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By PwC Deutschland | 20. November 2025

MoF: Draft for revision of attribution taxation for foreign family foundations

The Federal Ministry of Finance (MoF) has sent the draft of a revised version of the attribution taxation for foreign family foundations pursuant to Section 15 of the Foreign Tax Act to certain associations. They as well as interested professionals are given the opportunity to comment until 15 January 2026.

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Background

According to Section 15 (1) Foreign Tax Act the assets and income of a foreign family foundation (as defined: whose management and registered office are located abroad) shall be attributed to the founder, if he or she is subject to unlimited tax liability, or otherwise to the persons subject to unlimited tax liability who are entitled to receive payments or benefits, in proportion to their share.

In four largely similar judgments published in April 2025 (IX R 32/22, IX R 31/22, IX R 15/24 and IX R 16/24), the Supreme Tax Court decided that the restriction for exemption from taxation of the retained income of foreign foundations with their management or registered office in a member state of the European Union or a contracting state of the EEA to conflict with the EU free movement of capital. With its judgments the Supreme Tax Court ruled in favor of the plaintiffs. The statutory conditions of Section 15 (1) sentence 1 FTA for attributing the income (for 2012) or the income (for 2013 to 2016) of the foundation to the plaintiffs are met. However, taking into account the precedence of EU law, an attribution of income is not possible based on Section 15 para. 6 FTA.

Reasons for the proposed amendments to Section 15 FTA

The ministerial proposal seeks to systematically align and simplify the attribution taxation with the ATAD Tax Avoidance Directive of June 25, 2021, as amended with respect to with Sections 7 et seq. of the Foreign Tax Act (CFC-rules). This should be achieved in particular by introducing a low tax threshold of 15 percent and applying Section 8b (1) Corporation Tax Act () already at foundation level.

According to present Section 15 (6), the attribution taxation will not be applied if is demonstrated that the foundation's assets are legally and effectively withdrawn from the power of disposal and information is provided between Germany and the foreign country in which the family foundation has its management or registered office pursuant to Section 2 (11) of the EU Administrative Assistance Act or a comparable bilateral or multilateral agreement. The production of evidence in Section 15 (6) Foreign Tax Act should be brought in line with current case law of the ECJ and of the Supreme Tax Court, arrangements designed to circumvent imputed taxation should be avoided, and legal certainty in the context of imputed taxation be enhanced.

Source:

MoF, circular dated 18 November 2025 (IV B 5 - S 1361/00010/001/047)

Schlagwörter

family foundation, foreign foundation