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By PwC Deutschland | 16 March 2022

Bundesrat: Draft Bill Organised Tax Evasion

The draft bill is being (re-)introduced to combat serious tax evasion executed via organised -"gang"- structures. The current law is limited to organised evasion of VAT and excise duties.

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The bill had already been introduced in the Bundestag by the Bundesrat on 27 November 2020 but the procedure was discontinued at the end of the legislative period.

According to the original explanatory memorandum to the proposed legislation, organised tax evasion has increased for a wide range of tax types over recent years and has become a major feature of organized white-collar crime. The specific nature of the offence, which regularly goes far beyond "standard" tax evasion, is not currently reflected in the law for all types of taxes.

Section 370 (3) of the German Tax Code increases the prison sentence for serious tax evasion. In this regard Section 370 (3) Sentence 2 No. 5 GTC deals with organized tax evasion by gangs; however it only applies to organised evasion of VAT or excise taxes. The explanatory memorandum pointed out that organized tax evasion, which can be classified as particularly serious, ceased long ago to be limited to certain types of offences, such as VAT carousels and organized excise tax evasion - such as alcohol and cigarette smuggling. By way of example, the memorandum notes, that cum-ex transactions and related tax arrangements have been systematically planned and carried out by professional market participants such as international investment banks.

There is concern that the highly professional and conspiratorial cooperation of the perpetrator groups makes it difficult to solve the crimes as the arrangements are purposefully concealed through the use of convoluted corporate structures, the relocation of organizational units abroad (often offshore), the involvement of trustees and various other service providers etc.

Accordingly, the present draft bill of the Bundesrat should extend Section 370 (3) Sentence 2 No. 5 GTC to all types of tax .

Source

Legislative proposal of the State of North Rhine-Westphalia, February 16, 2022, BR-Drs. 66/22.

Keywords

Tax evasion, cum-ex, organised crime