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tax + legal newsflash

Important changes in law and regulations

Draft for a German Growth Opportunities Act published

A draft law for a "Growth Opportunities Act" was sent to the German Industry Associations for consultation on 14 July 2023. In addition to a new law introducing an investment grant for certain investments aiming to achieve energy savings, various adjustments to national and international tax law provisions are proposed. This tax insight focuses on some of the main aspects which are relevant from an international tax perspective.

In detail

1. Amendments to the interest capping rule: In light of ATAD 1, Germany is obliged to adjust its interest capping rule. The suggested amendments foresee that an allowance of EUR 3m will be introduced regarding net interest expense (currently, the EUR 3m is a de minimis amount determining when the interest capping rule is at all applicable). In addition, an anti-fragmentation rule to avoid a multiple use of the allowance amount is introduced. Furthermore, the so-called stand-alone-Test and the equity-ratio-Test allowing for a non-application of the interest capping rules will be deleted. Lastly, the scope of the interest capping rule shall be extended (i.e., also covering other expenses relating to interest expense).

2. New interest rate capping rule: As already announced in the coalition agreement, an interest rate capping rule is introduced which would apply in addition to the existing interest capping rule. A major prerequisite for the application of this rule is that the loan agreement is entered into by related parties. The deductibility of interest is capped under this rule at a floating rate which is determined under German law. However based on the wording of the law, one could conclude that the floating rate has to be increased by 2%. If it can be demonstrated that the ultimate parent entity of the group and the lender would have received the loan only at a higher rate, such higher rate may be deducted by the borrower.

Furthermore, if the lender maintains sufficient substance as defined under German CFC rules, the interest rate capping rule will not apply either. However, if the lender was resident in a territory not participating in the information exchange under the German Tax Haven Defense Tax Act, the aforementioned substance escape would not apply.

3. Tax loss carry back/carry forward

From the 2024 assessment period onward, the loss carryback shall be adjusted. Going forward losses could be carried back for three years (within the limits of the minimum taxation) and limited to an amount of EUR 10 million or EUR 20 million (for joint taxpayers)

Furthermore, the minimum taxation is suggested to be abolished for the fiscal years 2024-2027 (i.e., losses would be deductible up to the total amount of income of the following assessment period without any limitations). From the fiscal year 2028 onwards the minimum taxation will be reintroduced (i.e., a carry forward of an amount of EUR 10 million and 60% of the total amount of income exceeding EUR 10 million would be possible).

Observation:

The German Growth Opportunities Act foresees various changes to the German national and international tax law. Particularly the changes to the interest capping rule and the introduction of the interest rate capping rule need to be closely monitored.

Any questions?

For a deeper discussion of how this might effect your business, please reach out to your local PwC contact advisor or our following international tax experts:

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