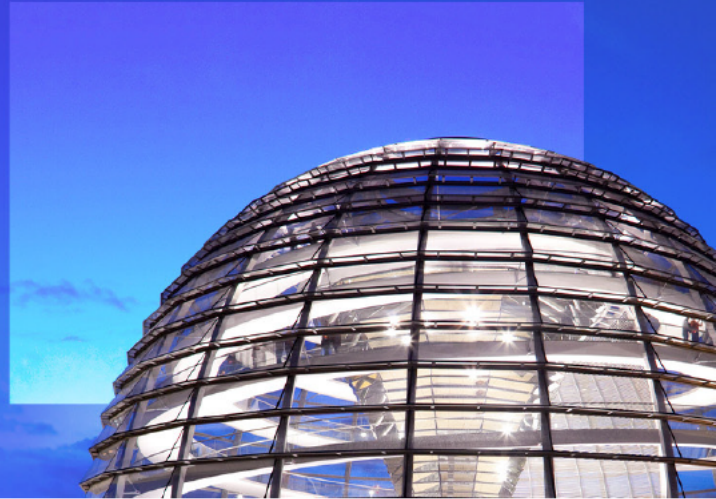


German Tax Monthly

Information on the latest tax developments
in Germany

April | 2024



Bundesrat approves Growth Opportunities Act

The Bundesrat approved the Mediation Committee's compromise proposal for the "Act to Strengthen Growth Opportunities, Investment and Innovation as well as Tax Simplification and Fairness" (Growth Opportunities Act) on 22 March 2024.

The Act contains a large number of amendments in various areas of tax law. The main content of the provisions amended by the Growth Opportunities Act can be summarised as follows:

Financial transactions

- Addition of regulations on the arm's length principle in the Foreign Transactions Tax Act for the cross-border deferral of profits in multinational groups of companies regarding financial transactions
- Prerequisites for an income correction (no transaction at arm's length):
The taxpayer cannot credibly demonstrate that (a) he could have provided the debt service for the entire term of the financing from the outset and (b) the financing is commercially necessary and used for the purpose of the business

or

the interest rate of a cross-border financing relationship with a related party exceeds the interest rate at which the company could obtain financing from unrelated third parties based on a group rating. If it is proven in individual cases that a rating derived from the corporate group rating corresponds to the arm's length principle, this must be taken into account when calculating the interest rate

- Legal categorisation of the pure brokerage service or forwarding of a financing relationship, the typical treasury function and cash pooling as a low-function and low-risk service, which is to be remunerated accordingly (at a low level)
- Regulations already apply from 2024.

Tax loss deduction

Loss carry-forward (unlimited loss offset only up to 1 million euros, above that only on a pro-rata basis)

- Temporary increase of the percentage limit up to which losses above EUR 1 million may be offset for 2024 to 2027 from currently 60% to 70%

Content

Bundesrat approves Growth Opportunities Act

Government Draft for a Fourth Bureaucracy Relief Act

Amendment of the Application Decree to the German Fiscal Code (including on Management and Permanent Establishment)

- No increase for trade tax purposes.

Improvement of depreciation possibilities and further investment incentives

Improvement of depreciation possibilities

- Temporary reintroduction of **declining-balance depreciation** of up to 20%, up to a maximum of 2 times straight-line depreciation, for movable fixed assets acquired after 31 March 2024 and before 1 January 2025; temporary introduction of declining-balance depreciation of 5% for residential buildings whose construction is started after 30 September 2023 and before 1 October 2029 or whose acquisition lies within this period
- **Special depreciation for new rental housing:** Extension of the increased depreciation (up to 5% annually) for certain climate-friendly new buildings with building applications / building notifications before 1 October 2029 (currently 1 January 2027); upper construction cost limit will be significantly increased to EUR 5,200 per square metre (previously EUR 4,800) and the maximum assessment basis for special depreciation to EUR 4,000 per square metre (previously EUR 2,500)
- **Special depreciation** (in the year of acquisition and in the four following years): Increase of the maximum amount (from currently up to 20% of the investment costs) to up to 40% for businesses that do not exceed the profit limit of EUR 200,000 in the year preceding the investment.

Expansion of research allowance

- Among other things, expansion of the eligible expenses to include the reduction in value of depreciable 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 and are acquired after the date of promulgation of the Act
- Increase of the eligible cost share for contract research from 60% to 70%
- Increase of the maximum assessment basis for the research allowance from currently four million euros to ten million euros
- Entry into force in principle on the day after promulgation of the Act.

Partnerships

Option for corporate income taxation

- Access for trading partnerships and partnership companies (Partnerschaftsgesellschaften) and registered civil law companies
- Also, for newly established companies and for corporations that have been transformed into partnerships
- Improvements to the fictitious distribution of retained profits
- Entry into force on the day after promulgation of the Act.

With the Bundesrat's approval of the Mediation Committee's agreement proposal, the parliamentary procedure is complete. The Growth Opportunities Act still has to be published in the Federal Law Gazette before it can enter into force.

Government Draft for a Fourth Bureaucracy Relief Act

On 13 March 2024, the government draft for a Fourth Act to Reduce Bureaucracy for Citizens, Business and the Administration (Fourth Bureaucracy Relief Act) was published.

However, the draft bill only contains a few tax-related changes which are generally positive for taxpayers.

For example, the draft provides for changes to the retention period for **accounting documents**, which is to be reduced from ten to eight years in both tax and commercial law. The shortened retention periods are to be applied for the first time to documents whose retention period has not yet expired under the previous legal situation when the Fourth Bureaucracy Relief Act comes into force (on the first day of the quarter following the promulgation of the Act).

In addition, there is to be a change to **exemption certificates** (§ 50c Income Tax Law): Taxes will be withheld on the domestic income, among others, of foreign artists, athletes, licensors and supervisory board members as part of the tax withholding procedure, unless they have applied for a so-called exemption certificate. Such a certificate is issued, for example, if the double taxation treaty (DTT) provides for full or partial relief from withholding tax on income earned in Germany. According to the current legal situation, an exemption certificate can be limited to a maximum period of three years. This period for the limitation of exemption certificates is now to be increased from three to five years.

Further reliefs in the Fourth Bureaucracy Reduction Act relate to the following measures:

- Reduction of reporting and information obligations
- Measures to promote digitalization
- Projects to simplify and speed up administration and
- further simplifications, in particular the deletion of individual superfluous regulations.

The government draft can now be introduced into the parliamentary procedure. The Bundesrat will then have the opportunity to comment on the draft law. This will be followed by the resolutions of the Bundestag and the Bundesrat.

Amendment of the Application Decree to the German Fiscal Code (including on Management and Permanent Establishment)

On 5 February 2024, the Federal Ministry of Finance (BMF) amended the Application Decree to the Fiscal Code (AEAO) with immediate effect. The amendments include, among other things, explanations on the topics of management and permanent establishment.

For the first time, explanations on the topic of **management** are included in the AEAO.

In principle, management is to be understood as the centre of overall business management. According to the Federal Tax Court, this is the place where the decisive will for the management is formed and the measures of some importance for the management are ordered. The decisive factor is the place where the so-called "day-to-day business" (transactions that are part of the normal operation of the business entity and organisational measures that

are part of normal management) is actually carried out.

A fixed and separate business establishment of the company is not required for the exercise of management functions. Management activities in the sense of the day-to-day business of a business entity can also be carried out in the managing director's home, for example. According to a current BFH decision, the place of management can also be located on the premises of a service or management company that is involved (BFH III R 35/20 as of 23 March 2022).

The explanations in the AEAO on **permanent establishments** are much more detailed in the amended version.

A permanent establishment is basically any fixed place of business or facility that serves the activities of a business entity.

In particular, the current BFH decision III R 35/20 has been supplemented. According to this, a permanent establishment of the client exists on the premises of the contractor if the client carries out its own business activities on the premises of the contractor with a certain degree of sustainability. This is the case, for example, if the contractor is supervised, in particular if the management bodies are identical, or if the management is actually exercised by the contractor (BFH III R 35/20 as of 23 March 2022).

An employee's home office does not generally constitute a permanent establishment of the employer. This also applies under tax treaty law and also

- if the costs for the home office are borne by the employer;
- if a rental agreement is concluded between the employer (tenant) and the employee

(landlord); an exception to this applies if the employer is actually authorised to use the premises for other purposes (e.g. sending other employees to the premises or right to enter the premises outside of occupational safety inspections);

- if no other workplace is made available to the employee by the employer.

The reason for this is that the employer usually does not have sufficient power of disposal over the employee's domestic premises. In contrast, a home office can constitute a permanent establishment if an employee performs management functions, and these management functions give the business entity the power of disposal.

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