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By PwC Deutschland | 28 December 2020

German Bundesrat approved Finance Bill 2020

In its plenary session of 18 December 2020 the Bundesrat approved the Finance Bill 2020.

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In its plenary session of 18 December 2020 the Bundesrat (upper chamber of parliament) endorsed the Finance Bill 2020 (Annual Tax Act 2020 - known as “JStG 2020”) in the version recommended by the Finance Committee of the Bundestag (lower chamber). The package contains necessary adjustments to EU law and to the case law of the European Court of Justice as well as legislative actions to the case law of the Supreme Tax Court. In addition, it addresses the need for regulatory adjustments that has arisen in various individual tax laws. Furthermore, measures are planned for more digitization (in particular the implementation of the VAT digital package) and for combating various tax planning structures. Contrary to earlier plans the “1:1 implementation" of the ATAD Directive into national law is not included.

The Finance Bill 2020 was published in the Federal Gazette on 28 December 2020.

Here is a brief summary of selected adjustments and changes included in the Finance Bill 2020:

Income Tax Act (ITA)

Home office allowance (as a result of the change in working practices during Corona)

With the home office lump sum allowance tax consideration of home office work during Corona times will be possible for the years 2020 and 2021. The deductible allowance is €5 per calendar day, with a maximum of €600 for the calendar (tax) year. This would be equivalent to 120 home working days. The home office allowance will be deducted from the standard lump sum allowance of €1.000 available for costs of earning income, i.e. it will not be granted in addition to the employee’s standard lump sum allowance.

Extension of tax emption for tax free special Corona benefits from employer

In the course of the Corona Tax Relief Act (*Corona-Steuerhilfegesetz*) a tax exemption of special Corona benefits granted by the employer until 31 December 2020 up to a maximum amount of €1,500 was added in Section 3 No. 11a ITA. The payment deadline for the special Corona tax exemption is now extended to June 30, 2021.

The limited and temporary tax exemption of the employer's subsidies for short-time work and seasonal short-time work introduced by the Corona Tax Relief Act is extended for one year until 31 December 2021.

Tax exemption for outplacement consulting services by employer

Employees who are to be laid off or who are leaving can be counseled by their employers to redirect their careers to avoid unemployment. Counseling service for professional reorientation, even if - at the initiative of the employer – it is provided by third parties, will in future be tax-exempt for the respective employees.

Increase of the exemption limit for benefits in kind

Increase of the exemption limit for benefits in kind from currently €44 to €50 from assessment year 2022 onwards; in the case of wage income taxed at source the new threshold applies to benefits that are first granted in the wage payment period ending after December 31, 2021 or with respect to other benefits granted after December 31, 2021.

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Common profit threshold (limit) and further improvements for investment allowances and special depreciation (Section 7g ITA)

Introduction of a uniform profit limit of €200,000 for all types of income. Investment allowances and special depreciation can also be claimed for leased assets. The percentage of investment costs eligible for tax relief is raised from 40% to 50% of the expected acquisition or production costs. These new rules apply from the assessment period 2020 onwards.

Interest on provisional loss carryback

In the course of the Second Corona Tax Relief Act Sec. 111 (1) ITA was introduced under which an amount equal to 30 percent of the total amount of income for the 2019 assessment period will be deducted as loss carryback from 2020 (provisional loss carryback for 2020). - If such losses are deducted for the 2019 tax assessment interest will be due on the overpayment of tax, pursuant to (newly added) sent. 4 in Sec. 111 (1) ITA.

Allocation of shares, Sec. 20 (4a) sent. 5 ITA

If shares in certain entities are allocated to the taxpayer without consideration, the income and the acquisition costs of the new shares are assumed to be EUR 0 if, among other things, it is not possible to determine the amount of the capital gain. Sec. 20 (4a) sent. 5 ITA was now revised: In the case of the allocation of shares by foreign corporations, it is no longer relevant whether it is possible to determine the amount of the capital gain or not, the capital gain will always be taken at EUR 0 and the acquisition costs will remain unchanged. The new provision is applicable for allocation of shares after December 31, 2020 and if the shares in question were acquired after December 31, 2008.

Increase of the exempt threshold for charitable bodies

The tax benefits (no corporation profits tax, no trade tax) for charitable corporations that exclusively and directly pursue charitable or clerical purposes (tax-privileged purposes) are upheld if the total income, including value-added tax, from business operations does not exceed €45,000 (formerly €35,000) p.a.

Compulsory contributions to pension providers by non-residents

In its judgement of 6 December 2018 (case: **C-480/17**, *Montag*) the European Court of Justice (ECJ) held that the non-deductibility of compulsory pension contributions paid by a non-resident with limited tax liability in Germany to professional pension schemes is contrary to the freedom of establishment. This has been followed and implemented in Sec. 50 (1a) ITA. Such contributions henceforth will qualify for deduction. The new regulation in Sec. 50 (1a) ITA applies to contributions made after December 31, 2020.

Increase of maximum amount of loss set-off from forward transactions

Losses from certain forward transactions or from partially irrecoverable capital receivables can only be set off against profits from similar transactions (forward transactions) or against other income from capital assets (capital receivables). In each of these cases losses may be set off up to a maximum amount of

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€20,000 (formerly €10,000). This new rule in Sec. 20 (6) sent. 5 and 6 ITA applies to losses incurred either after 31 December 2020 (re. forward transactions) or after 31 December 2019 (re. capital receivables).

Lump sum tax for employer benefits provided in addition to regular wage

Pursuant to Section 40 (2) sent. 1 no. 5 sent. 2 ITA, the employer may levy income tax at a flat rate of 25% on contributions made by him and which incurred and are paid “in addition of the regular wages owed in any case”. In a ruling of August 1, 2019, the Supreme Tax Court changed its previous case law and decided that the flat rate of tax for employer benefits is also applicable in the case of salary conversion if benefits are granted for a specific purpose in addition to the wages owed in any case. The Federal Finance Ministry then issued a special circular stating that (as before) only genuine fringe benefits provided by the employer are subject to the privileged 25% flat rate. This latter view is now incorporated into new Section 8 (4) sent. 1 ITA.

At the request of the Finance Committee of the Bundestag, the new provisions in Section 8 (4) ITA are complemented by Section 8 (4) (new) sent. 2 ITA, according to which a benefit provided “in addition to the wages owed in any case” is also assumed if the employee is entitled to it under the terms of the employment contract or pursuant to another legal arrangement governed by employment or service law (such as individual contract, workers agreement, collective labor agreement).

Trade tax Act (TTA)

No trade tax addback for life and health insurance companies and pension funds

Under Sec. 8 no. 8 TTA the share in the loss of a domestic or foreign general or limited partnership or any other (similar) entity must be added back to the trading profit subject to trade income tax. Under the Finance Bill 2020, exception from the addback is provided for life and health insurance companies and for pension funds; this will apply from the 2020 period of levy.

Corresponding application of Sections 8c and 8d CTA on loss curtailment rules

New Sec. 10a sent. 10 et sec. TTA explicitly provides that the rules of Sec. 8c CTA (re. curtailment of loss relief on changes of shareholder) and Sec. 8d CTA (re. continuance-bound loss carry-forward after loss forfeiture) also apply to trade tax losses. The new rule is effective already for pre 2020 periods of levy.

Value Added Tax Act

Implementation of the EU VAT Digital Package: This includes, i. a., the expansion of the existing mini-one-stop shops to a one-stop shop and introduction of an import one-stop shop for e-commerce companies; applicable for sales exported after 30 June 2021.

Changes with respect to **mail-order sales to private individuals**: In the case of deliveries of goods from countries outside the EU via online marketplaces, the marketplace operator will, under certain conditions, be liable for the VAT incurred in Germany for this delivery.

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Abolition of the €22 tax exempt threshold for import VAT

Abolition of the €22 exemption limit for low-value shipments from third countries. This is due to the transposition of EU law; effective date: January 1, 2021.

Recipient of telecommunication services liable for VAT

As of January 1, 2021, the recipient of telecommunication services will be liable for VAT under the Reverse Charge mechanism if he or she is a so-called reseller ("Wiederverkäufer"), i.e., if he or she usually purchases such services in order to resell them.

Retroactive correction of invoice

The input tax deduction under the German VAT Act is conditional on possession of a supplier's invoice correctly drawn up. A deficient invoice can be corrected later, but the right to deduct the input tax can only be exercised after the correction. In a judgement from 15 September 2019 (**C-518/14**, *Senatex*) the European Court of Justice held that the correction of formal invoicing errors is allowable with retroactive effect on the input tax deduction, regardless of whether the correction works to the advantage or disadvantage of the taxpayer. Under this assumption, the statute of limitation would not begin before the end of the calendar year in which the invoice was corrected.

However, in new Sec. 14 (4) sent. 4 German VAT Act the tax administration adopted its previous view that an invoice correction does *not* constitute a retroactive event within the meaning of Sec. 175 (1) no. 2 German Fiscal Code and for purpose of applying the statutory interest rate levied on late payment or refund of taxes. An invoice correction will henceforth only be possible within the regular framework of the statute of limitations.

Other changes

Strengthening the rules on the statute of limitations for prosecution and collection of proceeds from cases of serious tax evasion, Sec. 376 Fiscal Code (AO)

The current statute of limitations for particular serious cases of tax evasion is extended from 10 years to 15 years.

Real estate transfer tax and Brexit

In Sec. 5 (3) and Sec. 6 (3) of the Real Estate Transfer Tax Act a "grandfathering provision" for granted tax concessions in view of the Brexit has been added. This applies to transactions after January 31, 2020.

Adjustments in the R&D Subsidy Act

The German Act on Tax Incentives for Research and Development (FZulG) became effective 1 January 2020. Research and development projects which fall into one or more of the categories of fundamental research, industrial research or experimental research are eligible for subsidies. The fixed research subsidy is not paid out directly. Rather, it will be credited in full, against the assessed tax in the next assessment for

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income or corporation tax. The following changes/adjustments, which are effective from January 1., 2020, are included in the Finance Bill 2020:

- Adjustments and inclusion of new regulations on the treatment of contract research are introduced in Sec. 3 (4) sentences 1 and 2 FZulG.
- Credit of the subsidy against the tax assessment (Sec. 10 (1) sent. 2 FZulG): In future, the R&D subsidy will be explicitly credited to the *next* ***first*** tax assessment for income tax/corporation profits tax (rather than to the *next* tax assessment(…) as provided under the former version of the statute).
- In order to eliminate remaining doubts about the tax-free treatment of the subsidy when repaid or reimbursed, Section 10 (1) sent. 3 FZulG now expressly refers to an income or corporation tax refund.

Keywords

Annual Tax Act 2020, Finance Bill