

## **Tax update autumn 2024**

- Second German Future Financing Act (ZuFinG II)
- German Foreign Tax Act (AStG)

## ZuFinG II: Strengthening the financial centre shall be accelerated

The German Federal Ministry of Finance has presented the draft bill for a Second Future Financing Act (ZuFinG II). The ZuFinG II is intended to build on the Future Financing Act of December 11, 2023 and further strengthen the competitiveness and attractiveness of Germany as a financial centre. In addition, investments in infrastructure, renewable energies and venture capital are to be facilitated, among other things.

From a tax perspective, the proposals in the Investment Tax Act (InvTA / InvStG) mainly consist of allowing funds to engage in more commercial activities without this being detrimental to their classification as a fund under the Investment Tax Act, their status as a Spezial-Investmentfonds (special investment fund) and their general exemption from trade tax.

The following proposals should be emphasised in particular:

- It will be clarified that in order to qualify as an “Investmentfonds” according to the InvTA, it is irrelevant that an investment asset pool actively manages the assets it holds on a commercial basis. This means that investment funds may generally participate as partners in commercially active partnerships and carry out commercial activities themselves within the scope permitted by supervisory law.
- All activities associated with the long-term holding of investments in corporations, such as co-decision-making on the principles of the target company's business policy or the exercise of supervisory board functions as well as inspection and audit rights, should not call into question the asset management character of the fund.
- Under certain circumstances, there is no active commercial activity if an investment fund grants money loans.
- “Spezial-Investmentfonds” can acquire all types of domestic or foreign investment funds, even if these are partnerships. This should improve the investment opportunities of a “Spezial-Investmentfonds” and at the same time considerably simplify the administrative monitoring of investment regulations. In addition, the large amount of capital available in “Spezial-Investmentfonds” is to be used for the expansion of renewable energies and investment requirements in the area of infrastructure, and investments in private equity and venture capital funds are to be simplified.
- The restriction on income from the management of renewable energies in connection with the letting and leasing of real estate will be lifted for “Spezial-Investmentfonds”. This will make it possible for such funds to invest in renewable energy plants, for example, with legal certainty.
- Real estate income also includes income that an investment fund generates through its participation in partnerships and that originates from an asset management activity or from a foreign permanent establishment of the partnership. On the one hand, this clarifies the tax liability at fund level and at the same time enables a tax exemption for tax-exempt investors in “Investmentfonds” and “Spezial-Investmentfonds”.

## **Foreign Tax Act: Deadline extension for tax declarations until October 31, 2024**

In its circular dated 18 June 2024, the Federal Ministry of Finance has extended the deadline for submitting the first tax returns under the new foreign tax law. Declarations and notifications that relate to the 2022 assessment year and concern financial years of the controlled foreign companies that begin after December 31, 2021 must be submitted by October 31, 2024 at the latest. The deadline extensions must be observed ex officio. A separate application for an extension of the deadline is not required in this respect.

This is the Ministry's response to the enormous complexity of the new regulations resulting from the ATAD II Implementation Act (ATADUmsG) and the delayed provision of the new version of the official forms for the application of the new rules.

We are currently analysing the portfolios of our funds and will provide our investors with the relevant information in good time if taxation is considered at their level due to the fund investment.

Background: The revision of the AStG by the ATADUmsG of June 25, 2021 will result in some significant changes for taxpayers from 2022 with regard to the add-back taxation of low-taxed passive income generated via a fund investment. A BMF circular published in this regard contains some welcome statements, such as the fact that taxpayers who hold a direct or indirect interest in a foreign company and are exempt from corporation and trade tax in Germany are not obliged to submit a declaration for separate and uniform assessment in accordance with the AStG. In other cases, however, there may be declaration obligations.

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