

Public hearing on Case studies on Member States national tax policies - Germany: implemented national tax reforms and the combat against aggressive tax schemes

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- For Germany, it has always been important that taxes are imposed in an equitable and effective manner. Both overtaxation and aggressive tax planning should be avoided.
- This is not only a matter of fairness but also has a direct impact on a country's economic profile. Taxes are a relevant factor in business decisions. Therefore, countries will seek to create a tax environment that does not reduce their attractiveness for business investments but rather enhances it. This objective is fully legitimate.
- However, this should not lead to situations where tax rules are exploited. Aggressive tax schemes do not only reduce the respective tax actually paid. They also create unfair business advantages for some actors and distort the level playing field. Moreover, they generally undermine the trust in the integrity of the tax system.
- The detrimental effects of aggressive tax planning have become the subject of an intense public debate over the last years. There have been (and continue to be) important international and European initiatives to deal with these issues. Germany's position in this debate is very clear: we support fair tax competition, but we should tackle aggressive tax schemes.
- Looking at the concrete situation in Germany, one can start by stating that we have had fairly robust rules against aggressive tax planning for many years. For instance, Germany has introduced legislation on controlled foreign companies (CFC) back in 1972, and in 2007 Germany was the first country to introduce an interest barrier limitation rule (so-called Zinsschranke)¹. Germany also has a specific domestic rule on the limitation of tax benefits in tax treaty constellations (LoB) as well as a General Anti-Abuse Rule (GAAR).
- Against this background Germany's main objective in the international negotiations was not a further tightening of its domestic rules. Rather Germany sought to establish an international and European consensus about the limits of fair tax competition and to agree on effective means to address aggressive tax schemes.
- The recommendations subsequently agreed in the BEPS project and implemented through various directives have been transposed into German law. This took place through dedicated legislation on
 - the exchange of information on tax rulings („DAC3”², legislated in 2016³)

¹ Introduced through Unternehmensteuerreformgesetz 2008 dated 14 August 2007 (Federal Law Gazette 2007 I p. 1912, dated 17 August 2007).

² Directive 2015/2376/EU, dated 8 December 2015.

³ Introduced through Gesetz zur Umsetzung der Änderungen der EU-Amtshilferichtlinie und von weiteren Maßnahmen gegen Gewinnkürzungen und -verlagerungen, dated 20 December 2016 (Federal Law Gazette 2016 I p. 3000, dated 23 December 2016).

- the exchange of information on country-by-country-reports („DAC4“⁴, legislated in 2016⁵)
- the exchange of information on cross-border arrangements („DAC6“⁶, legislated in 2019⁷)
- the exchange of information on digital platforms („DAC7“⁸, legislated in 2022⁹)
- In addition, Germany has enacted relevant parts of the ATAD/ATAD2 in 2021 and introduced measures against non-cooperative tax jurisdictions (as agreed by the Code of Conduct Group (Business Taxation)), also in 2021.
- With respect to the implementation of the so-called Pillar 2 (effective minimum level of tax), the German government is currently finalizing draft legislation. We aim to publish this draft soon for discussion purposes. The full legislative process is to be completed by the end of 2023.
- This list on the most important projects against aggressive tax schemes shows that Germany lives up to its international obligations. Over the last years many important initiatives could be agreed upon at the international and European level. Germany will continue to play an active role in order to strike the right balance between legitimate tax policy decisions and aggressive tax arbitrage.

⁴ Directive 2016/881/EU, dated 25 May 2016.

⁵ Introduced through Gesetz zur Umsetzung der Änderungen der EU-Amtshilferichtlinie und von weiteren Maßnahmen gegen Gewinnkürzungen und -verlagerungen, dated 20 December 2016 (Federal Law Gazette 2016 I p. 3000, dated 23 December 2016).

⁶ Directive 2018/822/EU, dated 25 May 2018.

⁷ Introduced through Gesetz zur Einführung einer Pflicht zur Mitteilung grenzüberschreitender Steuergestaltungen, dated 21 December 2019 (Federal Law Gazette 2019 I. p. 2875, dated 30 December 2019).

⁸ Directive 2021/514/EU, dated 22 March 2021.

⁹ Introduced through Gesetz zur Umsetzung der Richtlinie (EU) 2021/514 des Rates vom 22. März 2021 zur Änderung der Richtlinie 2011/16/EU über die Zusammenarbeit der Verwaltungsbehörden im Bereich der Besteuerung und zur Modernisierung des Steuerverfahrensrechts, dated 20 December 2022 (Federal Law Gazette I p. 2730, dated 28 December 2022).