Proposal for EU Directive against tax avoidance

Proposal for a Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market

Legislation

On 28 January 2016 the European Council submitted a proposal for a Directive against tax avoidance practices aiming to achieve a certain degree of uniformity in implementing the BEPS outputs across the EU. The proposed Directive shall provide for minimum standards against tax avoidance that Member States must adhere to. Member States may introduce more extensive and stricter rules. The following paragraphs outline the anti-tax avoidance rules contained in the proposal and highlight briefly how they compare to existing German tax rules and case law.

Interest limitation rule

Art. 4 of the proposal is in many ways similar to the German interest limitation rule ("Zinsschranke"). Borrowing costs shall be deductible to the amount of interest received or other taxable revenues derived from financial assets. Tax deductibility of exceeding borrowing costs is limited to the higher of 30% of EBITDA or EUR 1m. The limitation is intended to apply to any kind of borrowing costs regardless of whether they result from intercompany loans or from loans granted by non-related parties. Member States shall have the option to introduce an escape clause providing for full deductibility of exceeding borrowing costs in cases where the ratio of the taxpayer’s equity over its total assets is higher than the group’s ratio or at least does not deviate by more than 2% from the ratio of the group. The proposed rule includes an obligation to allow an indefinite carryforward of interest expenses which cannot be deducted in the current tax year as well as an option to grant a carryforward of EBITDA which cannot be fully utilized in the current tax year.
Legislation

But there are also substantial differences between the draft Directive and the German interest limitation rule. Zinsschranke in its current version does not apply if the net negative interest expenses are less than EUR 3 million (so-called “minimum threshold”), but once net interest expenses reach the EUR 3 million cap, all interest (not only the exceeding amount) will be deemed currently not deductible if in excess of 30% of EBITDA. The current wording of the draft Directive, however, implies that EUR 1m shall be considered not a threshold but an exemption amount, so that the first EUR 1m of exceeding borrowing costs shall always be deductible regardless of EBITDA. The term “borrowing costs” is also more comprehensive than the definition of “interest expenses” in the German Zinsschranke, which may increase the effective tax burden; however, both definitions leave some room for interpretation. Although the current wording of the proposed rule does not impose any explicit time limitation on the availability of EBITDA carryforward, this does not necessarily mean that Germany would have to give up the currently existing five-year period for the utilization of EBITDA carryforward. Given that the proposal should only ensure the minimum level of legislative measures, Member States are free to introduce (or maintain currently existing) stricter rules. However, it is questionable whether the proposal is compatible with the German constitution (see article “Federal Tax Court (BFH) questions the constitutionality of interest limitation rule (“Zinsschranke”)” in this issue).

Exit taxation

Art. 5 aims to adjust the Merger Directive in cases where the assets in question are no longer effectively connected with a domestic PE (transfers of residence, or asset transfers to foreign permanent establishments (PEs)) by requiring an exit taxation while giving taxpayers the option of deferring the payment of exit tax on a deemed disposal at market value over at least 5 years and settling through instalment payments. The receiving Member State shall accept the market value established by the Member State of origin as the starting value of the assets for tax purposes. From a German perspective, current tax law should broadly be in line with the major aspects of the proposal so that the implementation of the rule would require only some adjustments in the Reorganization Tax Act, the Corporate Income Tax Act and the General Tax Code (e.g. with regard to the deferral possibility).

Switch-over clause

According to Art. 6, profit distributions from third-country entities or proceeds from the disposal of shares in these entities as well as income from PEs situated in third countries shall be subject to taxation at the level of the taxpayer (instead of being exempt) if this third-country source income was subject to a statutory corporate tax rate lower than 40% of the statutory tax rate in the taxpayer’s Member State. The OECD BEPS recommendations do not foresee such a measure. The switch-over clause should apply regardless of the participation quota and regardless of any business justification for establishing a tax presence in a third-country tax haven. It is not clear what the “statutory tax rate” in the case of a German parent would be, but, as the German-language version of the draft Directive only mentions “Körperschaftsteuer”, i.e. corporate income tax, and does not mention German trade tax, the low tax threshold could be a 6% statutory tax rate in the foreign jurisdiction (6.33% if solidarity levy was included in the calculation).

General anti-abuse rule (GAAR)

Art. 7 has been designed to cover gaps that may exist in specific anti-abuse rules of the Member States and/or to ensure that Member States at that moment do not have a GAAR introduce one. The rule is broadly comparable with the existing German GAAR of Sec. 42 General Tax Code, but could obtain a wider relevance, as potentially - and contrary to the current interpretation of the German GAAR - a structure could be found to be abusive and hence disregarded even where it seeks to avoid non-German taxes.

Controlled foreign company (CFC) rules

Art. 8 and 9 define minimum requirements for CFC legislation. Unlike the 25% income tax rate in the German Foreign Tax Act, the proposal foresees a low taxation threshold at the level of less than 40% of the effective corporate tax rate in the taxpayer’s Member State. The catalogue of non-trading (passive) activities tends to be more extensive than under the currently existing German CFC rules, including e.g. all royalties and dividends/capital gains. The tightening of activity requirements as a consequence of an EU Directive could therefore have significant impact on German multinationals.

Hybrid mismatches

Art. 10 stipulates that the legal characterization given to a hybrid instrument or entity by the Member State where a payment, expense or loss originates shall be followed by the other Member State involved in the mismatch. It is to be noted that the rule should be applicable only among the Member States themselves and not in relation to third countries. Germany has set up a working group which is considering drafting a domestic anti-hybrid provision which would most likely go beyond the EU Commission’s proposal in that it would also cover third-country hybrid mismatches. Details have not yet been released, but are expected over the next few months.
New German legislative proposals tackling dividend arbitrage trades - The German Federal Government released bill to start legislative process

The German Federal Government released on 24 February 2016 a legislative proposal for an overhaul of the German investment tax law. The package also includes new rules seeking to deny tax credits or refunds resulting from short-term transactions around the dividend due date (also referred to as “cum/cum transactions”). The new cum/cum rules should be applicable as of 1 January 2016 already. If implemented as proposed, the rules will have a profound impact on trading in and hedging with German equities around the dividend due date. Dividend distributions on shares of a German corporation are subject to withholding tax (WHT) at a standard rate of 26.375%. Although the WHT rate is in many cases reduced by a treaty or the European Union directive, the lowest WHT rate for a less than 10% shareholder is typically 15%. In order to achieve this WHT reduction, the shareholder has to pass intensive German anti-treaty shopping rules and comply with extensive documentation requests by the German tax authorities. For a German resident corporate shareholder, however, the 26.375% dividend WHT is not a cost, as it can be fully credited against the taxpayer’s annual tax liability (or refunded, if the taxpayer’s income is nil or negative). Against that background, in the past, nonresident shareholders of German public companies entered into transactions with German resident counterparties, where German shares were sold to the resident counterparty before the dividend date and then repurchased after the dividend date; the latter was often structured with the help of forward transactions. Alternatively, the shares could be lent to the German counterparty during the dividend date. In all such cases, it could be achieved that the German resident counterparty was seen as the shareholder of record, being eligible for the dividend WHT credit, which was then economically shared between the parties of the trade. The new rules should be applicable to German taxpayers (which includes German branches of non-German residents such as in particular non-German banks and broker/dealers), but should in our view impact all participants in such trades through the change of trade economics. Given its very broad and open wording, the full extent of the proposed rule is to some extent unclear and adjustments of the wording do not appear unlikely throughout the legislative process.

The German Government intends to end the cum/cum transaction practice with the introduction of the new Sec. 36 Para. 2a Income Tax Act (ESTG). Sec. 36 Para. 2a ESTG mandates that, in order to be eligible for a WHT credit on dividends, the German resident shareholder:

- Must be the legal and economic owner of the shares for at least 45 days during a period of 45 days before the dividend date and 45 days after the dividend date (in total, 91 days).
- Bear at least 30% of the risk of a change in value of those shares as measured by the start of the 45 day period. That is, any days on which the risk of loss borne by the German resident shareholder is less than 30% of the fair value of the shares at the time of the acquisition do not count for this minimum holding period.

The legislative materials state that the rule was modeled after similar measures included in the US and the Australian income tax codes. Since in a share lending transaction or in a transfer, which is, e.g., combined with a forward sale or other hedging transaction, the resident counterparty does not bear any risk of a change in value of the temporarily owned shares, the WHT on a dividend received in the context of such a transaction would be lost.

The rule does not apply to German resident shareholders owning the shares already for a period of one year prior to the dividend date, and to shareholders with annual dividend income of not more than EUR 20,000.

In addition, the proposed rule imposes compliance obligations on shareholders who do not meet the minimum holding period requirements but obtained a WHT refund or exemption on such distribution. Those shareholders would have to notify the competent tax office about the situation and pay the WHT differential amount to the tax office.

The draft bill clarifies that it does not apply to transactions of and with trustees within a contractual trust arrangement (CTA) for old age pensions.

If passed, the new rules will apply to distributions made on or after 1 January 2016, i.e. with retroactive effect.

1 US Internal Revenue Code Section 246 (c); Australia: Income Tax Assessment Act 1997 Sec. 160APHO and 160APHT.
Legislation

Update on tax treaties

Treaty Germany/The Netherlands
The tax treaty between the Netherlands and Germany came into force on 1 December 2015, and is applicable as of 1 January 2016. The new treaty replaced the 1959 treaty and is supposed to respond to changes in the taxation of income and assets. In the following, some of the most important features of the new treaty are discussed.

- Residence: In principle, the new tax treaty contains the standard residency clause (Art. 4) of the OECD Model Tax Convention. The protocol clarifies that all Dutch resident entities liable to Dutch corporate income tax qualify as Dutch treaty residents provided that their income is treated as income of that entity. This means tax-exempt entities have treaty access as well. Regarding hybrid entities, the residence state determines the qualification for purposes of the tax treaty.

- Permanent establishments (PEs): The PE provision is largely in line with the OECD Model Tax Convention. Additional provisions apply regarding offshore activities. With regard to the allocation of business profits, the new treaty adopts the OECD regulations (Authorised OECD Approach). Thus, guidance is provided on the arm’s length attribution of profits to a PE based on the functions performed, the assets used and the risk incurred. As a consequence, for profit attribution purposes, a PE is treated like a subsidiary. Further, a mechanism ensures mutual agreement on transfer pricing issues between the states.

- Dividends, interest and royalties: The dividend withholding tax (WHT) is reduced to 5% in case the company has a participation of at least 10%; for qualifying pension funds resident in the Netherlands, the WHT rate is reduced to 10%; for other cases the rate remains 15%. This is relevant for cases in which the Parent-Subsidiary directive does not apply or the WHT has not been exempted under Dutch law. The new treaty foresees no withholding taxes on royalties and interest payments, unless the underlying agreement grants a profit participation (e.g., in case of a silent partnership).

- Capital gains: Under the new treaty, capital gains on the sale of shares in certain real property companies may under certain conditions be taxed in the country where the property is located.

- Further changes: The new treaty explicitly allows both countries to apply domestic anti-abuse measures without limitation by the treaty. Mutual agreement procedures are introduced to resolve disputes. Comprehensive information exchange according to the OECD standards is incorporated in the new treaty.

Treaty Germany/China
The new tax treaty with China was signed by both countries on 28 March 2014. The German Parliament (Bundestag) approved the law on 11 November 2015. The treaty is not yet effective. Most likely, it will be applicable as of 1 January 2017.

- Permanent establishments (PEs): Regarding PEs (Art. 5), the new treaty with China will not contain the Authorised OECD Approach (AOA). For construction PEs, the period is extended from more than 6 months to more than 12 months. For service PEs, the period is changed to more than 183 days.

- Dividends, interest and royalties: The withholding tax (WHT) on dividends is limited to 10% for dividends and to 25% for certain investment vehicles. The WHT on dividends is limited to 5% if a corporate beneficial owner directly holds at least 25% in the distributing company. A 6% effective WHT rate for royalty payments for the use of, or the right to use, any industrial, commercial or scientific equipment was negotiated. In all other cases, the rate remains at 10%.

- Capital gains: There are special provisions regulating the relief from capital gains tax for different types of share dispositions. The criteria depend on the asset classification, percentage of ownership and listing requirements.
Legislation

**Treaty Germany/UK**
With the UK, an amending protocol to the existing double tax treaty was signed on 17 March 2014. It was approved by the German Parliament (Bundestag) on 1 October 2015. The treaty is effective since 29 December 2015, and applicable as of 1 January 2016. The new treaty brings minor changes. It includes, however, the Authorised OECD Approach for the apportionment of PE profits.

**Treaty Germany/France**
France and Germany signed an amending protocol to the existing double tax treaty on 21 March 2015. The German Parliament (Bundestag) approved it on 15 October 2015. It is not yet effective, but is likely to take effect by 1 January 2017. The most relevant change under the new treaty is the new wording of Art. 7 on the taxation of capital gains. Furthermore, the WHT on dividends from certain investment vehicles was reduced (Art. 9). The regulation for cross-border workers and pensions was changed with balancing mechanisms between the states. Regarding capital gains, the gains from investments in real property may under certain conditions be taxed in the country where the property is located.

**The Federal Ministry of Finance (BMF) on the status of the tax treaties**
On 19 January 2016, the BMF published a letter on the status of the tax treaties, which gives an overview when new treaties are applicable.

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**New additional capital allowance for construction of rental apartments**

In order to facilitate the construction of new apartments to relieve the tight German apartment and housing market, the German Government agreed to introduce a new capital allowance. Combined with the normal depreciation, the new rule, which was released on 3 February 2016, would allow for an overall depreciation of 35% in the first three years of an investment in newly built rental apartments. It is planned to be, in general, restricted to investments in the years 2016 to 2018 in specific areas. The German Parliament is expected to approve the Government bill in late April.

**Financial accounting: Change in calculation of interest rate to discount pension liabilities**

In February 2016, both houses of the German parliament approved new rules to calculate the applicable interest rate for pension liabilities in financial accounting according to German local GAAP (HGB). Under the new regime, the average interest rate to be used in the calculation of pension liabilities is to be computed over the last ten instead of the last seven fiscal years. This will mitigate the effect of the ongoing low interest environment on companies' balance sheets. Tax accounting is only indirectly affected (deferred taxes). The new rule is generally applicable as of fiscal year 2015. Book profits caused by the new rule are subject to legal dividend distribution restrictions.
German tax authorities

Tax authorities continue working on official guidance regarding withholding taxes on software payments

The German tax authorities are currently working on official guidance regarding withholding taxes on royalties paid to non-resident taxpayers. This effort comes as a reaction to the currently existing practical uncertainties surrounding the levying of withholding taxes on payments for software, digital content, image rights as well as data-base access in a B2B context because the German tax rules have not kept up with technological developments. It is expected that the guidance will include wording defining what constitutes the “use of a right” in a German business (which is one key element for triggering withholding taxes) and shall also include comprehensive examples dealing with new technologies such as software as a service and similar digital offerings. Given that any rules relating to withholding taxes may have an impact also for trade tax purposes because of a 6.25% add-back on royalties for trade tax purposes, representatives of the Federal States have also been involved in the discussions between the Federal Ministry of Finance and the Federal Tax Office (which is competent for withholding taxes). While it is rumored that work on the guidance shall still be finalized in 2016, a more detailed date for its release or more information regarding the content of such guidance is currently not yet available as positions within the tax authorities still appear to be quite diverse.

New guidance issued by the German tax authorities to limit excessive application of Sec. 50i German Income Tax Act

The German tax authorities have released a public letter ruling on Sec. 50i German Income Tax Act (EStG) dated 21 December 2015, which should mitigate the excessive tax consequences of the enhanced rule as amended in 2014 (IV B 5 S 1300/14/10007). Sec. 50i EStG was introduced into German tax law in 2013 as a reaction of the German legislator to new case law of the Federal Tax Court (BFH) regarding the classification of income for treaty purposes of partnerships that are non-operating, but deemed trading. Sec. 50i EStG typically targets cases in which a shareholder migrates from Germany to a foreign country after the tax-free transfer of his shares in a corporation. The transfer of the shares in the corporation does not trigger exit taxation because the German taxation right is not considered restricted due to the attribution of the assets (shares) to the deemed trading partnership. However, according to newer case law of the BFH and contrary to the long-standing view of the German tax authorities, a partnership which is only deemed trading from a German income tax perspective does not generate business income from a treaty perspective and, therefore, cannot constitute a German taxation right regarding the partnership’s assets. Sec. 50i EStG was introduced in response to such case law to prevent non-taxation of the value appreciation of the partnership’s assets in such situations. It gives Germany the right to tax any gain which results from the future sale of the shares or partnership interest regardless of whether the applicable treaty allocates the taxation right to the country of residence of the partner.

In 2014, a second paragraph was introduced to Sec. 50i EStG to safeguard that the rule would also apply to otherwise tax-free transfers of the affected partnerships’ assets (e.g. tax-free reorganizations under the Reorganizations Tax Act or transfers due to an inheritance). The amended rule stipulates that contrary to any other German tax rules which may provide for a tax-free transfer of the assets at book value, such transfers are deemed to be executed at fair-market value resulting in a disclosure of the built-in gains, even in scenarios where no restriction of a German taxation right was given at all. As a result, the wording of Sec. 50i Para. 2 EStG is widely considered to go too far and beyond its original purpose.

Legislative procedures for an amendment of the rule in 2014/2015 were dropped. The German tax authorities now released a public letter ruling to practically limit the scope of this second paragraph of the rule in order to provide for relief from the adverse tax consequences of Sec. 50i Para. 2 EStG for tax-neutral transfers of the affected assets which do not lead to a restriction of the German taxation right. The relief should also be applicable for trade tax purposes without separate approval from the municipality because the relief only leads to a deferral of the tax (not to a waiver).

According to the new public letter ruling, the relief requires formal applications of the transferor and transferee that Sec. 50i Para. 2 EStG should not apply. From a procedural perspective, the new guidance raises several questions, e.g. regarding how the application is to be filed (e.g. separate written letter, implied application by submitting a tax balance sheet at tax book values, etc.), which tax office is responsible and when the application should be submitted. Filing a binding ruling request before taking any actions should provide legal certainty regarding the question whether the requirements for the relief are fulfilled and therefore, whether relief will be granted or not.
German tax authorities do not apply the Federal Tax Court’s (BFH) case law regarding the trade tax exemption of CFC income

Under German CFC law, passive and low-taxed income of a controlled foreign company is calculated in accordance with German income tax principles and is directly allocated to the German resident shareholders. So far it was not absolutely clear whether this CFC income (“Hinzurechnungsbetrag”) would be subject to both German corporate income tax and trade tax or whether it would be exempt from German trade tax.

In its decision dated 11 March 2015 (I R 10/14), the BFH ruled that CFC income allocated to a German resident shareholder derived from a foreign subsidiary which generates low-taxed “passive” income is exempt from trade tax. Under German trade tax rules, income generated in a foreign permanent establishment (PE) is in principle tax-exempt. The BFH regarded this exemption to be applicable to CFC income as well, even though the CFC income was not generated in a foreign PE, but in a foreign subsidiary (corporation). However, as the CFC income allocation entails that the income of the subsidiary will be treated as own income of the German resident shareholder, the BFH treated this deemed own income of the German resident taxpayer as trade tax exempt as it was generated in a foreign country.

In response to this BFH case law, the tax authorities published a decree on 14 December 2015 according to which they intend not to apply this case law in similar cases. According to the tax authorities’ view, the CFC income imputation leads to a transformation of the income of the foreign subsidiary into domestic income of the German resident shareholder. Due to the classification of the CFC income as domestic income of the shareholder, the tax authorities deny the application of the trade tax exemption for foreign PE income.

Foreign taxes paid by the subsidiary on the respective income can only be credited against German corporate income tax on the CFC income, but not against German trade tax. Therefore, if the CFC income is subject to trade tax, excessive taxation may arise.

Currently, there is no indication that the BFH will change its view regarding the trade tax exemption under current law. Taxpayers should monitor future legislative developments and consider next steps in open cases.

Tax authorities clarify income determination of controlled foreign company in share transfer situations

On 6 January 2016, the tax authorities of the German Federal State of Berlin issued a circular addressing the question whether the German loss forfeiture rule in case of share transfers is to be applied also for computing the income of a controlled foreign company (CFC), and hence for determining whether the CFC earns low-taxed income. Such low taxation is deemed where the income (determined under German rules) of a foreign (indirect) subsidiary is taxed at an effective tax rate (ETR) of less than 25%. Losses incurred in a specific fiscal year are to be carried forward in the subsequent fiscal years applying standard German loss carryforward rules. However, the German Foreign Tax Act does not explicitly state whether a share transfer results in an elimination of such loss carryforward under the loss forfeiture rule in case of a share transfer, either at shareholder level of the German company holding the participation in the CFC or within the chain of shareholdings between German company and its CFC. That rule basically states that where an acquirer buys shares of more than 25% up to 50% in a corporation, current losses and loss carryforwards are forfeited on a pro-rata basis. Where an acquirer buys more than 50% in a corporation, its entire loss carryforward is forfeited. According to the now issued circular, the rule is to be applied also in the context of the income determination of a CFC. In practice, this should result in share transfer situations in a reduction or elimination of loss carryforwards of prior fiscal years as well as losses of the current fiscal year until the date of the share transfer. Disregarding prior losses of a foreign entity on grounds of a (partial) transfer of its shares should increase its exposure to imputation taxation as the deemed income of such a CFC is higher than in a situation where the loss forfeiture rule is not applied. Consequently, the application of the loss forfeiture rule results in a lower ETR compared to the application of standard loss carryforward rules.
On 13 January 2016, the BFH published a decision on the transfer of beneficial ownership in a securities lending transaction involving the transfer and re-transfer of shares around the dividend due date.

In the case, which should be relevant both for the past as well as future cum/cum transactions, the court confirmed that the beneficial ownership in a securities lending transaction is generally transferred from the lender to the borrower. However, the transfer of the beneficial ownership is not recognized if, “exceptionally”, the borrower only obtains a formal legal ownership position with no economic substance.

In the case at hand, the borrower, a German manufacturing company, entered into a series of consecutive securities lending transactions over securities issued by UK companies with a UK resident financial institution as the lender. Each transaction had the same term of 14 days, which included the respective dividend due date/record date and the same transaction volume. The borrower was required to pay the lender a fee and a manufactured payment in the full amount of the income paid by the UK companies.

The court concluded that the borrower obtained only the formal, but never the beneficial ownership for the following reasons:

- Income from the securities: The transaction agreements and its conduct never aimed at providing the borrower with any of the income from the borrowed securities. Instead, the borrower was always required to pay a manufactured payment in the exact amount of the income received. The manufactured payment did not leave the borrower with any cash-flow advantage, as it had to be made immediately after receipt of the corresponding income.

- Risks and chances of the ownership position: The lender was entitled to request a return of securities at any time with a three-day termination notice, the transactions occured with always the same terms and volumes and there was evidently no “economic utilization” of the borrowed securities by the borrower. In combination, these facts led the court to the conclusion that all economic risks and chances of the ownership position remained with the lender and thus the transfer of formal legal ownership was not sufficient to also confirm the transfer of beneficial ownership.

From the point of view of market participants entering in securities lending transactions, the court’s clear statement generally confirming the transfer of the beneficial ownership sends a positive message. However, no clear guidance was given as to when this would “exceptionally” not be the case. Some of the terms of the transactions underlying the court case, such as e.g. a short termination notice, would not necessarily represent an unusual arrangement. Furthermore, the court explicitly left open whether and how the principles of the general anti-abuse provision may apply to such cases.

Market participants involved in securities lending transactions should review their past and current lending arrangements to assess any risk of de-recognition of transfer of beneficial ownership.
German court decisions

**Federal Tax Court (BFH) questions the constitutionality of the interest limitation rule ("Zinsschranke")**

A press release of the Federal Constitutional Court (BVerfG) published on 13 February 2016 states that the Federal Tax Court (BFH) assumes that the German interest limitation provisions ("Zinsschranke") may violate constitutional law. The BVerfG will have to decide whether the general principle of equality has been violated (court reference: I R 20/15 as of 14 October 2015).

Due to the application of the interest limitation rule in the case at hand, interest expenses of a domestic corporation belonging to a real estate group were deemed non-deductible and carried forward. However, this interest carryforward was lost the subsequent year as the result of a reorganization leading to a harmful change in ownership. None of the loans were granted from abroad. According to the BFH, the resulting tax effect in this solely domestic case constitutes a violation of the core principle of income taxation based on an objectively established ability to pay tax, which cannot be justified by anti-abuse considerations.

The BFH already expressed doubts regarding the compatibility of the interest limitation rule with the Constitution in an earlier case (reference: I B 85/13). The Federal Ministry of Finance (BMF) reacted on 13 November 2014 by issuing a non-application decree, arguing that the question of compatibility of the interest limitation provisions with the Constitution had not been submitted to the BVerfG yet. Due to the pending case, taxpayers should be able to successfully apply for suspension.

**“Treaty override” is permissible under German Constitution**

The Federal Constitutional Court (BVerfG) ruled on 15 December 2015 that a domestic law provision overriding a double tax treaty (DTT) is permissible under the Constitution (case reference: 2 BvL 1/12). The corresponding court order was published on 12 February 2016.

In the underlying case, it was unclear whether the provisions of Sec. 50d Para. 8 Sent. 1 German Income Tax Act (ESTG) were in line with Art. 23 of the Germany-Turkey DTT (1985). Under the DTT, income of German residents derived from employment in Turkey shall be exempt from the German income tax basis subject to the progression clause. According to Sec. 50d Para. 8 Sent. 1 ESTG the exemption shall – notwithstanding the provisions of the applicable DTT – only be allowed to the extent the taxpayer proves that the source state has waived its right to tax or that the tax assessed on the income in this state has been paid. The plaintiffs, jointly assessed spouses, failed to provide evidence of payment of Turkish tax on income derived from employment in Turkey or to prove that Turkey had waived its right of taxation. The tax office thus included the Turkey-sourced employment income in the spouses’ German tax base.

The Federal Tax Court (BFH) previously (case reference: I R 66/09) concluded that such a treaty override was unconstitutional as the legislator had a constitutional obligation to respect international law.

The second Senate of the BVerfG in its majority rejected this conclusion. It ruled that a general treaty override ban would contradict the basic constitutional principles, according to which the later legislator shall be entitled to amend the decisions of the previous ones. One of the BVerfG judges agreed with neither the argumentation nor the conclusion of the Senate’s majority. Her dissenting opinion shows that treaty overrides still remain legally questionable.

The case has wide relevance, as Germany introduced a number of treaty-overriding domestic law provisions to protect its tax base over the last few years, which based on this BVerfG ruling should be enforceable.
Tax court of Münster rules on CFC taxation in accordance with the ECJ “Cadbury Schweppes” decision

On 20 November 2015 (case reference: 10 K 1410/12 F), the tax court of Münster expressed its view on the preconditions for applicability of the CFC regime taking into consideration the “Cadbury Schweppes” decision of the European Court of Justice (ECJ) (case reference: C-196/04).

In the case, a German plaintiff held all shares in a Cyprus entity through a Dutch intermediate. Business activities of the Cyprus entity were limited to intra-group license management – it acquired book licenses and subsequently sub-licensed them to several Russian and Ukrainian companies belonging to the same group. The employees of these Russian and Ukrainian sub-license holders monitored the Russian-speaking publishing market to identify promising works. Business opportunities identified by the employees of Russian and Ukrainian companies were reflected in the license management of the Cyprus entity. The entity rented office premises in Cyprus and employed a local managing director as its only staff. The entity was subject to low taxation in Cyprus.

The taxpayer argued that the Cyprus entity should not be subject to the CFC regime because it pursued a genuine economic activity in Cyprus and referred to the ECJ “Cadbury Schweppes” decision. Notably, the provisions of Sec. 8 Para. 2 AStG (German Foreign Tax Act) containing the response of German lawmakers to the “Cadbury Schweppes” case were not applicable in the case at hand so that the court derived its conclusions directly from the ECJ’s decision.

The tax court of Münster ruled that substance requirements were not met and denied that the Cyprus entity pursued a genuine economic activity. Specifically, the tax court ruled as follows: (1) The local entity had not been actively selling into the Cypriot market at all; (2) the local entity had not been purchasing in the Cypriot market in a sufficient manner; (3) substantial business decisions had been made at the level of the Russian and Ukrainian group companies and not in Cyprus. The taxpayer argued that the tax structuring in place was shifting income away from Russia and Ukraine, but not from Germany. The tax court took this as confirmation that substantial business functions had been outsourced to the Russian and Ukrainian companies as well; (4) being the entity’s only staff, the managing director was not in the position to review each license and sub-license draft from a financial, content-related and legal perspective. On the other hand, the tax court explicitly rejected the view of the tax authorities that CFC taxation may only be avoided if a foreign entity permanently employs both management and persons running ordinary business, thus, at least two employees. It remained open whether performing only intra-group sub-licensing rules out the assumption of genuine economic activity.

The decision of the tax court has been appealed and is currently pending before the Federal Tax Court (case reference: I R 94/15).

Relief of minimum taxation resulting from impairment in value and subsequent reversal

The tax court of Düsseldorf ruled on 2 September 2014 (case reference: 6 K 3370/09 K) that, if the write-down of an asset due to impairment in value and the subsequent reversal due to value recovery in different assessment periods result in an effective tax liability merely because of minimum taxation, this tax liability must be waived on grounds of equity.

In the case at hand, the plaintiff, a German holding corporation, wrote down one of its shareholdings to a lower market value in the assessment period covering the years 2000 and 2001. In accordance with the provisions of the imputation system applicable at that time, the impairment was treated as tax-deductible and increased the plaintiff’s loss carryforward. The write-down was reversed in a later assessment period due to recovery in value. The reversal was added back to the tax base. Under the restrictions of the so-called minimum taxation, only 60% of annual taxable profits in excess of EUR 1 million were offset by loss carryforwards. As a result, 40% of the profit exceeding EUR 1 million was subject to tax.

The tax court held that the case at hand should not have been affected by the minimum taxation because it resulted in taxation of profits which on balance had not been realized and ruled that in the specific case, no minimum tax should apply, i.e. a full offset of the loss previously generated through the share write-down against the recapture was to be allowed.

The decision of the tax court has been appealed and is pending before the Federal Tax Court (case reference: I R 65/14).
In general, the German Real Estate Transfer Tax (RETT) Act provides for the taxation of a transfer, i.e. change in legal ownership, of real estate. This can also apply to cases of a change in ownership of shares or a participation in a real estate owning company. The RETT Act provides for an exemption rule regarding certain group reorganization events, but as pending cases show, the application of this exemption rule is not uncontroversial.

Two cases pending before the BFH (II R 50/13; II R 63/14) address the so-far unresolved question of how the notion of “company” should be interpreted within the scope of the RETT group exemption rule.

Pending cases (II R 36/14; II R 50/13; II R 62/14) also address whether a narrow or broad interpretation of the RETT group exemption rule is to be applied. While the objective of the RETT group exemption rule is to exempt several types of group reorganization events, the actual wording of the rule suggests a narrow application, which is followed by the tax authorities, whereas advisors advocate a broader interpretation. There is no prevailing opinion to be found in academia, legal commentaries and relevant case law. Clarification in this regard is needed for all real estate transfers which occur in the course of group reorganizations where the transferring entity (transferor) ceases to exist, such as mergers, split-ups, spin-offs, carve-outs or certain other forms of asset transfers governed by the German Reorganization Act.

The BFH has now requested the Federal Ministry of Finance (BMF) to also comment on the EU’s state aid compatibility of the RETT group exemption rule. The recent decision of the ECJ’s General Court on the German insolvency restructuring privilege illustrates the importance of these aspects (see article “ECJ’s General Court finds that German insolvency restructuring privilege qualifies as unlawful state aid” in this issue). While granting a selective advantage can be permissible under state aid rules, strict conditions apply and a justification is required.

The BFH’s procedural move could pave the way to rendering guidance on the application of important aspects of the RETT exemption rule for group reorganizations. If the RETT exemption rule qualifies as state aid and was not reported to the European Commission, state aid rules would lead to the exemption’s non-application. Even the potential that the rules may be found to constitute state aid at the moment provides significant additional uncertainty regarding their application.
Federal Tax Court (BFH): Also partnerships may qualify as controlled companies in a VAT group

According to the wording of the German VAT Act, only incorporated legal entities are considered as controlled companies of a VAT group. Until now, according to the view of the BFH, partnerships could not be treated as controlled VAT group subsidiaries.

In principle, a company with a business activity is regarded as an independent taxable person for VAT purposes. As an exception to this general rule, incorporated legal entities that are integrated financially, economically and organizationally into another taxable person are considered as dependent. Such dependent entities are considered as one single taxable person only. All supplies exchanged between the entities of the VAT group are considered as “internal” supplies irrelevant for VAT. The VAT group concept allows entities involved in exempt taxable business with no or a limited right to deduct input VAT (especially companies of the financial services and healthcare industries) to reduce costs resulting from irrecoverable input VAT. In addition, all output and input VAT amounts must be reported in one single return (administrative simplification) to be filed by the VAT group parent company.

Contrary to the wording of the German VAT Act, the BFH ruled in its decision dated 2 December 2015 (V R 25/13) that partnerships may be treated as being financially integrated into a VAT group parent company, but only if shareholders of the partnership are

- the controlling company and
- (if any) other financially controlled companies dominated by the aforementioned controlling company. A VAT group between sister companies is still precluded.

Taxable entities should be able to apply the VAT group principles and refer to the new case law even with retroactive effect. Since the German tax authorities held a different opinion in the past, it is likely that they will allow for a transitional period for applying the VAT group.

We highly recommend analyzing the VAT group concept with regard to any negative or positive VAT or interest effects. For example, businesses which are partially exempt, but exchange taxable intra-group services may benefit from the new case law.

Upstream merger harmful for post-reorganization holding periods (Sec. 22 Para. 2 Sentence 1 Reorganization Tax Act)?

According to Sec. 21 Reorganization Tax Act (RTA), a contribution of more than 50% of the shares in a German corporation (e.g. GmbH1) to another corporation (e.g. GmbH2) in return for shares in the latter can be carried out at book value, thus not triggering a taxable capital gain at the level of the shareholders. However, a subsequent disposal of the shares received (in GmbH2) as well as of the shares contributed by the former shareholders (in GmbH1) within a seven-year period will lead to a retroactive taxation of the original share-for-share contribution at the level of the former shareholders. An exception applies in case the original contribution is followed by a similar subsequent share-for-share transaction at book value (e.g. GmbH2 contributes the shares in GmbH1 into GmbH3).

In a recently published ruling, the Hamburg tax court (decision of 21 May 2015, case reference 2 K 12/13) had to decide whether an upstream merger of the corporation whose shares had been contributed (GmbH1) into the acquiring corporation (GmbH2) has to be seen as a harmful disposal of shares. The tax authorities are of the opinion that any share transfer without consideration in new shares triggers retroactive capital gains taxation. By law, an upstream merger has to be carried out without consideration and, therefore, is considered as harmful by the tax authorities. The court has held that an upstream merger cannot be seen as a harmful disposal of shares as from the point of view of the transferring entity (GmbH2) no consideration will be granted. Further, the court is of the opinion that the intention of Sec. 22 Para. 2 RTA is to avoid abuse, but an upstream merger cannot lead to an abusive benefit for the former shareholders.

The decision has been appealed to the Federal Tax Court (case reference: I R 48/15). Taxpayers, therefore, have to wait for the final decision of the Federal Tax Court.
German court decisions

Tax-effective write-down of an upstream loan

Capital losses suffered by corporations from the disposal of shares in corporations are not deductible if a capital gain resulting from the underlying transaction would have been exempt from tax. The same principle applies to write-downs of shares to a lower market value. In addition, write-downs on loans provided by shareholders or related parties of these shareholders who hold or have held a direct or indirect participation of more than 25% in the borrowing corporation are not tax-deductible.

In the underlying case, the loan was granted by a lower-tier subsidiary upstream to its indirect parent. Although the lending corporation falls under the definition of a related party of the borrowing corporation, the Munich tax court (case reference: 7 K 2688/11) ruled that the value impairment of the upstream loan shall be tax-effective due to the fact that the lending corporation had never held any participation in a party able to exert control over the borrowing corporation. The decision has been appealed to the Federal Tax Court (case reference: I R 74/15).

Taxable entities should be able to apply the VAT group principles and refer to the new case law even with retroactive effect. Since the German tax authorities held a different opinion in the past, it is likely that they will allow for a transitional period for applying the VAT group.

We highly recommend analyzing the VAT group concept with regard to any negative or positive VAT or interest effects. For example, businesses which are partially exempt, but exchange taxable intra-group services may benefit from the new case law.

Exemption of portfolio dividends paid out of substance from trade tax base

The participation exemption for trade tax purposes does not apply if the dividends are received from a German corporation in which the parent holds less than 15%. The tax court of Cologne (case reference: 10 K 410/14) considers the respective inclusion of portfolio dividends into the trade tax base as a violation of the net principle of income taxation in a situation where the distribution was paid out of substance, i.e. it justified a (generally non-tax deductible) impairment of the investment due to a permanent reduction in value of the distributing corporation. The tax court of Cologne held that the non-deductibility of the impairment had to be reversed when calculating the shareholder’s trade tax burden. The decision has been appealed to the Federal Tax Court (case reference: I R 88/15).
ECJ's General Court finds that German insolvency restructuring privilege qualifies as unlawful state aid

On 4 February 2016, the General Court, in the first instance in state aid proceedings at the European Court of Justice (ECJ), rendered its decisions in two German state aid cases (T-620/11 GFKL and T-287/11 Heitkamp), both applying for annulment of the decision of the European Commission of 26 January 2011 considering the German tax provision enabling the carryforward of tax losses for the restructuring of companies in difficulty (Sanierungsklausel) as state aid. The Court rejected the appeals of the taxpayers and confirmed the view of the Commission.

According to Art. 107(1) Treaty on the Functioning of the European Union (TFEU), any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market, i.e., qualifies as unlawful state aid. It is settled case law that the notion of aid can encompass not only positive benefits such as subsidies or loans, but also interventions which in various forms mitigate charges, such as tax advantages. The law only prohibits aid favoring certain undertakings or the production of certain goods, i.e. selective aid. In order to determine whether a tax measure is selective, it must be examined whether in the context of a particular legal tax system that measure constitutes an advantage for certain undertakings in comparison with others which are in a comparable legal and factual situation. State measures which differentiate between undertakings and are therefore prima facie selective aid may only be justified where that differentiation results from the nature or the general scheme of the tax system of which they form part.

The General Court confirmed the decision of the Commission and qualified the insolvency structuring privilege as unlawful state aid. The decision was based mainly on the intention of the German legislator to protect companies in the process of restructuring and the wording of the new rule. The Court took the view that the insolvency structuring privilege is an exception to the basic rule disallowing a corporation to utilize its existing tax losses after the direct or indirect acquisition of a substantial shareholding by a new shareholder. The Court rejected the argument that this privilege is open to all companies regardless of their size or business activity or their residence. Only such undertakings which met the specific criteria of the privilege could utilize their tax losses after a substantial transfer of their shares to a single new shareholder or group of shareholders. It also rejected the argument that the exemption is justified on the basis of the general scheme of the German tax system because it helps to give effect to the fundamental principles of German corporation tax law (inter alia the principle of transfer of losses between different tax periods and the principle that taxable persons should contribute to state financing in accordance with their means). According to the Court, the main purpose of the exception was to grant companies in difficulties a tax advantage in terms of retaining its tax loss carryforwards and this benefit was not available to other non-ailing companies.

The decision of the Court may not be the final word in this case as it is expected that the applicants will appeal against the decisions before the ECJ. Moreover, the subject may also be addressed by a local court by way of a request for a preliminary ruling of the ECJ.

The decision once again illustrates the growing influence of state aid on tax rules. Considering the rationale used by the Court, there could be a substantial number of tax rules which are potentially preferential for a specific type of companies and which could fulfill the requirements of being “selective” in nature and cannot be justified by criteria related to the tax system. As most of such rules are not notified with the Commission, the beneficiary has no protection of legitimate expectations. If the aid granted is ruled state aid, the Member State must retroactively recover the aid granted from the beneficiaries.
In the future, more companies than ever before could be subject to co-determination by employees. The Federal Labor Court (BAG) decided on 4 November 2015 that for the composition of the Supervisory Board, temporary workers with voting rights working on core workplaces have to be considered for the determination of co-determination thresholds (7 ABR 42/13). In another decision dated 16 February 2015 (3/16 O 1/14), the Regional Court Frankfurt am Main ruled that employees working abroad are not excluded from co-determination and have to be involved in the election of employee representatives to the Supervisory Board. The Court of Appeal in Berlin has submitted a relevant case to the European Court of Justice (ECJ) for a preliminary ruling (KG Berlin 16.10.2015, 14 W 89/15).

The ECJ has to examine in this specific case whether it is in compliance with Art. 18 TFEU (ban of discrimination) and Art. 45 TFEU (free movement of workers) if a Member State grants the active and passive right for election of employee representatives in the company’s supervisory body only to the employees employed within Germany. For international companies, this decision might be decisive for the determination of thresholds regarding corporate co-determination. For corporations in Germany with more than 500 employees, one third of the Supervisory Board members have to be employees according to the One-Third Participation Act; if there are more than 2,000 employees, the Supervisory Board must be composed of equal numbers of shareholder and employee representatives (Co-Determination Act). In the latter case, the employees of controlled entities are to be added to the employees of the controlling entity in accordance with the Co-Determination Act; the One-Third Participation Act provides for this regulation only if a controlling agreement exists or in case the company was integrated.

**How companies can react**

Until a year ago, the number of employees within the company for purposes of the threshold included only employees of companies located in Germany. The same applied when determining who was allowed to participate in the employee representatives’ election. So far, employees employed in foreign companies or subsidiaries who were not integrated in the company on a simply temporary basis have not been taken into account.

In general, it can take up to two years until the ECJ rules on a case. However, due to the indicated change in German case law, companies with employees in Germany which are still below the relevant thresholds for co-determination should consider already now how they want to organize their corporate structure with a view to the situation of employee co-determination going forward. A change into a legal entity without co-determination could be an option. Changing into a European Company (SE) could also be advantageous as the SE’s level of co-determination can be stipulated so that the SE is not affected if the relevant co-determination thresholds are exceeded at a later point.
ECJ reverses position on final losses of foreign permanent establishments in Timac Agro case

Beginning with the Lidl Belgium decision in 2008, cross-border loss recognition in case of permanent establishments (PEs) incurring “final losses” has evolved to a highly controversial field. While German tax courts, including the German Federal Tax Court (BFH), have decided several cases in favor of the taxpayer, the tax authorities continued to deny loss relief in particular where the applicable double tax treaty provides for the application of the exemption method. In 2014, the local tax court of Cologne, however, decided to involve the European Court of Justice (ECJ) again seeking for clarification of the ECJ’s position in cases where a PE was transferred within a group.

The case at hand involved a German corporation with an Austrian PE in a loss position which was sold in 2005 to another group entity. The claimant argued that as far as the losses exceeded the purchase price, the PE losses incurred in the years 1999 to 2005 became final and were to be recognized in Germany at head office level. Losses incurred in the years prior to 1999 had already been taken into account at parent level under a rule allowing for the deduction of foreign PE losses upon application in exemption method situations. As a recapture of such losses in the case of a sale of the PE applied, the taxpayer also went to court against such recapture relying again on the “finality”.

The ECJ now held that taxpayers with a foreign PE are not in a situation which is comparable to the situation of a domestic taxpayer operating through a domestic business. Such comparability is inevitable to establish a restriction of the freedom of establishment. Hence, according to the ECJ, Timac Agro could not rely on the freedom of establishment with respect to its losses suffered as of fiscal year 1999.

With respect to the losses incurred in prior years, the ECJ held that a comparable situation actually existed and final losses are in principle to be taken into account. The ECJ further held that it was up to the referring German court to decide whether the losses were actually final and stressed the strict requirements for qualifying a loss as final or definitive. In this context, the ECJ referred to the statement of Austria in the court proceedings indicating that there were still possibilities to make use of these losses by setting up a new PE. However, it is important to note that the ECJ referenced its decision in Marks & Spencer (C-446/03) with regard to the principles relating to final losses.

This decision will have far-reaching impact on the tax practices of EU Member States that apply the exemption method on foreign PE income. With its present decision, the Court reversed its position with regard to case law on final losses, specifically the Lidl Belgium decision, without explicitly addressing this decision. On this basis, it seems likely that the BFH will have to tighten its case law on cross-border loss recognition in PE cases. However, by referencing the decision in Marks & Spencer and other relevant case law, the ECJ seems to confirm the respective principles on final losses in group taxation situations involving a foreign subsidiary. But from the reasoning of the Timac Agro decision it still appears not entirely clear in which situations the ECJ will qualify a loss to be final.
On 10 December 2015, the ECJ ruled on case C-594/14 and answered the respective request for preliminary ruling of the Federal Supreme Court of Germany (BGH).

As already reported in GTLQ 1/2015, a private company limited by shares subject to the law of England and Wales ("Limited") operated its business via a German branch mainly in Germany. When the insolvency proceedings were opened against the Limited, the insolvency administrator sued the director pursuant to Sec. 64 German Limited Liabilities Company Act (GmbHG) for payments made by the director after the Limited had already been insolvent. However, as this is a German law provision and not English or Welsh (or European) law, the BGH could not decide whether or not this provision is applicable to an English limited company in Germany. Therefore, the BGH stayed the proceedings and requested a preliminary ruling from the ECJ.

The ECJ qualifies the provision as being covered by insolvency law and therefore, the law of the territory of the company's actual center of administration is applicable. This interpretation does not violate European law and in particular does not affect the freedom of establishment. The ECJ did not follow the view that the management's liability is subject to company law and therefore to the rules of the company's country of origin.

Consequently, German law applies and the director has to reimburse the respective payments made after the company became insolvent according to Sec. 64 GmbHG. The BGH is expected to rule accordingly and order the director to pay.

Internationally mobile employees: significant compliance risks

A growing number of employees are being deployed around the globe by their employers. Standard types of long- and short-term assignments, where employees are assigned to a foreign entity for a period of three months up to a maximum of five years, are typically well organized and transparent. In the last few years, however, globalization has led to the need to increasingly use also alternative forms of international mobility, which in form and effect can differ significantly from the common types. Many companies lack confidence regarding the challenges arising in connection with cross-border business travelers, employees with a global role or multiple responsibilities, international project assignments, dual contracts, foreign local hires or any other conceivable international roles.

Risks usually arise when companies do not have clear visibility of the size of their internationally mobile population, the reasons for travel and the country combinations travelled by their employees. This can lead to major compliance issues in the respective countries and trigger serious financial and reputational risks for employers.

Potential risks

Most countries establish their right to taxation and social security contributions based on the fact that work is performed within their territory. With globally mobile employees, the specific situation of the mobile employee groups needs to be analyzed thoroughly in order to assess the specific implications from a tax and social security perspective. In practice, companies frequently run the risk of not accurately transferring (wage) taxes and social security contributions to the countries where their employees work due to the complexity of the mobile employee groups as well as the country-specific tax and social security regulations. Local labor law and immigration guidelines can complicate things further.

Failure to comply with local rules and regulations can have a significant impact on businesses, such as legal action, financial and reputational implications, and going as far as individual liability of board members.
A 360° approach to compliance

A clear operating model with proper identification, risk assessment and risk mitigation processes can help companies manage the risks related to their internationally mobile population.

The correct identification of relevant employees within the organization is crucial. Nevertheless, many companies still struggle with tracking how many employees travel where, for how long, for what reason and with what status (i.e. are they business travelers or short-term assignees?). Such difficulties typically arise if travel policies, providers and IT systems across the globe are not (sufficiently) harmonized.

Measures supporting the identification of mobile employees include the use of travel calendars, collaboration with external travel providers and the tracking of business trips via mobile apps. Correct tracking can also be supported by using interfaces when booking trips or employing the help of HR Business partners familiar with tax, immigration and social security topics.

Once employees have been identified and categorized in meaningful groups, the tax, social security and immigration risks associated with international movements of the respective groups need to be assessed. The most common country combinations should be tracked and a country-specific risk landscape should be considered.

Depending on the materiality of risks, implementation of a mitigation process may be called for to manage the various aspects of tax, social security and immigration compliance. Due to the nature of the risks in question, the mitigation will typically be owned jointly by HR and Tax communities on both global and local levels.

However, such an operating model will only increase the compliance of internationally mobile employee management and limit the risks the company is exposed to if it is consistently adhered to in the long term and if it is embedded in a meaningful internal control system. Therefore, it has to be communicated in the company as well as underpinned with relevant technology, policies and directives. Efficient process steering and controlling and a functioning crisis management are also required for ensuring lasting success and sustainability.
EY publications and events

Please find pdf-versions of the EY publications listed below by clicking on the related picture. The free EY Global Tax Guides app provides access to our series of global tax guides. www.ey.com/GL/en/Services/Tax/Global-tax-guide-app

The worldwide corporate tax guide summarizes the corporate tax systems in 161 jurisdictions.

Worldwide personal tax guide (2015-16 edition)
The worldwide personal tax guide summarizes the personal tax systems and immigration rules for individuals in more than 160 jurisdictions.

Worldwide VAT, GST and sales tax guide (2015 edition)
Inside this guide you will find extensive details of value-added tax, goods and service tax and sales tax systems of 114 jurisdictions.

Upcoming EY events

Update Internationale Steuern

- Results of the OECD BEPS discussion - Implementation of recommendations in Germany, the EU and important target countries and what is still to be expected in 2016
- Practical consequences of the recommendations for transfer pricing: Discussion of case studies with Erich Spensberger, Bavarian Tax Office
- How do companies react to these developments? First observations of trends

Language: German
Date and location: 11 April 2016 in Munich
Event contact: Aleksandra Blachowska, aleksandra.blachowska@de.ey.com

Munich International Tax Seminar (MITS)

- Plenaries and workshop presentations by international EY partners on current international tax and TP topics of interest to tax directors/international tax managers
- Optional visit of the Oktoberfest for the 2016 opening ceremony, as well as lunch/afternoon entertainment

Language: English
Date and location: 16-17 September 2016 in Munich
Event contact: Aleksandra Blachowska, aleksandra.blachowska@de.ey.com
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