BAI Criticises Planned Reform of Foreign Tax Law

- Priority of Investment Tax Act (InvStG) over the Foreign Tax Act (AStG) is to be abolished;
- The 2018 investment tax reform will thus be counteracted and the confidence of industry and investors in German tax legislation once again shaken;
- Simultaneous application of the InvStG and the AStG leads to more bureaucracy rather than less and results in unequal treatment of domestic and foreign funds.

Bonn, 18th December 2019. The **Bundesverband Alternative Investments e.V.** (**BAI**), the central lobby of the alternative investment industry in Germany, criticises the unexpectedly initiated amendment to the Foreign Tax Act, which leads to a paradigm shift in the taxation of investment funds.

The amendment to the AStG is part of the Act on the Implementation of the Anti-Tax Avoidance Directive (ATAD-UmsG), which was consulted last week by the Federal Ministry of Finance with just under three days' notice. The regulation in § 7 AStG, according to which additional taxation only applies subsidiarily to investment taxation and which has been in effect for almost two decades, is now to be abolished.

With regard to the cabinet appointment scheduled for tomorrow, BAI Managing Director **Frank Dornseifer** commented on the paradigm shift as follows: "In our view, the deletion of § 7 AStG and the resulting abolition of the principle of priority application of the Investment Tax Act over the Foreign Tax Act is highly problematic. On the one hand, a hierarchical structure established over almost two decades and guaranteeing a high degree of legal security for all users will be abolished. On the other hand, the recently comprehensively reformed investment tax law and the objectives associated with it, such as the equal treatment of domestic and foreign funds and a clear simplification of procedures in key areas, will be cancelled out or counteracted by the proposal."

With the introduction of the substantial investment tax reform in 2018, the German lawmakers introduced a new taxation regime for investment funds. This has led to considerable restructuring and adjustment costs not only for the fund industry itself, but also for many German institutional

investors. Confident of the new legal situation and its long-term validity, many existing funds were converted or new funds launched - not only in Germany, but throughout Europe.

In many cases, the proposed amendment threatens to result in considerable tax disadvantages for fund companies or their investors. Numerous companies/investors have, for example, set up group-internal bundling vehicles in the legal form of Luxembourger SA SICAV / FCPs, particularly as part of their CTAs, through which investments are made in illiquid/alternative strategies, e.g. in the areas of private equity, private debt, infrastructure and liquid alternatives. This is partly due to the fact that no adequate fund structures were available here in Germany. Ultimately, the planned regulations make it less attractive for domestic investors to invest in foreign investment funds. The intention of the legislator in reforming investment tax law was, among other things, to treat foreign and domestic investment funds equally.

Frank Dornseifer commented on this aspect with the following: "The forthcoming revision of the AStG aims to deter domestic investors from investing in foreign investment funds and is an encroachment on the free movement of capital and thus contrary to European law. It is precisely this problem that was to be alleviated by the InvStRefG. The planned amendment to the AStG, however, has the opposite effect. The initiative is completely incomprehensible in view of the fact that the entire fund industry has now adapted to the new investment tax regime. In this respect, it is not only the new investment tax law that is partially becoming a waste of paper, but also the consistency and reliability of German tax legislation that is being called into question. This does not make Germany more attractive as a fund location."

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