17 December 2019
Global Tax Alert

German Government postpones adoption of draft ATAD implementation law

On 10 December 2019, the first draft of the German "Law implementing the EU Anti-Tax Avoidance-Directive" ("Draft Law"; Council Directives 2016/1164 of 12 July 2016, and 2017/952 of 29 May 2017, "ATAD") was released for public consultation. The further legislative process was expected to take place very quickly; Government (Bundeskabinett) approval of the bill was already expected on 18 December.

The 10 December Draft Law includes significant changes to the German taxation of cross-border transactions. It included not only an implementation of the anti-hybrid rules of the ATAD Directive, but also, inter alia, a comprehensive reform of German transfer pricing rules, in particular those relating to cross-border intercompany financing, and a reform of the German controlled foreign corporation (CFC) rules, which both to a great extent tightened significantly the currently applicable rules in these areas. For further details, see EY Global Tax Alert, *Germany publishes draft ATAD implementation law*, dated 12 December 2019.

There is currently no official information available concerning the reasons for the postponement. A major point of contention seems to be the absence of a proposal to lower the current high tax kickout exception rate (25%) on CFC income of a German taxpayer. Since the ATAD Directive mandates implementation of the standards set by the directive into German law as of

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31 December 2019, it is expected that the German Ministry of Finance will push to restart the legislative proceedings with the introduction of a revised draft as soon as possible in January 2020. A revised draft could become available as early as mid-January 2020.

We will continue to report on the progress of this legislative development.

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