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Government Draft Bill to Amend the Minimum Tax Act and to Implement Further Measures

On 3 September 2025, the Federal Cabinet adopted the government draft bill for an Act to amend the Minimum Tax Act and to implement further measures (Minimum Tax Amendment Act). Compared to the ministerial draft as of August 2025, few changes have been made.

The primary aim of the draft law is to implement new OECD Administrative Guidance items from 15 December 2023, 24 May 2024 and 13 January 2025 on the global minimum tax in the German Minimum Tax Act (MTA). In addition, individual anti-profit shifting regulations are to be reduced to the necessary level as accompanying measures to avoid bureaucracy.

The following measures should be emphasised:

1. Minimum Tax Act

Flow-through entities

The definitions of flow-through, tax-transparent and reverse hybrid entities will be revised. This is also intended to cover cases in which the shares in the flow-through entity are held by another flow-through entity.

Another legal addition intends to ensure that the allocation of covered taxes of a constituent entity in connection with tax-transparent entities also takes into account taxes that are transferred from another entity to the tax-transparent entity, e.g. due to CFC rules.

Securitisation agreements and securitisation Vehicles (new in the government draft)

To implement point 6 "Treatment of Securitisation Vehicles" of the OECD Administrative Guidance of 24 May 2024, the terms "securitisation agreements" and "securitisation vehicles" are defined in the MTA.

Unrecognised taxes (new in the government draft)

The definition of unrecognized taxes is extended. Taxes of a constituent entity that relate to financial years preceding the transition year are also considered unrecognized taxes.

Attribution of recognised taxes to other constituent entities (new in the government draft)

An option to opt out of cross-border allocation of deferred taxes is added. As a consequence, these taxes are not to be taken into account for the purposes of determining the adjusted recognised taxes.

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Adjusted deferred taxes

It is stipulated that timing differences between the GloBE carrying value and the tax carrying value are decisive for determining the total amount of deferred taxes.

The provisions on the recapture taxation of deferred tax liabilities will be expanded and merged. The extension includes the possibility of combining several deferred tax liabilities in so-called recapture taxation categories (General Ledger account as so-called recapture taxation category I and Aggregate DTL Category as so-called recapture taxation category II) for the first time under certain conditions, in deviation from the still applicable principle of considering on an item-by- item basis, in order to facilitate the practical application of the recapture taxation rule.

Gains/losses of the acquiring constituent entity from a reorganisation

It should be clarified that a gain or loss resulting from a reorganisation at the level of the acquiring constituent entity is not considered when determining the minimum tax gain or loss. However, this should not apply to an acquisition gain insofar this corresponds to the share of the acquiring constituent entity in the disposing constituent entity and this share is an equity interest not covered by Section 21 Minimum Tax Act (shareholding of at least 10% and ownership interest that is included under the equity method of accounting).

GloBE Information Return (GIR)

It should be ensured that MNE groups that have short Reporting Fiscal Years or Fiscal Years that deviate from the calendar year also have to submit their first Globe Information Return (GIR) by 30 June 2026 at the earliest.

For a constituent entity taxable in Germany, the obligation to submit a GIR in Germany does not apply if the GIR has already been submitted by the ultimate parent company or a constituent entity commissioned by it to transmit it in its respective country of residence, provided that an international agreement on the exchange of information exists. States of residence that are Member States of the EU are now exempt from this additional requirement (new in the government draft). This is in implementation of Directive (EU) 2025/872 (DAC 9), which provides for an automatic exchange of information on GIR in the EU. There is no provision for automatic exchange with third countries.

It is also intended to create the legal basis for forwarding the GIR, which is to be submitted to the Federal Central Tax Office, to the competent authorities of the other EU member states.

In addition, a correction obligation is laid down vis-à-vis the ultimate parent entity or the reporting constituent entity (filing entity) if another state informs the Federal Central Tax Office that it has received a possibly erroneous GIR from Germany (correction notification). Likewise, the Federal Central Tax Office is given the opportunity to notify the foreign authority if the Federal Central Tax Office has reason to believe that a GIR received from another state contains manifestly incorrect information (new in the government draft).

Tax attributes in the transition year

The provisions on the consideration of deferred taxes from pre-transitional years when determining the effective tax rate are to be reworded and rearranged to improve clarity. The aim of the new regulation is, in particular, to restrict the recognition of such deferred taxes (predominantly DTA) with an avoidance character that are artificially generated and deliberately used to increase the effective tax rate to over 15%. In order to prevent tax avoidance, the legislator is of the opinion that a retroactive application of the revised regulations is necessary.

CbCR safe harbour

The requirements for the CbCR safe harbour are extended. It is to be stipulated that the effects of applying the purchase price accounting to the acquisition of ownership interests in the context of a business combination may only be taken into account if they have already been included in the country-by-country reports and certain adjustments are made.

Furthermore, as a consequence of the inclusion of the aforementioned new provisions and to improve the structure, the definitions for the CbCR safe harbour are to be revised in their entirety.

Redefinition of the transitional year (new in the government draft)

For the purposes of the national top-up tax, the transitional year for a constituent entity must be redetermined if it is subject to the national top-up tax before the general GloBE regulations apply to it.

2. CFC rules

Introduction of a participation limit for tightened CFC rules

According to the current legal situation, any amount of participation can be sufficient for the application of the tightened CFC rules for income of an investment nature. In the case of participation of less than 1%, this only applies if the income of the foreign company consists exclusively or almost exclusively of income of an investment

nature and the foreign company is not listed on a stock exchange (so-called “exclusivity clause of investment income”).

According to the explanatory memorandum, the introduction of a participation limit (directly or indirectly at least 10% of the voting rights or at least 10% of the shares in the nominal capital) and the deletion of the exclusivity clause of investment income including the stock exchange clause are intended to significantly reduce the administrative burden, particularly regarding indirect participations. At the same time, however, this is intended to ensure that cases with a significant impact will continue to be covered by CFC rules. This change is to apply retroactively from the 2022 assessment or tax period (financial years beginning after 31 December 2021).

Adjustment of the relative and absolute exemption thresholds

According to the exemption threshold for the general CFC rules, passive income is not included in the tax base if the passive income does not exceed 10% of the total income of the foreign company (relative company-related exemption threshold). The prerequisite is that the amounts of passive income to be disregarded for a taxpayer do not exceed a total of EUR 80,000 (absolute shareholder-related exemption threshold). A corresponding exemption limit applies to income of an investment nature (tightened CFC rules).

From the 2026 assessment or tax period (financial years beginning after 31 December 2025), there will only be an increased company-related exemption threshold in each case. It is planned to increase the relative exemption threshold to "no more than one third" and to increase the absolute exemption threshold to EUR 100,000. In future, the exemption threshold will therefore only be reviewed at the level of the controlled foreign company.

Adjustment of the reduction amount

The so-called reduction amount serves to prevent double taxation of distributed profits of the controlled company that were already covered by CFC taxation or from the sale of shares in the controlled company. Currently, however, the non-deductible business expenses (5% of the investment income) were not part of the reduction amount.

Now, the non-deductible business expenses are also to be neutralised retroactively from the 2022 assessment or tax period.

3. Royalty deduction barrier

Expenses for the granting of rights to related parties are not deductible or can only be deducted proportionately if the corresponding income is subject to an income tax burden of less than 15% for the recipient due to a harmful preference rule that does not require the recipient to have a substantial business activity (nexus approach) (so-called royalty deduction barrier – Section 4j Income Tax Act). The regulation was introduced for expenses incurred after 31 December 2017 to prevent profit shifting by means of royalty expenses during the internationally agreed transitional period for the abolition or nexus-compliant adjustment of harmful preferential regulations until 30 June 2021.

In view of the transitional period that has now expired and the introduction of the global minimum tax, there is no longer any need for an internationally uncoordinated measure. The regulation will therefore be abolished from the 2025 tax year.

4. Outlook

The draft law can now be submitted to the parliamentary procedure. First, the Bundesrat will have the opportunity to comment on the government draft. This will be followed by the deliberations and resolutions in the Bundestag. Significant changes may still be made in the further course of the legislative process. The legislative process is scheduled to be finalised by the end of 2025.

The Act should generally 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 Acts must be observed.

Government Draft for a Law to Promote Private Investment and Germany as a Financial Centre

On 10 September 2025, the Federal Cabinet adopted the government draft for a law to promote private investment and Germany as a financial centre.

The coalition agreement of the Federal Government provides for an investment offensive and targeted structural reforms to increase economic growth, in particular through tax incentives for private investment and the reduction of bureaucracy costs (strengthening private investment activity as a growth lever). To this end, the framework conditions for private investment are to be improved and Germany as a financial centre is to be strengthened. The aim of the draft law is therefore to promote private investment, especially in infrastructure and renewable energies, as well as in smaller companies and start-ups (venture capital) in implementation of the coalition agreement.

The law focuses on measures to improve the financing conditions

of companies and to make the financial sector more competitive in the areas of financial market law, commercial law, supervisory law and tax law, among other things. The measures include, in particular:

- improving financing opportunities for small businesses and start-ups;
- promoting investments by funds in renewable energy and infrastructure,
- measures to reduce bureaucracy in the financial market sector without lowering the level of consumer protection, in particular streamlining supervisory processes at the Federal Financial Supervisory Authority (BaFin), and
- location-friendly implementation of capital market law EU legal acts (in particular Listing Act, ESAP, MIFIR Review).

The main changes in tax law include:

Roll-over of hidden reserves in corporation shares: With the aim of facilitating investments in venture capital, the maximum amount is quadrupled to 2,000,000 euros for the transfer of realised hidden reserves from the sale of shares in corporations held as business assets to preferential reinvestment assets (e.g. shares in corporations or buildings). However, the preferential treatment does not apply to corporations, as profits from the sale of shares in other corporations are generally tax-exempt. First application to capital gains realised in financial years beginning after the promulgation of the law.

Investment tax law (among other things):

- Strengthening the fund location and promoting investments in renewable energies, infrastructure and venture capital by significantly expanding the investment opportunities of funds, for example through basically unlimited investments in commercial partnerships or in all types of other funds such as European Long Term Investment Funds (ELTIF).
- Regulation on the harmlessness of an (active) entrepreneurial activity for the status as an investment fund in order to create legal certainty for investments by investment funds, in particular in renewable energies and other infrastructure; Participation of investment funds as partners in commercially active partnerships within the scope permissible under supervisory law and also exercise an own commercial activity (e.g. by operating a photovoltaic system on a rented building).
- As a consequence: In order to avoid distortions of competition with companies subject to corporate income tax, the taxation regulations for investment funds and special investment funds will be amended in such a way that an exemption from corporation tax is excluded and thus income taxation at fund level is ensured insofar as (special) investment funds generate income from original commercial activity (definitive taxation of such income at fund level).
- The existing regulations on exemption from local trade tax for investment funds will be extended to investments in renewable energy management companies, public-private partnership (PPP) project companies and infrastructure project companies.
- Expansion of the investment opportunities of special investment funds to facilitate targeted investments in real estate, infrastructure and renewable energies (acquisition of investment shares in all types of domestic or foreign investment funds as funds of funds; acquisition of up to 100% of the shares in corporations whose business object is infrastructure projects).
- Application of the new regulations in principle from 2026.

The draft law can now be submitted to the parliamentary procedure. First, the Bundesrat will have the opportunity to comment on the government draft. This will be followed by the deliberations and resolutions in the Bundestag. Significant changes may still be made in the further course of the legislative process. The legislative process is scheduled to be finalised by the end of 2025.

Government Draft for a Law to Implement DAC8

The 8th amendment of the Directive on Administrative Cooperation (DAC8) provides for automatic exchange of information on crypto-assets between EU countries. The directive was adopted by EU countries in October 2023 must be transposed by the member states by 31 December 2025. The member states must apply its provisions as of 1 January 2026. EU countries must obtain information from Reporting Crypto-Asset Service Providers and exchange that information with the EU country of residence of the taxpayer/investor on an annual basis.

In particular, the draft law of 15 August 2025 covers the transposition of DAC 8 into national law. The draft law creates an obligation for providers of crypto-asset services to report to the Federal Central Tax Office in a systematic manner annually specific information that enables users to be

identified and the transactions carried out by them to be quantified. To ensure that the information to be reported is available and of sufficient quality, providers are obliged to collect it from users in compliance with certain due diligence obligations. A user is anyone who uses the crypto asset services of a crypto provider. The users to be reported include individuals and companies who are tax resident in Germany or in other EU member states as well as in third countries with which Germany has concluded a qualifying agreement. To ensure that the other states receive the information relevant to them, the draft law provides for an automatic exchange of information, which the Federal Central Tax Office is to carry out with the respective competent authorities on the basis of the DAC or a qualifying exchange agreement. The automatic exchange of information also ensures that the Federal Central Tax Office in return receives information on users who are taxable in Germany and for whom information has been reported to foreign tax authorities by providers of crypto-asset services.

The draft law also contains further regulations to extend the automatic exchange of information between EU member states:

- Expansion of the Common Reporting Standard for Financial Accounts (CRS) to include new digital financial products
- Expansion of reporting requirements of reporting financial institutions to include additional disclosures related to reportable accounts and adjustments to due diligence requirements related to the collection of self-disclosures when opening accounts and identifying the controlling person of an entity under anti-money laundering law
- Extension of the exchange of information on certain categories of income and assets to include information on dividends from companies whose shares are not held in a bank custody account and on income from life insurance products
- Extension of the exchange of cross-border rulings to include certain tax rulings affecting individuals
- Reportable cross-border arrangements (DAC6): extension of the content of the data set to be transmitted to include all other information that could help the competent tax authorities in the assessment of a tax risk
- Reporting rules for digital platforms (DAC7): Extension of the reporting data to include the EU identification service, which is used by the platform operator to identify a provider.

The law is to come into force on 1 January 2026.

Draft Bill for Amendments to Tax Ordinances Regarding DTT Lithuania, FATCA and Permanent Establishment Profit Allocation

On 4 August 2025, the Federal Ministry of Finance has published a draft bill for a Seventh Ordinance Amending Tax Ordinances. The regulations to be amended include the following with an international dimension:

- Adoption of an Ordinance implementing the notification of the change from the exemption to the tax credit method under the DTT Lithuania
- Amendment to the FATCA-USA Implementation Ordinance
- Amendment to the Ordinance on the Allocation of Profits of Permanent Establishments regarding foreign insurance enterprises

DTT Lithuania

The amendment concerns the avoidance of double taxation on income from dependent personal services (Article 15) under the DTT between Germany and Lithuania of 1997 and is related to the Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Lithuania on Defence Cooperation of 13 September 2024. The Agreement on Defence Cooperation regulates the legal framework for the presence of German armed forces, civilian entourage, other seconded German personnel and German state-owned companies in the territory of the Republic of Lithuania for enhanced partnership and cooperation in the field of defence. Article 18 of the Agreement on Defence Cooperation regulates the exemption of posted German personnel from personal duties in Lithuania.

On 19 December 2024, Germany had notified Lithuania through diplomatic channels (pursuant to No. 7 of the Protocol to the DTT 1997) that double taxation on income from employment would be avoided in the case of a person resident in Germany as follows: Income that can be taxed in Lithuania under the DTT will no longer be exempt from German tax (Article 23 (1) a)), if the Agreement on Defence Cooperation does not allow Lithuania to tax this income. In these cases, Germany avoids double taxation by means of a tax credit (Article 23 (1) b)).

The amending ordinance transposes this notification into law. The amendment is applicable to taxes levied for periods from 1 January 2026.

FATCA USA

Violations of the reporting obligations under the FATCA USA Implementation Ordinance currently pose an endangering of taxes that can be punished with a fine of up to 30,000 euros. In the case of violations of reporting obligations under the Common Reporting Standard (CRS), on the other hand, the fine for financial institutions is up to 50,000 euros. With the amendment to the FATCA Ordinance, this divergence in penalties for similar reporting obligations of the two reporting procedures will be equalized by increasing the FATCA fine framework.

Thus, the fine for violations of the reporting obligations under the FATCA Regulation is set at up to 50,000 euros.

The amendment will enter into force on the day following its promulgation.

Permanent Establishments

The amendment to the Ordinance on the Allocation of Profits of Permanent Establishments (PE-Allocation-Ordinance) is an adjustment based on the case law of the Federal Tax Court. On 5 June 2024 (I R 3/22), the Federal Tax Court ruled on the determination of the free capital of a domestic permanent establishment of a foreign insurance company.

The PE Allocation Ordinance contains an opening clause (Section 25 subsection (3) sent. 1), according to which the foreign insurance enterprise may attribute to the domestic insurance permanent establishment an amount of free capital lower than the free capital according to the “modified capital allocation method” (according to subsection (2)) only if this produces a result for the domestic insurance permanent establishment that, in relation to the rest of the enterprise, is more in line the arm’s length principle based on the assets attributed to it and the opportunities and risks attributed to it. According to subsection (3) sent. 2, however, the domestic insurance permanent establishment must report at least the amount of free capital it would be required to report as equity capital in accordance with insurance supervisory law if it were a legally independent insurance enterprise (“minimum capital method for insurance permanent establishments”).

The Federal Tax Court decided, contrary to the opinion of the tax authorities, that the provision of subsection (3) sent. 2 (minimum capital method) only applies to the opening clause of subsection (3) sent. 1 and does not apply to the modified capital allocation method (subsections (1) and (2)) for domestic insurance permanent establishments. According to the judgment, if the free capital of the permanent establishment determined according to the modified capital allocation method is less than the capital determined according to the minimum capital method, neither a higher free capital nor additional assets and investment income would be attributable to the domestic permanent establishment.

With the amendment of Section 25 now envisaged, it should not be possible to fall below the minimum capital under insurance supervisory law, which an independent insurance undertaking must at least disclose in the situation of a domestic insurance permanent establishment. According to the explanatory memorandum to the Act, the minimum capital method is in principle in line with the 2010 OECD Report on the Attribution of Profits to Permanent Establishments.

The amendment will enter into force on the day following its promulgation.

Federal Tax Court (XI R 15/23): E-Mails as Business Letters to Be Submitted in the Context of an External Tax Audit; Digital Documents on Group Transfer Pricing as Tax-Relevant Documents

In its ruling of 30 April 2025, the Federal Tax Court ruled that commercial and business letters received and sent can also be e-mails within the meaning of the obligation to retain documents and that these can be requested by the tax authorities as part of the external tax audit. In addition, (digital) documents on group transfer pricing are considered “other documents” that may be important for taxation. The court also found that the tax authorities are generally entitled to request all tax-related e-mails from the taxpayer in the context of the external tax audit. However, the tax authorities are prohibited from demanding a so-called general journal, which on the one hand would still have to be prepared and on the other hand also contains information on such e-mails that have no tax relevance.

The plaintiff, a corporation, and the tax office disputed the obligation to submit commercial and business letters as well as other documents, including a general journal, during an external tax audit.

The plaintiff had concluded a "Sales and Marketing Services Agreement" (SMS Agreement), according to which it had to provide services to another group company based outside Germany. During an external tax audit, the tax office requested the plaintiff to submit received business letters and reproductions of the business letters sent as well as other documents with relevance for taxation. For electronically sent or received documents such as e-mails, an electronically usable data carrier should be provided. In particular,

this did not cover the private correspondence of employees and purely internal company communication. The correspondence between the group companies, on the other hand, should be submitted. If the requested documents are available in electronic form, the plaintiff was to submit a general journal in electronic form on a data carrier that could be evaluated by machine. The general journal should contain information on the sender and recipient (including cc and bcc recipients), subject and attachments of the message.

The plaintiff defended itself against this in the appeal proceedings, inter alia, on the grounds that there was no legal basis for the submission of a general journal.

In the opinion of the Federal Tax Court, the external tax audit was entitled to require the plaintiff in particular to submit all e-mails relating to the preparation, conclusion and implementation of the SMS agreement with the other group company, including the transfer pricing documentation. Excluded from this are those e-mails that are merely of a private nature or concern internal company communication.

A request for the documents "en bloc" - namely all business letters relating to the audit period - was also permissible, in particular because of the administration's often existing lack of knowledge of the existence of specific documents. In addition, the external tax audit had already clarified the requirement by referring to the SMS agreement. In the further course of the proceedings, the tax office further substantiated the request by referring to the correspondence containing statements about transactions that must be retained, as well as to documents that are indispensable for checking the completeness and correctness of the entries and records. Finally, a further specification, which sufficiently determines the request for submission, was again provided by the reasoning in the context of the decision on the plaintiff's appeal, which refers only to the "tax-relevant" e-mail communication. In doing so, the tax office had made it sufficiently clear to the plaintiff what was wanted of him. This did not require any further restrictions regarding the requested correspondence, for example in the form of certain search terms, employees or shorter periods of time.

The tax office had also rightly demanded the submission of those e-mails relating to the plaintiff's transfer pricing documentation. In the opinion of the Federal Fiscal Court, documentation on group transfer pricing falls within the scope of the regulations on the retention of "other documents insofar as they are significant for taxation".

Special statutory documentation and submission obligations for transfer pricing matters do not release the taxpayer from the obligation to maintain general documents, in particular e-mails, insofar as they contain transactions that are important for transfer pricing documentation and thus "for taxation". This also includes those e-mails that relate only to the preparation, conclusion and also to the implementation of the agreement, even if such e-mails essentially only contain so-called fulfillment actions.

The tax office's demand to comply with the obligation to submit also proved to be proportionate. The request for submission (obligation to submit only on the merits) leaves it up to the plaintiff to decide which e-mails or data it submits in the individual case. In the opinion of the Federal Tax Court, the plaintiff is therefore free to select data that is not relevant for tax purposes (so-called initial qualification right). Due to the obligation to submit only on the merits, no further restrictions, such as on random samples, certain data parameters or periods within the audit period, were necessary.

However, in the context of the external tax audit, the tax office was not allowed to request a so-called general journal in digital form, which had to contain information on any e-mail correspondence of the plaintiff and its employees. There is no legal basis for this. In the Court's view, the tax office's request for the provision of a general journal had to be understood by the plaintiff as meaning that information relating to its entire e-mail correspondence must be submitted, regardless of whether there is a retention obligation for an individual e-mail. A request for submission understood in this way, which also extends to the submission of (data on) e-mails without tax relevance, exceeds the scope of the tax office's authority to request electronic documents.

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