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Global Tax Alert

German Federal Parliament approves *Annual Tax Act 2019* and *Research Allowance Act*

On 7 November 2019, the German Federal Parliament (Bundestag) passed the *Annual Tax Act 2019*. The initial draft bill was published on 7 May 2019 and an amended draft bill was published on 30 July 2019.[1] The German Federal Council (Bundesrat) is expected to approve the *Annual Tax Act* on 28 November 2019. The changes shall generally come into effect as of 1 January 2020.

Simultaneously, the German Federal Parliament also passed the *Research Allowance Act (Forschungszulagengesetz)* which is expected to be approved by the German Federal Council on 28 November 2019 and shall enter into effect as of 1 January 2020.

On the *Real Estate Transfer Tax Reform* which was formally separated from the *Annual Tax Act 2019* earlier in July,[2] the German Federal Government recently announced that the further legislative procedure will be postponed until the first half of 2020. Apparently, the legislator requires more time to discuss and agree on the various technical details around the planned changes. This delay should only be interpreted as a delay, and nothing else. The German Government has made it clear that there is a general consensus that the changes are necessary and will be implemented, and that the delay is due to discussions around technical details such as an exemption for publicly traded entities. Whether the delay of the legislative process will affect the effective date of the new law, which was intended to be in place and applicable as of 1 January 2020, is unclear.

Also, the long-expected draft legislation of the German implementation of the European Union (EU) Anti-Tax Avoidance Directive (ATAD) I/II seems to be delayed once more as well and may not be published before Q1 or even Q2 2020. Whether the delay will affect the effective date of the law is unclear, but it is expected that the German Government will seek to honor the effective date as prescribed by the Directives (1 January 2020). A draft of the German implementation will most likely not be available before year end, though the rules may still be implemented with retroactive effect. Taxpayers therefore should review whether existing financing structures should be aligned to withstand at least the minimum standards set forth by the directive by the end of 2019. Further, it is unclear whether the rules will be effective for fiscal years ending or, alternatively, beginning on or after 1 January 2020. Hence, it should be reviewed whether it might be beneficial for entities with a fiscal year deviating from the calendar year to change their fiscal year to the calendar year for 2019 (and re-adjust it again later in 2020) to safeguard deductions in 2019.

Annual Tax Act 2019

The *Annual Tax Act* which was passed on 7 November is widely in line with the earlier draft bills (see earlier EY Global Tax Alerts on detailed discussion).

One important item which was subject to controversial debates, has not changed: The application of the participation exemption for Trade Tax purposes on dividends will in the future uniformly require a minimum participation of at least 15% at the beginning of the respective tax period. Whereas this threshold was already previously applied for domestic and third-country dividends, this means an increase of the minimum participation for EU Member State dividends from previously 10% to 15%.

Besides this, the bill contains a new rule which defines which types of vouchers and cash cards an employer can grant in the future as a benefit in kind subject to preferential taxation to its employees. This will include so called closed-loop cards which can be used to purchase goods or services from the issuer of the voucher (e.g., rechargeable gift cards for retail shops) and controlled-loop cards which can be used to purchase goods or services from the issuer of the voucher or certain limited acceptance points. It shall however not include open-loop cards which can be used as cash surrogates in independent retail systems.

Research Allowance Act

The *Research Allowance Act* is intended to increase the attractiveness of Germany as a research location. This bill has preceded several years of political and public discussion around the first-time introduction of tax research and development (R&D) incentives in Germany as well as after certain technical changes to the previous draft bill which became necessary after a dialogue with the European Commission on EU State Aid concerns.

According to this bill, a research allowance may be credited against the personal or corporate income tax payable or in the case of a loss situation paid directly to the taxpayer. The research allowance is granted for fundable expenses of fundable R&D activities. Fundable R&D activities include basic research, applied research and experimental development which fulfil the five criteria of the Frascati Manual of the Organisation for Economic Co-operation and Development (novel, creative, uncertain, systematic, transferable and/or reproducible). It does not include product development activities which aim to bring a new product to the market.

The assessment base includes fundable expenses (e.g., wages that are subject to wage tax) up to a maximum of €2 million per year and per company, whereas the amount of the allowance is 25% of the assessment base. Thus, the maximum allowance amount is €500,000 per year and per company. However, this amount is only granted once for an affiliate group of companies. In the case of a research cooperation between non-affiliated companies, every eligible party may be granted the maximum allowance. One item which was changed to accommodate political and public demands is that in case of contract research the customer and not the contractor is eligible to receive the funds.

Endnotes

1. See EY Global Tax Alert, *Germany publishes draft Annual Tax Act 2019 and draft bill on Real Estate Transfer Tax Reform*, dated 7 August 2019.
2. Ibid.

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