RECENT DEVELOPMENTS TO COMBAT TAX AVOIDANCE IN GERMANY

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INTRODUCTION

"Paper is patient." This is a common German saying, typically used to highlight the sluggishness of processes and plans of all kinds. However, paper can also catch up with you or even take you by surprise in a way that may be embarrassing or worse. Examples include the following:

- The Luxembourg Leaks (2014)
- The Panama Papers (2016)
- The Bahamas List (2016)
- The Paradise Papers (2016)
- The Pandora Papers (2021)

All brought tax and tax-related criminal issues to the forefront, as they described purportedly abusive arrangements entered into for the purpose of tax avoidance. The public was titillated. Tax and law enforcement authorities were motivated. For over a decade, tax and law enforcement authorities worldwide have focused on abusive international investment and holding structures. As a result, the density of regulations and the complexity of national and international legal systems have increased year by year.

Jurisdictions with preferential tax regimes are under the scrutiny of tax and investigative authorities. This affects multinational corporations, family offices, entrepreneurial families, and wealthy private individuals who invest their assets internationally in a diversified and international manner. Cross border corporate structures are commonplace. The primary considerations are economic, reflecting investment volume, return on investment expectations, global trends, and developments. Legally permissible tax optimization of the investment is also considered as taxes represent costs when looked at from an economic perspective. The goal remains to achieve high net returns, which are usually reinvested, often for the benefit of the next generation or the public via charitable foundations.

Often, private and institutional investors are not sufficiently aware of the increased compliance effort associated with global investment forms and the resulting tax and tax criminal risks. European and German legislation have enacted numerous regulations, sometimes vaguely formulated. Tax administration officials use these regulations against taxpayers, especially wealthy private individuals. Emotions should not be underestimated here when unequal wealth distribution is perceived as unjust. Additionally, tax administrations are increasingly relying on A.I.-powered risk detection tools to uncover tax irregularities.

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Wealthy individuals frequently become the focal point of emotionally charged debates on tax justice, redistribution, and anti-tax evasion measures. Calls for reinstating a wealth tax and higher taxation of the "super-rich" are growing, aimed at achieving perceived fairness.

This article aims to provide (i) an overview of the latest measures of the European Union and the Federal Republic of Germany to combat tax avoidance and (ii) insight into current advisory practice. It draws from experience and advisory practice to illustrate concrete challenges and potential solutions for wealthy private individuals and family offices. It concludes with a cautious projection of future developments.

One thing is certain. Investors and their advisers must pay ever more attention to tax compliance and the economic and tax aspects on a forward-looking basis when an international investment is made. In comparison, tax examiners will first review the tax consequence of an international investment several years down the road. At that time, tax examiners will benefit from having 20/20 hindsight. Tax issues that were difficult to identify at the time an investment is made become easy to spot several years later when a tax examination is carried on. Without careful front-end planning by the taxpayer, the advantage is held by the tax examiner.

E.U. AND GERMAN MEASURES TO COMBAT TAX AVOIDANCE

The E.U. and the O.E.C.D. are committed to the principles of the market economy and democracy—and increasingly to the idea of tax justice. This is evident in the B.E.P.S. Action Plan, the initiation of global tax reforms like Pillar I and II, and the enactment of the European A.T.A.D. Directives.

B.E.P.S. Action Plan

The B.E.P.S. Action Plan was adopted by the O.E.C.D. in 2013. It aims to facilitate information sharing by tax administrations across borders and to link the location of taxation more closely to the actual economic substance of the income source. Additionally, it seeks to increase the coherence of individual national tax systems and curb unfair tax competition.

Legally, the B.E.P.S. Action Plan is considered "soft law," meaning it consists of recommendations without binding legal force. However, its principles were implemented through E.U. directives (*e.g.*, the A.T.A.D. directives) and national laws, giving the measures binding effect. Consequently, E.U. member states are obligated to implement specific anti-abuse measures, including provisions on (i) exit taxation and (ii) combating tax havens and corresponding investment structures.

A.T.A.D. Directives I and II

The E.U. Directives A.T.A.D. I and A.T.A.D. II are regulations designed to combat tax avoidance practices within the E.U. Examples include a provision limiting interest expense deductions and regulations to attack hybrid structures. The 2016 Directive A.T.A.D. I[1] obligated E.U. member states to implement measures to combat tax avoidance by the end of 2018, promoting an insofar uniform tax law across the E.U. It addresses core areas like the limited deductibility of interest expenses,

[1] Directive (E.U.) 2016/1164.

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the adoption of controlled foreign company (C.F.C.) rules, and adoption of certain standards for arm's length transfer pricing rules including the need for specific documentation.

In 2017, the supplementary Directive A.T.A.D. II[2] was adopted with an implementation deadline of December 31, 2019. It contains further regulations, particularly to combat hybrid structures that can lead to double deductions of operating expenses and hybrid mismatch rules.

Pillar I and II

Pillar I, a global tax reform initiated by the O.E.C.D. in 2021, aims primarily at reallocating taxation rights between states. The focus is on multinational companies with revenue of at least €20 billion and a profit margin of greater than 10%. Profits of multinational companies principally in the digital sector are to be allocated to market states where revenues are generated rather than the place of residence of the company.

Pillar II, also published by the O.E.C.D. in 2021, proposes the adoption of a global minimum level of taxation for multinational enterprise groups. Central to this is the introduction of a global minimum tax of 15% for multinational companies with consolidated revenues exceeding €750 million. It led to E.U. Directive 2022/2523.

Recent Tax Legislation in Germany

Tax Avoidance Prevention Act (StUmgBG)

The Tax Avoidance Prevention Act (*StUmgBG*) was passed on June 23, 2017. It was enacted in response to the publication of the Panama Papers in 2016, illustrating tax avoidance through the widespread use of shell companies and letterbox companies. The act aims to combat tax avoidance more effectively and encompasses several key measures:

- **Increased Transparency:** Financial institutions are obligated to collect and provide comprehensive information about account holders, beneficial owners, and authorized persons. Controlling business relationships of domestic taxpayers with partnerships, corporations, associations, or assets located or managed in states or territories that are not members of the E.U. or the European Free Trade Association (the "E.T.A.") are to be made transparent.
- **Extended Cooperation Obligations:** Both taxpayers and third parties, such as banks, must actively contribute to clarifying tax matters such as by disclosing comprehensive documents.
- **Investigation Powers for Tax Authorities:** The authorities are given extended capabilities for investigating and uncovering tax avoidance. The associated discovery and prosecution risk is intended to have a deterrent effect.
- **Adjustments to the Fiscal Code:** Limitation periods for tax assessments are extended, and specific regulations are introduced regarding information and reporting obligations for international matters, in particular regarding relationships with third countries.

[2] Directive (E.U.) 2017/952.

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Tax Haven Defense Act (StAbwG)

In 2021, the Act to Combat Tax Avoidance and Unfair Tax Competition (so-called Tax Haven Defense Act (*StAbwG*)) replaced the Tax Avoidance Prevention Act. It was embellished by an application letter from the Federal Ministry of Finance dated June 14, 2024. An official, nonbinding English translation of the Act is available on the website of the Federal Ministry of Finance. This demonstrates that the tax administration is serious and shows its willingness to enforce regulations concerning structures involving tax havens in the service of tax justice.

The aim of this Act is to make business relationships or shareholdings of taxpayers with noncooperative states – an administrative euphemism for the old school term "tax havens" – economically unattractive, regardless of the taxpayer's motive. Noncooperative states are particularly those that are nontransparent in tax matters, engage in unfair tax competition, or do not meet the E.U.'s B.E.P.S. minimum standards.

The Act also covers contractual relationships and processes based on cooperation arrangements, even if the parties are not related. Moreover, the *StAbwG* does not provide the possibility of an exemption. This gains even more importance when a country is on the E.U. blacklist. Specific measures apply to curb tax avoidance practices in the context of those countries. The E.U. blacklist is updated twice each year. In December 2023, the Russian Federation was added to the E.U. blacklist. The next revision is planned for February 2025.

This step is intended to create legal certainty in the form of a uniform approach by the tax administration to tax havens and to prevent the tax administration from establishing differing definitions of the term "tax haven" in the course of practice.

Measures adopted in the Act include the following:

- Disallowance of Business Expense Deductions[3]
- Enhanced C.F.C. Rules, especially concerning intermediate companies domiciled in tax havens[4]
- Withholding Tax Measures concerning certain types of income (refer to the E.U. Code of Conduct from 2019) by extending limited tax liability and the obligation to withhold taxes[5]
- Measures on Profit Distributions and Share Disposals, such as denying exemption provisions under national law and tax treaties and corresponding sanction norms for individuals[6]
- Increased Cooperation Obligations in business relationships with tax havens[7]

The application of the *StAbwG* is not restricted by income tax treaties. The law specifically overrides treaty obligations to ensure that national measures take

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[3] Sec. 8 *StAbwG*.

[4] Sec. 9 *StAbwG*.

[5] Sec. 10 *StAbwG*.

[6] Sec. 11 *StAbwG*.

[7] Sec. 12 *StAbwG*.

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precedence. Thus, German taxation rights are not altered by income tax treaties with noncooperative tax jurisdictions. Allocation rules of taxation rights are overridden so that the tax credit of foreign taxes against German tax follows general German principles, with the consequence that the taxpayer faces the risk of double taxation.

The inclusion of the Russian Federation in the *StAbwG*, which is effective as of 2024, increases the practical relevance of these regulations. When only national law applies, economic double taxation cannot be avoided through a primary adjustment under Paragraph 2 of Article 9 of the O.E.C.D. Multilateral Agreement or through a mutual agreement procedure under Art. 25 of the O.E.C.D. Multilateral Agreement.

Moreover, national law on the crediting of foreign income taxes does not provide a remedy, either. Avoiding double taxation can be achieved, if at all, only through equitable measures by the tax administration. In practice, such measures will not likely provide relief due to the purpose of the *StAbwG*, which is to discourage transaction with noncooperative countries.

Particularly, the regulations on enhanced C.F.C. taxation pose significant challenges for taxpayers in add-back cases involving complex foreign corporate structures. In the context of an acquisition of a foreign corporation according to the German legal type comparison rules, the due diligence team must take into account the effect of the *StAbwG* during the examination of the foreign target that itself and/or its lower-tier subsidiaries could be based in noncooperative jurisdictions.

"Avoiding double taxation can be achieved, if at all, only through equitable measures by the tax administration."

Anti-Treaty Shopping Regulation[8]

This highly controversial anti-abuse provision (the "Anti-Treaty Shopping Regulation") is intended to combat the abuse of income tax treaties and E.U. directives through targeted arrangements. It has been the subject of preliminary ruling procedures before the European Court of Justice (the "E.C.J.") multiple times and was found to be contrary to E.U. law on two separate occasions. The law was adjusted each time to address the identified violation in a minimalist way. The regulation establishes a steep hurdle that must be overcome when claiming treaty benefits in an arrangement that uses intermediate foreign holding companies. The intent is to ensure that the use of the intermediary company does not constitute a purely artificial arrangement to "unjustifiably" obtain a tax advantage. Consequently, taxpayers planning to make an investment through one or more foreign holding companies must take the regulation into account. While it is highly controversial in terms of E.U. law, it remains valid and applicable under German law.

Controlled Foreign Company Taxation and Exit Taxation

The Foreign Tax Act ("*AStG*") addresses exit taxation[9] and C.F.C. taxation.[10] It has existed since 1972 and was last revised following the A.T.A.D. Directives. Its aim is to secure the German tax base. It is intended to prevent a German tax resident subject to German tax on worldwide income from (i) shifting tax residence abroad or (ii) shifting income into foreign companies with lower tax rates. In the former event, emigration from Germany is treated as a taxable event. In the latter case, the passive income of a C.F.C. is attributed to German resident shareholders.

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8 Sec. 50d III Income Tax Act ("I.T.A.")

9 Sec. 6 *AStG*.

10 Sec. 7 *et seq. AStG.*

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For the exit tax to apply, the emigrating German resident must own at least 1% in a domestic or foreign corporation or cooperative that is held in a private capacity. In addition, the emigrating German resident must have been subject to tax on worldwide income in Germany for at least seven years within the most recent 12-year period.

The termination of tax residence is equivalent to the gratuitous transfer of shareholdings in all corporations to a recipient that is not subject to worldwide tax in Germany. In addition, exit tax applies if Germany's right to tax gains from share disposals is excluded or limited in any other way. Overall, the exit tax is intended to ensure that built-in reserves in corporate shareholdings that have arisen during the period of tax residence in Germany are actually taxed prior to the time the taxpayer or the assets leave the country.

In the past 12-months two developments have taken place. First, the Federal Ministry of Finance published an extensive circular with the intent of achieving a uniform application of the law. The second is a legislative proposal to extend the exit tax to shareholdings in certain investment funds.

SELECTED PRACTICAL EXPERIENCE

Recent experience regarding German domestic and international tax issues in the examination of a family business, a family office, or a wealthy private individual is that in many instances material issues arising in a tax examination did not exist or were not known or not spotted at the time the investment was made. Additionally, points of contention seem to multiply and intensify as the tax audit proceeds. Taxpayers and their advisors must demonstrate high expertise, sound judgment, and effective communication. In an advisory practice, situations often arise that require an administrative appeal, legal action, and in some cases, a readiness to defend against criminal charges.

More Aggressive Tax Examinations

Certain tax examiners adopt an overly aggressive approach. They can be described as following a path that calls for "shooting first and asking questions later." Unfortunately, we increasingly observe in daily advisory practice that the tone in complex tax audits is becoming harsher. For example, high additional assessments are often proposed in the area of transfer pricing and C.F.C. taxation with little justification other than vague assertions of economic substance. Legal appeals and lawsuits to address the assertions can be quite lengthy and uncertain, and pose considerable risks.

The problem is compounded when criminal tax proceedings are threatened or actually initiated in circumstances that previously amounted to differences of opinion as to the law or facts. In part, the tax examiner who conducts the examination is also the responsible person to assess whether objective indications of criminal tax behavior exists. Often, the tax examiner is not trained in criminal law and is also not responsible for the criminal assessment of facts. The easy way out for the tax examiner is to make a report to the criminal matters unit. The criminal matters unit, in turn, is hampered by having to assess complex facts in a very short period of time and may have limited tax expertise. The easiest path forward is to assume criminal intent and move forward with the prosecution. Aggravating this onward movement to

a criminal prosecution is the fact that taxpayers sometimes do not get an opportunity to comment, often based on a reluctance by the tax examiner or the criminal matters unit to "tip his hand." In case of doubt, the criminal matters unit will initiate criminal proceedings, if only to generate a case file.

In such cases, effective professional advice is essential, as tax criminal charges can have significant repercussions. The advisor should maintain regular contact with the tax authority's contact person. If the advisor encounters a breakdown in communication with the tax examiner, it may mean that the tax examiner is already speaking with the criminal matters unit. If such critical points are reached and the criminal matters unit or even the tax investigation department is involved, the taxpayer has no choice but to obtain legal support in criminal tax matters. A professional defense by tax and criminal law experts can defuse the conflict and lead to a constructive solution. Not infrequently, a criminal aftermath can be avoided. In other circumstances, the path to court is unavoidable. Due to (i) various tightening of substantive tax law and criminal law, (ii) the push to criminalize reasonable differences of opinion, (iii) related administrative instructions for tax authorities regarding stricter sentencing, (iv) extension of the statute of limitations, (v) notifications to other authorities, and (vi) triggering of non-tax consequences, experienced advisors should be brought on board.

The Search for Tax Residency

There is a noticeable trend that tax administrations are increasingly searching for tax points of contact that could establish Germany's taxation right, especially when it comes to taxpayers resident abroad with income sources related to Germany or assets located in Germany, particularly real estate.

A tax residency or an habitual abode in Germany can lead to the assertion of German tax on worldwide income, or in inheritance and gift cases, the assertion of German inheritance and gift taxes on the entire estate or the entire gift.

From the perspective of the German tax administration, a taxpayer can have multiple residencies at home and abroad, and the requirements for a tax residency in Germany are relatively low. Therefore, in the case of stays in Germany that go beyond mere business trips or short leisure stays with hotel accommodations, special caution is advised.

Taxpayers who were once resident, but who have moved away from Germany often believe they no longer are tax resident in Germany. Especially in seemingly clear cases, where only a holiday apartment or an otherwise vacant inherited property exists in Germany, the tax situation often looks different from the view of German tax authorities. The tax authorities can now rely on various instruments for fact finding, such as observing and searching properties, obtaining witness statements, evaluating bank statements, searching the internet including social media platforms, and including entries from registration authorities and the Federal Financial Supervisory Authority.

Additionally, inheritance and gift tax laws provide that an inheritance tax residency can be maintained even after moving away for German nationals who give up their residence in Germany but have not yet stayed permanently abroad for more than five years, or for those living in the USA, ten years. Regulations in the *AStG* extend such five-year period of subsequent extended limited tax liability under certain

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circumstances to up to ten years. If taxpayers receive wages from a domestic public fund (such as embassy staff, civil servants, etc.), this can result in an inheritance tax residency that includes family members with German citizenship living in the same household.

Germany currently has agreements to avoid double taxation in inheritance and gift taxes with only six countries. They are Denmark, France, Greece, Sweden, Switzerland, and the USA.

Under German law, inheritance or gift tax does not become statute-barred before the tax administration becomes aware of the taxable event. This complicates the possibility of a voluntary self-disclosure to avoid punishment.

Exit Tax on Shares in Corporations

Wealthy private individuals are regularly affected by exit taxation in emigration plans or plans on restructuring measures and asset transfers. Frequently, directly or indirectly held shares in (i) domestic or foreign corporations or (ii) cooperatives with high built-in reserves are part of the investment portfolio. Consequently, the German tax administration places a special focus on exit scenarios, as this is the last opportunity for the German state to tax the hidden reserves before the taxpayer or the assets leave the country.

Participations in asset-managing partnerships that do not hold shares in corporations are currently not covered by the exit taxation provisions. The same applies to assets such as real estate, bank accounts, or objects of art. However, for real estate located in Germany, a limited tax liability will continue to exist in Germany in most cases.

"Germany currently has agreements to avoid double taxation in inheritance and gift taxes with only six countries."

As the taxable sale of shares in an exit tax event is hypothetical, taxpayers face significant tax burdens without a commensurate inflow of cash from an actual sale. In a sense, the deemed sale represents "dry income," the opposite of a "liquidity event." For large assets, this can easily lead to financial bottlenecks and necessitate unplanned asset sales to obtain liquidity to settle taxes due. Even if double taxation agreements exist between the relevant states in exit cases, they usually do not mitigate the effects of German exit taxation. If significant uncertainties or risks remain when analyzing the planned circumstances, consideration should be given to applying for a binding ruling from the tax administration prior to implementation. This can provide increased security, although not in short-term projects, as an application for a binding ruling involves additional preparation effort and typically a long processing time by the chronically overloaded tax offices, often six months or longer.

While the burden of exit taxation can be mitigated by returning to Germany within seven years after ending worldwide tax liability or by applying for deferral of the tax due with installment payments against security, these exceptions are subject to strict conditions, restrictions, and ongoing cooperation and notification obligations. If, for example, deferral of the exit tax is utilized, share transfers or profit distributions may no longer be possible or only possible in a very limited way without violating the deferral regulations. Violations may result in the acceleration of the tax payment due date potentially with interest on the deferred payment, so a planned approach is advisable.

Beyond planned restructuring and transfer processes or relocations of residence abroad, the issue of exit taxation can suddenly and unexpectedly arise in unforeseeable deaths of family members, for example, when a beneficiary living abroad inherits shares in one or more corporations. Share transfers through gifts and in the context of business successions should also be analyzed concerning exit taxation prior to implementation. Since inheritance situations can arise suddenly to younger people as well as older people, prudence suggests that estate, corporate, and tax law precautions should be taken not only in the context of exit taxation in cross-border fact patterns, but also in purely domestic cases.

Exit Tax on Membership Interests in Certain Partnerships

Under German tax law, asset-managing or commercially active partnerships are generally considered fiscally transparent for tax purposes, unless the option to be taxed as a corporation has been chosen. In addition, asset-managing partnerships are deemed to be commercially active for tax purposes under certain conditions. Partnership income is attributed to the partners for income tax purposes. The partnership itself owes the tax for trade tax purposes, *i.e.*, in cases where the partnership operates commercially or is deemed to be commercially active.

Against this background, the relocation of a wealthy private individual who is involved in a family limited partnership to another country can cause his or her share of the assets to be viewed as if they also moved abroad. In case of an asset-managing partnership, an Exit tax could apply if the partnership holds shares in a corporation (see last chapter above). In case of a commercially active or deemed commercially active partnership, the hidden reserves in the assets that migrate abroad might be subject to trade tax (economically burdening all limited partners), resulting in shifts between the partners. Additionally, there is an income tax burden regarding the share of the emigrating partner, which can be considerable.

The tax administration is often reluctant to secure the position of the emigrating partner within the framework of a so-called binding ruling during the planning of an exit. The binding ruling serves in German tax law to coordinate the tax effect of not yet realized situations in advance. In recent years, the willingness of the tax administration to provide such security has significantly decreased, and the emigrating partner is often exposed to considerable tax risks. Moreover, during tax audits of partnerships, data on partners who have moved abroad are explicitly requested, and discussions about unpaid tax liabilities are initiated, which can, in the worst case, lead to criminal proceedings.

Inbound/Outbound Taxation of Corporations – Arrival/Departure of a Managing Director

Often, wealthy private individuals residing outside Germany hold positions as managing directors of corporations. The arrival of a managing director to Germany can result in a relocation of the place of effective management of a non-German entity. This can lead to a foreign corporation or an L.L.C., which is often treated as a corporation, becoming tax resident in Germany from a German perspective. This entails declarations and tax obligations regarding the worldwide income of the company. Since these cases are often only discovered after their realization, they lead to an after-the-fact self-disclosure made by professional advisors in order for the managing director to avoid criminal consequences. This is often quite elaborate, as tax offices insist on evaluating the bookkeeping from a German income and tax

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perspective, and the period covered by the disclosure can extend back for up to 13 years. Therefore, the self-disclosure must be prepared very carefully and conscientiously by advisors specializing in this area.

Conversely, the departure of a managing director can lead to a corresponding tax residency abroad for a German corporation, resulting in dual tax residency. Since it is usually unclear which state has which taxation rights, situations of double taxation are frequent. In this context, some corporations immediately consider seeking resolution under an Income tax treaty. Regrettably, we often observe that the German tax administration is aware that a Mutual Agreement Procedure under an income tax treaty is expensive and lengthy, and many taxpayers ultimately avoid these procedures. Consequently, the German tax administration rarely moves away from double taxation.

C.F.C. Taxation

C.F.C. taxation under the provisions of the *AStG* poses a significant challenge for many internationally active wealthy private individuals for various reasons. The scope of C.F.C. taxation is not always known to the personal tax advisor. The effect of C.F.C. taxation can be immense and completely incomprehensible to a taxpayer. We often see cases of cross-border investments in which the C.F.C. taxation could be applicable. However, the investor often does not receive sufficient information about the investment vehicles from the provider of the investment, even though he is subject to increased obligations to cooperate and provide evidence under German tax law. The result is that the attribution of income under German C.F.C. rules to a German resident individual first becomes visible after many years have passed. Moreover, the requirements to prove that a foreign company pursues a significant economic activity in its state of residence using adequate *substance*, *i.e.*, material and personnel resources, and thus is not an intermediate company in the sense of C.F.C. taxation are significant and the process is complex. In practice, a careful analysis of the participation structures and income sources of foreign companies from the perspective of C.F.C. taxation is essential. Regardless, it should be noted that in some structures, the necessary information cannot be provided because many investors do not have the same requirements for information provision.

Crypto Assets in Focus

Recently, digital assets, especially cryptocurrencies, have come into the focus of tax authorities. Blockchain transactions can constitute taxable private sales transactions since cryptocurrencies are considered other assets. This is based on a letter from the Federal Ministry of Finance issued in 2022, which assumes the taxability of such transactions, despite the fact that there has been a structural enforcement deficit and constitutional concerns for some time. It remains questionable whether a blockchain entry would have to convey specific, economically relevant rights or claims to qualify as an asset, as a blockchain entry often consists only of a combination of numbers and letters without real equivalent value. It is also doubtful to what extent cryptocurrencies represent property or contractual positions, as they lack physical substance and often lack a contractual basis. The absence of clear and specific legal frameworks leaves many questions about cryptocurrencies unresolved. The tax treatment of cryptocurrencies is based on a legal interpretation that predate the introduction of Bitcoin.

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Regarding the tax administrative procedure, taxpayers are obliged to fulfill their duty to cooperate by fully and truthfully disclosing crypto transactions. For tax documentation, taxpayers are often dependent on transaction histories from trading platforms or tracking programs. This can raise practical difficulties in fulfilling the extended cooperation obligations, especially when using foreign trading platforms regarding contact persons or data accessibility. Investments in the cryptocurrency sector should be made with the understanding of the difficulty that may be encountered in providing information at a level that is satisfactory for tax purposes. In practice, the tax administration often resorts to estimates that are favorable to it.

Intensified Examination of Conduit Companies and Meander Structures

Against the backdrop that the German government has twice adjusted the anti-abuse provision of Sec. 50d Paragraph 3 ITA of Anti-Treaty/Directive Shopping Regulation) after it was twice declared contrary to E.U. law by the E.C.J., the future direction is clear. The government aim is to continue to proceed against tax-driven behavior that involves setting up purely artificial constructions devoid of any economic reality for the purpose of unjustly obtaining a tax advantage. While taxpayers have opportunities to provide counter-evidence, namely that the foreign intermediate company itself is economically active and not merely a conduit company for passing on income, the provision continues to presume abuse, and the hurdles for counter-evidence remain high.

Applications for Refund of Withholding Tax by Foreign Recipients

When foreign residents apply for refunds of withholding tax, two hurdles must be overcome before refunds are issued. The first hurdle is substantive: The individual must be entitled to a refund under national law and treaty law, if the case may be. The second is the lengthy processing times for such refund applications by the Federal Central Tax Office ("*BZSt*"). For several years, the processing time for refund applications has been over 20 months, with little prospect of improvement. Filers of tax refund claims should consider short-term and long-term liquidity planning, as a quick refund of excessively withheld withholding tax cannot be expected.

Cross-Border Group Financing

A topic that the tax administration has been addressing more systematically recently is cross-border financing relationships, especially group financing. Tax audits often result in a limited allowable interest deduction for cross-border loans. This does not only concern loan relationships with lenders from tax havens. To illustrate, assume the acquisition of German real estate by a real estate company that aims to hold and profitably manage the properties. It is financed by a foreign parent or sister company with loans. Almost universally, the tax administration will contend that the interest rate on the loans exceeds an arm's length rate of interest. The intent is to create a negotiating position against the taxpayer. Additionally, discussions will revolve around prohibiting the deduction of interest expenses based on arguments related to the interest barrier rule, taxation inconsistencies, and lack of substance.

Here, it's essential to point out the risks to the taxpayer when setting up the financing structure and to refute allegations of violating the arm's length principle. Arguments range from recent case law of the Federal Fiscal Court on group financing, to examples of market situations, to economic influencing factors, and to reasoned transfer pricing studies.

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CONCLUDING REMARKS

The increasing regulatory density in tax law through national and international anti-abuse provisions like the *StUmgBG* or the *AStG* make continuous monitoring of these regulations an indispensable routine in analyzing investment decisions and corporate transactions having a German nexus.

Existing legal uncertainty reinforces the need to focus on tax compliance and adjustment prevention in strategic planning. Wealthy private individuals and their advisors should analyze relevant regulations early to minimize tax risks while creating viable contractual structures. Even if residual risks cannot be completely avoided, this often aligns with the government's intention to deter aggressive tax planning models through these uncertainties.

Especially in international matters, early involvement of specialized legal and tax advisors is essential. Advisers should be chosen based on expertise and experience in practical dealings with tax authorities and criminal matters units. Professional advice is crucial to avoid errors in fundamental provisions on tax residency or the application of special legal regulations.

Failure to correctly apply tax provisions entails significant risks, both civil and criminal. Systematic examination by tax authorities conducting external audits and assessment procedures in the context of international investment and holding structures should be anticipated.

A forward-looking, strategically sound approach combined with advice from seasoned professionals will be a key to successfully mastering the challenges of the modern tax landscape.

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