New German Government announces its support for the OECD's BEPS initiative

December 17, 2013

In brief

One of the key tax strategy announcements from the new German Coalition Government has been its commitment to the fight against tax evasion and tax avoidance. In its achievement of this strategy the Coalition will focus on the presumed cross-border profit shifting by multinational enterprises, in support of the OECD's "Base Erosion and Profit Shifting (BEPS)" initiative, by implementing further legislative tax measures. Whilst at this stage the Coalition has only indicated the potential areas of change to specific German tax provisions, the overall message points to a clear directional shift regarding the future tax policy of the new German government.

In detail

Fighting tax evasion and curtailing tax avoidance

In their Coalition Agreement the two parties to the new German Coalition Government (Chancellor Angela Merkel's Christian Democratic Union (CDU) Party and the Social Democratic Party (SPD)) have devoted a separate section to their tax policy goals of fighting tax evasion and curtailing tax avoidance. The Coalition's focus will be on the prevention of both double non-taxation of income and double deductibility of business expenses. Integral cornerstones of their policy will be the battle against the presumed cross-border profit shifting by multinational enterprises and circumvention of harmful tax competition between countries. To support the success of these policies, the Coalition plan to establish a comprehensive transparency framework in relation to the sharing of tax information between both German and foreign national tax authorities.

The Coalition announced its support for the OECD's BEPS initiative, which is currently projected to be completed by 2015. In addition the Coalition parties have agreed to implement specific German tax legislation in this area in case the completion of the OECD's BEPS initiative is delayed. If required, the Coalition will legislate in anticipation of measures at the international (i.e. OECD) level. Examples of envisaged unilateral measures by the German government include:

- Limitation of the tax deductibility of payments to "letterbox" companies that lack sufficient business activity and substance.
- Broadening the scope of the European Union (EU) interest directive to cover all forms of capital income and make it applicable to all individuals and corporations.
- Implementation of a public register for all business parties involved in trust structures on the basis of Germany's Prevention of Money Laundering Act.

- Ensuring that any German tax deduction for license expenses corresponds to an appropriate taxation of the license income in the recipient country.
- Introduction of the EU's "immediate response mechanism" to combat VAT fraud by making Germany's Federal Central Tax Office (*Bundeszentralamt für Steuern, BZSt*) the first contact point for the German federal states tax authorities, for all business sectors.
- Pushing legislation at the international and European level to curtail tax avoidance by the use of offshore financial centres.
- Possible regulatory sanctions, including the withdrawal of banking licenses in cases of systematic infringement of German tax law by banks doing business in Germany.
- Extension of the period (to the last ten non-statute-barred years) for which complete disclosure of all tax relevant information must be provided to gain immunity from punishment where a voluntary report of tax evasion is made by a German taxpayer.

In addition to the above measures, the Coalition has also stated that the recently published German model tax treaty will be used to serve the twin goal of fighting tax evasion and curtailing tax avoidance. As a result the German tax authorities will look to discuss appropriate clauses with treaty partners and include them in existing and future double tax treaties.

Transparency and information exchange with foreign tax authorities

To establish a greater degree of transparency in tax matters amongst German and foreign tax authorities, the Coalition also seeks legislative action at the EU and the OECD level.

For instance, an EU obligation for country-by-country reporting covering income earned, losses incurred and taxes paid is intended to be supported by the new German government – with primary application in the banking and commodity trade sectors.

Moreover, both parties to the Coalition have, though rather vaguely, also agreed to support harmonization of company taxation across the EU. A key part of this initiative is the introduction of a common consolidated corporate tax base across the EU.

Furthermore, the Coalition will support a revision of the OECD's current model convention on exchange of information, to ensure that automatic exchange of tax-relevant information becomes an international standard. In the meantime, respective information exchange clauses will be included in Germany's bilateral and multilateral tax treaties.

The takeaway

After the final signing of the Grand Coalition Agreement on 16 December 2013, the new Coalition Government can start to operate. Although the Coalition Agreement only indicates potential changes to German tax legislation, the overall direction of the new German Government in relation to tax policy is clear: Fighting tax evasion and tax avoidance with a focus on presumed cross-border profit shifting by multinational enterprises.

Taxpayers should therefore carefully consider the potential impact of German legislative tax changes on their business structures. As new tax regulations are introduced it will be important for taxpayers to ensure that their tax arrangements continue to be compliant with German tax law.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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