

# Tax & Legal Newsflash

## Finance Bill 2020: Bundesrat Committees submit recommendations to Bundesrat

*The Bundesrat Committees have published their recommendations to the Bundesrat with regard to the Finance Bill 2020. In it, they propose numerous amendments or additions to the provisions provided for in the federal government's draft bill. One of the recommendations is to demand a "1:1 implementation" of the ATAD Directive into national law. Below is a brief summary of some of the – in our view – most important proposals:*

### **1:1 implementation" of the ATAD Directive into national law.**

Specifically, the wish has been expressed to implement the regulations relating to hybrid arrangements and CFCs. In terms of content, the proposed regulations essentially correspond to the draft bill of the ATAD Implementation Act of 24 March 2020. However, there have also been selective changes to the wording and the explanatory memorandum, which in part reflect discussions that have taken place in the meantime. In this context, particularly noteworthy is that the reference rate for low taxation is to be lowered to 15% and that the new Section 4k in the amendment to the Income Tax Act (deductibility of expenses by mismatches) will not be applied until 2021. The issues in relation to Section 6 Foreign Transactions Taxes Act (exit taxation) and Sections 1 to 1b Foreign Transactions Taxes Act (transfer pricing), which have been controversial issues in the political discussions on the ATAD Implementation Act, should be suspended for the time being, as their regulation is not a direct requirement of ATAD.

### **Extension of the concept of production costs coincidental to acquisition (Section 6 (1) No. 1a Sentence 1 draft amendment to Income Tax Act – “draft ITA”)**

Production costs for a building should now also include expenses relating to repair and modernization measures undertaken after the conclusion of the legally valid mandatory contract or equivalent legal instrument and before the end of the third year following the acquisition of the building if such expenses, excluding VAT, exceed 15% of the acquisition cost of the building (production costs coincidental to acquisition). Up to now the scope of reference in Section 6(1) No. 1a Sentence 1 ITA only referred to the *acquisition* and thus the acquisition of economic ownership, so that repair and modernization measures carried out after the conclusion of the purchase agreement but before payment of the purchase price (transfer of beneficial ownership) were not covered by the provision.

### **Raising the limit for immediately depreciable low-value assets to 1,000 Euros**

As was already the case during the legislative procedure for the "Act on Further Tax Incentives for Electromobility and to change Further Tax Regulations" (Finance Act 2019), the Federal States are proposing an increase in the currently applicable maximum limit for low-value assets under Section 6 (2) Sentence 1 ITA from 800 Euros to 1,000 Euros. At the same time, the option under Section 6 (2a) ITA - to



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create an depreciation pool for movable fixed assets with an acquisition cost/production cost or – respectively - a (contribution) value (under Section 6 (1) no. 5 to 6 ITA) of between 250 Euro and 1.000 Euro – is to be deleted completely.

### **Extension of scope of Section 7g ITA to intangible depreciable assets**

The option to claim investment allowances or apply a special depreciation under Section 7g (5) ITA should in future also apply to intangible depreciable assets (e.g. such as software solutions).

### **Extension to two years of the carryback period for losses from the 2020 and 2021 periods**

The Committees of the Bundesrat welcomed the increase in the maximum amount of loss carryback for the assessment periods 2020 and 2021 from one million Euros to five million Euros (for married couples up to a maximum of 10 million Euros) under the terms of the Second Corona Tax Support Act. However, they suggest also (at least) extending the carryback period for losses incurred in the periods of assessments 2020 and 2021 to two years. Currently, losses can only be carried back to the immediately preceding assessment period.

### **Deletion of the statutory codification of subsequent acquisition costs in the area of the sale of privately held shares in corporations**

As was already the case when it was introduced as part of the "Act on Further Tax Incentives for Electromobility and to change Further Tax Regulations" (Finance Act 2019), the federal states demand the complete deletion of Section 17 (2a) sentences 1 to 4 ITA (last application to disposals within the meaning of Section 17 (1, 4 or 5) made before 1 January 2021)

### **Restriction of application of Section 20 (4a) sentence 3 ITA to exchanges for shares**

According to the recommendations of the Committees, Section 20 (4a) sentence 3 ITA should – in line with the original aim of the provision – be restricted to the exchange into shares, in order to avoid abusive tax arrangements based on the provision as it now stands.

### **Wage and income replacement benefits are only effectively subject to the progression proviso above an annual allowance of 6,000 Euros (Section 32b (6) draft ITA)**

As a result of the widespread use of short-time working ("Kurzarbeit") due to the recession triggered by the corona pandemic, the progression proviso will gain considerable importance. This will place an additional burden in the coming year on many employees in the lower and middle income brackets, who are already in a difficult financial situation. To alleviate this problem, wage and income substitute benefits for the calendar years 2020 and 2021 will only effectively be subject to the progression proviso where they exceed an annual allowance of 6,000 Euros.

### **Requests for review of the rules on the deductibility of expenses for an office/workstation in the home**

The Committees of the Bundesrat suggested that - in the light of new working practices - the question of the deductibility of expenses for an office in one's home should in future be newly regulated both in terms of the reasoning behind it and in

terms of the amounts. Background: According to the current regulations in the Income Tax Act (Section 4 (5) sentence 1 number 6b ITA - deductibility of expenses for an office at home), expenses incurred for this purpose are generally not deductible or only deductible to a limited extent.

### **Further requests**

In addition, the Committees of the Bundesrat have requested that the following matters be examined:

- more attractive arrangements for the preferential treatment of retained earnings for partnerships (subsidized retention) and the introduction of an option for partnerships, to be taxed in the same manner as corporations;
- to reduce the legal interest rate from currently 6 percent per annum to 3 percent per annum;
- reduction of the electricity tax to the minimum level permitted under European law.

### **Regulation on filing an application pursuant to Section 8d Corporation Tax Act ("CTA") subsequent to the first filing of the tax return (Section 8d (1) sentences 5 and 6 draft CTA)**

According to the current Section 8c (1) sentence 5 CTA, the application for the assessment of a continuance-bound loss carryforward is to be made in the tax return for the assessment period in which the harmful share acquisition occurred. In future, according to the demands of the Committees of the Bundesrat, the taxpayer should be able to file the application at least until the tax assessment or the separate determination of the loss carried forward under Section 31 (1a) CTA can no longer be amended. Furthermore if an amended assessment determines a harmful share acquisition under Section 8c (1) sentence 1 CTA for the first time, it should be possible to file a written application for the utilisation of continuance bound losses up to and until the time the said amended assessment can no longer be appealed against.

### **What next**

The Bundesrat is expected to adopt its position in its meeting on October 9, 2020. Thereafter, the Federal Government will present its opinion on the recommendations of the Bundesrat in a counterstatement, through which the amendments proposed by the Bundesrat may be accepted or rejected. The draft bill will then be submitted to the Bundestag together with the Bundesrat's statement and the government's counterstatement. It therefore remains to be seen whether and in what form the above-mentioned measures will find their way into the statute.

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