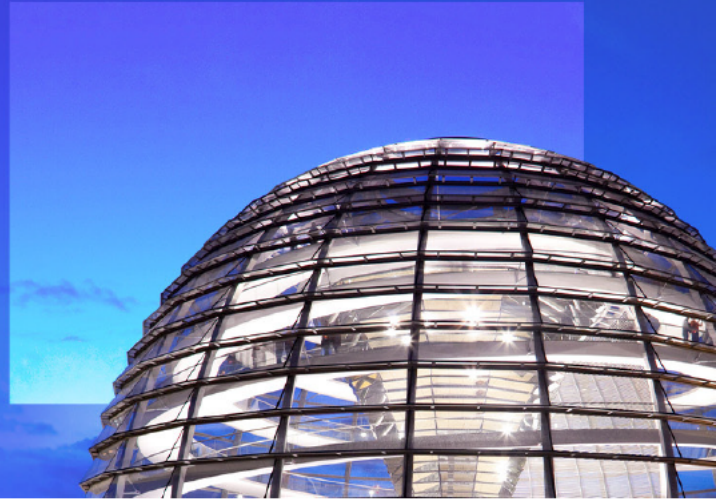


# German Tax Monthly

Information on the latest tax developments  
in Germany

November | 2024



## Bundestag Passed Annual Tax Act 2024

The German Bundestag passed the Annual Tax Act 2024 on 18 October 2024. The Bundestag has made 59 changes to the draft law on the recommendation of the Finance Committee. In a total of 56 articles, the bill contains a large number of thematically unrelated or only partially related individual measures in various areas of tax law, which are predominantly technical in nature.

### *1. Restructuring and reorganisations*

#### **Book value transfer of assets in connection with partnerships (Section 6 (5) Income Tax Act):**

**Transfers between “sister partnerships”:** The transfer of assets at book value even in the case of a transfer between different partnerships of the same, identically participating partners (so-called “sister partnerships”) will be allowed. Retroactive application of the new regulation is provided for in all open cases (due to a requirement of the Federal Constitutional Court). At the joint request of the partners, the new regulation is not to be applied for transfers before 12 January 2024, i.e. the fair market value and not the book value is recognised for the transfer.

**Corporation clause (blocking clause for profit-neutral transfer if a corporation acquires an interest in the transferred asset) (newly added by the Bundestag):** The so-called corporation clause will be tightened. According to the corporation clause, the fair market value instead of the book value is recognised for generally favorable transfers of assets if the share of a corporation in the transferred asset is established or increases (within a seven-year period after the transfer). According to the tightening, this is also to apply in the case where the share of a corporation in the transferred asset only replaces a share of another corporation and in the overall view the share of any corporation has not increased, so-called subject-related change of status. The tightening applies for the first time to transfers of assets that take place after 18 October 2024.

#### **Reorganisations:**

**Deferred taxation of hidden reserves in case of exit taxation (so-called balancing item method of Section 4g Income Tax Act):** The exit taxation of hidden reserves to be realised as a result of an exclusion or restriction of Germany's right to tax the profit from the sale or use of an asset can be spread over five years (Section 4g Income Tax Act).

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The scope of application for this deferred taxation is to be extended to cases in which there is an exit taxation due to a reorganisation. The new regulation is to be applied in all open cases.

**Closing balance sheet of the transferring entity:** A deadline for submitting the closing tax balance sheet is to be introduced. Accordingly, the closing tax balance sheet is to be submitted to the tax office until the deadline for filing the corporate income tax return for the tax period in which the transfer date for tax purposes falls. The new submission deadline is to apply in all cases in which the application for entry in the register was made after the date of promulgation of the law.

**Taxation of the shareholders of the transferring corporation (newly added by the Bundestag):** In case of a merger, the shares in the transferring corporation are deemed to have been sold at fair market value (valuation principle) and the shares received in the acquiring corporation are deemed to have been acquired at this value (exchange of shares at shareholder level). Only upon application and under certain conditions may the book value be recognised in deviation from this, so that no profit is realised. While the government draft provided for a reversal of this valuation regulation, i.e. recognition of the book value as a new standard case without an application, the Bundestag adheres to the previous principle (i.e. recognition below the fair market value only upon application). Further the introduction of an application deadline is exacerbated. The application must be submitted to the tax office by the time the tax return is submitted for the first time at the latest. The new regulations are to be applied to reorganisations whose tax transfer date is after the date on which the law is promulgated.

**The trade tax liability** for a gain arising from the sale or the discontinuation of a partnership following a conversion into this partnership is to be applied even if the shares in the converted partnership are only sold indirectly (i.e. in the case of a sale via an intermediary partnership). The rule serves to avoid tax structuring options. First-time application to reorganisations whose tax transfer date is after the date of **publication of the ministerial draft bill**.

**Withdrawals from a partnership in the tax retroactive period in case of contributions to a corporation:** In case, a partnership is transferred into a corporation (contribution), the valuation of the business assets contributed to the corporation is to take place considering the withdrawals from and contributions in the transferred partnership in the tax retroactive period. This is to avoid negative acquisition costs for the shares received in the acquiring corporation and would result in the realisation of hidden reserves. First-time application to contributions if the conversion resolution or the contribution agreement was made or concluded after 31 December 2023.

**Retroactive taxation of “contribution gain II” in case of an exchange of shares:** After an exchange of shares (contribution of shares to another corporation) with a valuation below the fair market value, retroactive taxation – i.e. realisation of hidden reserves at that time (“contribution gain II”) – may occur if the shares contributed are sold within seven years (harmful event) after the exchange. However, if the received shares in the acquiring company are sold first before the harmful event, the retroactive taxation of the contribution gain II is waived (exception). The 2024 tax act provides for a “clarifying” legal amendment, according to which this exemption from retroactive

taxation of the contribution gain II only applies if the sale of the received shares in the acquiring company (or sale-like circumstances such as conversions and contributions) takes place with the realisation of hidden reserves. The regulation is to enter into force on the day following the promulgation.

**Tax-specific capital contribution surplus account:**

- In reorganisations, there is to be **no initial assessment** of the amount of the tax-specific capital contribution surplus account for the acquiring corporation if this is newly created by the reorganization. The transferring amount of the tax-specific capital surplus contribution account of the transferring entity is deemed to be an addition in the current financial year. As a result, the transferred capital contribution surplus account is not available for utilisation (repayment of capital contributions) in the first financial year of the newly created corporation. The regulation comes into force on the day after its promulgation.
- **Cross-border reorganisations (newly added by the Bundestag):** For foreign corporations, the tax-specific capital contribution surplus account does not have to be determined annually. However, under current law, in the case of a cross-border reorganisation, a tax-specific capital contribution surplus account for the foreign corporation must be determined at the time of the reorganisation. This procedure is now to be abolished. As in the cases of new incorporation described above, the contributions that are not made to the nominal capital of the transferring corporation are deemed to be an

addition in the current financial year of the acquiring corporation. As a result, the transferred amount is only available for utilisation (return of contributions) in the following financial year of the acquiring domestic corporation. The regulation enters into force on the day after promulgation.

## 2. International taxation

### CFC taxation:

- **Trade tax in the case of CFC rules:** Passive income from foreign permanent establishments is also subject to German CFC taxation (Section 20 (2) Foreign Transactions Tax Act). In addition to corporation tax, CFC income is also subject to trade tax. The 2024 tax act provides for a "clarification" that all passive foreign permanent establishment income is deemed to have been generated in a domestic permanent establishment and therefore also such income for which Germany is already entitled to taxation under the agreement in the case of a Double Taxation Treaty; application in all open cases.
- **Reduction amount for profit distributions (newly added by the Bundestag):** The ATAD Implementation Act changed the system for taking into account profit distributions from a controlled foreign company in the case of CFC taxation. From 2022, the so-called reduction amount applies. The Bundestag has now subsequently passed a regulation to avoid the threat of double taxation of profit distributions in 2022. A reduction amount is also to be recognised in cases in which a taxpayer received a profit distribution in 2022 from controlled foreign company

with a financial year that deviates from the calendar year and that began in 2021.

### Minimum Tax Act:

- **Minimum tax group (newly included by the Bundestag):** Based on German Pillar Two rules, top-up tax payments and filing obligations are centralized at the level of one single German-based Constituent Entity (the so-called minimum tax group leader). A German entity should also be considered the minimum tax group leader of a German subgroup if it is the only business unit in Germany. This is accompanied by the mandatory notification of group leaders to the Federal Tax Office, for the first time on 28 February 2025. The regulation will come into force retroactively on 28 February 2023.
- **GloBE model regulations:** The administrative guidelines adopted by the Inclusive Framework on BEPS on 13 July 2023 for the administration of the GloBE model regulations with regard to mobile employees (consideration of wage costs in one tax jurisdiction), i.e. no pro rata consideration of employees who carry out more than 50 percent of their work in one tax jurisdiction, are to be implemented. The changes enter into force with effect from 28 December 2023.

### 3. Real Estate

**Tax exemption for photovoltaic systems:** The permissible gross output is to be increased from 15 kW to 30 kW (peak) per residential or commercial unit. The increase is to apply for the first time to photovoltaic systems that are purchased, commissioned or expanded after 31 December 2024.

**Real estate transfer tax: The attribution of real estate** to the assets of a company for so-called "share deal" cases (transfer of shares in corporations or partnerships that own real estate – supplementary cases pursuant to Section 1 (2a) to (3a) Real Estate Transfer Tax Act (RETTA) is to be regulated newly. Accordingly, the attribution is to be made to the assets of the company that last realised an acquisition of real estate according to the basic cases (e.g. through a purchase agreement) pursuant to Section 1 (1) RETTA. The realisation of a real estate acquisition through a share deal pursuant to Section 1 (3) or (3a) RETTA should no longer lead to a change in the ownership (for RETT purposes) of the property. The new regulation is to enter into force on the day after promulgation without a separate transitional arrangement. The new regulation applies to acquisition transactions that are carried out after the date of promulgation of the Act.

### 4. Capital income / withholding tax

**Reporting standards on capital income (newly added by the Bundestag):** In 2021, the regulations on information on tax certificates for capital income, on withholding tax, and the transmission obligations to the Federal Tax Office, were comprehensively revised and expanded. In anticipation of the EU FASTER Directive, which will apply from 2030, these reporting standards will be adapted to the requirements of the FASTER Directive. This is intended to avoid different reporting standards for domestic dividends on the one hand and cross-border dividends on the other. First application for capital gains accruing to the creditor after 31 December 2026. In addition, certain reporting regimes will be postponed by two years. Accordingly, these are also to be applied for the first time to investment income accruing to the creditor after 31 December 2026.



This also includes the obligation for listed companies based in Germany to report information about the identity of their shareholders to the Federal Tax Office.

### 5. Procedural law

#### **FATCA reporting obligations:**

The maximum fine for violations of the reporting obligations under the FATCA-USA Implementation Regulation is to be increased to EUR 30,000. In addition, an authorisation for the Ministry of Finance to regulate the provisions on fines for violations by reporting financial institutions within the framework of a statutory ordinance is to be introduced. The new regulations are to enter into force on the day after promulgation.

#### **Exchange of financial account information:**

A new offence of fines is to be regulated in the event of a breach by financial institutions of their obligation to prepare records on the application and fulfilment of the due diligence and reporting obligations under the Financial Account Information Exchange Act. In this context, the Bundestag has added a specification regarding the catch-up of appropriate measures by financial institutions to obtain the necessary tax information on financial accounts by 31 December 2025. In addition, the record-keeping obligations are to be specified. The new regulations are to be applicable from 1 January 2025 and only for obligations relating to reporting periods beginning on or after 1 January 2025. In addition, the Bundestag has added catch-up obligations, subject to fines, for breaches of due diligence in connection with audits of financial accounts, if these have not been carried out in time.

### 6. Outlook

The next step in the legislative process will be the Bundesrat's approval of the bill. This could

take place in the November meeting on 22 November 2024. The Act is generally to enter into force on the day after promulgation. The special regulations on the entry into force of the individual articles and the temporal application of the individual laws must be observed. In this context, it should be noted that individual, more stringent measures are to be applied retroactively, especially in case of reorganisations and restructurings.

#### **Fourth Bureaucracy Relief Act Promulgated**

The Fourth Act to Reduce Bureaucracy for Citizens, Business and the Administration (Fourth Bureaucracy Relief Act) was promulgated in the Federal Law Gazette on 29 October 2024. This concludes the legislative process.

The main tax-related measures are as follows:

- **Shortening of the retention period** for accounting documents - uniform in tax law and commercial law - from ten to eight years. The shortened retention periods apply for the first time to documents for which the previous 10-year period had not yet expired on 1 January 2025. A special regulation applies to documents of taxpayers who are subject to supervision by the Federal Financial Supervisory Authority: The shortening of the retention periods applies to these documents with a delay of one year.
- **Change to exemption certificates for withholding tax:** Domestic income of foreign artists, athletes, licensors and supervisory board members is subject to limited tax liability in Germany. This income is taxed in a special procedure, the tax withholding procedure.

The foreign creditors of the remuneration can apply to the Federal Central Tax Office for relief from German withholding tax (Section 50c Income Tax Act). The prerequisite for this is that the relevant DTT provides for relief from withholding tax. Foreign taxpayers are relieved of German withholding tax either by reimbursement of the tax amounts already paid or - before payment of the remuneration - by the issue of a so-called exemption certificate. This means, the debtor of the remuneration does not have to withhold tax at all or only at a reduced rate. According to the current legal situation, an exemption certificate can be limited to a maximum period of three years. This period for the limitation of exemption certificates is now increased from three to five years.

- **Transfer pricing (valid from 2025):** For transfer pricing documentation, the so-called transaction matrix will be included as a new component of the documentation. The transaction matrix must provide an overview of the relevant business transactions. In addition, the obligation to submit documents in the event of an external tax audit will be newly regulated, thus pursuing a risk-oriented approach. According to this, it is no longer necessary to submit all (transfer pricing) documentations without a separate request from the tax authorities, but only the transaction matrix, the master documentation and the records of extraordinary business transactions within a period of 30 days after the announcement of the order on the external tax audit.

Further reliefs in the Fourth Bureaucracy Reduction Act relate to the following measures:

- Reduction of reporting and information obligations
- Measures to promote digitalization
- Projects to simplify and speed up administration and
- Further simplifications, in particular the deletion of individual superfluous regulations.

### **Amendment of the Regulation to Apply the Act to Combat Tax Avoidance and Unfair Tax Competition**

The German Federal Ministry of Finance [MoF] has published a ministerial draft for a Regulation to apply the Act to Combat Tax Avoidance and Unfair Tax Competition.

The Act to Combat Tax Avoidance and Unfair Tax Competition (Tax Havens Combat Act – THCA) of 25 June 2021 provides administrative and legislative measures that apply in relation to those states and territories that are non-cooperative tax jurisdictions. Tax jurisdictions are non-cooperative, if they are listed on the so-called EU blacklist of non-cooperative countries and territories. However, the EU blacklist does not apply immediately for purposes of the German THCA. A tax jurisdiction must first be included in the corresponding German regulation before the defensive measures related to that jurisdiction become applicable.

The EU blacklist is updated twice a year (February and October), most recently on 8 October 2024. Compared to the status in October 2023 and February 2024 the following jurisdictions have been removed from the list: Antigua and Barbuda, Bahamas, Belize, Seychelles, Turks and Caicos Islands.

New jurisdictions have not been added to the EU blacklist as of October 2024.

Following the update of the EU Blacklist in October, the German regulation will be adapted at the end of the year to reflect the current status of the EU Blacklist. This process has now been initiated by the MoF. The defensive measures of the THCA will therefore no longer be applicable retroactively from 1 January 2024 to the above-mentioned tax jurisdictions that have been removed from the EU blacklist and will be removed from the German regulation.

The following eleven non-cooperative tax jurisdictions remain on the EU blacklist and on the amended national regulation: American Samoa, Anguilla, Fiji, Guam, Palau, Panama, Russia, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu.

For the regulation to enter into force, it must be promulgated in the German Federal Law Gazette after approval by the Upper House of the German Parliament (Bundesrat).

### **Multilateral Instrument: Germany Notifies Completion of Domestic Entry into Force at the OECD**

On 2 October 2024, Germany informed the OECD that domestic measures to modify seven German DTT for the implementation of the OECD BEPS Multilateral Instrument (BEPS-MLI) have been completed and that it intends to apply a shorter period for the entry into force.

Due to the large number of options and reservations provided for in the BEPS-MLI, Germany had reserved the right to ensure that the modifications to the German DTT covered only take effect after the conclusion of domestic

measures. The implementation of these domestic measures was carried out by the "Law on the Application of the Multilateral Convention of 24 November 2016 and Further Measures" (MLI Application Act). The MLI Application Act was promulgated in the Federal Law Gazette on 21 June 2024. The legislative process has thus been concluded. In particular, this Act intends to specify the modifications resulting from the BEPS-MLI, considering the selection decisions of Germany and the respective other contracting state (so-called matching) for the DTT covered.

The MLI Application Act listed the following nine DTT covered:

1. Croatia
2. Czechia
3. France
4. Greece
5. Hungary
6. Japan
7. Malta
8. Slovakia
9. Spain.

Following the completion of the legislative process on the MLI Application Act, Germany informed the MLI custodian (OECD) on 2 October 2024 of the completion of the domestic measures – but only for the following seven of the nine DTT covered:

1. Croatia
2. France
3. Greece
4. Hungary
5. Malta
6. Slovakia
7. Spain.

For the DTT with the Czech Republic and Japan, which are also covered by the MLI Application Act, no confirmation of the completion of the domestic procedure has yet been made.

In addition, the completion of the national procedure for the entry into force of Part VI (arbitration proceedings) was notified for the following four DTT covered:

1. Greece
2. Hungary
3. Malta
4. Spain.

The effectiveness of the BEPS-MLI in relation to the covered Contracting States is regulated in Article 35 (1), (3) and (7) of the BEPS-MLI.

The BEPS-MLI will take effect for withholding tax on amounts paid or credited to non-residents as follows:

- On or after 1 January of the calendar year beginning 30 days after receipt by the depositary of Germany's notification of the completion of the domestic procedures for the BEPS-MLI to take effect in relation to the relevant treaty – thus, as of 1 January 2025.

The BEPS-MLI will take effect for all other taxes levied for assessment periods as follows:

- On or after 1 January of the calendar year beginning six months after receipt by the depositary of Germany's notification of the completion of the domestic procedures for the entry into force of the BEPS-MLI in relation to the relevant treaty.
- However, according to the explanatory memorandum, the six-month period can also be shortened if Germany and the respective contracting state notify the depositary that they intend to apply a correspondingly shorter period. The date on which the legal changes resulting from the application of the BEPS-MLI in relation to

the respective treaty take effect will be announced in the Federal Law Gazette.

- Germany has made use of this possibility of shortening and has accordingly notified that it intends to apply a shorter period of only two calendar months in relation to the following DTT, so that the regulations would apply from 1 January 2025:
  1. Croatia
  2. France
  3. Greece
  4. Hungary
  5. Malta
  6. Slovakia
  7. Spain.

- According to the OECD website, Croatia, Greece, Hungary, Malta, Slovakia and Spain have also deposited the shortening to two months; confirmation for France would still be pending.

Separate rules of application apply to arbitration proceedings under the BEPS-MLI.

### **Global Minimum Taxation (Pillar Two): Notification Forms Published for Registering Minimum Tax Group Leader**

The German Ministry of Finance [MoF] published the notification form for registering the minimum tax group leader with the German tax authorities for Pillar Two purposes. Based on German Pillar Two rules, top-up tax payments and filing obligations are centralized at the level of one single German-based Constituent Entity (the so-called minimum tax group leader).

When determining the minimum tax group leader, the German tax authorities generally rely on the following order:

- 1) The Ultimate Parent Entity (UPE) of the group if the

group's UPE is tax resident in Germany;

- 2) The parent company located in Germany that it is the common parent company of all Constituent Entities located in Germany if the UPE is not tax resident in Germany;
- 3) The Constituent Entity designated as the German minimum tax group leader by the UPE in all other cases;
- 4) The economically most significant German entity of the group if there is no entity designated as the German minimum tax group leader by the UPE.

The minimum tax group leader needs to electronically submit certain information to the German Federal Central Tax Office [BZSt] via a online filing portal, among others, the identification of the UPE and – if different from the UPE – the minimum tax group leader (e.g., name, address, e-mail address, tax number, contact person).

Please note that according to the amendment to the law recently passed by the Bundestag on 18 October 2024 (2024 Annual Tax Act, see above), a Constituent Entity would automatically be considered the minimum tax group leader and thus, needs to file the respective notification, where it is the only German-based group member.

The notification is due within two months after the end of the calendar year in which the group falls within the scope of the German Pillar Two rules. As such, for calendar year taxpayers, the notification is due on 28 February 2025. If the financial year is different from

the calendar year, the notification deadline is 28 February 2026 (subject to exceptions in case of short financial years ending before 1 January 2025). According to the German tax authorities, the electronic filing will be possible starting on 2 January 2025.

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