ITSNewsalert

New German tax bills

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A German tax bill dealing with portfolio investments is expected to be enacted in the next two weeks. The bill will abolish the participation exemption for dividends received by portfolio investments. Capital gains realized upon disposal of portfolio investments generally will still qualify for the 95% participation exemption, if certain conditions are met.

Further, the upper house of the German legislature has proposed a new Tax Bill 2013 that, like the former Tax Bill 2013 which was rejected by both houses of the legislature early this year, contains provisions addressing the use of specific real estate transfer tax blocker structures, the use of hybrid instruments in German outbound structures, and loss utilization limitations following reorganizations.

These bills could be of particular interest to multinational corporations with German investments. This ITSNewsalert reviews the current status of the two bills and the most important potential revisions to German tax law.

Enactment expected for Tax Bill on Portfolio Investments

The German Federal Council (the *Bundesrat* or upper house of the German Legislature) on March 1, 2013 approved the Tax Bill on Portfolio Investments, following approval by the Federal Parliament (the *Bundestag* or lower house) on February 26, 2013. The new regulations are implemented in response to ECJ case law C-284/09 from October 20, 2011. Based on that the current German regulations on the taxation of dividends received by portfolio investments are against European law.

The bill is expected to be enacted in the next two weeks. The bill will abolish the participation exemption for dividends received by portfolio investments. Capital gains realized upon disposal of portfolio investments generally will still qualify for the 95% participation exemption, if certain conditions are met.

A portfolio investment is an investment in which the shareholder holds directly less than 10% of the share capital of the distributing entity at the beginning of the calendar year in which the dividend is distributed. An acquisition of a participation of at least 10% within a calendar year is deemed to have occurred at the beginning of that calendar year. So, distributions immediately after a major acquisition still qualify for the 95% participation exemption. The bill contains certain provisions for determining shareholding percentages for *Organschaft* groups (German tax consolidated groups), when shares are held via a partnership, and for securities lending.

The bill will apply to all dividends received after February 28, 2013.

For withholding taxes on dividends received by EU/EEA-corporations on portfolio investments before March 1, 2013 and thus covered by the above mentioned ECJ case law, a refund can be claimed for tax years not barred by the statute of limitations.

Tax Bill 2013 targeting RETT blocker structures

The Federal Council has proposed a new Tax Bill 2013. The new Tax Bill 2013, like the former Tax Bill 2013 which was rejected by both houses of the legislature early this year, contains i.a. provisions addressing the use of specific real estate transfer tax (RETT) blocker structures, the use of hybrid instruments in German outbound structures, and loss utilization limitations following reorganizations. Although both houses of the German legislature rejected the previous version of Tax Bill 2013, parts of the new bill would be effective retroactively. In particular, the amended RETT rules would apply to all transactions after December 31, 2012. However, some have questioned whether the retroactive effect of the Tax Bill 2013 is constitutional.

Company Taxation Bill enacted

The Company Taxation Bill was enacted on February 25, 2013. It contains significant amendments to the *Organschaft* regime, such as amended dual consolidated loss rules and the so-called permanent establishment allocation requirement (for discussion of these provisions, see ITSNewsalert, "Germany's Company Taxation Bill and Tax Bill 2013" published in January 2013).

Contacts

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