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German Tax and Legal News

MOF plans stricter monitoring of energy and electricity consumption

The MOF has published a draft of new transparency rules for the energy and electricity tax, as well as changes to the energy and electricity tax ordinance.

Germany's Federal Ministry of Finance (BMF) has published a draft of a new Transparency ordinance for Energy and Electricity Tax (EnSTransV) purposes, as well as proposed rules that would amend the Energy and Electricity Tax Ordinance. The proposals would increase compliance requirements and, for certain enterprises, affect tax benefits applied in previous periods.

Transparency ordinance

The draft transparency ordinance would introduce new obligations on the recipient of benefits to provide information and be more transparent with respect to aid Germany for energy and electricity tax purposes (e.g. tax benefits, reduced rates, tax refunds). However, obligatory tax benefits (such as those regulated in article 14 of the Council Directive 2003/98/EC of October 27, 2003 restructuring the Community framework for the taxation of energy products and electricity would not be affected under the proposed rules. Such tax benefits are regulated within the framework of the EU and implemented in national law and, therefore, would not qualify as aid according to article 107 of the Treaty on the Functioning of the European Union. However, most of the tax benefits, reduced rates and tax refunds regulated by the Energy Tax Act and Electricity Tax Act would constitute subsidies subject to the new transparency rules.

The draft transparency ordinance would impose new obligations on the recipients of tax benefits (e.g. under section 3 and 28 Energy Tax Act or section 9, paragraphs 2/3 of the Electricity Tax Act) and tax refunds linked to energy and electricity tax (e.g. sections 53 a and b and 54 -57 of the Energy Tax Act and sections 9b and 10 of the Electricity Tax Act). Such recipients would be required to provide information relating to the following:

- Their name and address;
- The type and volume of energy or electricity consumed;
- The amount of tax benefits/reduced rates//tax refunds received; and
- The type of economic activities relevant to the beneficiary's business.

In certain cases, the recipient of benefits would be able to submit an application to be exempt from the information reporting obligation (i.e. if it received no more than EUR 10,000 in tax subsidies that were used in the previous three years). Such an exemption would be valid for three years from the year the application was approved.

The draft transparency ordinance also would introduce rules relating to the storing, collection, processing and use of the data by the customs authorities, as well as the transmission of the data to the European Commission or other EU authorities.

If approved, the new rules would apply as from 1 July 2016.

Ordinance for Energy and Electricity Tax

The draft regulations relating to the energy and electricity tax would introduce new definitions of the following:

- The consumption of air fuel and the legal environment for tax-exempt use;
- The period for filing a refund application for the production of electricity; and
- The local production of electricity.

The new definition related to the local production of electricity, in particular, would result in a more restrictive interpretation of the tax exemption for this sector, which could lead to a

reduction in the number of exemptions granted for the decentralized production of electricity and may result in the production of electricity being subject to the electricity tax. Affected producers should be aware that the costs for the production of electricity would increase.

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