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German Tax and Legal News

ATAD Implementation Law to enter into force after finally approved by both chambers of the German parliament

Anti-hybrid rules to become effective retroactively as from 1 January 2020.

On 25 June 2021, Germany's upper house of parliament approved the "ATAD implementation law" to implement the EU anti-tax avoidance directive (including provisions of ATAD I and ATAD II) into domestic German tax law. The final version of the ATAD implementation law does not contain any changes from the version that was approved by the lower house of parliament on 21 May 2021 (see GTLN dated 25 May 2021). The approval of the upper house marks the end of a more than 18-month journey to implement the ATAD rules into German law since the first draft was published on 10 December 2019 (see GTLN dated 12 December 2019 and GTLN dated 23 December 2019).

The law now must be signed by the president and published in the federal gazette, which is a simple formality that should take place within the next few days. The ATAD rules will be implemented with retroactive effect as from 1 January 2020, as intended from the beginning.

The ATAD implementation law also includes changes to the exit tax rules (mainly for individuals and not included in the ATAD) and the controlled foreign company rules (to bring the rules in line with the ATAD requirements). In addition, the ATAD implementation law contains an extension of the 2020 tax return filing deadlines, as a response to the current COVID-19 environment.

The 1 January 2020 retroactive effective date for the anti-hybrid rules is causing concern for taxpayers and their advisors. Even if there is a legal obligation for the German government to implement these rules as from 1 January 2020, the more than one and a half year delay in the actual implementation is resulting in legal uncertainties. In addition, the European Commission is closely monitoring Germany's delay in implementing the ATAD into domestic law, and even sent a reasoned opinion to Germany on 10 June 2021 for failure to communicate its compliance with all required national measures to fully implement the ATAD measures.

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