

CLIENT ALERT

# Growth Opportunities Act Provides for Growth Opportunities in Real Estate

March 26, 2024

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Following a political agreement between the German *Bundestag* and German *Bundesrat*, the Growth Opportunities Act (*Wachstumschancengesetz*) (the “**Growth Opportunities Act**”) was passed on March 22, 2024. It is expected to be published in the Federal Gazette shortly.

Market participants have eagerly awaited the implementation of the Growth Opportunities Act because it is expected to provide a significant impulse to the German real estate sector. Among other measures, the new law includes the following:

- For tax assessment periods from 2024 to 2027, corporate and individual taxpayers will be able to deduct tax loss carryforwards of up to EUR 1 million plus 70% (previously only 60%) of the taxpayer’s current year taxable income.
- The application of the so-called extended trade tax exemption will be broadened: If the overall income of a German commercial business generated from the operation of solar systems or charging stations does not exceed 20% (previously 10%) of its income from the lease of its entire real estate generated during the same business year, the extended trade tax exemption shall continue to apply. The new rule shall apply even for the tax assessment period in 2023.
- In addition, long-awaited declining balance depreciation options for residential and rental buildings have finally been introduced in the Growth Opportunities Act (see below for further details).

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### **5% Declining Balance Depreciation for Residential Buildings**

The declining balance depreciation for residential buildings located in Germany, the European Union or European Economic Area has now been set at 5% per year of the value of the particular residential building in question, which provides for a welcomed and quite substantial increase of the annual depreciation amount compared to the current regular linear depreciation rate of only 2% per year. In particular, the following prerequisites have to be met by the taxpayer to qualify for these tax benefits:

- With regard to the construction of a residential building, the construction process has to be initiated between September 30, 2023 and October 1, 2029.
- With regard to the acquisition of the residential building, the residential building needs to be acquired by the end of the year of its completion, which must fall between September 30, 2023 and October 1, 2029.

### **Even Combinable: Special Depreciation for new Rental Apartments**

The new 5% declining balance depreciation can even be combined with the existing special linear depreciation for the construction of new, low-cost rental apartments. With respect to this depreciation for new rental apartments the new law provides for an investor-friendly increase of the threshold for its applicability (from EUR 4,000 to EUR 5,200 per square meter of living space) as well as the relevant depreciation basis (EUR 2,500 to EUR 4,000 per square meter of living space). The new rules are applicable for new rental apartments provided that the relevant construction work has been carried out on the basis of a building application which was submitted either between August 31, 2018 and January 1, 2022 or which will be submitted between December 31, 2022 and October 1, 2029.

Both depreciation amounts can be claimed by all individuals with unlimited or limited tax liability in Germany and can be used at the same time. The regulations are legally effective from the tax assessment period in 2023 onwards.

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