

Federal cabinet approves draft bill to combat tax avoidance

Taxpayers would be subject to increased duties to cooperate, and financial institutions would be subject to increased disclosure requirements

A package of measures to ensure more transparency of domicile companies was approved by Germany's federal cabinet on December 21, 2016. The draft bill includes measures that would enhance the duties of taxpayers to cooperate and would impose more disclosure requirements on financial institutions. The following are some of the more important measures contained in the draft bill:

- The existing disclosure requirements relating to the acquisition and sale of foreign participations would be standardized for both direct and indirect participations (i.e. a participation of 10% or more) and would be extended to apply to the sale of foreign participations. The new rule would apply to transactions taking place after December 31, 2017.
- The German tax authorities would have to be notified when a person obtains majority control (whether direct or indirect) of a company under Germany's company law, or the financial or business affairs of a company located outside the EU. Failure to comply would result in the imposition of a penalty of up to EUR 25,000. This rule would apply to transactions taking place after December 31, 2017. However, following a grandfathering period, the disclosure requirements would be extended to major controls obtained before January 1, 2018 and that still exist on that date.
- The bank secrecy provision in tax matters would be abolished. This measure would become effective one day after the announcement of the law.
- The automatic account data access procedure would be extended to enable the German tax authorities to determine whether a German taxpayer is entitled to dispose of, or is the beneficial owner of, an account or a deposit of an individual, partnership, corporation, association or legal estate that has its place of residence, habitual abode, legal seat, main office or place of management abroad. In addition, the data retention period for bank institutions would be extended to 10 years where an account is closed.
- The possibility of collective requests for information would be legally enacted on the basis of the jurisprudence of the Federal Tax Court.
- Financial institutions would be required to collect the tax identification number of the account holder or any other person entitled to dispose of the account and any other beneficial owner of the account. The information would be transmitted to the German tax authorities under the account data access procedure.
- A new retention obligation of six years would be introduced for taxpayers that alone, or together with related persons, hold majority control over the corporate, financial or business affairs of a non-EU company. The retention obligation would apply to records relating to revenue and expenses of the company. A tax audit of such taxpayers would be possible without special reasons being required.
- Tax evasion based on hidden business relationships with non-EU entities controlled by the taxpayer would be defined as "particularly severe tax evasion", with the result that the statute of limitations period for criminal prosecution would be extended to 10 years. Further, the statute of limitations for tax assessments would be extended from 5 to 10 years.

The parliamentary legislative procedure will start with an initial consultation on the draft law by the Upper House of Parliament on February 10, 2017.

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