Germany expected to enact Company Taxation Bill shortly

February 6, 2013

In brief

The German Federal Council approved the Company Taxation Bill on February 1, following approval by the Federal Parliament on January 17. We expect Germany to enact the bill in the upcoming weeks; it must be signed by the Federal President and published in the Federal Law Gazette.

The bill could particularly affect US multinational corporations with investments in German tax consolidated groups (*Organschaft*). The bill substantially broadens the dual consolidated loss (DCL) rules applicable to *Organschaft* structures. It also imposes an additional *Organschaft* requirement under which shares in a controlled entity must be allocated to a German permanent establishment (PE) of the controlling entity throughout the *Organschaft's* existence. Further amendments regard a potential 'healing' for improperly executed profit and loss transfer agreements (PLTA) and rules dealing with the required loss absorption wording in the PLTA.

Other important legislation — Tax Bill 2013 — was rejected by both legislative bodies and its future remains unclear. The bill could be referred back to the mediation committee or folded into a new legislative initiative. Among its key provisions, Tax Bill 2013 would shut down selected real estate transfer tax blocker structures, introduce generally the authorized OECD approach to determining PE income, and eliminate the 95% participation exemption for certain hybrid instruments.

The potential elimination of the participation exemption regime for dividends and capital gains from portfolio investments is included in another pending bill — the Tax Bill on Portfolio Investments. That bill likely will be taken up at the next meeting of the mediation committee, which is expected to occur on February 26, 2013.

For prior coverage of the Company Taxation Bill and Tax Bill 2013, see European Tax Newsalert, "Germany's Company Taxation Bill and Tax Bill 2013: Latest proposals and status," December 21, 2012.

The takeaway

Companies with German investments should consider the following actions in response to the Company Taxation Bill's expected enactment:

- Review German Organschaft groups headed by a PE and German partnerships with foreign partners in light of the PE allocation requirement.
- Analyze the amended DCL rules' impact on the tax deductibility of German losses, and revisit existing financing structures.
- Review existing profit and loss transfer agreements in light of the required loss absorption wording.
- Consider the retroactive effects of the new DCL rules and PE allocation requirements.

Let's talk

For a deeper discussion, please contact:

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