

Newsalert

International Tax Services – Europe

Germany

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This Newsalert does not provide a comprehensive or complete statement of the taxation law of the countries concerned. It is intended only to highlight general issues which may be of interest to our clients.

For issues relating to this news alert please contact your local international tax services advisor or the specialists listed at the end of this article.

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Solicitation

Draft Coalition Agreement includes certain Tax Reform Proposals

The recently elected coalition, consisting of the Christian Democratic Union (CDU), Christian Social Union (CSU) and Free Democratic Party (FDP), are in the final stages of negotiating the coalition agreement. All party bodies have approved the coalition agreement and signature is scheduled for tonight. The draft coalition agreement published over the weekend includes some important potential changes to the tax system. The aim is to introduce specific changes to those existing regulations which negatively impact companies in the financial crisis. In this context the parties have tentatively agreed, effective January 1, 2010 to remove regulations which hinder the growth of the economy with a number of measures potentially of relevance to U.S. Investors.

NOL Change of Control Rule

- The time limitation of the so called "rescue" clause entered into this year shall be eliminated, i.e. the rescue clause shall be applicable for business years ending after December 31, 2009.
- The utilization of NOLs shall "to the extent necessary" be applicable in case of intra-group reorganizations.
- The transfer of NOLs shall be possible based on the amount of the unrealized built-in-gain.

Interest Capping Rule

- The increased threshold of the net interest expense of Euro 3m shall be extended to future fiscal years.
- A carry forward of EBITDA for up to five years shall be introduced with retroactive effect as of 2007.
- The escape clause in form of the equity test shall be amended in such a way that it is applicable for German MNCs.

Transfer of Business Function Rule

- The rule (also known as "exit charge rule") shall be amended in order to avoid the negative consequences on Germany as an R&D location.

Real Estate Transfer Tax

- Intra-group reorganizations shall be simplified by introducing a "Group Relief Clause".

Outlook

There are several other changes discussed. We will comment on those as well as on the above in more detail when more reliable information is available. At this stage, the above highlights comprise the intention of the parties which may form the government later this week.

There is still high uncertainty whether the rules as described above will actually be implemented or amended. Currently, there are discussions amongst the parties as to how the intended changes can or shall be introduced considering existing budget constraints. Nevertheless, there is a certain likelihood that some more favorable rules in the above-mentioned areas may be introduced and should therefore be considered in connection with contemplated actions.

For more detailed information, please do not hesitate to contact

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