

Dear Ladies and Gentlemen,

the German government intends to implement tax law amendments mentioned in the Coalition Agreement as of 2010 (see our information sent on 26 October 2009). The legislative proposal (*Wachstumsbeschleunigungsgesetz*, also attached) will be discussed in the *Bundestag* this week. The final decision by the *Bundesrat* is scheduled for the end of December 2009.

Overall annual expected shortfall in tax revenues should be about € 8.5 bn p.a., most of this for the benefit of families (below 5: € 4,610 bn) and VAT (7% VAT only on lodging / accommodation services; below 5: 945 m€).

### **Summary of the main measures according to the legislative proposal:**

#### **1. Change of Ownership / Forfeiture of Losses**

- Annulment of the time limitation of the Corporate Income Tax restructuring clause for loss carry-forwards introduced by the *Bürgerentlastungsgesetz Krankenversicherung* earlier this year. Thus, in case of a restructuring loss carry-forwards continue to exist indefinitely.
- No forfeiture of loss carry-forwards and current year losses in case of a 100% intra-group reorganization.
- In case of a acquisition of shares, no forfeiture of losses in the amount of existing allocable hidden reserves at the level of the corporation whose shares are acquired.
- Expected shortfall in tax revenues for amendments regarding loss carry-forwards and current year losses about € 1,340m p.a.

#### **2. Interest Deduction Rules**

- The de minimis threshold of now € 3m (instead of € 1m previously) regarding the interest barrier rules shall be applicable without time limitation. (Expected shortfall in tax revenues about € 60m p.a.).
- The “1% tolerance threshold” regarding the equity comparison test for groups shall be increased to 2%. (Expected shortfall in tax revenues about € 100m p.a.).
- Introduction of an “EBITDA carry-forward” (annual net interest expense lower than 30% x EBITDA in a certain year) which can be utilized as of 2010. The determination of the EBITDA carry-forward starts as of 2007. An EBITDA carry-forward may be used in the following five years (first-in-first-out). The EBITDA carry-forward, however, shall not be determined for years in which the requirements for one of the three escape rules are fulfilled, i.e. (i) de minimis threshold, (ii) stand-alone entity or (iii) equity ratio test. Change of ownership in partnerships may result in a loss of an EBITDA carry-forward. (Expected shortfall in tax revenues about € 200m p.a.)

**Please find attached the German / English wording of the current applicable Interest Deduction- and Change of Ownership-Rules as well as the proposed amendments to these rules.**

#### **3. Real Estate Transfer Tax (RETT)**

A new section 6a shall be added to the RETT Code. According to this rule certain mergers (*Verschmelzungen*), split-ups (*Aufspaltungen*), spin-offs (*Abspaltungen*) as well as asset contributions (*Ausgliederungen*) involving corporate entities / subsidiaries shall be exempt from RETT as of 2010. There shall be, however, restrictions: The properties transferred must have been held by the transferring company for at least 5 years. The RETT exemption will be withdrawn retroactively in case the receiving company sells the property within 5 years and/or in case the “acquirer” reduces its share in the corporation which owns properties. The latter is drafted unclearly and is presumably meant to cover – similar to the current rule for asset contributions into partnerships – contributions of assets downwards into subsidiaries. (Expected shortfall in tax revenues about € 200m p.a.).

#### 4. Inheritance and Gift Tax Law

- The barriers for obtaining business property relief shall be lowered. The holding period to be met for basic relief (85 % deduction from the tax base) shall become 5 years (currently 7 years), the total sum of salaries and wages to be paid during this period shall be 400 % of the historical average of total wages (currently 650 %). The holding period for optional relief (100 % deduction from the tax base) shall be changed to 7 years (currently 10 years), the total sum of salaries and wages to be met during this period shall be 700 % of the historical average (currently 1000 %). The requirement to pay a certain sum of salaries and wages shall not be applicable for businesses with 20 (currently 10) or fewer employees.  
(Expected shortfall in tax revenues about € 50m p.a.)
- The rate applicable for persons in tax class II (e.g. siblings and nephews) shall be changed to 15 % - 43 % (currently, as in tax class III 30 % or 50 % if the value is above € 6 m).  
(Expected shortfall in tax revenues about € 370m p.a.)
- The rules amended shall be applicable for successions and gifts effective after December 31, 2009.

#### 5. Other

- Introduction of a provision for the immediate write-off of assets up to 410 €. Further, the possibility to group minor assets between 150 € and 1,000 € shall be provided.  
(Expected shortfall in tax revenues about € 400m p.a.)
- Reduction of the trade tax add-back for rent and lease payments for the use of immovable assets from 65 % to 50 %.  
(Expected shortfall in tax revenues about € 80m p.a.)
- VAT rate regarding short-time lodging / accommodation services shall be reduced from 19% to 7%. Increase of certain tax allowances for children.  
(Expected shortfall in tax revenues about € 4,610m p.a.)

We will keep you informed about any new developments.

Best regards  
P+P Pöllath + Partners

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