



BDO Seidman, LLP  
Accountants and Consultants

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## Issue:

### Germany: 2007 Annual Tax Bill Tightens Treaty Shopping Rules

# International Tax Alert

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## Issue:

Two new German Tax Bills were recently adopted by the German Upper House ("Bundesrat"). One of them, the 2007 Annual Tax Bill ("Jahressteuergesetz"), provides for tighter anti-treaty shopping rules and introduces a domestic subject-to-tax clause (among other things).

## Affecting:

All U.S. companies doing business in Germany.

## Details:

### 2007 Annual Tax Bill

The 2007 Annual Tax Bill tightens the substance requirements under the anti-treaty shopping rules. A foreign company will not be entitled to reduced withholding tax rates under a tax treaty or EU directive benefits to the extent the company's shareholders would not be entitled to such benefits if they had received the income directly from the German subsidiary, and if one of the following conditions is satisfied:

- (i) there are no economic or other relevant business reasons for the interposition of the foreign company;
- (ii) the foreign company does not derive more than 10 percent of its income from its own business activities; or
- (iii) the foreign company does not have adequate business substance to participate in the business community.

These restrictions will not be applicable to a foreign corporation that is listed on a stock exchange and if its main class of shares are regularly traded. The new rule applies to dividends when subject to EU directives or treaties, interest when subject to treaties and royalties when subject to treaties. The rule is effective for dividends, interest and royalties paid after December 31, 2006.

## **Integrity...Trust...Professionalism...Independence...Service**

The 2007 Annual Tax Bill also introduces a domestic subject-to-tax clause. Under this new rule, Germany can deny the exemption under a double taxation treaty for tax-exempt income or income that is subject to low taxation in another country. This new clause will be effective as of January 1, 2007.

In addition, the Bill introduces a new fee structure for binding rulings and APA's. A fee will be charged for binding rulings requested from the German tax authorities, which will be based upon the value of the ruling. The base fee to be charged for an APA is Euro 20,000.

### **Bill on the Tax Features for the Introduction of the European Company and Amendment of Further Tax Rules**

This bill introduces a variety of international tax rules, including:

- (i) Tax free cross-border reorganizations within the EU and European Economic Area, and the tax free formation and migration of the European Company and European Cooperative.
- (ii) A general exit taxation rule where Germany is losing the right to tax.
- (iii) A general disallowance of loss carry forwards if transferred in a reorganization.

## **How BDO Member Firms Can Help:**

The introduction of the new law may present a challenge to existing structures involving German entities. BDO Seidman, LLP and BDO Deutsche Warentreuhand AG, the German BDO Member Firm, can assist with your tax planning needs.

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