Tuesday, May 7, 2019

German legislators have adopted a number of Acts of Parliament in relation to Brexit both on the federal level and on the level of the 16 German states. Some of these regulate the “deal” scenario where the Withdrawal Agreement is ratified by the UK, and some of these regulate the “no-deal” scenario.

The so-called Brexit Steuerbegleitgesetz (Brexit Tax Accompanying Act) was adopted on 25 March 2019 and provides for a number of tax contingency rules in the areas of corporate tax, income tax, real estate transfer tax, inheritance tax and transformation tax, as well as contingency rules for the financial services sector, including banks, insurance companies, pension funds, payment services providers and other financial services providers, as well as special rules for German Covered Bond Banks. The act in particular contains a statutory authorisation for the German regulator BaFin to adopt further regulations, which BaFin will, however, only exercise if and once the UK ceases to be a member state of the EU without a deal.

The so-called Gesetz zu den Übergangsregelungen in den Bereichen Arbeit, Bildung, Gesundheit, Soziales und Staatsangehörigkeit was adopted on 8 April 2019 and regulates the “no-deal” scenario in the areas of Employment, Education, Health, Social Matters and Nationality.

The federal Brexit Übergangsgesetz (Brexit Transition Act) was adopted on 27 March 2019 and provides that in the event the UK ratifies the Withdrawal Agreement, each reference in German federal law to a member state of the European Union and companies and nationals of a European Union member state shall also mean, during the Transition Period pursuant to Articles 126 and 132 of the Withdrawal Agreement, a reference to the UK and companies from the UK. That rule is necessary, as Articles 126 and 132 and Article 127 (6) of the Withdrawal Agreement, which regulate the Transition Period, only apply in respect of European Union law but do not apply in respect of the domestic national laws of the 27 member states of the European Union (see this article for more analysis of this). The Parliaments of the 16 states of Germany have adopted (or are in the course of adopting) similar Brexit transition acts at state level.

The general principle prevailing in German politics and the economy is still that it favours a potential revocation of the Article 50 notice. The extension to 31 October 2019 has been welcomed. However, there is a growing tension that the ultimate decision to be taken in the UK whether 1) Article 50 is revoked, 2) Britain leaves with a deal or 3) Britain leaves with no deal, should be taken sooner rather than later in order to avoid further uncertainty for businesses and residents.

The current Brexit uncertainty is having an effect on driving competitors out of business, in particular airlines and affected businesses. An airport in northern Germany, for example, declared insolvency because of (amongst other reasons) FlyBMI going out of business. Such vulnerable businesses are, therefore, being circled by opportunistic investors.

© Copyright 2019 Squire Patton Boggs (US) LLP

Source URL: https://www.natlawreview.com/article/brexit-insight-eu-27-germany