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By PwC Deutschland | 14 November 2023

Bundestag decides on Future Financing Act

On Thursday, 16 November 2023, the Bundestag will vote on the Federal Government's bill to finance future-proof investments.

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Draft law of the Federal Government

The so-called Future Financing Act is intended to provide for easier access to the capital market for start-ups, growth businesses and small and medium-sized enterprises (SMEs) and at the same time promote investment in renewable energy. Furthermore, according to the German government in its the statement on the problems and objectives of its draft bill "regulations in financial market law, company law and tax law are to be further developed".

Simplification for open-ended real property funds

The individual measures include making it easier in the future for open-ended real property funds to invest in renewable energy systems. For example, it is to be "made possible also under supervisory regulations to acquire land on which only plants for the generation, transport and storage of electricity, gas or heat from renewable energies are located". Fund providers should also be allowed to operate these plants themselves in future. Legal certainty will be introduced for the operation of plants on existing buildings.

Most importantly, the participation of employees in their employer's equity capital is to be made easier. To this end, the tax-free allowance is to be increased from the current EUR 1,440 to EUR 5,000. According to the Federal Government this alone is estimated to cost EUR 355 million per annum from 2025.

Deferred taxation

The Federal Government wants to "significantly expand" the scope of application of deferred taxation. In future, it will be possible to defer taxation until the shares are sold provided the employer assumes liability for the wage tax incurred.

In future, companies will be allowed to go public with a minimum market capitalisation of EUR 1 million (previously: EUR 1.25 million). The obligation to have an underwriter as co-applicant, for example a bank, will no longer apply.

Share issues on a blockchain basis

In future, share issues will also be possible applying blockchain technology. This further development of the legal framework for crypto assets is intended to make Germany "a legally secure location for this future technology". Specifically, in future registered shares should be able to be issued both as securities listed in the central register and as crypto securities. Bearer shares will continue to only be available as central register securities.

Raising equity capital is also to be made easier by allowing companies to issue shares with multiple voting rights. Capital increases are also to be made easier by, inter alia, raising the limit for the simplified exclusion of pre-emptive subscription rights under company law from the current ten per cent of share capital to 20 per cent.

Level playing field with other EU countries

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VAT regulations for investment funds are to be harmonised with the regulations in other EU Member States. The aim of the German government is to achieve a "level playing field with other European countries". There are also to be changes in relation to liability regulations for crowdfunding projects. Corresponding sections in the Securities Trading Act are to be amended.

International players should also be able to communicate with the German Financial Supervisory Authority in English in future. Communication with the authorities is also to be made easier through digitisation.

Opinion of the Bundesrat

In its statement, the Bundesrat (Federal Council) has proposed numerous amendments to the draft bill. Among other things, the favourable tax treatment of employee shareholdings should also apply to registered shares with restricted transferability.

The Chamber of Federal States (Länderkammer) stated that with reference to the Income Tax Act (ITA): "In relation to start-ups, registered shares with restricted transferability are almost the only shares granted in employee participation programs. According to the draft law, it cannot be assumed in these cases that income (wages) will be realised because it is still impossible for the employee to dispose of the shareholding. As a consequence, the purpose of Section 19a ITA, namely, to promote start-ups by improving employee recruitment and retention through attractive equity participation, would fail. The proposed amendment would mean that Section 19a ITA would also apply to shares with restricted transferability."

In its counterstatement, the German government signalled its willingness to discuss this. It stated: "The Federal Government will examine the Bundesrat's suggestion, taking particular account of the factual significance of the issue for the industry."

Reference

Bundestag online, post from 10 November 2023.

Keywords

Income Tax Act, Real Estate, employee option, investment funds, renewable energy