Germany

Ministry of Finance Publishes Draft Bill to Implement Minimum Global Taxation, Pillar Two Rules, Amends CFC-Rules

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On 10 July 2023, the German Ministry of Finance published a draft bill for the implementation of the Minimum Taxation Directive (2022/2523) (Directive) to ensure minimum global taxation for multinational groups and large domestic groups in the EU (*Minimum Tax Directive Implementation Act* (*Entwurf eines Gesetzes für die Umsetzung der Richtlinie zur Gewährleistung einer globalen Mindestbesteuerung für multinationale Unternehmensgruppen und große inländische Gruppen in der Union und die Umsetzung weiterer Begleitmaßnahmen*)) and the OECD Pillar Two Rules. The EU Member States agreed on Directive 2022/2523 to ensure a global minimum level of taxation for multinational enterprise groups and large domestic groups within the EU on 15 December 2022 (Minimum Tax Directive, *see* Council Formally Adopts Minimum Taxation Directive (16 December 2022)).

The draft bill serves to implement the Directive and to ensure minimum global taxation for multinational enterprise groups and large domestic groups in the EU. The Directive in turn transposes the Global Anti-Base Erosion Model Rules developed by the Inclusive Framework (IF) on BEPS into European law. The draft bill also takes into account the associated commentary published by the IF on BEPS on 14 March 2022 (*see* OECD Releases Commentary on GloBE Model Rules (15 March 2022)), as well as the further international work within the GloBE Implementation Framework, in particular the regulations for so-called safe harbours presented on 15 December 2022 (*see* Pillar Two: OECD Releases Implementation Package for GloBE Rules (21 December 2022)).

The draft bill is largely based on the EU Directive, the OECD Model GloBE Rules (*see* Newly Released OECD Model Rules Bring Implementation of GloBE Proposal Into Play (20 December 2021)) as well as other OECD publications. The implementation of the EU Minimum Tax Directive is to be set out in a separate law, which comprises a total of 95 paragraphs and is divided into 11 parts.

In addition, the draft bill provides for further changes to existing tax laws in connection with the implementation of the Directive with effect from 1 January 2024. The draft bill provides for the abolition of section 4j of the Income Tax Act, which limits the deductibility of intra-group royalty payments if the recipient is either not taxed or is subject to a low tax rate due to the application of a preferential regime that does not comply with the OECD's work on harmful tax practices. The draft bill further foresees a reduction of the low taxation threshold under the German CFC-rules from currently 25% to 15% and an exemption of any deemed dividend under the CFC-rules from municipal business tax.

The Minimum Tax Directive Implementation Act will firstly apply to fiscal years beginning after 30 December 2023, whereas the provisions of the undertaxed payment rule (UTPR) will firstly concern fiscal years beginning on or after 30 December 2024.

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