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German Tax and Legal News

New German government publishes coalition agreement that includes tax policy

Description of tax policy's goals and how to achieve these goals

The "grand" coalition between Germany's Christian-Democrats and Social-Democrats successfully finalized its negotiations and released its draft coalition agreement on 7 February 2018. The agreement describes the government's policy goals, including its goals relating to tax policy, and how it intends to achieve these goals.

Following the federal elections that took place on 24 September 2017 and the unsuccessful first round of coalition talks between the Christian-Democrats, the Green Party and the Liberals, the new government will be established by the Christian-Democrats and the Social-Democrats, the same parties that have governed Germany for the last four years. The coalition agreement includes a description of the future government's policy goals and what measures the new government wants to take. Although the coalition agreement includes few details on concrete tax measures, it does offer some insight into what can be expected. The agreement does not specifically mention any major tax reform projects or changes in tax rates—the focus will be on combatting tax evasion, harmful tax practices and unfair tax competition.

The coalition agreement still has to be confirmed by both political parties, and the Social-Democrats are going to hold a referendum about their participation in the government and the coalition agreement among their party members within the next three weeks. As noted above, the coalition agreement still is a draft version and has not yet been finally signed by the parties. The content, however, is not expected to change.

The most important tax measures mentioned in the coalition agreement are as follows:

Simplification of the tax system and enforcement procedures
One of the goals of the new government is to use electronic data processing to enhance the electronic communications between the tax authorities and taxpayers. The government intends to introduce a pre-populated tax return for taxpayers starting from 2021. The coalition agreement mentions several other measures, including the abolition of the 25% flat tax for interest income for individuals and its support for the introduction of a substantial financial transaction tax at the EU level. The agreement also alludes to strengthening the role of the federal tax office, in particular, as the central point of contact for nonresident taxpayers. The enforcement and refund procedure for import VAT would be enhanced, as this has been identified as a competitive disadvantage for German companies and German seaports and airports.

The coalition agreement specifically states that the new government supports a common tax base in the EU and minimum corporate income tax rates. The government plans to push these goals forward together with the French government, in a joint effort to respond to global changes and challenges, in particular, tax reform in the US.

Combatting tax evasion, harmful tax planning and unfair tax competition
The coalition agreement emphasizes the new government's goals of combatting tax evasion, harmful tax planning, unfair tax competition and money laundering at the national, EU and international levels. The government also intends to restrict "tax dumping" (i.e. excessive measures (in the form of reduced rates, tax holidays, etc.) adopted by governments to attract business).

The new government supports a fair tax burden for multinational companies (with respect to the digital economy, in particular) and aims to achieve this goal within an international framework similar to the OECD BEPS initiative. The agreement cites the implementation of the EU anti-tax avoidance directive (ATAD) into German tax law, the modernization of the domestic controlled foreign company (CFC) rules, the introduction of anti-hybrid rules and changes to the interest deduction limitation rules.

The coalition parties intend to implement measures for a proper taxation of the digital economy and multinational companies and single out certain US tech companies by name. No further description of such measures is however included in the agreement.

To combat VAT fraud in the digital marketplace, rules would be introduced that would impose a secondary liability on the operators of trading platforms that do not prevent VAT fraud by their customers/users. An information reporting obligation for the operators of such platforms about their customers/users would be introduced.

The agreement also highlights the new government's plans to expand the German customs authorities.

Other proposals

Other noteworthy proposals mentioned in the coalition agreement are:

- Tax incentives for small and medium-size businesses that are engaged in R&D activities;
- Tax incentives for start-up companies, particularly in the area of VAT;
- Gradual abolition of the solidarity surcharge. An exemption limit would be introduced as a first step starting from 2021 (mainly for individual taxpayers with lower and medium incomes);
- Favorable treatment for wage tax purposes and higher amortization of electric company cars;
- Amendment of the real estate transfer tax (RETT) law to prevent harmful tax practices through share deals, to be implemented after the release of the final report of a joint task force between the federal government and the various Laender (German states) (see GTLN dated 22 September 2017), and possibly using the additional tax revenue generated by the changes to lower the general RETT rates;
- Overhaul of the general real estate property tax; and
- Measures to ease the burden of tax administration, e.g. measures that would harmonize differences in accounting rules for book and tax purposes and measures that would implement real-time tax audits.

Comments

Although the coalition agreement does not include many specifics, certain takeaways and observations can be made. It is noteworthy that close cooperation with the French government is mentioned several times in the agreement, not only in the tax area. Therefore, it can be expected that certain future measures and initiatives (in particular at the EU level) would be driven by combined efforts of the two governments. Such efforts could even lead to a joint initiative similar to the "Green book" that was published in 2012 (see GTLN dated 15 February 2012).

The wording of the agreement with regard to the implementation of the ATAD could indicate that Germany is not intending to go far beyond what is required as a minimum standard under the directive. The modernization of the CFC rules does not come as a surprise, and has been on the wish list of taxpayers for some time. However, it will be interesting to see whether the 25% tax rate (the rate under which low-taxation exists for purposes of the CFC rules) will be reduced. The introduction of anti-hybrid rules for financing structures has been anticipated since a draft law that proposed anti-hybrid rules in 2014 (see GTLN 22 December 2014) was not implemented.

The new government's plans for amending the interest deduction limitation rules remain to be seen, and it is unclear whether such changes would be in the form of technical amendments, a reduction of the current 30% EBITDA threshold or a response to a case pending before the Constitutional Court (see GTLN dated 16 February 2016). The agreement also does not detail the measures that would be introduced for taxation of the digital economy for multinational companies, and whether these would be aligned with the EU initiative on taxing the digital economy.

The reference in the coalition agreement to possible changes to the RETT rules indicates that the past initiative of the Laender has not lost its momentum and remains high on the agenda (e.g. the states have been examining ways to lower the threshold that triggers the RETT in share deal transactions and measures to tighten the RETT rules). Whether this would result in a reduction of the current 95% threshold for the transfer of shares in real estate-owning companies and what such a reduced threshold would be should be monitored.

The coalition agreement is a policy document, rather than draft law, and while taxpayers should not rely on the statements in the agreement, they should take the announcements in the agreement into consideration and closely monitor future developments.
