9 December 2024

tax + legal newsflash

German Pillar 2 legislation amendment act

German Pillar 2 Tax Amendment Act published

On 5 December 2024, the Federal Ministry of Finance published a second draft of the German Pillar 2 Tax Amendment Act (hereinafter referred to as “the draft act”) for feedback by 31 January 2025 as part of the consultation process. In addition to the aspects already included in the first draft, this second draft includes further amendments – inter alia – by implementing the OECD Administrative Guidance from June 2024.

Furthermore, the draft act foresees that other provisions concerning international taxation are to be repealed. These include inter alia the license barrier rule under Sec. 4j of the German Income Tax Act, a rule foreseeing the non-deduction of so-called special business expenses according to Sec. 4i German Income Tax Act and the CFC taxation rules for participations in investment companies under Sec. 13 of the Foreign Tax Act.

In detail

CbCR-Safe-Harbour calculation

1. The definition of "reporting packages" as one of the central elements when applying the CbCR-Safe-Harbour (Sec. 87 para. 2 No. 1 of the draft act) was adjusted in its wording. In addition, a reference to the German implementation of the CbCR rules in Sec. 138a of the German Tax Code was added in order to clarify that the requirements for the CbCR also need to be considered to benefit from the CbCR-Safe-Harbour. Under the new suggestions it is required that only aggregated and not consolidated data are to be used, as required by the OECD Guidance to the CbCR.
2. In Sec. 87 para. 1 sent. 2 of the draft act, it is foreseen that use of the CbCR-Safe-Harbour for a tested jurisdiction cannot be claimed, if adjustments to the data for the CbCR-Safe-Harbour, which are required under the German Pillar 2 act, have not been made. This rigid rule is supposed to apply, even if the omitted adjustment would have had no effect when applying the CbCR-Safe-Harbour. Therefore, all

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adjustments (e.g. elimination of tax expense from uncertain tax positions) need to be made when determining the reporting packages (even if the CbCR-Safe-Harbour would have been passed without such an adjustment).

Calculation of deferred taxes

Sec. 50 para. 1a of the draft act transposes Chapter 2 of the OECD Administrative Guidance from June 2024 into German domestic law. Based on this provision the deferred taxes as part of the amount of adjusted covered taxes shall be calculated based on the difference between the “GloBE book values” (instead of the accounting book values) and the tax book value to the extent adjustment for P2 purposes have been made. The draft act follows the OECD Guidance.

Recapture of deferred tax liabilities (DTLs)

Sec. 50a of the draft act transposes Chapter 1 of the OECD Administrative Guidance from June 2024 into German domestic law. In order to track the reversal of DTLs, taxpayers can choose to aggregate DTLs on a general ledger account level or under certain requirements even on a DTL category level. The reversal of DTLs is then either tracked on LiFo or FiFo basis.

The draft act follows closely the OECD guidance.

Definition of a transparent entity

The definition of transparent entities, tax-transparent entities and tax-transparent structures is expanded in Sec. 7 para. 32 of the draft act in order to implement chapter 5.2 and 5.5. of the OECD Administrative guidance issued in June 2024. In particular, it is envisaged that the definitions are not only determined by the immediate shareholder, but also by an indirect shareholder.

Restructurings

Sec. 66 para. 2 No. 2 of the draft act introduces a unilateral extension of Art. 6.3.2 (b) of the OECD Model Rules (MR). Under Art. 6.3.1 (a) OECD MR the disposing constituent entity is supposed to exclude any gains/losses stemming from the disposition of shares from the computation of the GloBE Income/Loss. It is now foreseen by the draft act that the difference in value of the shares in the disposing entity and the book value of the transferred assets is excluded from the computation of the GloBE Income/Loss of the acquiring constituent entity.

This rule does not apply to the extent the acquiring entity holds a participation in the disposing entity (e.g. in case of an upstream merger) and the sale of the participation would not be an excluded equity gain (not a loss) under Sec. 21 of the Minimum Tax Act (cf. 3.2.1 (c) OECD-MR).

Miscellaneous

The Anti-Hybrid-Arbitrage Arrangement legislation transforming Chapter 2.6 of the OECD Administrative Guidance of December 2023 is applicable for fiscal years beginning after 31 December 2024 for the first time.

In addition, the draft act provides for the abolition of key provisions of the German tax law, such as:

- The licenses barrier rule under Sec. 4j of the German Income Tax Act (effective from the fiscal year 2025 onwards)
- A domestic anti-hybrid ruled foreseeing the non-deduction of expenses triggered in conjunction with partnerships (i.e. so-called special business expenses according to Sec. 4i German Income Tax Act) which are deductible in another jurisdiction as well
- A CFC taxation rule for participations in investment companies under Sec. 13 of the foreign tax code should be abolished with retroactive effect from fiscal year 2022 on.

Any questions?

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

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