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German Tax and Legal News

European Commission requests Germany to revise exit tax rules

European Commission considers German exit tax rules on capital gains taxation too restrictive in relation to EEA member states.

On 24 January 2019, the European Commission decided to send a reasoned opinion to Germany regarding the exit tax rules applicable to the transfer of certain business assets from a permanent establishment (PE) located in Germany to a PE located in an EU/European Economic Area (EEA) member state. In the commission's view, the transfer of assets from a German PE to a PE of the same taxpayer in an EEA state that is not an EU member state (i.e. Iceland, Liechtenstein or Norway) is treated less favorably than a purely domestic transaction.

The European Commission noted that, upon application by the taxpayer, transfers of assets to a PE located in an EU member state would benefit from a five-year deferral of exit tax. In contrast, the transfer of assets to a PE located in an EEA member state would be subject to an immediate exit tax. In the commission's view, with respect to EEA member states, the German exit tax rules on capital gains taxation are likely to prevent taxpayers from exercising their right to the freedom of establishment guaranteed by article 49 of the Treaty on the Functioning of the European Union and the corresponding provision of the EEA agreement. Unless Germany takes immediate action and revises its exit tax rules on capital gains taxation, the commission may refer a case to the Court of Justice of the European Union (CJEU).

Affected taxpayers that previously have been subject to an immediate exit tax on asset transfers to an EEA member state should monitor developments and keep any relevant assessments open (e.g. by filing an objection and applying for a suspension of proceedings, referencing the commission's statement—or, if a case on the rules is referred to the CJEU, to the case before the CJEU).

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