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## **Upper House of Parliament recommends rule requiring 5% add back of non-resident dividends for trade tax purposes in tax group situation**

The upper house of parliament has launched an initiative to reverse a taxpayer favorable decision of the BFH on the trade tax treatment of non-resident dividends.

On 8 May 2015, the upper house of the German parliament launched an initiative to codify the position of the tax authorities on the trade tax treatment of dividends distributed by a nonresident subsidiary to its German parent company that is a controlled company in a German tax group. According to the tax authorities, such dividends should only be 95% exempt (as is the case for corporate income tax purposes).

This issue has been controversial since the federal tax court (BFH) upheld a taxpayer-favorable decision of the lower tax court of Muenster in which the lower court concluded that such dividends must be treated as fully tax exempt for trade tax purposes and not only 95% exempt, as argued by the tax authorities (BFH decision dated 17 December 2014 (I R 39/14)). The case involved dividends distributed by a nonresident subsidiary to its German parent company that is a controlled company in a German tax group.

The upper house of the German parliament would like legislation to be proposed to introduce a 95% trade tax exemption for such dividends, and has asked the government to examine this option in more detail as part of the legislative process on the draft "Bill on the implementation of the minutes to the Law on the adaptation of the General Tax Code to the European customs codex and amendment of other tax provisions." The government issued a statement on 13 May agreeing to consider parliament's request.

The introduction of a 95% trade tax participation exemption for dividends from foreign subsidiaries to a controlled entity in a tax group effectively would reverse the decision of the BFH. The fact that the government did not immediately reject the request of the upper house of parliament could indicate that the rule may be introduced during the legislative process.

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