

Draft Growth Opportunities Act: 6 Percent Special Depreciation for New Residential Construction

Article By:

Financial Services Litigation

The German government published a draft tax reform bill that aims to encourage new housing construction. Under the draft “Act to Strengthen Growth Opportunities, Investments, and Innovation, as well as Tax Simplification and Tax Fairness” (Draft Growth Opportunities Act), new residential construction projects commenced within the next six years would benefit from an increased declining-balance depreciation rate of 6 percent. However, given increased construction and financing costs, some in the real estate industry doubt that such measure would be sufficient to boost new housing construction, particularly affordable housing.

The draft Growth Opportunities Act, *inter alia*, includes the option to use a special depreciation rate for residential construction projects in Germany and other member states of the European Union and the European Economic Area that are commenced between 1 October 2023 and 30 September 2029, and that meet Efficiency Standard 55

as defined by German development bank KfW. Pursuant to the draft act, buyers of such residential construction projects would also be able to benefit from the special depreciation rate. Buyers could benefit if the purchase agreement for such project was notarized within the specified period and at the latest in the year of the project's completion. In addition, the beneficial ownership in the building would have to be transferred to the buyer at the latest in the year of completion.

If the taxpayer opted for the special depreciation, such depreciation would apply degressively at 6 percent of the investment costs, reduced by the depreciations of previous years (residual value). "Investment costs" are the building's acquisition or production costs. If the degressive depreciation were applied, write-downs for extraordinary technical or economic wear and tear would not be possible. For sub-annual commencements of construction or acquisition, the special depreciation would apply on a pro-rata basis. However, a switch to standard linear depreciation would be possible at any time. In this case, the depreciation would be based on the residual value, which is the original investment costs minus any previous depreciations.

The following is a comparison between the degressive and linear depreciation for the first three years (investment costs = EUR 1,000,000):

Degressive depreciation

Year	01	02	03
Depreciation	EUR 60,000	EUR 56,400	EUR 53,016
Residual Value	EUR 940,000	EUR 883,600	EUR 830,584

Linear depreciation (at 3 % per year):

Year	01	02	03
Depreciation	EUR 30,000	EUR 30,000	EUR 30,000
Residual Value	EUR 970,000	EUR 940,000	EUR 910,000

Construction of the residential building would have to commence between 1 October 2023 and 30 September 2029. The date of the construction commencement notice according to state regulations would apply; if no such notification is required, the date of voluntary notice to the competent construction authority would apply. In contrast to the original draft of the Growth Opportunities Act, the current draft states that special depreciation would also be available for projects for which a building permit was granted, but which projects would only start after 1 October 2023. This is intended to reduce the number of permits for residential construction that were granted, but not yet used. When buying a residential construction project, the date of the legally effective conclusion of the purchase agreement would be decisive. Moreover, the draft Growth Opportunities Act would require that the residential construction project will be acquired by the end of the year of its completion. The acquisition is assumed completed once the ownership, risks, benefits and burdens are transferred to the buyer.

The measure aims to create an immediate investment

incentive for builders and landlords, particularly given the decline in approvals of new construction projects and increasing pressure on the rental market, especially in large cities.

The draft act will be discussed in the German Federal Parliament and shall be adopted by the German Federal Parliament on 10 November 2023. To come into force, it must afterwards also be approved by the German Federal Council.

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