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German Tax and Legal News

MOF publishes revised guidance on notification obligations for foreign transactions

Amended guidance aims to alleviate the notification requirement for changes in ownership of foreign publicly traded companies.

On 18 July 2018, Germany's Federal Ministry of Finance published revised administrative guidance on the notification requirements in the Fiscal Code. German resident taxpayers must notify the tax authorities of the following transactions that take place after 31 December 2017:

- Acquisition or establishment of a foreign business or permanent establishment;
- Acquisition, disposal or any other change in the participation in a foreign partnership;
- Acquisition or disposal of shares in a foreign corporation, body of persons or estate if this results in a shareholding of at least 10% and the acquisition costs of the shares amounts to more than EUR 150,000; or
- Direct or indirect control of a company situated in non-EU/EFTA countries, whether alone or together with related persons, if control is established for the first time.

The amended guidance aims to ease the notification requirements where there is a change in ownership of publicly traded companies, by stating that notification is not required if a share of less than 1% in a publicly traded company is acquired or sold, even if the price of the share exceeds EUR 150,000. To qualify as a publicly traded company, the principal class of shares of the company must be frequently traded on a recognized stock exchange in the EU/EEA or on certain other stock exchanges according to section 193 of the Capital Investment Act.

In general, the notification must be filed with the German company's annual tax return covering the period in which the triggering event took place. Failure to comply could result in a penalty of up to EUR 25,000.

Direct or indirect control over a company established before 31 December 2017, but which has not yet been disclosed to the German tax authorities, also is subject to the notification requirement.

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