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By PwC Deutschland | 18 June 2021

UPDATE: Bundestag approves Tax Haven Defence Act

On 10 June 2021, the Bundestag approved the "Act to avert tax avoidance and unfair tax competition and to amend other laws". In doing so, the Bundestag followed the recommendation of the Finance Committee.

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The defence mechanisms contained in the bill (19/28901) are intended to make it more difficult for individuals and companies to avoid paying taxes in Germany through business relations with states and territories that are on the EU list of non-cooperative tax jurisdictions. The measures envisaged include, for example, the denial of tax benefits or deductions.

The draft law is based on the conclusions of the Council of the European Union on the so-called "black list" as well as the negotiated measures of the Code of Conduct Group (business taxation). According to the draft, the implementation of the measures into national law follows a coordinated approach of the Member States.

In its reply to the conclusions of the Bundesrat (19/29643), the Federal Government predominantly agreed with the proposed amendments of the Federal States' Chamber and promised also to examine the proposals not adopted .

The bill essentially aims to regulate tax defence measures in relation to tax jurisdictions that are on the EU's black list (in particular to provide for restrictions on available deductions (Section 8), for stricter rules on CFC adjustments/add-backs (Section 9), for the extension of withholding tax obligations (Section 10), for the suspension of the participation exemption under Section 8b Corporation Tax Act (Section 11) and for an extension of the obligation to cooperate with the tax authorities (Section 12)).

The EU blacklist is updated at regular intervals and currently (as of 26 February 2021) includes the following tax jurisdictions:

- American Samoa,

- the American Virgin Islands,

- Anguilla,

- Dominica

- Fiji,

- Guam,

- Palau,

- Panama,

- Samoa,

- Seychelles,

- Trinidad and Tobago and

- Vanuatu.

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The aforementioned tax jurisdictions are - subject to the conditions in Section 3(1) of the bill - deemed to be non-cooperative tax jurisdictions. In order to ensure legal certainty, the names of such non-cooperative states are - according to Section 3 (2) - to be published in a statutory instrument.

The approval of the Bundesrat is still pending.

UPDATE (18 June 2021)

The bill passed by the Bundestag is on the agenda of the Bundesrat for 25 June 2021 (2nd reading).

Source

Bundestag website

Keywords

CFC provisions, tax avoidance, tax haven