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By PwC Deutschland | 09 June 2021

UPDATE : Bundestag passes the Act to Modernise the Relief of Withholding Taxes and the Certification of Capital Gains Tax

On 5 May 2021, the Bundestag passed the Act to Modernise the Relief of Withholding Taxes and the Certification of Capital Gains Tax. The law as passed is based on the resolution recommended and passed by the Bundestag Finance Committee on 21 April 2021.

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The approval of the Bundesrat is still pending. The appointed date for this is 28 May 2021.

The law now passed provides in particular for the following additions or amendments to the Federal Government's draft law (see our **Newsflash**), which are partly based on the demands of the Bundesrat set out in its statement of 5 March 2021:

Changes to the regulations provided for in the government draft:

- **Exemption certificates pursuant to Section 50c (2) Sentence 4 Draft Income Tax Act (ITA)** will be valid from the day on which the application is received by the Federal Central Tax Office (FCTO) at the earliest. This corresponds to the current legal situation. The Federal Government's draft bill, on the other hand, provided that the earliest date from which the exemption certificate should be valid should be its date of issue. According to the explanatory memorandum to the recommended resolution, the validity was to remain the date on which the application is received by the FCTO, so that it would still be possible to amend the related tax return for any tax withheld and paid in the period between the receipt of the application and the issue of the exemption certificate (in addition to the option for the income recipient to apply for a refund from the FCTO under Section 37 (2) Sentence 1 General Tax Code (GTC).
- The date from which the **additional requirements for certification and reporting to the FCTO of investment income** within the meaning of Section 43(1) Sentence 1 No. 1a and 2 Sentence 4 ITA are to apply, has been delayed by one year in comparison to the draft bill, so that the extended requirements are to apply for the first time to investment income accruing to the creditor after 31 December 2024 (Section 52(44a), (44b), (44c) and (47c) Sentence 2 Draft ITA).
- Substitution the term "assets" in Section 2 (5) Sentence 5 Draft Reorganisations Taxes Act with the words "financial instruments or shares".
- The **amendments in the area of transfer pricing** (Section 1 (3) to (3c) Draft Foreign Taxes Act (FTA) and the price adjustment clause in Section 1a Draft FTA) arising from the draft **ATAD Implementation Act** are to be applicable from the 2022 assessment period (Section 21 (25) Draft FTA). The regulations with regard to “financing relationships” first provided for in the draft ATAD Implementation Act and also called for by the Bundesrat in the course of this legislative procedure (Section 1 (3d), 3e Draft FTA in the Bundesrat's statement of 5 March 2021) are not included. However, the Finance Committee of the Bundesrat propose such corresponding regulations in the legislative process for the ATAD Implementation Act (cf. recommendations of the committees of 26 April 2021).

Further regulations/changes:

- **Exclusion of the certification of long-term overpayment** pursuant to Section 44a (5) ITA from the catalogue of certificates allowing an exemption from withholding on dividend payments from

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domestic shares held in collective custody by deleting Section 44a (10) Sentence 1 No. 2 ITA. The aim of this amendment is to prevent (cum/cum) arrangements which apply such long-term overpayment certificates to avoid dividend taxation.

- **Extension of the tax exemption on corona special payments** up to an amount of EUR 1,500 – as introduced by Section 3 No. 11a ITA by the (First) Corona Tax Assistance Act - until 31 March 2022. In its comments on the draft bill on 5 March 2021, the Bundesrat had proposed an extension of the deadline to 31 December 2021. This deadline had already been extended by the Finance Act 2020 for grants and support provided on or before 30 June 2021. It remains the case that in the extended benefit period 1 March 2020 to 31 March 2022, a total of up to EUR 1,500 can be paid out.
- Statutory codification of the administrative ordinance on the transferability of so-called **"differential amounts" in Paragraph 28 of the Tonnage Tax Ordinance** (Ministry of Finance - 12 June 2002, as on 31 October 2008) in response to Supreme Tax Court case law (judgements of 28 November 2019, IV R 28/19 and of 29. April 2020, IV R 17/19). Contrary to Paragraph 28 of the Tonnage Tax Ordinance, the Supreme Tax Court ruled that the term "withdrawal" in Section 5a (4) Sentence 3 No. 3 ITA included every withdrawal by a shareholder and thus also applied to cases of a transfer or contribution at book values (e.g. Section 6 (3) ITA and Section 24 Reorganisation Taxes Act). The regulation proposed by the Federal Council on 5 March 2021 is to be applied retroactively for financial years beginning after 31 December 1998.
- **Alignment of the calculation method** for the accounting obligation turnover limit (EUR 600,000) with the upper-limit for the application of the actual taxation method ("Ist-Besteuerung) under Section 20 (1) Number 1 VAT Act and Section 19 (3) Sentence 1 VAT Act.
- Supplementing the exceptions listed in Section 152 (3) and (8) GTC with regard to the assessment of late payment surcharges with regulations on the registration of special advance payments of VAT under Section 48 (2) of the VAT Ordinance. This regulation had been requested by the Federal Council.
- Transfer of central responsibility for the taxation procedure under Section 16(5a) and Section 18(5a) VAT Act. Responsibility for **foreign missions, professional consular representations and their member**s was with central tax offices nationwide but will now be transferred to the FCTO.
- Extension of the so-called **"beer tax volume scale"** for independent micro and medium-sized breweries for a limited period to 31 December 2022.

Update (9 June 2021)

The Act was published in the Federal Law Gazette on 8 June 2021

Update (28 May 2021)

At its meeting on 28 May 2021, the Bundesrat decided to approve the law passed by the German Bundestag.

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Keywords

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