

Act Combating Tax Avoidance and Unfair Tax Competition and Amending Further Acts¹

of 25 June 2021

The Bundestag has adopted the following Act with the consent of the Bundesrat:

C o n t e n t s

- Article 1 – Act Combating Tax Avoidance and Unfair Tax Competition and Amending Further Acts²
- Article 2 – Amendment of the Income Tax Act³
- Article 3 – Amendment of the Corporation Tax Act⁴
- Article 4 – Amendment of the Fiscal Code⁵
- Article 5 – Amendment of the Introductory Act to the Fiscal Code⁶
- Article 6 – Repeal of the Ordinance to Combat Tax Evasion⁷
- Article 7 – Amendment of the Act on the Automatic Exchange of Financial Account Information in Tax Matters⁸
- Article 8 – Amendment of the Fiscal Administration Act⁹
- Article 9 – Amendment of the Valuation Act¹⁰
- Article 10 – Amendment of the Inheritance and Gift Tax Act¹¹
- Article 11 – Amendment of the Real Property Transfer Act¹²
- Article 12 – Amendment of the Fire Protection Tax Act¹³
- Article 13 – Entry into force

Article 1

Act Combating Tax Avoidance and Unfair Tax Competition (Combating Tax Havens Act¹⁴)

O v e r v i e w

P a r t 1

G e n e r a l p r o v i s i o n s

Section 1 – Scope

¹ This working translation of the *Gesetz zur Abwehr von Steuervermeidung und unfäirem Steuerwettbewerb und zur Änderung weiterer Gesetze* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

² *Gesetz zur Abwehr von Steuervermeidung und unfäirem Steuerwettbewerb*

³ *Einkommensteuergesetz*

⁴ *Körperschaftsteuergesetz*

⁵ *Abgabenordnung*

⁶ *Einführungsgesetz zur Abgabenordnung*

⁷ *Steuerhinterziehungsbekämpfungsverordnung*

⁸ *Gesetz zum automatischen Austausch von Informationen über Finanzkonten in Steuersachen*

⁹ *Finanzverwaltungsgesetz*

¹⁰ *Bewertungsgesetz*

¹¹ *Erbschaftsteuer- und Schenkungsteuergesetz*

¹² *Grunderwerbsteuergesetz*

¹³ *Feuerschutzsteuergesetz*

¹⁴ *Steueroasen-Abwehrgesetz*

Section 2 – Definitions

Section 3 – Authorisation to adopt statutory instruments

Part 2

Classification of a jurisdiction

Section 4 – Lack of transparency in tax matters

Section 5 – Unfair tax competition

Section 6 – Non-compliance with the BEPs minimum standards

Part 3

Defensive measures

Section 7 – Business transactions affected

Section 8 – Prohibition on deducting business expenses and work-related expenses

Section 9 – Tighter rules on controlled foreign company (CFC)

Section 10 – Withholding tax measures

Section 11 – Measures relating to profit distributions and sales of shares

Part 4

Special requirements for the tax administration procedure

Section 12 – Enhanced cooperation obligations

Part 5

Final provisions

Section 13 – Application provisions

Part 1

General provisions

Section 1 – Scope

(1) The provisions of this Act are applicable to natural persons, corporations, associations of persons and pools of assets.

(2) This Act is applicable to taxes, including tax refunds, that are governed by German federal law or European Union law, and that are administered by federal revenue authorities, *Land* revenue authorities or local authorities, with the exception of value added tax, including import VAT, import and export duties, and excise duties.

(3) The provisions of this Act are not restricted or excluded by agreements on the avoidance of double taxation. Moreover, German taxing rights are not affected by agreements on the avoidance of double taxation with non-cooperative tax jurisdictions for the period in which parts 3 and 4 apply in relation to this tax jurisdiction.

Section 2 – Definitions

(1) A country or jurisdiction (tax jurisdiction) is non-cooperative within the meaning of this Act if the tax jurisdiction fulfils one of the conditions set out in section 4 (1), section 5 (1) or section 6.

(2) The following are resident in a non-cooperative tax jurisdiction within the meaning of this Act:

1. natural persons if they have a residence (section 8 of the Fiscal Code) or their habitual abode (section 9 of the Fiscal Code);
2. corporations, associations of persons and pools of assets if they have a registered office (section 11 of the Fiscal Code) or their place of management (section 10 of the Fiscal Code)

in a non-cooperative tax jurisdiction.

Section 3 – Empowerment to issue a statutory instrument

(1) To ensure a uniform application of the law, the Federal Ministry of Finance and the Federal Ministry for Economic Affairs and Energy will issue with the consent of the Bundesrat a statutory instrument which specifies

1. the tax jurisdictions that are non-cooperative tax jurisdictions in accordance with section 2 (1), if they are named in the current version of the EU list of non-cooperative jurisdictions for tax purposes published in the Official Journal of the European Union; and
2. the point in time as of which a tax jurisdiction that was previously non-cooperative no longer fulfils the conditions of section 2 (1).

The statutory instrument is definitive for the application of parts 3 and 4.

(2) If a tax jurisdiction is named as a non-cooperative tax jurisdiction in the statutory instrument pursuant to subsection (1), parts 3 and 4 apply to this tax jurisdiction from the beginning of the year following the entry into force of the statutory instrument. An exception will apply for section 8, which applies as of the beginning of the fourth year after the entry into force, and for section 11, which applies as of the beginning of the third year after the statutory instrument enters into force. If the fiscal year that applies to the person who is the target of the measures in parts 3 and 4 is different from the calendar year, sentences 1 and 2 apply with the proviso that the beginning of the following fiscal year is used as a basis.

(3) If a tax jurisdiction is no longer listed as a non-cooperative tax jurisdiction in the statutory instrument pursuant to subsection (1), parts 3 and 4 already no longer apply to this jurisdiction as of 1 January of the calendar year in which the point in time specified in the statutory instrument for when the conditions are no longer fulfilled falls. If the fiscal year that applies to the person who is the target of the measures in parts 3 and 4 is different from the calendar year, sentence 1 applies with the proviso that the beginning of the fiscal year is used as a basis.

Part 2

Classification of a jurisdiction

Section 4 – Lack of transparency in tax matters

(1) A tax jurisdiction is non-cooperative if this tax jurisdiction does not ensure sufficient transparency in tax matters.

(2) A tax jurisdiction is not ensuring sufficient transparency in tax matters if this tax jurisdiction

1. does not carry out the automatic exchange of financial account information in tax matters with the Federal Republic of Germany and all other member states of the European Union in accordance with the Common Reporting Standard;
2. has not extensively implemented the OECD standard on transparency and effective exchange of information on request; or
3. has not ratified the Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988, as amended by the Amending Protocol of 27 May 2010, or, if the tax jurisdiction does not have full state sovereignty, it has not joined the Convention on Mutual Administrative Assistance in Tax Matters of 25 January 1988, as amended by the Amending Protocol of 27 May 2010; however, transparency is deemed to be sufficiently ensured if the tax jurisdiction ensures the effective exchange of information on request and the automatic exchange of information with the Federal Republic of Germany and all other member states of the European Union on the basis of existing agreements.

(3) The Common Reporting Standard pursuant to subsection (2) no 1 is the Standard for Automatic Exchange of Financial Account Information in Tax Matters that was developed by the Organisation for Economic Co-operation and Development (OECD) together with the G20 countries, as published by the OECD on 15 July 2014.

(4) The OECD standard pursuant to subsection (2) no 2 is defined by the 2016 Terms of Reference in “Exchange of Information on Request, Handbook for Peer Reviews 2016-2020”, Global Forum on Transparency and Exchange of Information for Tax Purposes (2016).^{*} The standard is deemed to be extensively unimplemented in a tax jurisdiction if significant deviations are made from it and these deviations had, or are likely to have, significant effects on the practical implementation of the exchange of information on request.

Section 5 – Unfair tax competition

(1) A tax jurisdiction is non-cooperative if it engages in unfair tax competition.

(2) A tax jurisdiction is engaging in unfair tax competition if it applies rules, including legal provisions, administrative provisions and administrative practices in the area of tax law, that lead to a significantly lower level of effective taxation, including zero taxation, compared with the level of taxation that usually applies in the tax jurisdiction in question. These rules must in particular be regarded as unfair tax competition if they

1. grant benefits exclusively to non-residents or for transactions with non-residents;
2. grant benefits that domestic businesses in the non-cooperative tax jurisdiction are not able to claim, with the result that they have no effect on the tax base of these businesses;
3. separate benefits from an actual economic activity or presence in the tax jurisdiction granting these benefits, and the tax benefits are also granted without this type of activity or presence;
4. deviate from internationally generally accepted principles, especially those of the OECD, when calculating profits in the case of activities within a multinational group; or
5. are non-transparently documented, especially if they are not documented in a generally foreseeable or adequate way, including cases in which the treatment by the administrative authorities deliberately deviates from the rules in order to grant benefits that are not provided for in law.

(3) For a tax jurisdiction that does not have a corporate income tax system, or which has a corporation tax system whose application leads to an effective rate of corporation income tax of zero or close to zero (zero rate jurisdiction), rules and structures must be regarded as unfair tax competition if they are aimed at attracting profits which do not reflect real economic activity in the tax jurisdiction. Rules and structures must in particular be regarded as unfair tax competition if they lead to an effect corresponding to the rules under subsection (2) sentence 2 nos 1 to 5. For the assessment of the effect, it is irrelevant whether these rules and structures are tax or non-tax rules and structures in the tax jurisdiction in question. The mere circumstance that a tax jurisdiction is a zero rate

^{*} Official note: This document is accessible online at https://www.bzst.de/DE/Behoerden/InternationaleAmtshilfe/AmtshilfeDirekteSteuern/amtshilfe_direkte_steuern_node.html.

jurisdiction does not mean that the relevant rules or structures in this tax jurisdiction are to be regarded as unfair tax competition.

Section 6 – Non-compliance with the BEPs minimum standards

(1) A tax jurisdiction is non-cooperative if it has not committed itself to implementing the minimum standards of the OECD/G20 BEPS project (Base Erosion and Profit Shifting, cf. BEPS Project Explanatory Statement, 2015 Final Reports) to combat base erosion and profit shifting. The minimum standards include Action 5 “Counter Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance”, Action 6 “Prevent Treaty Abuse”, Action 13 “Transfer Pricing Documentation and Country-by-Country Reporting” and Action 14 “Make Dispute Resolution Mechanisms More Effective”.

(2) A tax jurisdiction is also non-cooperative if it

1. does not have a mechanism for exchanging country-by-country reports with the Federal Republic of Germany and all other member states of the European Union; or
2. deviates significantly from the OECD/G20 BEPS project minimum standard Action 13 “Transfer Pricing Documentation and Country-by-Country Reporting” with regard to confidentiality, data protection safeguards, the proper use or the timely and sufficient exchange of information on country-by-country reporting.

P a r t 3

D e f e n s i v e m e a s u r e s

Section 7 – Business transactions affected

If a taxpayer maintains business relations or participating interests in or in relation to a non-cooperative tax jurisdiction (transactions), sections 8 to 11 apply. Sentence 1 also applies to assumed dealings as referred to in section 1 (4) sentence 1 no 2 of the External Tax Relations Act¹⁵ and to transactions that are based on an agreement under company law.

Section 8 – Prohibition on deducting business expenses and work-related expenses

Expenses from business transactions as referred to in section 7 may not be used to reduce profits or the surplus of income over income-related expenses. This does not apply if

1. the income that corresponds to the expenses is subject to unlimited or limited tax liability in accordance with the provisions of the Income Tax Act, the Corporate Income Tax Act or this Act; or
2. an add-back amount as referred to in section 10 (1) sentence 1 of the External Tax Relations Act is to be applied due to the income resulting from the expenses.

Section 9 – Tighter rules on controlled foreign company (CFC)

If persons with unlimited tax liability hold a stake pursuant to section 7 of the External Tax Relations Act in a foreign company as referred to in section 7 (1) of the External Tax Relations Act which is resident in a non-cooperative tax jurisdiction, the foreign company is, in addition to section 8 (1) of the External Tax Relations Act and notwithstanding section 8 (2) to (4) and section 9 of the External Tax Relations Act, deemed to be an intermediate company for all their income that is subject overall to low taxation as referred to in section 8 (5) of the External Tax Relations Act. Sentence 1 does not apply if its application leads to lower taxable income than if

¹⁵ Außensteuergesetz

it is not applied. For permanent establishments of a taxpayer with unlimited tax liability that are located in a non-cooperative tax jurisdiction, section 20 (2) sentence 1 of the External Tax Relations Act applies with the proviso that this provision is applicable to the total income of the permanent establishments; section 20 (2) sentence 2 of the External Tax Relations Act is not applicable and sentence 2 applies accordingly.

Section 10 – Withholding tax measures

In addition to section 49 of the Income Tax Act, taxable income of natural persons, corporations, associations of persons or pools of assets that are resident in a non-cooperative tax jurisdiction is also deemed to exist insofar as they generate income from

1. financing arrangements,
2. insurance or reinsurance benefits,
3. the provision of services, to the extent not already covered by nos 1 and 2, or
4. trade in goods or services,

that pursuant to the first half-sentence of section 2 (1) sentence 1 of the Income Tax Act would be subject to taxation in the case of taxpayers with unlimited tax liability, and remuneration that has been granted to them in this regard as operating expenses or income-related expenses from another taxpayer can be taken into account, notwithstanding section 8 sentence 1, when assessing such income for the purposes of unlimited income tax or corporation tax liability. Section 50a of the Income Tax Act, with the exception of its subsections (6) and (7), and sections 73c to 73g of the Income Tax Implementing Ordinance,¹⁶ as well as the other legal provisions that are linked to the tax deduction on the basis of section 50a of the Income Tax Act, apply accordingly to the remuneration referred to in sentence 1. In this respect, section 50a (2) sentence 1 of the Income Tax Act is applicable with the proviso that the tax deduction amounts to 15 percent of the total income.

Section 11 – Measures relating to profit distributions and sales of shares

(1) The following provisions do not apply to earnings as referred to in section 20 (1) nos 1, 2, 9 and 10 (a) of the Income Tax Act that are paid by a corporation resident in a non-cooperative tax jurisdiction:

1. the provisions on a tax exemption in accordance with section 8b (1) sentence 1 of the Corporation Tax Act and
2. provisions in agreements on the avoidance of double taxation that are comparable with the provisions specified in no 1.

The provisions on a tax exemption in accordance with section 8b (2) sentence 1 of the Corporate Income Tax Act and comparable provisions in agreements on the avoidance of double taxation do not apply to profits from the sale of a share in a corporation or partnership whose benefits for the recipient form part of earnings as referred to in sentence 1. Sentences 1 and 2 also apply if the taxpayer receives earnings from a related party as referred to in section 1 (2) of the External Tax Relations Act and these earnings result from distributions or capital gains that the related party has received indirectly or directly from a corporation as referred to in sentence 1; this does not apply if sentences 1 and 2 or comparable provisions have already been applied at the level of the related party.

(2) For income as referred to in subsection (1), section 2 (5b) sentence 1, section 32d (1) and section 43 (5) of the Income Tax Act are not applicable in relation to income that the bank pays to the taxpayer on the debtor's account, and section 3 no 40 sentences 1 and 2 of the Income Tax Act is not applicable.

(3) Subsections (1) and (2) do not apply if the taxpayer proves that the distributions result from amounts that were already subject to taxation pursuant to section 10 on the part of the payor, or that the non-deductibility rule pursuant to section 8 was already applied to them.

¹⁶ *Einkommensteuer-Durchführungsverordnung*

Part 4

Special requirements for the tax administration procedure

Section 12 – Enhanced cooperation obligations

(1) The taxpayer has an enhanced cooperation obligation in addition to the existing cooperation obligations pursuant to section 90 of the Fiscal Code. The enhanced cooperation obligation includes the obligations set out in the following subsections.

(2) The taxpayer must keep the following records for business transactions as referred to in section 7:

1. a representation of their business relations, an overview of the type and scope of these business relations, in particular goods purchases, services, loan arrangements, insurance relationships, transfers of usage rights, and cost contribution arrangements;
2. contracts and agreed contractual conditions that form the basis for the business relations, and any changes to these within the fiscal year;
3. a list of agreements relating to intangible assets, including cost contribution arrangements as well as research service agreements and licensing agreements, as well as a list of the intangible assets that the taxpayer uses, or transfers for the purpose of being used, within the scope of the business relations in question;
4. the functions performed and the risks assumed by participants within the scope of the business relations, as well as any changes to these within the fiscal year;
5. the main assets used;
6. the chosen business strategies;
7. any market- and competition-related circumstances that are of relevance for taxation;
8. the natural persons who are indirectly or directly partners or shareholders in a company in a non-cooperative tax jurisdiction with which the taxpayer has business relations; this does not apply if there is substantial and regular trading in the foreign company's principal class of shares on a stock exchange in a European Union member state or in a contracting state to the EEA Agreement or on a stock exchange that is authorised by the Federal Financial Supervisory Authority¹⁷ in another country pursuant to section 193 (1) sentence 1 nos 2 and 4 of the Investment Code.¹⁸

The records pursuant to sentence 1 must be created at the latest one year after the end of the respective calendar or fiscal year and must be provided to the local competent revenue authority as well as, in cases that fulfil the conditions of section 138a of the Fiscal Code, the Federal Central Tax Office.¹⁹ In addition, the records must be presented upon request in accordance with section 90 (3) sentences 6 and 7 of the Fiscal Code.

(3) Upon request by the competent revenue authority, the taxpayer must affirm under oath the correctness and completeness of the information pursuant to subsection (2) and must authorise the revenue authority to enforce, in their name and in and out of court, possible rights to information in relation to persons specified by the revenue authority in relation to whom business transactions as referred to in section 7 exist. Section 95 of the Fiscal Code remains unaffected.

¹⁷ Bundesanstalt für Finanzdienstleistungsaufsicht

¹⁸ *Kapitalanlagegesetzbuch*

¹⁹ Bundeszentralamt für Steuern

Part 5
Final provisions

Section 13 – Application provisions

(1) Parts 3 and 4 of this Act are applicable as of 1 January 2022.

(2) In derogation from subsection (1), parts 3 and 4 of this Act are applicable as of 1 January 2023 in relation to tax jurisdictions that on 1 January 2021 were not included in the EU list of non-cooperative jurisdictions for tax purposes published in the Official Journal of the European Union.

(3) Subject to subsections (1) and (2), section 9 is applicable for the first time in the version applicable on the day after promulgation

1. in the case of income tax and corporate income tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2021. For passive income from an intermediate company or a subsidiary as referred to in section 14 (1) of the External Tax Relations Act in the version applicable on 30 June 2021 or from a subsidiary's subordinate foreign company as referred to in section 14 (3) of the External Tax Relations Act in the version applicable on 30 June 2021, or from a permanent establishment, where the passive income arose in a fiscal year that began before 1 January 2022, the following version of section 9 is applicable subject to subsections (1) and (2):

“Section 9 – Tighter rules on controlled foreign corporations

If persons with unlimited tax liability hold a stake in accordance with section 7 of the External Tax Relations Act in the version applicable on 30 June 2021 in a foreign company as referred to in section 7 (1) of the External Tax Relations Act in the version applicable on 30 June 2021 which is resident in a non-cooperative tax jurisdiction, the foreign company is deemed to be, in addition to section 8 (1) of the External Tax Relations Act in the version applicable on 30 June 2021 and notwithstanding section 8 (2) and section 9 of the External Tax Relations Act in the version applicable on 30 June 2021, the intermediate company for all the persons' income which overall is subject to low taxation as referred to in section 8 (3) of the External Tax Relations Act in the version applicable on 30 June 2021. Subsidiaries as referred to in section 14 (1) of the External Tax Relations Act in the version applicable on 30 June 2021 and these subsidiaries' subordinate foreign companies as referred to in section 14 (3) of the External Tax Relations Act in the version applicable on 30 June 2021 that are resident in a non-cooperative tax jurisdiction are deemed to be, in addition to section 14 (1) and section 8 (1) of the External Tax Relations Act in the version applicable on 30 June 2021 and notwithstanding section 8 (2) and section 9 of the External Tax Relations Act in the version applicable on 30 June 2021, subordinate intermediate companies for all their income, to the extent that this has been subject to low taxation; negative income from such companies is not attributable, in derogation from section 14 (1) sentence 1 of the External Tax Relations Act in the version applicable on 30 June 2021. Sentences 1 and 2 do not apply if their application would lead to lower taxable income or attributable income than if they are not applied. For permanent establishments of a taxpayer with unlimited tax liability that are located in a non-cooperative tax jurisdiction, section 20 (2) sentence 1 of the External Tax Relations Act in the version applicable on 30 June 2021 applies with the proviso that this provision is applicable to the total income of the permanent establishments; section 20 (2) sentence 2 of the External Tax Relations Act in the version applicable on 30 June 2021 is not applicable and sentence 3 applies accordingly.”

Article 2 – Amendment of the Income Tax Act

Section 51 (1) no 1 (f) of the Income Tax Act, as published on 8 October 2009 (Federal Law Gazette I, p. 3366, 3862), as last amended by Article 5 of the Act of 21 December 2020 (Federal Law Gazette I, p. 3096), is repealed.

Article 3 – Amendment of the Corporation Tax Act

The Corporate Income Tax Act, as published on 15 October 2002 (Federal Law Gazette I, p. 4144), as last amended by Article 8 of the Act of 21 December 2020 (Federal Law Gazette I, p. 3096), is amended as follows:

1. The following sentence is added to section 8 (1):

“In the case of corporations as referred to in section 1 (1) established abroad whose place of management is located in Germany and that are not to be treated as legal persons under German company law due to a lack of legal capacity, payments and payment commitments between the corporation and persons that generate income as referred to in section 20 (1) nos 1 and 9 of the Income Tax Act from this corporation are to be treated as payments and payment commitments between a corporation with legal capacity and its shareholders for the purposes of carrying out taxation with taxes on earnings.”

2. Section 12 (4) is repealed.

3. Section 33 (1) no 2 is amended as follows:

- a) In letter (d), the semicolon at the end is replaced by a full stop.
- b) Letter (e) is repealed.

4. Section 34 is amended as follows:

- a) The following subsection (3c) is added after subsection (3b):

“(3c) Section 8 (1) as amended by Article 3 of the Act of 25 June 2021 (Federal Law Gazette I, p. 2056) is also applicable to assessment periods before 2021.

- b) The existing subsection (3c) becomes subsection (3d).

- c) The following sentence is added to subsection (6d):

“Section 12 (4) in the version applicable on 30 June 2021 is applicable for the last time to the 2020 assessment period.”

Article 4 – Amendment of the Fiscal Code

The Fiscal Code in the version promulgated on 1 October 2002 (Federal Law Gazette I, p. 3866; 2003 I, p. 61), as last amended by Article 28 of the Act of 21 December 2020 (Federal Law Gazette I, p. 3096), is amended as follows:

1. In section 3 (4) no 3, the wording “and (4a)” is inserted after the words “section 162 (4)”.

2. Section 90 (2) sentence 3 is repealed.

3. In section 147a (1) sentence 6, the words “section 90 (2) sentence 3” are replaced by the words “section 12 (3) of the Act Combating Tax Avoidance and Unfair Tax Competition”.

4. Section 162 is amended as follows:

- a) Subsection (2) sentence 3 is worded as follows:

“If the taxpayer violates their cooperation obligations pursuant to section 12 of the Act Combating Tax Avoidance and Unfair Tax Competition, it is rebuttably presumed that taxable income in Germany in relation to jurisdictions as referred to in section 3 (1) of the Act Combating Tax Avoidance and Unfair Tax Competition

1. has not yet been declared, but exists in reality, or
2. was previously declared but in reality is higher than declared.”

b) The following subsection (4a) is inserted after subsection (4):

“(4a) If the taxpayer violates their cooperation obligations pursuant to section 12 of the Act Combating Tax Avoidance and Unfair Tax Competition, subsection (4) is applicable accordingly. No penalty is imposed in cases where the non-fulfilment of cooperation obligations appears to be excusable or the degree of fault is negligible. If a legal representative or agent is to blame for the non-fulfilment of cooperation obligations, the fault is attributed to the taxpayer.”

5. Section 193 (2) no 3 is worded as follows:

- “3. if a taxpayer does not fulfil their cooperation obligations pursuant to section 12 of the Act Combating Tax Avoidance and Unfair Tax Competition.”

Article 5 – Amendment of the Introductory Act to the Fiscal Code

The following subsection (4) is added to Article 97 of the of the Introductory Act to the Fiscal Code of 14 December 1976 (Federal Law Gazette I, p. 3341; 1977 I, p. 667), as last amended by Article 2 of the Act of 15 February 2021 (Federal Law Gazette I, p. 237):

“(4) Section 3 (4) no 3, section 90 (2), section 147a (1) sentence 6, section 162 (2) sentence 3 and subsection (4a) and section 193 (2) no 3 of the Fiscal Code in the version applicable as of 1 July 2021 are applicable for the first time to tax periods that begin after 31 December 2021.”

Article 6 – Repeal of the Ordinance to Combat Tax Evasion

The Ordinance to Combat Tax Evasion of 18 September 2009 (Federal Law Gazette I, p. 3046) is repealed.

Article 7 – Amendment of the Act on the Automatic Exchange of Financial Account Information in Tax Matters

The Act on the Automatic Exchange of Financial Account Information in Tax Matters of 21 December 2015 (Federal Law Gazette I, p. 2531), most recently amended by Article 16 of the Act of 12 December 2019 (Federal Law Gazette I, p. 2451), is amended as follows:

1. In the table of contents, the following title is inserted after the title of section 3:

“Section 3a – Obligations of the account holder and the applicant”.

2. The following section 3a is to be inserted after section 3:

“Section 3a – Obligations of the account holder and the applicant

(1) Natural persons and legal entities that apply to open a financial account at a reporting financial institution, either for themselves or for the benefit of or on behalf of another person, and the account holder, must comply with the following obligations.

(2) If a reporting financial institution must obtain self-certifications or documents under this Act, this information or these documents must be provided or issued completely and accurately.

(3) Anyone who has issued a self-certification to a reporting financial institution must, in the event of a change in circumstances, inform the financial institution, using a self-certification, of the new relevant information, correctly and in full, by the last day of the relevant calendar year or of another appropriate reporting period or 90 calendar days after the change in circumstances occurred, depending on which date is later.

3. The following subsection (2a) is inserted after section 13 (2):

“(2a) In derogation from subsection (2), the procurement of the self-certification or the confirmation of its plausibility can also take place without delay after the account opening if the reporting financial institution can prove that

1. the procurement of the self-certification at the time of the account opening is impossible for legal or factual reasons; or
2. the confirmation of plausibility at the time of the account opening cannot be reasonably expected in justified exceptional cases.

In the case of sentence 1, it must be ensured that no money can be withdrawn from the account before the self-certification is procured or its plausibility is confirmed. In the case of a repayment of funds received, these may only be paid out to the depositor. If the self-certification cannot be procured, or its plausibility cannot be confirmed, within 90 calendar days of the account being opened, the reporting financial institution must notify the Federal Central Tax Office of this without delay, providing all the information it has available for the purpose of identifying the account holder.”

4. The following subsection (2a) is inserted after section 16 (2):

“(2a) In derogation from subsection (2) no 1 (a), the procurement of the self-certification or the confirmation of its plausibility can also take place without delay after the account opening if the reporting financial institution can prove that

1. the procurement of the self-certification at the time of the account opening is impossible for legal or factual reasons; or
2. the confirmation of plausibility at the time of the account opening cannot be reasonably expected in justified exceptional cases.

In the case of sentence 1, it must be ensured that no money can be withdrawn from the account before the self-certification is procured or its plausibility is confirmed. In the case of a repayment of funds received, these may only be paid out to the depositor. If the self-certification cannot be procured, or its plausibility cannot be confirmed, within 90 calendar days of the account being opened, the reporting financial institution must notify the Federal Central Tax Office of this without delay, providing all the information it has available for the purpose of identifying the account holder.”

5. Section 28 is amended as follows:

a) Subsection (1) is worded as follows:

“(1) An administrative offence is deemed to be committed by any person who wilfully or negligently

1. in violation of section 3a (2), fails to issue a self-certification or a document correctly or completely;
2. in violation of section 3a (3), fails to make a notification or fails to do so correctly, completely or in time; or
3. in violation of section 8 (1) sentence 1, fails to make a report or fails to make a report correctly, completely or in time.”

b) The following subsection (1a) is inserted after subsection (1):

“(1a) The administrative offence is punishable by a fine not exceeding fifty thousand euros in the cases referred to in subsection (1) no 3 and by a fine not exceeding ten thousand euros in all other cases.”

Article 8 – Amendment of the Fiscal Administration Act

Section 5 (1) sentence 1 no 12 of the Fiscal Administration Act in the version published on 4 April 2006 (Federal Law Gazette I p. 846, 1202), as last amended by Article 8 of the Act of 30 March 2021 (Federal Law Gazette I, p. 607), is worded as follows:

- “12. the carrying out of the assessment pursuant to section 50 (2) sentence 2 no 5 of the Income Tax Act and section 32 (2) no 2 of the Corporation Tax Act and the carrying out of the withholding tax procedure pursuant to section 50a (1) of the Income Tax Act and pursuant to section 10 of the Combating Tax Havens Act; including the issuing and enforcement of liability notices and additional assessment notices;”

Article 9 – Amendment of the Valuation Act

The Valuation Act, as published on 1 February 1991 (Federal Law Gazette I, p. 230), as last amended by Article 30 of the Act of 21 December 2020 (Federal Law Gazette I, p. 3096), is amended as follows:

1. Section 95 (1) is amended as follows:

- a) The reference to “section 15 (1) and (2)” is replaced by the wording “section 15 (1) and (2)”.²⁰
- b) The following sentence is added:

“The operation of companies as referred to in section 1 (1) of the Corporation Tax Act established abroad whose place of management is located in Germany, and that are not to be treated as legal persons under German company law, is also deemed to be a business as referred to in sentence 1, if an activity as referred to in section 15 (1) and (2) of the Income Tax Act essentially exists.”

2. In section 97 (1) sentence 1 no 5 sentence 1, the wording “if they correspond to, on the basis of their activity, a company as referred to in section 15 (1) sentence 1 no 2 or section 18 (4) sentence 2 of the Income Tax Act, companies as referred to in section 1a (1) of the Corporation Tax Act” is replaced by the wording “if they correspond to, on the basis of their activity, a company as referred to in section 15 (1) sentence 1 no 2, section 15 (3) or section 18 (4) sentence 2 of the Income Tax Act, companies as referred to in section 1a (1) of the Corporation Tax Act and companies as referred to in section 1 (1) of the Corporation Tax Act established abroad whose place of management is located in Germany and that are to be treated as partnerships under German company law”.

Article 10 – Amendment of the Inheritance and Gift Tax Act

In section 13b (4) no 5 sentence 5 of the Inheritance and Gift Tax Act as published on 27 February 1997 (Federal Law Gazette I, p. 378), as last amended by Article 34 of the Act of 21 December 2020 (Federal Law Gazette I, p. 3096), the full stop at the end is replaced by the wording “and for companies as referred to in section 1 (1) of the Corporation Tax Act established abroad whose place of management is located in Germany and that are to be treated as partnerships under German company law.”

²⁰ Translator’s note: This provision involves a minor editorial change to the German text which does not affect the English version.

Article 11 – Amendment of the Real Property Transfer Tax Act

The Real Property Transfer Tax Act, as published on 26 February 1997 (Federal Law Gazette I, p. 418, 1804), as last amended by Article 33 of the Act of 21 December 2020 (Federal Law Gazette I, p. 3096), is amended as follows:

1. Section 5 is amended as follows:

a) The following sentence is added to subsection (1):

“Sentence 1 does not apply to a company as referred to in section 1 (1) of the Corporation Tax Act established abroad whose place of management is located in Germany and that is to be treated as a partnership under German company law.”

b) The following sentence is added to subsection (2):

“Subsection (1) sentence 3 applies accordingly.”

2. The following sentence is added to section 6 (3):

“Subsection (1) does not apply accordingly if the acquiring joint ownership²¹ is a company as referred to in section 1 (1) of the Corporation Tax Act established abroad whose place of management is located in Germany and that is to be treated as a partnership under German company law.”

Article 12 – Amendment of the Fire Protection Tax Act

Section 11 (2) sentence 1 of the Fire Protection Tax Act in the version promulgated on 10 January 1996 (Federal Law Gazette I, p. 18), as last amended by Article 15 of the Act of 2 November 2015 (Federal Law Gazette I, p. 1834), is amended as follows:

1. In no 1, the words “35 percent” are replaced with the words “30 percent”.

2. No 3 is worded as follows:

“3. 45 percent, of which 40 percent is based on their share of the residential population and 60 percent is based on their share of the stock of residential housing;”

Article 13 – Entry into force

This Act enters into force on the day after its promulgation.

²¹ *Gesamthand*