends the personal scope of application, meaning that the intended extension only covers those taxpayers who submitted an application before the original deadline of 30 September 2008 or, if applicable, filed an appeal against a rejection of the application or took legal action.

Changes to the Trade Tax Act

In the area of trade tax, the Bundestag resolution provides, in particular, for a revision of the regulations on the **trade tax liability of passive permanent establishment income**. According to **Section 7 Sentence 8 Trade Tax Act** (“TTA”), which replaces the previous Sentences 8 and 9, income that is generated in the foreign permanent establishment and would be taxable under Sections 7 to 13 Foreign Taxes Act (“FTA”) if this permanent establishment were a foreign company within the meaning of these provisions, is to be deemed to have been generated in a domestic permanent establishment.

According to the explanatory memorandum, the amendment is intended to clarify that Sentence 8 also covers cases in which Germany has a right of taxation under the DTAs. Pursuant to Section 36 (3) Sentence 4 TTA, the new regulation will apply to tax periods before 2024.

As requested by the Federal Council (Bundesrat) in its statement on the draft bill, the Bundestag resolution includes a new regulation on the ***simple trade tax reduction for real property*** *pursuant to* ***Section 9 No. 1 Sentence 1 TTA.*** *From the 2025 tax period (Section 36 (4b) TTA), the simple trade tax property deduction is accordingly linked to the to the real property tax actually recognised as a business expense in the tax period on the property belonging to the business assets of the entrepreneur and no longer to the value for real property tax purposes. This is intended to take account of the federal states' own property tax regulations. (Section 36 (4b) TTA).*

Changes to the Reorganisation Tax Act

Linking the deadline for the submission of the final tax balance sheet for reorganisations within the

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meaning of Sections 3 et seq. and 11 et seq. Reorganisation Tax Act (" RTA") to the deadline for filing the corporate income tax return for the tax period in which the tax transfer/reorganisation date falls (Section 3 (2a) RTA; Section 11 (3) RTA; Section 27 (20) RTA).

The deadline for the transferring corporation to submit the final tax balance sheet is to be regulated in statute for the first time and with effect for cases in which the application for entry in the commercial register (relevant for the effectiveness of the respective transaction) is submitted after the day FA 2024 is published.

Under Section 3 (2a) and Section 11 (3) RTA, the final tax balance sheet of the transferring corporation must be electronically filed by the deadline for filing the corporate income tax return for the tax period in which the transfer date for tax purposes falls under Section 149 General Tax Code. Furthermore - in line with the previous explanations at (03.04 of the Reorganisations Tax Ordinance 2011 - the provisions of Section 5b ITA on the e-balance sheet must be applied accordingly to the closing balance sheet.

Extension of the deemed contribution in Section 5(2) RTA for shares held as private assets (Section 5(2) RTA; Section 27(21) RTA)

The contribution fiction in Section 5 (2) RTA, which previously only covered shares within the meaning of Section 17 ITA is to be extended to shares within the meaning of Section 20 (2) Sentence 1 No. 1 ITA effective for reorganisations the tax transfer date of which occurs after the date of the Act's entry into force.

Taxation of shareholders in the event of mergers of corporations (Section 13 (2) RTA - deadline for a book value application in accordance with Section 13 (2) RTA

According to the version of the adopted Act, the application must be submitted, at the latest, by the date on which the tax return is submitted to the tax office responsible for the taxation of the shareholder.

Trade tax on the indirect sale or surrender of shares in the acquiring partnership (Section 18 (3) Sentences 3 and 4 RTA; Section 27 (22) RTA)

Where the business of a partnership, which was the acquiring legal entity in the event of a transfer of assets or in the event of the change of legal form from a corporation, is sold or discontinued within five years after the reorganisation, the gain upon disposal or discontinuation is subject to trade tax in accordance with Section 18 (3) Sentence 1 RTA. In order to counteract structuring considerations to avoid trade tax through multi-level partnership structures, with effect for reorganisations whose tax transfer date is after the date of publication of the draft bill (Section 27 (22) RTA-D), Section 18 (3) Sentence 3 RTA-D will also covers cases in which a natural person holding an indirect interest in the acquiring partnership via one or more partnerships sells or surrenders a share in the partnership holding the interest. A resulting capital gain or gain on disposal at the level of the intermediary partnership will be subject to trade tax insofar as it is attributable to the share in the acquiring partnership.

Treatment of withdrawals in the retroactive period for contributions in accordance with Section 20 RTA (Section 20 (2) Sentence 5 RTA; Section 27 (23) RTA)

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Section 20 (2) Sentence 5 RTA is intended to implement the view of the tax authorities set out in Margin No. 20.19 Reorganisation Tax Act Application Ordinance 2011, according to which the contributed business assets may not become negative even if this is a result of withdrawals during the redemption period; in such cases a (partial) step-up in value is to be carried out (no negative acquisition costs). This view is to be regulated for the first time after the Supreme Tax Court rejected it in its decision (I R 12/16) of 7 March 2018 due to its lack of a legal basis. According to Section 27 (23) RTA the regulation is already to be applied (retroactively) to contributions in which the signature of the reorganisation resolution in cases of universal succession or the conclusion of the contribution agreement in other cases occurred after 31 December 2023.

Restriction of the exception to the retroactive taxation of the so-called Contribution Gain II (Section 22 (2) Sentence 5 RTA)

According to Section 22 (2) Sentence 5 RTA, there is no retroactive taxation of a Contribution Gain II pursuant to Section 22 (2) RTA provided, inter alia, the transferor has sold the shares which he received from the reorganisation. According to the amendment to the regulation, this exception should only be able to apply if the sale resulted in the realisation of hidden reserves. The planned new regulation implements the view of the tax authorities in this regard, which was included in Margin No. 22.17 of the draft for a new version of the Reorganisation Tax Act Application Ordinance dated 11 October 2023.

Changes in Value Added Tax legislation

The Bundestag resolution contains important changes in VAT regulations. The changes include a new invoice requirement for outgoing invoices from taxable persons taxed on a receipts-basis (Section 20 VAT ACT “VATA”). In future, such taxable persons must state on the invoice that they tax their services according to the consideration received. Irrespective of the form of taxation, an entrepreneur who receives a supply from a taxable person taxed on a receipts-basis may - subject to certain other requirements - in future only deduct the input tax shown in such invoices from the date of payment at the earliest. These regulations are applicable from the year 2028, the legislator is thus complying with the case law of the ECJ.

With effect from 1 January 2025, use is to be made of the option under EU law to (re)introduce the reduced VAT rate for works of art and collectors' items. However, the reduced rate is not to apply to the rental of such items.

Other changes include the introduction of a European-wide special regulation for small businesses, which will be applicable from 2025. In future, small businesses based in Germany will be able to claim the tax exemption for their domestic turnover where this turnover does not exceed EUR 100,000 in the current calendar year and EUR 25,000 in the previous calendar year. Under certain further conditions, they will also be able to operate tax-free in other EU Member States - conversely, this should also apply to small businesses from other EU Member States which operate in Germany. To this end, a special notification procedure will be introduced for small business owners wishing to apply this regulation in other EU countries, for which a special identification number will be issued. Small businesses operating across

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borders will then submit a single turnover declaration for all countries in which they operate.

The places of performance for services in connection with virtual events will also be adjusted from 2025 onwards. Cultural, artistic, scientific, educational, sporting, entertainment services and certain other services provided virtually (e.g. made available via streaming) to non-entrepreneurs and persons treated as such will be deemed provided at the place where the recipient is established or has their domicile or habitual residence. The MoF had already anticipated this place of supply regulation for cases provided prior to the named date in its 29 April 2024 circular. The granting of admission authorisations to virtual events to other entrepreneurs (and equivalent persons) is excluded from the Section 3a (3) No. 5 VATA place of supply regulation and should thus be subject to the general standard of sec. 3a (2) VATA - this corresponds to the current administrative opinion (Section 3a.7a (1) Sentence 4 of the VAT Application Ordinance).

Apparently in response to infringement proceedings by the EU Commission, the tax exemption for educational services as well as school and university tuition provided by private teachers is to be harmonised with EU law. This change is also set to come into enter into force on 1 January 2025.

Numerous other measures primarily serve the purpose of clarification, are intended to ensure a sufficient legal basis for certain interpretations and areas of application of individual provisions or are a reaction to the case law of the European Court of Justice. The abolition of the tax exemption for VAT warehouses planned for 1 January 2026 is being carried out because it is only relevant for a small number of economic operators, which is disproportionate to the considerable administrative effort involved.

Changes to the Real Estate Transfer Tax Act

In order to create legal certainty and clarity, a new Section 1 (4a) RETTA of the German Real Estate Transfer Tax Act (RETTA) is to regulate - for the first time - when, for the purposes of the real estate transfer taxation (RETT) of share deals (so-called supplementary facts within the meaning of Section 1 (2a) to (3a) RETTA) a property is to be considered part of the assets of a company (so-called real estate transfer tax attribution).

Real estate should belong to an entity from the point in time the real estate was acquired in a legal transaction in accordance with Section 1 (1) RETTA (e.g. acquisition through the conclusion of a real property purchase agreement). The affiliation should end when another legal entity has acquired the real estate in a legal transaction pursuant to Section 1 (1) RETTA (e.g. resale of the property) or if the conditions for the affiliation under Section 1 (4a) Sentence 1 RETTA are no longer met.

In addition, pursuant to Section 1 (4a) Sentence 4 RETTA, an affiliation can also be established through a right to exploit the real estate within the meaning of Section 1 (2) RETTA. If the requirements for this are no longer met, this affiliation should end.

In contrast to previous case law and decrees (Supreme Tax Court decisions: II R 44/18, II R 33/20 and II R 40/20 and Federal States Identical Decree of 16.10.2023), the realisation of a taxable share deal within the meaning of Section 1 (3) or (3a) RETTA should no longer result in an affiliation of the real estate with the

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assets of the acquirer. Such share deals should therefore no longer give rise to a double attribution of the real estate to the assets of two companies, which was controversially previously considered possible by the tax authorities.

In order to avoid abusive arrangements, the attribution rules of Section 1 (4a) Sentences 1 and 2 RETTA should not apply to legal transactions which have been reversed in accordance with Section 16 (1) RETTA or to real estate reacquired in accordance with Section 16 (2) RETTA, insofar as this leads to an acquisition transaction being avoided (e.g. if the share deal takes place between the sale of the property and the reversal/repurchase). In such cases the cancellation/reacquisition should be considered an event with retrospective effect within the meaning of Section 175 (1) Sentence 1 No. 2 GTC (Section 1 (4a) Sentence 3 RETTA).

According to the new provisions introduced into Section 1 (4a) RETTA via Section 23 (25) RETTA during the deliberations of the Finance Committee of the Bundestag, the norm is to be applied for the first time to acquisition transactions pursuant to Section 1 (2a) to (3a) that occur after the day of the publication of the FA 2024 in the Federal Law Gazette. In applying Section 1 (4a), acquisition transactions under Section 1(1) and (2) that are realised before this date must also be taken into account.

A RETT Brexit clause was also added into Section 23 (27) RETTA as part of the deliberations of the Finance Committee. This stipulates that the entry into force of the of the Act on the Modernisation of Partnership Law does not lead to a breach of current retention periods for transfers that were realised by 31 December 2026; the retention periods continue to apply and are only breached if the share of company assets is reduced within the subsequent retention period.

Changes to the Foreign Tax Act

*Upon the recommendation of the Finance Committee, a t**ransitional provision for the application of Section 1 (3d) RTA was inserted into Section 21 (1a) FTA**, according to which the regulation is not to be applied to expenses incurred on or before 31 December 2024 which are based on financing relationships that were agreed under civil law before 1 January 2024 and whose actual implementation began before 1 January 2024. Where there is a material change to the relevant financing relationships after 31 December 2023 and before 1 January 2025, Section 1 (3d) FTA does not apply to expenses incurred before the material change.*

*In addition, **Section 21 (4) FTA** was amended to ensure that even in cases in which a taxpayer has received a profit distribution from an intermediate company with a different financial year in 2022, a reduction under Section 11 FTA can be recognised in the 2022 assessment perio*d.

Changes to the General Tax Code

Duties of legal representatives (Section 34 draft General Tax Code – “GTC”)

Section 34 (1) Sentence 3 GTC is intended to clarify that the tax authorities must only contact one of these

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representatives if there are several legal representatives for natural and legal persons, associations with legal capacity and estates.

Electronic communication with the tax authorities (Section 87a GTC)

The new Section 87a (1) Sentence 2 GTC will state, inter alia, that the transmission of electronic documents to the tax authorities by simple email, email with a qualified electronic signature or by beA/beSt outside court proceedings will only permissible where this is expressly allowed by law.

Penalisation of violations of international agreements for the promotion of tax honesty in international matters (Section 117c GTC); temporary increase in fines for violations of the FATCA-USA Implementation Regulation (Section 379 GTC)

Section 117c (1) Sentence 1 No. 5 GTC is intended to create an authorisation basis for the Federal Ministry of Finance to issue - with the approval of the Bundesrat - regulations via statutory instrument, by means of which violations of reporting obligations to which financial institutions are subject under the FATCA-USA Implementation Regulation (Federal Law Gazette I 2014, 1222) can be punished as administrative offences and fined up to EUR 50,000. The FATCA-USA Implementation Regulation was introduced for the purposes of the intergovernmental automatic exchange of information on financial accounts with the United States of America.

The previous maximum fine for violations of FATCA-USA Implementation Regulation reporting obligations is currently considered to be at odds with the possible fines for violations of comparable obligations of the same obligated entities (i.e. financial institutions) in connection with the implementation of the intergovernmental, automatic exchange of financial account information in accordance with the Common Reporting Standard (CRS) within the scope of the Financial Account Information Exchange Act (FAIEA; according to Section 28 (1) and 1a FAIEA corresponding administrative offences can be punished with a fine of up to EUR 50,000). Until the entry into force of the new regulation, a corresponding fine provision will come into force under Section 379 (8) GTC, according to which the maximum fine for wilful and reckless breaches of reporting obligations under the FATCA-USA Implementing Regulation will be temporarily increased from EUR 5,000 to EUR 30,000.

Confirmation of oral administrative acts (Section 119 (2) GTC)

According to Section 119 (2) GTC, oral administrative acts must be confirmed in writing where a legitimate interest exists, and the person concerned immediately notifies the authority. According to Section 119 (2) GTC, such a confirmation can be made in writing and in electronic form.

Cancellation of the binding effect of agreements reached with the tax authorities in the context of mutual agreements (Section 175a Sentence 2 GTC)

Section 175a Sentence 2 GTC-D is intended to clarify (according to the explanatory memorandum to the Act) that binding rulings (Section 89 GTC), binding commitments (Section 204 GTC) or legally binding agreements between the taxpayer and the tax authorities may be corrected by assessment under Section

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175a GTC for the purpose of implementing the terms of an interim mutual agreement (Section 89a GTC), a mutual agreement or an arbitration award. Where, during a dispute resolution procedure, the facts of the case or its assessment under tax law change from that previously agreed in the context of a binding ruling, a binding commitment or a legally binding agreement between the taxpayer and the tax authority, such information and findings should, according to the explanatory memorandum to the bill, be taken into account when implementing a mutual agreement or an arbitration award. Thus, the binding effect of binding rulings, binding commitments or a legally binding agreements between taxpayers and the tax authorities is overridden to this extent.

Further changes

In addition to the changes outlined above, the law also provides, inter alia, for changes to the

- ***Investment Tax Act*** *(including the introduction of regulations based on Section 6 InvTA for an exit taxation in relation to investment units under Section 19 (3) InvTA and Section 49 (5) InvTA for events realised after 31 December 2024 (Section 57 (10) InvTA); and the extension of the settlement period under Section 17 (1) Sentence 4 InvTA for investment funds from five to ten years),*
- ***Inheritance Tax and Gift Tax Act*** *(including amendment of Section 10 (6) and Sections 13d and 28 (3) IHTA in line with EU law),*
- ***Minimum Tax Act*** *("MTA")(fiction of the minimum tax group with effect from 28.12.2023 also for an individual business unit located in Germany, Section 3 (1) Sentence 4 MTA; Introduction of Section 59 (3) MTA regarding the determination of the amount of labour costs for mobile employees to determine the substance-based tax-free amount; according to the explanatory memorandum, the provision was not included in the original transposition law due to a clerical error).*
- ***Real Estate Tax Act*** *(statutory regulation to allow the taxpayer the option of proving a property value that is lower than the property tax value assessed under the federal model (Section 220 (2) Valuation Act) for real estate tax purposes; the regulation is intended as a reaction to the decisions of the Supreme Tax Court of 27 May 2024 (II B 78/23 (AdV), BStBl. II 2024, p.543, and II B 79/23 (AdV), BStBl. II 2024, p. 546) and is based on the content of the coordinated decrees of the Supreme Tax Authorities of the Federal States dated 24 June 2024),*
- ***Tax Haven Defence Act*** *(amendments to Section 8 Tax Haven Defence Act, which are intended to prevent payments deliberately excluded - through the FA 2022 - from the scope of application of the defence measure of Section 10 Tax Haven Defence Act, i.e. a withholding tax deduction, and excluded payments with regard to certain globally deposited bearer bonds and similar securities are then subject to the prohibition on the deduction of operating expenses/advertising costs according to Section 8 Tax Haven Defence Act) and*
- ***Financial Account Exchange Act*** *(extension of due diligence obligations subject to fines in the Financial Account Exchange Act (Sections 8 (2), 11 (4), 12 (9), 15, 28 (1) Financial Account Exchange Act).*

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Provisions from the government draft that were not included in the Act adopted by the Bundestag

- *Amendment to **Section 13 (2) RTA**, according to which the book value approach within the scope of the taxation of shareholders in the case of mergers of corporations would become the general rule.*
- ***Flat-rate wage tax** for benefits from a so-called **mobility budget** (Section 40 (2) Sentence 1 No. 8 and Sentence 4 ITA).*
- ***Surcharge for the non-submission or submission of essentially unusable records** within the meaning of Section 90 (3) GTC (Section 162 (4) GTC; Art. 97 Section 37 (2) and (3) Introductory Act to the General Tax Court).*

Schlagwörter

Finance Act, General Tax Code, Income Tax Act, RETT, corporate income tax