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Ministerial draft bill for a Growth Opportunities Act

On 17 July 2023, the Federal Ministry of Finance (BMF) published a ministerial draft bill for an "Act to strengthen growth opportunities, investment and innovation as well as tax simplification and tax fairness" (Growth Opportunities Act).

The aim of the law is to increase growth opportunities for the economy, to enable investment and innovation in new technologies and to strengthen the competitiveness of Germany as a business location. To this end, the liquidity situation of companies is to be improved and impulses for investments are to be set (e.g. better use of tax losses, investment premium for climate protection measures, expansion of R&D allowance, improvement of depreciation). In addition, numerous measures are planned to simplify the tax system and to relieve small businesses in particular of bureaucracy by raising thresholds and lump sums (e.g. simplification of the reporting procedure for cash register systems, simplification of wage tax, raising the limits for the obligation to keep accounts and for the actual taxation for VAT purposes). In addition, unwanted tax arrangements are to be effectively prevented (e.g. reform of the interest limitation rule and introduction of an interest rate barrier, reporting obligation for domestic tax arrangements, prevention of tax arrangements for investment funds).

The draft bill contains a large number of amendments in various areas of tax law in a total of 44 articles.

1. Restrictions on the deduction of interest expenses

The bill provides for measures regarding the deduction of interest expenses as business expenses, which may have considerable effects. On the one hand, the interest limitation rule (ILR) is to be adapted to the requirements of the EU Anti-Tax Avoidance Directive (ATAD) and comprehensively reformed on this occasion, and on the other hand, an interest rate barrier (§ 4l Income Tax Act-draft) is to be newly introduced. The introduction of an interest rate barrier is agreed in the coalition agreement of the governing parties. The changes to the law are to come into force on 1 January 2024.

Content

Reform of the interest limitation rule

The **exemptions** from the ILR are to be revised: The de minimis threshold of three million euros is to be converted into an allowance, i.e. only the net interest expenditure in excess of this amount is subject to the ILR. At the same time, a so-called "anti-fragmentation regulation" is to be introduced. This means that the allowance is not granted separately for each business within the meaning of the ILR (e.g. for each subsidiary). Instead, similar businesses that are under uniform management are considered as one business for the purposes of the tax allowance. The allowance is to be divided among the associated businesses. The allowance cannot be used for interest carried forward from previous years. The other exemption regulations, the stand-alone clause and the equity escape, as well as the related regulations on external shareholder financing (§ 8a para. 2, 3 Corporate Income Tax Act) should be completely repealed.

The **definition of interest** is to be expanded. In future, interest expenses shall also include economically equivalent expenses and other expenses in connection with the procurement of borrowed capital (the wording of the law refers to Art. 2 of the ATAD). The term interest income is to be adjusted accordingly. Interest expenses and income from the financing of certain public infrastructure projects are to be excluded from the definition of interest.

Introduction of an interest rate barrier

The interest rate barrier is intended to introduce a ban on deducting business expenses for interest expenses that exceed a legally defined maximum rate (§ 4l Income Tax Act-draft). However, the regulation is only to apply to interest expenses based on a business relationship between related parties.

The **maximum deductible rate** should generally correspond to the base interest rate according to German Civil Code (BGB) increased by two percentage points. As of 1 January 2023, this would correspond to 3.62%. However, the taxpayer should have the opportunity to prove that both the creditor and ultimate parent company could only have received the capital at an interest rate higher than the maximum rate. If this can be proven, then the interest rate that could have been achieved in the best case is to be regarded as the maximum rate for the purposes of the interest rate barrier.

In addition, a **counter-evidence option** based on the motive test of the CFC rules (§ 8 para. 2 Foreign Transaction Tax Act) is provided for. The interest rate barrier should not apply if the creditor carries out a substantial economic activity in his country of residence.

2. Improvement of the tax loss deduction

The draft law provides for improvements in both loss carry-back and loss carry-forward:

Loss carry-back: The maximum permissible period for a loss carry-back is to be extended from currently two years to three years, for the first time for losses in 2024. In addition, the maximum amount of 10 million euros, which is currently limited up to and until 2023, is to be retained permanently.

Loss carry-forward: The basic amount within the framework of the minimum taxation (unlimited loss offset only up to 1 million euros, above that only on a pro-rata basis) is to be temporarily suspended in 2024 to 2027. Thus, losses could be deducted without limitation up to the amount of current profits. However, a reservation is still noted in the draft law, according to which "the concrete amount of the improved loss deduction still has to be agreed in the departmental vote". Starting in 2028, the base amount is to be raised permanently to 10 million euros. The changes are to be applied accordingly to German trade tax.

3. Climate protection investment premium for movable assets

With the Growth Opportunities Act, a temporary investment premium is to be introduced to promote investments in climate protection (Climate Protection Investment Premium Act). This implements a plan from the coalition agreement of the governing parties, in which, however, on the one hand also the term "super depreciation" was used and on the other hand investments in digital assets were also mentioned.

The main features of the investment premium at a glance:

- **Eligibility**: all taxable enterprises irrespective of legal form, size and activity (including partnerships).
- **Beneficiary investments**: Acquisition and production of new depreciable movable assets of fixed assets as well as measures on existing movable assets of fixed assets (subsequent acquisition/production costs); acquisition/production costs of at least 10,000 euros per asset.
- **Further requirements**: Assets must serve to improve energy efficiency in the company, be included in a savings concept (prepared with the help of an energy consultant or an in-house energy manager) and be able to exceed applicable EU standards.

- **Limited funding period**: Investments that were started and completed after the day of the promulgation of the law and before 1 January 2028 (approx. four years); it should be possible to complete the investment after 31 December 2027, provided that expenses were incurred prior to this date (partial production costs or advance payments on acquisition costs).
- **Amount of funding**: 15% and a maximum of 30 million euros per beneficiary for the entire funding period. The basis for assessment is the sum of the proven acquisition/production costs, up to a maximum of 200 million euros per beneficiary for the entire funding period, taking into account the requirements of EU state aid law (30 million euros per company and investment project including further state aid).
- **Application**: Applications can generally be submitted at the time of purchase/production, subject to the above-mentioned preconditions. A maximum of two applications per eligible person are to be permitted in the entire funding period until 31 December 2029.
- **Treatment of the investment premium for (corporate) income tax purposes**: receipt as a contribution without affecting profit or loss (according to the explanatory memorandum to the law). The depreciation of the investment goods benefiting from the investment premium is calculated according to the acquisition/production costs reduced by the investment premium.

4. Improvement of depreciation possibilities and further measures for investment incentives

Improvement of depreciation possibilities

Low-value assets: The amount limit of the acquisition or production costs for the immediate depreciation of low-value assets is to be raised from 800 euros to 1,000 euros.

Collective item method: In the case of the depreciation option for collective items, the amount limit is to be raised from 1,000 euros to 5,000 euros and the liquidation period reduced from five years to three years.

The **special depreciation** (in the year of acquisition and in the four following years) for businesses that do not exceed the profit limit of 200,000 euros in the year preceding the investment is to be increased from currently up to 20% of the investment costs to up to 50%.

The amendments to the law are to be applied for the first time to assets that are acquired, produced or incorporated into business assets after 31 December 2023.

Expansion of research allowance

The Research Allowance Act provides for various measures to improve the framework conditions and provide incentives for investment:

- Expansion of the **eligible expenses** (currently: only wages) to include the reduction in value of usable movable assets of the fixed assets used in the research and development project benefiting from the subsidy, which are necessary and indispensable for the implementation of the research and development project; the eligible cost share for contract research is to be increased accordingly from 60% to 70%. First-time application for financial years beginning after 31 December 2023.
- Increase of the **maximum assessment basis** for the research allowance from currently four million euros to twelve million euros for eligible expenses incurred after 31 December 2023. The maximum research allowance will thus triple from one million euros to three million euros.
- **Aid regime**: The application of the EU De-minimis Regulation is to be limited to the lump sum support of an individual entrepreneur's own work. In future, the subsidisation of the remuneration for activities paid to partners in a joint venture is to be based on the General Block Exemption Regulation (GBER).

Extended property deduction - solar power generation and charging stations

In the case of the extended property deduction (i.e. deduction of the profit of real estate companies that exclusively manage their own property by the part of the profit that is attributable to the management and use of their own property for the purposes of trade tax), the limit for the harmlessness of income from solar power generation on buildings and the operation of charging stations is to be raised from the current 10% to 20%, for the first time for 2023.

Investment funds: Increase of the harmlessness limit for entrepreneurial management

The limit for tax-exempt income from active entrepreneurial management of special investment funds is to be raised from the current 10% to 20% from 2024 onwards, provided that the income

comes from the operation of renewable energy systems or from the operation of charging stations for electric vehicles or electric bicycles. The amendment is to be applied as of 1 January 2024.

5. Wage tax / employees

Increase of lump sums and value limits

Meal allowances: Meal allowances are to be raised from the current 28 euros to 30 euros and 14 euros to 15 euros from 2024.

Company events: The cost limit for benefits on the occasion of company events is to be raised from the current 110 euros to 150 euros from 2024.

Home office for cross-border activity

For cross-border employees who have neither their domicile nor their habitual residence in Germany, a "home office regulation" is to be introduced within the framework of limited tax liability for non-self-employed activities in Germany. According to this, the activity is deemed to be carried out in Germany (fiction) if the taxpayer carries out the activity in another state, e.g. in his home office, and the relevant DTA or a bilateral agreement assigns the right of taxation to Germany. Germany concluded bilateral agreements to this effect with its neighbouring states during the Corona pandemic. The regulation is to apply from 2024.

6. VAT

Mandatory use of electronic invoices

In anticipation of the planned reporting system (directive proposal of the EU Commission "VAT in the Digital Age" from December 2022), a mandatory electronic invoice (e-invoice) is to be introduced. The obligation is to be limited to services between domestic companies and applied in these cases without the consent of the invoice recipient. The "e-invoice" will also be redefined by law as an invoice that is issued, transmitted and received in a structured electronic format that enables it to be processed electronically and that complies with the requirements of Directive 2014/55/EU of 16 April 2014. The amendments are to come into force on 1 January 2025 with transitional arrangements for the period 2025 to 2027: other invoices on paper or in another electronic format (in 2025); other invoices in another electronic format if issued by means of electronic data exchange using EDI procedures (in 2026 and 2027).

Simplifications in the taxation procedure

The simplification rule, according to which **the recipient of the service is deemed to be the person liable to pay tax (reverse charge)** if the supplier and the recipient of the service have applied the reverse charge, although this was objectively not correct, is also to be applicable to transactions from the transfer of emission certificates; entry into force on 1 January 2024.

Extension of actual taxation: The limit for actual taxation, where tax can be calculated according to the received instead of the agreed consideration, is to be raised from the current 600,000 euros to 800,000 euros; entry into force on 1 January 2024.

7. Partnerships

Option for corporate income taxation (§ 1a KStG)

The possibility for transparently taxed partnerships to opt for corporate taxation (non-transparent taxation) according to § 1a Corporate Income Tax Act is to be made more attractive. To this end, the following measures in particular are planned:

- **Extension of the scope of application**: All partnerships (instead of previously only trading partnerships and partnership companies) should be able to opt. Similarly, newly founded companies and corporations that have changed their legal form into partnerships should be able to opt for corporate taxation from the outset (new: application possible up to one month after conclusion of the partnership agreement or after registration of the change of legal form).
- **Fictitious distribution**: The retained profits of the opting company shall not be deemed distributed until they are actually withdrawn (currently it is also sufficient that the payment can be demanded).

The amendments are to come into force on the day after the promulgation of the law.

Procedural adjustments to the Partnership Law Modernisation Act

With the Act to Modernise the Law on Partnerships, the regulations in the German Civil Code (BGB) concerning partnerships under civil law (GbR) were completely revised with effect from 1 January 2024. The main change is that the partnership itself can form assets and that it is not merely a matter of "joint assets of the partners" (so-called "Gesamthandsvermögen"). This results in a need for tax adjustments, especially in procedural law, from 2024 onwards (with transitional arrangements):

- **Continuation of the principle of joint ownership in income taxation**: Economic assets belonging to a legally capable partnership are, as before, attributed to the participants or partners on a pro-

rata basis, insofar as separate attribution is required for taxation. Partnerships with legal capacity are deemed to be joint owners and their assets are deemed to be joint assets.

- **Procedural changes for partnerships with legal capacity, among others**: Fulfilment of tax obligations by the legal representatives; tax declaration obligation should be primarily incumbent on the partnership, the partnership should be held liable for late payment surcharges, notification of administrative acts to the partnership, right of appeal/lawsuit of the partnership itself.

8. Measures to prevent tax arrangements

Obligation to notify domestic tax arrangements

With the Growth Opportunities Act, an obligation to report certain domestic tax arrangements is to be introduced. This implements a plan from the coalition agreement of the governing parties. The regulations are closely based on the already existing notification obligation for cross-border tax arrangements (DAC6).

However, the relevant arrangements (so-called hallmarks) as well as the circle of "users" are to be limited.

The so-called intermediaries are still to be obliged to report domestic tax arrangements. If an intermediary is subject to a statutory duty of confidentiality, the duty to report certain user-related data is transferred to the user, unless the user has released the intermediary from the duty of confidentiality.

The regulations are to be applied from 1 January 2025 if the relevant event for the notification obligation occurred after 31 December 2024. However, cases from before this date may also become reportable: If the first step of a tax arrangement subject to notification was implemented after the day after the promulgation of the Act and before 31 January 2025, the notification is to be submitted by 31 March 2025.

Reorganization Tax: Tightening of the post-sale lock-up for demergers

The so-called post-sale lock-up in demerger cases, according to which the option for a book or interim valuation is excluded, is to be newly regulated. The planned amendment to the law is a reaction to the most recent BFH ruling on the post-sale lock-up (ruling I R 39/18 of 11 August 2021).

Accordingly, it is also to be detrimental to the option to choose valuation if the demerger "prepares" a sale to outside persons (previously: only "executed"). Outside persons are persons who have not held an interest in the transferring corporation for an uninterrupted period of five years prior to the demerger (effective date under civil law). In addition, at least one share in a corporation participating in the demerger must actually be sold to an outside person within five years after the tax transfer effective date. In this case, however, it can be disproved that a concrete intention to sell already existed at the time of the demerger.

If, on the other hand, shares in a corporation involved in the demerger are sold within five years of the tax transfer date that account for more than 20% of the shares existing in the corporation prior to the demerger taking effect, it must be irrefutably presumed that a sale was prepared by the demerger.

The amendments are to apply for the first time to demergers for which the application for entry in the register is made after 17 July 2023 (date of publication of the draft bill on the website of the Federal Ministry of Finance).

Tax arrangements for investment funds

In the area of the Investment Tax Act, tax arrangements for investment funds are to be prevented that have become known through announcements about cross-border tax arrangements. This concerns the consideration of real estate in the real estate quota of real estate funds if the rental income is not subject to a prior tax burden, the tax liability of capital gains from real estate corporations at the fund level, and the DTA tax exemption at the investor level for special investment funds.

9. Tax simplification and modernisation

Business expense deduction for gifts

The cost limit for the deductibility of gifts as business expenses is to be raised from currently 35 euros to 50 euros, to be applied for the first time for business years beginning after 31 December 2023.

Accounting obligation

The limit for the accounting obligation of certain taxpayers is to be raised to a total turnover of currently 600,000 euros to 800,000 euros or a profit of currently 60,000 euros to 80,000 euros; first-time application to turnovers or profits of business years beginning after 31 December 2023.

Reporting obligations for electronic recording systems

The data to be reported to the tax office when using electronic recording systems is to be reduced. This is to be achieved by not having to report each individual recording system, but rather by reporting the technical security equipment (TSE) used in each case. First-time application for

TSEs acquired, in operation or decommissioned after 31 December 2025.

International risk assessment procedures

The introduction of specific regulations for international risk assessment procedures, e.g. the "International Compliance Assurance Programme (ICAP)" of the OECD or the "European Trust and Cooperation Approach" (ETACA) of the EU, is planned. This should lead to international networking and cooperation among tax administrations, especially with regard to the transfer pricing of multinational groups of companies. If the risk of a tax loss is considered to be low, the taxpayer's tax circumstances (in relation to the facts under investigation) should not have to be determined in the course of a tax audit. An international risk assessment procedure is to be carried out at the request of the taxpayer or at the suggestion of another state. The new regulation is to come into force on the day after the promulgation of the law.

Administrative assistance third countries

A legal framework for the use and provision of special forms of administrative assistance in relation to third countries is to be introduced. In this context, the performance of simultaneous and joint audits and the presence of domestic officials abroad and vice versa shall be made possible. The new regulation is to enter into force on the day after the promulgation of the law.

Increase of the exemption limit for withholding tax

In 2021, the control notification procedure was replaced by an exemption limit, which gives the remuneration debtor the possibility to waive the deduction of withholding tax for certain income, e.g. from the transfer of rights. This exemption limit is to be raised from currently 5,000 euros to 10,000 euros per remuneration creditor and per year. First-time application to remuneration received after 31 December 2023.

Refund claim for capital gains taxes for foreign non-profit organisations

Certain foreign non-profit organisations - both from EU/EEA states and from third countries - are granted a refund claim for withholding taxes on dividend and interest payments. This means that the tax exemption for foreign non-profit organisations will also be applied in the area of capital gains tax. The regulation is to be applicable in all open cases.

10. Outlook

The publication of the ministerial draft bill is the first step in the legislative process. Only after a government draft bill has been introduced into the parliamentary procedure will the Bundesrat have the opportunity to comment on the bill. This is followed by the resolutions of the Bundestag and the Bundesrat. In the course of the legislative procedure significant changes can still be made in the course of the legislative process.

The legislative procedure can still be completed in the current year. The law should generally enter into force on the day after promulgation. The special regulations on the entry into force of the individual articles as well as on the temporal application of the individual laws must be observed.

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Please do not hesitate to speak to your direct contact at KPMG AG Wirtschaftsprüfungsgesellschaft if you have any questions.

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KPMG AG
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THE SQUAIRE / Am Flughafen
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Editorial team

Prof. Dr. Gerrit Adrian (V.i.S.d.P.)
Partner, Tax

Veronika Aschenbrenner
Manager, Tax

Julian Fey
Senior Manager, Tax

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