



International Tax

Germany Tax Alert

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Anti-hybrid/anti-double dip rules not to be implemented in 2014

Contacts

Stefan Grube
sgrube@deloitte.de

Axel Kroniger
akroniger@deloitte.de

Alexander Linn
allinn@deloitte.de

Andreas Maywald
anmaywald@deloitte.com

Germany's upper house of parliament (*Bundesrat*) approved the 2015 tax bill (Law on the adaptation of the General Tax Code to the European customs codex and amendment of other tax provisions) on 19 December 2014 without the original proposed anti-hybrid and anti-double-dip rules and several other proposed measures (see [tax alert](#) dated 7 November 2014). The upper house vote marks the end of the legislative process; the tax bill now only has to be signed into law by the president which is before the end of 2014.

Several measures originally proposed by the upper house did not make it into the final version of the bill. In addition to the omission of the anti-hybrid and anti-double dip rules, the following measures were not approved:

- The introduction of a 10% minimum shareholding requirement to qualify for the 95% participation exemption on gains from the sale of shares.
- A broadening of the intragroup restructuring exception for purposes of the change-in-ownership rule.
- Retroactive "clarification" of triggering events for application of the real estate transfer tax (RETT) where the real estate is held by a partnership.
- The introduction of a limitation on the boot consideration (i.e. non-share consideration) allowed under the Reorganization Tax Code for a tax-neutral contribution in kind.
- Centralization of the competency for certain withholding tax reclaims based on EU law in the Federal Tax Office.

It should be noted that the upper house approved the bill only after the federal government issued a statement that certain actions will be taken in 2015:

- *Anti-hybrid and anti-double-dip rules:* The federal government is appointing a task force to discuss the results of the final BEPS reports to be published in 2015 and to come up with a proposal on how to implement the final recommendations into German law. Legislative action is expected in late 2015 or in 2016.
- *Limitation for the boot consideration and other items:* Legislative action will be initiated in the first quarter of 2015. The government also intends to initiate legislative action regarding a reform of the investment taxation

rules (including the possible introduction of a 10% minimum shareholding requirement to qualify for the 95% participation exemption on gains from the sale of shares) in the second quarter of 2015.

Even though the anti-hybrid and anti-double-dip rules were not approved, taxpayers should closely monitor developments and assess whether action may be required. Legislative measures similar to the proposed rules are likely to be passed in 2015 or 2016 and they could be introduced with retroactive effect.

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