

Federal Government Draft

Draft Act on Taxation-Related and Other Provisions concerning the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union¹

(Tax Act relating to Brexit)

of ...

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

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¹ This working translation of the draft *Gesetz über steuerliche und weitere Begleitregelungen zum Austritt des Vereinigten Königreichs Großbritannien und Nordirland aus der Europäischen Union (Brexit-Steuerbegleitgesetz – Brexit-StBG)* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

Article 1

Amendment of the Income Tax Act²

The Income Tax Act, as published on 8 October 2009 (Federal Law Gazette I, p. 3366, 3862), which was most recently amended by Article 9 of the Act of 17 August 2017 (Federal Law Gazette I, p. 3214), is to be amended as follows:

1. Section 4g is to be amended as follows:
 - a) In subsection (3), second sentence, the words “section 175 (1) number 2” are to be replaced with the words “section 175 (1), first sentence, number 2”.
 - b) The following subsection (6) is to be added:

“(6) Subsection (2), second sentence, number 2 and subsection (3) are applicable subject to the proviso that the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union does not, by itself, mean that, in the case of an asset that is deemed to have been withdrawn, this asset is deemed to no longer be subject to the tax jurisdiction of the member states of the European Union.”
2. The following sentence is to be added to section 6b (2a):

“Assets acquired or produced pursuant to the first sentence also include assets that are attributable to a business asset belonging to the taxpayer in the United Kingdom of Great Britain and Northern Ireland insofar as the request pursuant to the first sentence was made prior to the point in time at which the United Kingdom of Great Britain and Northern Ireland ceases to be a member state of the European Union and is no longer to be treated as such.”
3. In section 92a (1), fifth sentence, the full stop at the end is to be replaced with the words “; this also applies to a home located in the United Kingdom of Great Britain and Northern Ireland that was already subject to preferential treatment prior to the point in time at which the United Kingdom of Great Britain and Northern Ireland ceases to be a member state of the European Union and is no longer to be treated as such, insofar as this home was already used pursuant to the first sentence prior to this point in time and no application for a further use is made.
4. In section 93 (1), fourth sentence, letter c, the semicolon at the end is to be replaced with the words “; this also applies if the spouses’ residence or habitual abode in the United Kingdom of Great Britain and Northern Ireland was established prior to the point in time at which the

² *Einkommensteuergesetz*

United Kingdom of Great Britain and Northern Ireland ceases to be a member state of the European Union and is no longer to be treated as such and the contract was concluded prior to 23 June 2016;”.

5. The following sentence is to be added to section 95 (1):

“The first sentence above does not apply if the person entitled to an allowance has had his or her residence or habitual abode in the United Kingdom of Great Britain and Northern Ireland without interruption since 22 June 2016 and the contract was concluded prior to 23 June 2016.”

Article 2

Amendment of the Corporation Tax Act³

The following sentence is to be added to section 12 (3) of the Corporation Tax Act, as published on 15 October 2002 (Federal Law Gazette I, p. 4144), which was most recently amended by Article 5 of the Act of 18 July 2017 (Federal Law Gazette I, p. 2730):

“This subsection is applicable subject to the proviso that the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union does not, by itself, mean that a corporation, association or pool of assets is deemed to no longer be subject to unlimited tax liability in a member state of the European Union or must be considered to be resident outside the European Union.”

Article 3

Amendment of the Reorganisation Tax Act⁴

The following subsection (8) is to be added to section 22 of the Reorganisation Tax Act of 7 December 2006 (Federal Law Gazette I, p. 2782, 2791), which was most recently amended by Article 6 of the Act of 2 November 2015 (Federal Law Gazette I, p. 1834):

“(8) Subsection (1), sixth sentence, number 6 and subsection (2), sixth sentence, are applicable subject to the proviso that the withdrawal of the United Kingdom of Great Britain and Northern

³ *Körperschaftsteuergesetz*

⁴ *Umwandlungssteuergesetz*

Ireland from the European Union does not, by itself, mean that the prerequisites set out in section 1 (4) no longer apply. The first sentence above applies only to contributions where, in cases of universal succession, the reorganisation resolution was made prior to the point in time at which the United Kingdom of Great Britain and Northern Ireland ceases to be a member state of the European Union and is no longer to be treated as such or, in cases where the contribution is not effected by way of universal succession, the contribution agreement was concluded prior to this point in time.”

Article 4

Amendment of the External Tax Relations Act⁵

Section 6 of the External Tax Relations Act of 8 September 1972 (Federal Law Gazette I, p. 1713), most recently amended by Article 5 of the Act of 27 June 2017 (Federal Law Gazette I, p. 2074), is to be amended as follows:

6. In subsection (5), fourth sentence, the comma in the clause preceding number 1 is to be replaced with the words: “, if the prerequisites for deferral under the first to third sentence no longer apply or”.
7. The following subsection (8) is to be added:

“(8) By way of derogation from subsection (5), fourth sentence, the deferral is not withdrawn if the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, by itself, means that the prerequisites for the deferral under subsection (5), first and third sentence, no longer apply in the case of the taxpayer or his or her legal successor as described in subsection (5), third sentence, number 1. In cases described in the first sentence above, subsection (5), fourth sentence, continues to be applicable subject to the proviso that, in addition to the criteria set out in subsection (5), fourth sentence, the deferral is also withdrawn

1. insofar as the shares, based on a withdrawal or another operation that, under domestic law, results in the application of a going-concern value or fair market value, are attributable neither to a permanent establishment of the taxpayer in the United Kingdom of Great Britain and Northern Ireland nor to a permanent establishment of the taxpayer as described in subsection (5), third sentence, number 3;

⁵ *Außensteuergesetz*

2. if the taxpayer or his or her legal successor as described in subsection (5), third sentence, number 1, as a result of giving up his or her residence or habitual abode, is no longer subject either to a tax liability in the United Kingdom of Great Britain and Northern Ireland that is comparable to German unlimited tax liability or to a tax liability as described in subsection (5), first sentence.

In cases described in the second sentence above, subsection (7) applies *mutatis mutandis*.”

Article 5

Amendment of the *Pfandbrief* Act⁶

The following subsections (3) and (4) are to be added to section 49 of the *Pfandbrief* Act of 22 May 2005 (Federal Law Gazette I, p. 1373), which was most recently amended by Article 24 (38) of the Act of 23 June 2017 (Federal Law Gazette I, p. 1693):

“(3) By way of derogation from section 4 (1), second sentence, and (1a), third sentence, section 12 (1) in conjunction with section 13 (1), second sentence, section 19 (1), first sentence, numbers 2 to 4, section 20 (1) number 1, letters b, c and g, and number 2 as well as (2) numbers 2 and 3, section 26 (1) numbers 3 to 5 as well as section 26f (1) numbers 3 to 5, claims that

1. are secured by mortgages on real property situated in the United Kingdom of Great Britain and Northern Ireland and rights equivalent to real property or
2. are levelled against the United Kingdom of Great Britain and Northern Ireland or creditors resident in the United Kingdom of Great Britain and Northern Ireland or for which one of these authorities has assumed the guarantee

and were used as cover prior to 30 March 2019 in accordance with the above provisions remain eligible as cover for the corresponding *Pfandbrief* category. In the case of sight deposits and monetary claims that are due on demand, this applies for up to one month following the day on which the *Pfandbrief* bank was first able to avail itself of the aforementioned deposits.

(4) Claims that

1. are secured by mortgages on real property situated in the United Kingdom of Great Britain and Northern Ireland and rights equivalent to real property or

⁶ *Pfandbriefgesetz*

2. are secured by ship mortgages on ships and ships under construction that are registered in the United Kingdom of Great Britain and Northern Ireland or
3. are secured by aircraft mortgages on aircraft, as described in section 1 (2), first sentence, number 1 of the Aviation Act⁷, that are registered in the United Kingdom of Great Britain and Northern Ireland or
4. are levelled against the United Kingdom of Great Britain and Northern Ireland or creditors resident in the United Kingdom of Great Britain and Northern Ireland or for which one of these authorities has assumed the guarantee

and were used as cover prior to 30 March 2019 in accordance with section 12 (1) in conjunction with section 13 (1), second sentence, section 20 (1) number 1, letters b, c and g, as well as number 2, section 21 in conjunction with section 22 (5), first sentence, and section 26a in conjunction with section 26b (4), first sentence, are not counted towards the limits set out in section 13 (1), second sentence, second half-sentence, section 20 (2a), section 22 (5), second sentence, and section 26b (4), second sentence.”

Article 6

Amendment of the Banking Act⁸

The Banking Act, as published on 9 September 1998 (Federal Law Gazette I, p. 2776), which was most recently amended by Article 8 of the Act of 10 July 2018 (Federal Law Gazette I, p. 1102), is to be amended as follows:

8. The table of contents is to be amended as follows:

- a) The title of section 25a is to be worded as follows:

“Section 25a – Special governance duties, provisions for material risk takers; authorisation to issue ordinances”.

- b) The title of section 25n is to be worded as follows:

“Section 25n – Classification as a major institution”.

- c) The title of section 64m is to be worded as follows:

“Section 64m – Interim provision for the Act amending the Banking Act”.

⁷ Luftverkehrsgesetz

⁸ Kreditwesengesetz

9. Section 1 (21) is to be worded as follows:

“(21) Material risk takers are members of staff whose professional activities have a material impact on the risk profile of an institution.”

10. Section 25a is to be amended as follows:

a) The title is to be worded as follows:

“Section 25a

Special governance duties, provisions for material risk takers; authorisation to issue ordinances”.

b) Subsection (5a) is to be replaced with the following subsections (5a) to (5c):

“(5a) Section 9 (1), second sentence, of the Protection Against Dismissal Act⁹ applies to material risk takers in major institutions whose annual fixed remuneration exceeds three times the amount set by the contribution assessment ceilings for the statutory pension scheme as referred to in section 159 of the Sixth Book of the Social Security Code¹⁰, and who do not hold posts as managing directors, managers, or similarly senior positions, and who are authorised to hire or dismiss employees independently, under the proviso that the employer’s request to terminate the employment does not require a justifying reason. Section 14 (1) of the Protection Against Dismissal Act remains unaffected.”

“(5b) A major institution must, on its own responsibility, determine the material risk takers on the basis of a risk analysis. In any case, as a minimum, the criteria pursuant to Articles 3 and 4 of Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution’s risk profile (OJ L 167, 6 June 2014, p. 30), which was amended by Delegated Regulation (EU) 2016/861 of 18 February 2016 (OJ L 144, 1 June 2016, p. 21), must be applied. The institution must inform the members of staff concerned that they have been identified as material risk takers. The risk analysis must be documented in writing or electronically and regularly updated. Exceptions pursuant to Article 4 (2) of the Delegated Regulation (EU) 604/2014 require the approval

⁹ Kündigungsschutzgesetz

¹⁰ Sechstes Buch Sozialgesetzbuch

of the management body (*Geschäftsleitung*) and notification of the administrative or supervisory board (*Verwaltungs- oder Aufsichtsorgan*).

(5c) The applications which must be submitted to the supervisory authority pursuant to Article 4 (5), first sentence, of Commission Delegated Regulation (EU) No 604/2014 must be submitted immediately, and at the latest six months after the end of the financial year.”

11. Section 25n is to be worded as follows:

“Section 25n

Classification as a major institution

(1) An institution is deemed to be major as referred to in section 25a (5a) if its balance sheet total on the balance sheet dates for the last three completed financial years reached or exceeded an average of €15 billion, unless the institution provides proof to the supervisory authority pursuant to section 1 (5) of the Banking Act that it is not major on the basis of a risk analysis pursuant to subsection (5).

(2) The following are deemed major institutions as referred to in subsection (1):

1. Institutions which fulfil one of the conditions pursuant to Article 6 (4), sub-paragraph 2 of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29 October 2013, p. 63; OJ L 218/82 of 19 August 2015, p. 82),
2. Institutions which could potentially trigger systemic risk pursuant to section 20 (1), third sentence, of the Restructuring and Resolution Act¹¹ and
3. Financial trading institutions pursuant to section 25f (1).

(3) The supervisory authority pursuant to section 1 (5) may classify an institution whose balance sheet total on the relevant balance sheet dates for the last three completed financial years did not reach an average of €15 billion as a major institution as referred to in subsection (1) if this is necessary given the institution’s remuneration structure as well as the nature, scale, complexity, risk content and international scope of its business activities. The classification of an institution as a major institution is necessary in particular if

¹¹ *Sanierungs- und Abwicklungsgesetz*

1. the institution has a high level of off-balance items, especially derivative instruments,
2. the institution operates to a significant extent as an originator, sponsor or investor of securitisation transactions or avails itself of a securitisation special purpose entity pursuant to Article 4 (1) number 66 of Regulation (EU) No 575/2013 for this purpose,
3. the institution has large positions in the trading book pursuant to Article 4 (1) number 86 of Regulation (EU) No 575/2013 or
4. the remuneration structures within the institution feature a large percentage of variable remuneration components in overall remuneration.

(4) If an institution belonging to a group is classified as a major institution as referred to in subsection (1), all other institutions belonging to the same group whose balance sheet totals on the balance sheet dates for the last three completed financial years reached or exceeded an average of €15 billion are also classified as major institutions.

(5) The risk analysis must take particular account of the institution's size, its remuneration structure and the nature, scale, complexity, risk content and international scope of its business activities as well as the criteria set out in subsection (3), second sentence, numbers 1–4. The risk analysis must be plausible, comprehensive and comprehensible to third parties. It must be conducted on an annual basis and documented in writing or electronically.”

12. In section 49, the wording “, section 53b (12)” is to be inserted after the words “section 48u (1) and (7)”.
13. The following subsection (12) is to be added to section 53b:

“(12) In the event that the withdrawal of United Kingdom of Great Britain and Northern Ireland from the European Union becomes effective without an agreement on withdrawal from the European Union and the European Atomic Energy Community pursuant to Article 50 (2), second sentence, of the Treaty on European Union having entered into force, the Supervisory Authority may determine, in order to avoid negative implications for the functioning or for the stability of financial markets, that the provisions of subsections (1) to (9) are to be applied *mutatis mutandis*, in full or in part, for an interim period following the time of withdrawal, to companies based in the United Kingdom of Great Britain and Northern Ireland that, at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, conduct banking business or provide financial services in Germany through a branch or by providing cross-border services pursuant to subsection (1). This applies only insofar as the companies, following withdrawal, conduct banking business or provide financial services that are closely connected to contracts that existed at the time of withdrawal. The

interim period starting at the time of withdrawal may not exceed 21 months. The order may also be issued and publicly announced by means of an administrative act of general application without a prior hearing.”

14. The following section 66m is to be inserted after section 64l:

“Section 64m

Interim provision for the Tax Act relating to Brexit

Section 25a (5a) in the version applicable on 29 March 2019 is applicable for the first time to dismissals received eight months after 29 March 2019.”

Article 7

Amendment of the Insurance Supervision Act¹²

The Insurance Supervision Act of 1 April 2015 (Federal Law Gazette I, p. 434), most recently amended by Article 6 of the Act of 17 August 2017 (Federal Law Gazette I, p. 3214), is to be amended as follows:

15. In the table of contents, the following title is to be inserted after the title of section 66:

“Section 66a – Application *mutatis mutandis* of the EU’s passporting regime”.

16. The following section 66a is to be inserted after section 66:

“Section 66a

Application *mutatis mutandis* of the EU’s passporting regime

(1) In the event that the withdrawal of United Kingdom of Great Britain and Northern Ireland from the European Union becomes effective without an agreement on withdrawal from the European Union and the European Atomic Energy Community pursuant to Article 50 (2), second sentence, of the Treaty on European Union having entered into force, the Supervisory Authority may determine, in order to protect policyholders and the beneficiaries of insurance benefits, that sections 61 to 66 and section 169 are to be applied *mutatis mutandis*, exclusively

¹² *Versicherungsaufsichtsgesetz*

for purposes of winding up insurance contracts that were concluded before the time of the withdrawal, for an interim period following the time of withdrawal, to insurance companies based in the United Kingdom of Great Britain and Northern Ireland that, at the time of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, operated in Germany through a branch or by providing cross-border services pursuant to section 61 (1), first sentence, and section 169 (1), first sentence. The interim period starting at the time of withdrawal may not exceed 21 months. The order may also be issued and publicly announced by means of an administrative act of general application without a prior hearing.”

(2) Subsection (1) is applicable to institutions for occupational retirement provision based in the United Kingdom of Great Britain and Northern Ireland that, at the time of withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, conduct cross-border operations in Germany pursuant to section 243 subject to the proviso that sections 243 and 243a are applicable.”

17. In section 310 (2), the wording “sections 20, 36,” is to be replaced with the wording “sections 20, 36, 66a,”.

Article 8

Amendment of the *Bausparkassen Act*¹³

The following subsections (8) and (9) are to be added to section 19 of the *Bausparkassen Act*, as published on 15 February 1991 (Federal Law Gazette I, p. 454), which was most recently amended by Article 24 (41) of the Act of 23 June 2017 (Federal Law Gazette I, p. 1693):

“(8) Investments pursuant to section 4 (3), first sentence, that were made in the territory of the United Kingdom of Great Britain and Northern Ireland prior to 30 March 2019, may continue to be held until they reach maturity.

(9) The securing of a claim as described in section 7 (1), first sentence, effected pursuant to section 7 (2) by means of mortgages on a property located in the United Kingdom of Great Britain and Northern Ireland prior to 30 March 2019, remains permissible until the secured claim ceases to exist.”

¹³ *Gesetz über Bausparkassen*

Article 9

Amendment of the investment ordinance¹⁴

The following subsection (4) is to be added to section 6 of the investment ordinance of 18 April 2016 (Federal Law Gazette I, p. 769), which was most recently amended by Article 24 (39) of the Act of 23 June 2017 (Federal Law Gazette I, p. 1693):

“(4) Investments that form part of guarantee assets and that, on 30 March 2019, no longer fulfil the prerequisites for the form of investment in question pursuant to section 2 (1) owing to the fact that the United Kingdom of Great Britain and Northern Ireland ceased to be part of the European Economic Area, can continue to be attributed to the form of investment in question pursuant to section 2 (1).”

Article 10

Amendment of the pension fund supervision ordinance¹⁵

The following subsection (7) is to be added to section 43 of the pension fund supervision ordinance of 18 April 2016 (Federal Law Gazette I, p. 842), which was last amended by Article 2 of the ordinance of 10 October 2018 (Federal Law Gazette I, p. 1653):

“(7) Investments that form part of guarantee assets and that, on 30 March 2019, no longer fulfil the prerequisites for the form of investment in question pursuant to section 17 (1) owing to the fact that the United Kingdom of Great Britain and Northern Ireland ceased to be part of the European Economic Area, can continue to be attributed to the form of investment in question pursuant to section 17 (1).”

Article 11

Entry into force

This Act enters into force on 29 March 2019.

¹⁴ *Anlageverordnung*

¹⁵ *Pensionsfonds-Aufsichtsverordnung*