Germany

Ministry of Finance Publishes Draft Growth Opportunities Bill - Direct Tax Measures

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The Ministry of Finance published a draft bill to strengthen growth opportunities, investment, and innovation as well as tax simplification and tax fairness (*Gesetz zur Stärkung von Wachstumschancen, Investitionen und Innovation sowie Steuervereinfachung und Steuerfairness*). In addition to the measures already reported, *see* Federal Cabinet to Cut Corporate Taxes by EUR 7 Billion (30 August 2023), the bill provides for the following important direct tax measures:

- limiting the 15% profit-independent grant for climate protection investments increasing energy efficiency to investment of at least EUR 5,000. The grant would not apply to combined heat and power, district heating and/or district cooling, and energy installations using fossil fuels including natural gas. The grant maximum is EUR 30 million, applicable to investments between 31 December 2023 or the bill's announcement date, and 31December 2029. Taxpayers can submit up to four applications during this period. In the case of multiple grants, the total must not exceed EUR 30 million. A minimum assessment basis of EUR 10,000 is needed for the investment premium. Taxpayers must reduce the investment's depreciation base with the value of the grant; exceeding residual value adds to taxable profits. Germany seeks EU Commission permission per State aid rules for the grant;
- adjusting the interest deduction limitation rules in article 4 of the Personal Income Tax Act and article 8a of the corporate income tax act to comply with the Anti-Tax Avoidance Directive (2016/1164) (ATAD). This includes abolishing the previous group-related nature of the interest barrier for the stand-alone and escape clause. Currently, interest may be deducted without limitation if the company does not belong to a group of related companies, or belongs to such a group only partially (stand-alone clause);
- reducing the maximum deduction for interest on cross-border loans to 2% above the basis interest under civil law from the current 3.62%;
- currently, the escape clause under the interest deduction limitation applies to qualifying interest payments for a company's debt or another group member's debt to a substantial shareholder of a group member, a person related to that shareholder or a third party with recourse to such a shareholder or related person, not exceeding 10%. From 2024, the payments to all qualifying shareholders will again be consolidated;
- extending the loss carryback from 2 to 3 years and making increased loss utilization limits of EUR 10 and EUR 20 million (for married couples) permanent. Currently, loss carry forward per year is unlimited up to EUR 1 million or EUR 2 million (for married couples). For the excess, the loss carryforward is limited to 60% of the total amount of income in the year in which the loss relief is claimed. This 60% carry-forward threshold will temporarily increase to 80% for 4 years from 2024. This increase will also apply to the municipal business tax;
- allowing all partnerships to opt for corporate taxation, controlling partners will become subject to capital gains tax only after profit distributions;
- increasing the maximum amount that can be written off in the year of purchase for low-value assets from EUR 800 to EUR 1,000;
- currently, taxpayers can create a collective item for movable fixed assets if their acquisition or production costs surpass EUR 250 but not EUR 1,000. The maximum limit will increase from EUR 1,000 to EUR 5,000, and the dissolution period will shrink from 5 years to 3 years.
- raising special depreciation for investment costs applicable to companies with profits not exceeding EUR 200,000 in the year before the investment to 50% from the current 20%;
- maintaining the temporary reintroduction of the declining balance for movable fixed assets for assets purchased or manufactured from 30 September 2023 until 1 January 2025. To mitigate the economic impact of the COVID-19 pandemic, the government reintroduced the declining-balance method temporarily for movable fixed assets acquired or produced from 1 January 2020 through 31 December 2022. The annual rate of depreciation was limited to two and a half times the allowable straight-line rate with an overall maximum of 25%;
- increasing the exemption limit for withholding tax (paid amount plus tax) from EUR 5,000 to EUR 10,000 as of 1 January 2024;

- the current benefit in kind for electric cars is set at 25% of the dealer's list price if the price doesn't exceed EUR 60,000. This threshold will be increased to EUR 80,000;
- allowing foreign non-profit organizations based in the EU and EEA to claim reimbursement of capital gains tax;
- extending the notification obligation for cross-border tax arrangements to domestic arrangements: and
- increasing the turnover threshold for keeping accounting books from EUR 600,000 to EUR 800,000 and the profit threshold from EUR 60,000 to EUR 80,000.

The full text of the draft bill is available here (in PDF and in German).

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