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# Committee Approves Draft Bill on EU Mutual Assistance Directive

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# COUNTRY DIGEST



## Committee Approves Draft Bill on EU Mutual Assistance Directive

The German Bundestag's Finance Committee on October 26 approved a draft bill on the implementation of the EU mutual assistance directive (2010/24/EC) as well as a number of important changes in tax law. The bill is scheduled for a second and third reading in the Bundestag (lower house) on October 27, and approval is expected.

### Overview

The government's objective is to transpose the EU mutual assistance directive of March 16, 2010, into domestic law by December 31. However, the draft bill also proposes several important tax changes, such as:

- amending the regulations for electronic wage tax deductions;
- introducing an automatic withholding tax procedure for the church tax on German capital income that is subject to taxation at source;
- suspending (but not abolishing) the reorganization clause under the German change of control rule;
- updating the base values for determining fair value in accordance with the asset value method under the Valuation Act;
- allowing nonresident taxpayers to opt for resident taxation under the Inheritance and Gift Act;
- providing for a deemed gift in connection with shareholdings in corporations; and
- amending the German anti-treaty-shopping rule.

### Domestic Anti-Treaty-Shopping Rule

It is also proposed that the anti-treaty-shopping rule under section 50d, paragraph 3 of the Income Tax Act be relaxed in response to an infringement procedure initiated by the European Commission against Germany on March 18, 2010 (2007/4435). (For a related commission release, see *Doc 2010-5855* or *2010 WTD 53-26*.)

Under the proposal, a foreign company would be entitled to full or partial relief from German withholding tax if it is owned by shareholders who would be entitled to a corresponding benefit under an income tax treaty or EU directive if they had received the income directly, or to the extent that the foreign company's gross receipts in the relevant year are generated by its own business activities.

The foreign company would also be entitled to a tax refund or tax exemption if:

- there are economic or other relevant reasons to interpose the foreign company in relation to the receipts; and
- the foreign company has, for its own business purposes, adequate business substance to engage in general commerce.

The proposed law also would introduce a burden of proof requiring the foreign company to prove the existence of economic or other relevant reasons for its involvement, as well as adequate business substance.

As under the current law, the anti-treaty-shopping rule should not apply if the ITA applies or if the principal class of shares of the foreign company is materially and regularly traded on a recognized stock exchange. If the foreign company does not fulfill the prerequisites, the German tax authorities will look at its shareholders. They will pursue a bottom-up approach and stop the analysis if a (higher-tier) shareholder meets all of the conditions or is resident in a non-treaty country. In the latter case, no relief from German withholding tax is granted. ◆

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