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By PwC Deutschland | 28 October 2022

Bundesrat adopts recommendations of its committees on the Finance Bill 2022

In its meeting today, the Bundesrat (Federal Council) by and large adopted the various demands and requests for review made by its committees in their representations on the Finance Bill 2022.

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The following demands of the committees are among those adopted by the Bundesrat in its statement today:

- In reaction to various decisions of the Supreme Tax Court (IV R 36/18 of 15 July 2021 and XI R 43/20 of 18 August 2021 and parallel decision XI R 20/19), a new Sentence 4 should be added to Section 6 (5) Income Tax Act (ITA) to apply to all open cases. Under this amendment, the transfer of a partnership (co-entrepreneurial – “Mitunternehmeranteil”) interest can also lead to a breach of the retention period within the meaning of the current Section 6 (5) Sentence 4 ITA; the Supreme Tax Court had rejected this in its aforementioned decisions for want of any legal foundation.

- In decisions of 15 July 2021 (IV R 36/18) and 18 August 2021 (XI R 43/20 with parallel ruling XI R 20/19), the Supreme Tax Court had also teleologically reduced the scope of application of Section 6 (5) Sentence 6 ITA, in each case with different reasons (IV Senate: no breach of the retention period under Section 6 (5) Sentence 6 ITA where a corporation sells a (partial) interest in an upper-tier partnership to another corporation in circumstances where the seller-corporation had already previously held (indirectly) an interest in the asset transferred under Section 6 (5) Sentence 3 ITA; XI Senate: no breach of the retention period where the transfer to a corporation of an interest (in the acquiring partnership) by a contributor for a full consideration within the retention period leads to a realisation of the hidden reserves in the previously transferred assets); the draft Section 6 (5) Sentences 8 and 9 ITA is intended to eliminate the reasoning behind the Supreme Tax Court's case law for all open cases.

- Reworking of Section 27 (8) Corporation Tax Act (CTA) in response to Supreme Tax Court case law effective for payments and nominal capital repayments made after 31 December 2022 (draft Section 34, (10) CTA) as well as further associated adjustments to the Increase of Capital (Taxes) Act and the Financial Authorities Act; including an extension of the scope of application of the regulation to third-country corporations and associations of persons (incl. EEA) (draft Section 27(8) Sentence 1 CTA).

- Increase of the maximum limit (applicable since 1.1.2018) for low-value assets within the meaning of Section 6 (2) Sentence 1 ITA from EUR 800 to EUR 1,000 - applicable to assets acquired, produced or incorporated into business assets after 31.12.2022 ; abolition of the option previously provided for in Section 6 (2a) ITA for the booking of a collective item for depreciable movable fixed assets with acquisition costs/production costs of between EUR 250 and EUR 1,000 - abolition to apply to assets acquired, manufactured or transferred to business assets on/after 1 January 2023, - however, the provision will continue to apply for collective items booked and still existing on 31 December 2022 .

Keywords

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Corporation tax, Finance Bill, Income Tax Act