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By PwC Deutschland | 03 November 2016

Federal Ministry of Finance publishes draft bill to combat tax avoidance

The Federal Ministry of Finance has published its draft bill to combat tax avoidance and to amend further tax provisions.

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Through this draft bill, the prime goal of the Federal Government is to make it more difficult for domestic taxpayers to avoid tax through the use of an offshore company. In addition to increasing the taxpayer's obligations to cooperate, the new draft also proposes an end to bank secrecy in tax matters. The cabinet will probably give its approval to the draft bill on 21 December 2016.

The goal of the draft is to enable the tax authorities to obtain comprehensive information on business relationships between German taxpayers and offshore companies located in tax havens through the provision of new investigatory powers. The draft bill includes the following measures:

Disclosure requirement upon the acquisition of qualified investments

The existing legal requirement to disclose the acquisition of qualified investments in foreign entities is to be standardised for both direct and indirect holdings. In addition the draft provides for an extension of the deadline for the filing of the disclosure to the date of the filing of the income tax/corporation tax returns.

Disclosure requirement for directly or indirectly controlled partnerships, companies, associations and estates in third countries

In future a taxpayer will also be obliged to disclose any business relationships it has with a partnership, a company, an association or an estate located in a third country, which he controls either directly or indirectly. This will be regardless of whether the taxpayer formally holds an interest in the entity or not. Failure to disclose will lead to a delay of the commencement of the period in which the assessment of tax is permissible and thus the limitation period will be extended. In addition, a penalty of up to € 25,000 may be levied in cases of non-disclosure.

Liability of financial institutions for tax deficits

In future, under certain conditions, financial institutions will be obliged to inform the tax authorities about business relationships between domestic taxpayers and entities resident in third countries where the relevant financial institution has either set up the business relationship or has acted as a mediator. A failure to do so may result in the financial institute being held liable to make good any tax deficits arising therefrom. Furthermore a penalty of up to € 50,000 may be levied.

Repeal of the bank secrecy provision in tax matters

According to the draft bill the provision regarding so-called bank secrecy in tax matters should be repealed. This expressly does not affect civil law bank secrecy, which protects the transmission of data by banks to, for example, other businesses. Whilst the existing bank secrecy rules did not give the banks a blanket right to refuse to provide the tax authorities with information, it certainly did encroach on the tax authorities' investigatory powers.

Extension of the automatic account data access procedure

The automatic account data access procedure for tax purposes should be extended. The new rules are intended to facilitate investigations in cases where a domestic taxpayer has the power to dispose over or is

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the economic beneficiary of an account or a deposit of an individual, a partnership, a company, an association or an estate, which has his/its residence, his/its customary place of abode, its registered office, its main branch or its place of management abroad. Furthermore the term during which credit institutes are obliged to keep data access on closed accounts available, should be extended to 10 years.

Collective disclosure requests

The options available to the tax authorities for making collective disclosure requests is to be codified on the basis of the settled case law of the Supreme Tax Court.

Collection and recording of identification for tax purposes

In the course of their identity checks, credit institutions should in future also collect and record the tax identification features of the account holder and any person with a power to dispose over the account. This information will be provided exclusively to the tax authorities through the account data access procedure. Previously the so-called identity check was limited to names and addresses.

New records retention requirements

A new records retention obligation should be imposed on taxpayers, who can alone or together with related persons, directly or indirectly exercise a controlling or decisive influence in commercial law matters or in financial or business matters on an entity resident in a third country. In future such taxpayers may be subject to a tax audit without the requirement of a special reason.

Inclusion in catalogue of particularly serious tax evasion offences

The evasion of tax through hidden business relationships with entities resident in third countries and controlled by the taxpayer should be included in the catalogue of particularly serious tax evasion offences. This would mean that the limitation period for criminal prosecution for this form of avoidance would be extended to 10 years.

Keywords

Panama Papers, offshore companies, tax avoidance