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By PwC Deutschland | 08 June 2017

Bundesrat approves the legislation to combat tax avoidance.

In its sitting on 2 June 2017 the Bundesrat (the Upper House) approved the legislation which the government introduced at the end of last year following the publication of the Panama Papers.

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The aim of the new legislation is to achieve more transparency in cross-border business transactions. Further the tax authorities' options for detecting the use of foreign domiciled companies for tax avoidance should be increased. Whilst the Federal States have expressly greeted the measures for more transparency, they also demanded the introduction of further steps to combat international tax avoidance.

Here a brief summary of some of the measures:

Obligation to report the acquisition of qualified holdings

The existing rules regarding reporting obligations relating to the acquisition of qualified holdings in foreign entities are to be changed so that the treatment of direct and indirect holdings are standardised. The legislation also provides for an extension of the reporting deadline up until the date on which the corporation tax or income tax returns are filed.

Reporting obligations for non-EU directly or indirectly controlled partnerships, companies, associations and estates

In future taxpayers are also obliged to report business relationships to non-EU partnerships, companies, associations and estates which they directly or indirectly control irrespective of whether they have a formal interest in the enterprise or not. A breach of this obligation will lead to an extension of the statute of limitations. In addition a breach can lead to a penalty of up to € 25,000.

Financial institutes to be liable for tax shortfalls

In future financial institutes will, under certain conditions, be obliged to report to the tax authorities, business relationships of German taxpayers with non-EU entities, where the financial institution established the relationship or acted as an agent. A failure to report can result in the financial institution becoming liable for any tax shortfalls resulting from its omission. Furthermore a breach can lead to a penalty of up to € 50,000.

Abolition of bank secrecy rules

The so-called bank secrecy privilege has been abolished. This is to be distinguished from the civil law bank secrecy privilege according to which data transmission by banks to other enterprises is protected. Whilst this bank secrecy privilege did not entitle the banks to refuse to provide the tax authorities with information, it did limit the tax authorities' powers of investigation. It may be noted that investigations without cause will continue to be prohibited.

Extension of Automatic Access Procedures

The procedure for the automatic access to accounts for tax purposes is extended. Under the new rule it will be possible for the tax authorities to investigate cases where a German taxpayer has either the sole power of disposal over or is the economic beneficiary of an account or depot belonging to an individual, a partnership, a company, an association or an estate with his/its residence, registered office, headquarters or place of management outside Germany. In addition the data retention period for banks should be extended

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to 10 years after account closure.

Procedures for compilation of collective of information defined

The tax authorities' options to gather collective information are codified in accordance with Supreme Tax Court case law.

Collection and recording of tax identification data

As part of their identification procedure, banks must also collect and record the tax identification data of the account holder and of each person with a power of disposal. This information will be provided exclusively to the tax authorities as part of the procedure for collection of information. Previously the so-called legitimation examination was limited to the name and address.

New obligations for the retention of documents

A new obligation for the retention of documents should be imposed on taxpayers, who, alone or with related parties, can exercise directly or indirectly a controlling or dominant influence over a non-EU entity in company law matters or in financial or business matters. In future, it will be open to the tax authorities to carry out a tax audit of these taxpayers' affairs without requiring special justification.

Catalogue of tax evasion offences considered as extremely grave extended.

Tax evasion arising through a hidden business relationship with a non-EU entity controlled by the taxpayer is now included in the catalogue of tax evasion offences considered as extremely grave. As a result the limitation period for the investigation such offences will be extended to 10 years.

Furthermore there is a general extension of the limitation period applicable to the payment of tax from 5 years to 10 years in cases of tax evasion

Keywords

Act to Combat Tax Avoidance, International Tax