
German legislation impacts portfolio investments and real estate transfer tax structures

March 1, 2013

In brief

Enactment expected for Tax Bill on Portfolio Investments

The German Federal Council (the *Bundesrat* or upper house of the German Legislature) on March 1 approved the Tax Bill on Portfolio Investments, following approval by the Federal Parliament (the *Bundestag* or lower house) on February 26, 2013.

The bill is expected to be enacted in the next two weeks. The bill will abolish the participation exemption for dividends received by portfolio investments. Capital gains realized upon disposal of portfolio investments generally will still qualify for the 95% participation exemption, if certain conditions are met.

A portfolio investment is an investment in which the shareholder holds directly less than 10% of the share capital of the distributing entity at the beginning of the calendar year in which the dividend is distributed. An acquisition of shares within a calendar year is deemed to have occurred at the beginning of that calendar year. The bill contains provisions for determining shareholding percentages for *Organschaft* groups (German tax consolidated groups) and when shares are held via a partnership.

The bill will apply to all dividends received after February 28, 2013.

Revival of a 'light' Tax Bill 2013 targeting RETT blocker structures

The Federal Council has proposed a revised 'light' Tax Bill 2013. The new Tax Bill 2013, like the previous version, contains provisions addressing the use of specific real estate transfer tax (RETT) blocker structures, the use of hybrid instruments in German outbound structures, and loss utilization limitations following reorganizations. Although both houses of the German legislature rejected the previous version of Tax Bill 2013, parts of the new bill would be effective retroactively. In particular, the amended RETT rules would apply to all transactions after December 31, 2012. **Note:** Some have questioned whether the retroactive effect of Tax Bill 2013 is constitutional.

Company Taxation Bill enacted

The Company Taxation Bill enacted on February 25, 2013 contains significant amendments to the *Organschaft* regime, such as amended dual consolidated loss rules and the so-called permanent establishment allocation requirement (for discussion of these provisions, 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:

- We expect enactment of the Tax Bill on Portfolio Investments, so taxpayers should review existing

shareholding structures for German investments, particularly minority shareholdings or shareholdings held via German or non-German partnerships.

- Taxpayers should monitor legislative actions regarding Tax

Bill 2013, in particular provisions addressing RETT blocker structures. If this bill is enacted as currently drafted, current reorganizations based on RETT blocker structures risk triggering the RETT.

Let's talk

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