Germany

Parliament's Lower House Approves Draft Growth Opportunities Bill

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On 17 November 2023, the lower house of the German parliament (*Bundestag*) approved the 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*) with some amendments. For details of the draft bill, *see* Ministry of Finance Publishes Draft Growth Opportunities Bill - Direct Tax Measures (5 September 2023).

The planned reduction of the maximum deduction for interest on cross-border loans to 2% above the basis interest under civil law has been cancelled. Instead, the approved version introduces a new provision to the German transfer pricing rules in section 1 of the Foreign Tax Act (FTA). The proposed Section 1(3d) of the FTA states that a cross-border financing relationship within a multinational group of companies violates the arm's length principle if it reduces the income of the taxpayer. In such cases, an income adjustment is foreseen if either:

- the taxpayer cannot credibly demonstrate that (a) it could have paid the interest payments for the entire financing term from the outset (debt capacity) and (b) the financing is economically required and used for the business purpose (financing requirement); or
- the interest rate payable by the taxpayer for a cross-border financing relationship with a related party exceeds the interest rate at which the enterprise could get a loan from a third party based on the corporate group's credit rating. If, in an individual case, it can be proven that a rating, derived from the corporate group rating, complies with the arm's length principle, this must be considered when determining the arm's length interest rate.

Furthermore, the approved version of the bill has constrained the planned temporary increase of the 60% loss-carry forward threshold to 80% to a limit of 75%.

Moreover, the bill extends the application of the increased loss utilization limits to EUR 10 million and EUR 20 million (for married couples) to tax years 2024 and 2025. From tax year 2026, these limits will be permanently set at EUR 5 million and EUR 10 million (for married couples).

The approved version of the bill postpones the introduction of a 15% profit-independent investment allowance for climate protection investments aimed at increasing energy efficiency to 1 March 2024.

The bill is still subject to approval by the Federal Council (*Bundesrat*).