

Breaking Tax News Tackling taxes



Governmental Bill on Amendments to Federal Tax Law 2011 – Capital Investments

As reported in our BTN No 15 on June 6, 2011, the governmental bill on most recent federal tax law amendments (“AbgÄG 2011”) also effects taxation of income from capital investments. The most important planned amendments are the following:

No withholding tax in case of non-certified derivatives

Income from non-certified derivatives according to Sec 27a/2/7 Income Tax Act (“EStG”) shall **not be subject to withholding tax** anymore. Thus, such earnings would be subject to the general progressive income tax rate.

Withholding tax – exit taxation

The obligation under Sec 94/7 EStG to withhold taxes in exit taxation situations (i.e. Sec 27/6/1/b EStG: fictional capital gains taxation) shall only apply if the taxpayer explicitly **informs** the withholding party on the transfer of capital investments. However, if the taxpayer provides a **notification allowing non-assessment** of the tax liability, the obligation to withhold exit tax shall not apply. Exit taxation should be based on the fair market value at the time of the expatriation.

Loss utilization on capital investments within the operational business

Current legislation allowed deduction of losses from capital investments only from other business income at a limitation of 50%. Now, such losses shall also be offset with income from **non operational** business.

Entering into force of the new taxation rules

The new taxation rules on realized capital gains and income on derivatives according to Sec 27/3 and 27/4 EStG shall come into force by **April 1, 2012** (October 1, 2011 was intended so far).

The new regime will apply on sales of shares in **corporations**, investment and real estate investment **funds**, which have been acquired for a consideration after **December 31, 2010** as well as on sales of all other capital investments and derivatives acquired for a consideration after **March 31, 2012** (September 30, 2011 was intended so far).

Further Developments

The **Constitutional Court** (VfGH) has already been confronted with several new claims against the new capital investment taxation rules; furthermore, the Ministry of Finance is going to publish **guidelines** on the rules soon. Further developments therefore remain to be expected.

We will keep you updated!
Your Deloitte Tax Advisor will be happy to answer your questions.

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