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Bundestag Passes Act to Amend the Minimum Tax Act and to Implement Further Measures

On 13 November 2025, the German Bundestag passed the Act to amend the Minimum Tax Act and to implement further measures (Minimum Tax Amendment Act) in the version recommended by the Finance Committee.

The primary aim of the 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. In addition, individual anti-profit shifting regulations are reduced to the necessary level as accompanying measures to avoid bureaucracy.

The following measures of the Minimum Tax Amendment Act 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

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

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

Attribution of recognised taxes to other constituent entities

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 is 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. 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.

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 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 revised in their entirety. In particular, the previously used term "qualified consolidated financial statements" is to be replaced by the term "qualified accounting data". What is new here is the use of so-called reporting packages if these fulfil the German requirements for country-by-country reporting.

The Bundestag has made further amendments in this context to fully implement the OECD requirements for the CbCR safe harbor. In particular, for constituent entities that are not consolidated in the consolidated financial statements of the ultimate parent entity due to their size or for reasons of materiality, all data sources permitted for CbCR are permissible, provided that no qualified accounting data has been prepared.

Redefinition of the transitional year

For the purposes of the national top-up tax, the transitional year for a constituent entity must be rede-

termined 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.

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 applies 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. The relative exemption threshold is increased to "no more than one third" and 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. However, the non-deductible business expenses (5% of the investment income) were not part of the reduction amount. The government draft also provided for retroactive neutralisation of these non-deductible business expenses. However, the Bundestag has removed this relief.

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 next step in the legislative process will be the approval of the Bundesrat. This may take place before the end of this year.

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.

Federal Ministry of Finance: Draft for a Minimum Tax Report Ordinance

The Federal Ministry of Finance has forwarded to the Bundesrat the draft ordinance on the implementation of the Minimum Tax Act on the scope, design and exchange of information on minimum tax reports (Minimum Tax Report Ordinance).

Pursuant the Minimum Tax Act, the Federal Ministry of Finance is authorised to transpose the international requirements on the minimum tax report into national law with the consent of the Bundesrat. The ordinance regulates:

- the scope of application
- definitions
- the competent authority
- the sections of the minimum tax report

- the exchange of information and distribution approach
- simplified reporting during the transitional period and
- the preparation of the minimum tax report.

The ordinance will enter into force on the day after its promulgation.

Federal Ministry of Finance: Updated Draft Bill for Amendments to Tax Ordinances

The draft bill for a Seventh Ordinance Amending Tax Ordinances has been forwarded to the Bundesrat. 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 Ordinance on the Allocation of Profits of Permanent Establishments regarding foreign insurance enterprises.

Compared to the draft from August 2025, an amendment to the FATCA-USA Implementation Ordinance is no longer included: Accordingly, the originally planned amendment, which was intended to set the fine for violations of the reporting obligations at up to EUR 50,000, has been cancelled.

The other amendments to the above-mentioned regulations are contained in the draft without change:

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.

The double taxation on income from employment will 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 amendment is applicable to taxes levied for periods from 1 January 2026.

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 endowment capital of a domestic permanent establishment of a foreign insurance company.

According to the Federal Tax Court Section 25 (3) sent. 2 PE-Allocation-Ordinance does not establish a general principle according to which the domestic insurance branch may not fall below the minimum equity capital that an independent insurance company must disclose under insurance supervisory law in the situation of the insurance branch in Germany. The principle shall therefore not be applicable to the modified capital allocation method according to Section 25 subsections (1) and (2).

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 (I R 1/23): Application of the Loss Deduction Limitation Rule in the Case of a Detrimental Change in Ownership During the Year

In its ruling of 16 July 2025 (I R 1/23), the Federal Tax Court decided that a loss carryback is also possible in the case of a detrimental change in ownership during the year pursuant to Section 8c of the German Corporate Income Tax Act (CIT).

Under German tax law, there are two particular features regarding the use of losses by corporations for tax purposes. For corporate income tax purposes, the loss can be offset against profits from the previous year (since 2022, against profits from the last two previous years) up to an amount of EUR 1 million (known as loss carryback). In addition, the so-called German

loss deduction limitation rule must be observed. According to this rule, unused tax losses of a corporation are no longer deductible if more than 50% of the shares are transferred to a purchaser within five years (so-called detrimental change in ownership pursuant to Section 8c CIT).

If the detrimental change in ownership takes place during the year, it has been controversial up to now whether a loss carryback is still possible with regard to the losses incurred up to the detrimental change in ownership or whether these losses are lost without being offset.

In the case at hand, an undisputed detrimental change in ownership took place at the level of a limited liability company on 17 October 2018, because more than 50% of the shares in the company were transferred to a purchaser. In 2017, the company generated a profit of EUR 1,843,459, and the current loss in 2018 up to the detrimental change in ownership amounted to EUR 14,058.

The competent tax office essentially rejected the loss carryback with reference to margin note 31 in the guidance of the Federal Ministry of Finance on Section 8c CIT dated 28 November 2017, according to which such current losses may not be carried back to previous tax periods. The Federal Tax Court, on the other hand, approved the loss carryback. In particular, it stated that the wording of Section 8c CIT did not clearly exclude loss carrybacks. A loss incurred during the financial year of the detrimental acquisition of shares up to the date of its realisation does not constitute a "purely mathematical partial annual result" which, as such, would not be eligible for a loss carryback. It should be noted that the question of the constitutionality of Section 8c CIT is pending before the Federal Constitutional Court under case number 2 BvL 19/17 but was not relevant to the decision in the Federal Tax Court dispute at hand.

The Federal Tax Court had already ruled in favor of the taxpayer in the reverse case (loss carryforward) in its ruling of 30 November 2011 (I R 14/11, Federal Tax Gazette II 2012, p. 360). According to this ruling, current profits generated up to the date of transfer can be used to reduce existing loss carryforwards (see also margin note 33 in the guidance of the Federal Ministry of Finance on Section 8c CIT dated 28 November 2017).

Federal Tax Court (III R 23/23): No Extended Property Deduction for Sideline Activity Not Expressly Permitted

According to the Federal Tax Court judgement of 24 July 2025, a sideline activity not expressly permitted in Section 9 no. 1 sentence 2 et seq. Trade Tax Act can lead to the exclusion of the extended property deduction even if no income is generated from it.

According to the established case law of the Federal Tax Court, the exclusive management and use of own real estate means that, in principle, only the favoured activity may be carried out and it must be own real estate without exception. Accordingly, sideline activities are still within the scope of the exclusivity requirement and are, by way of exception, not detrimental to preferential treatment if they serve the management and use of own real estate in a narrow sense and can be regarded as a necessary part of an economically sensible own real estate management and use. The activities that are also permitted and therefore also not detrimental to preferential treatment, but are not themselves favoured, are exhaustively listed in Section 9 no. 1 sentences 2 and 3 Trade Tax Act.

In the case in dispute, a GermanCo held, among other things, two classic cars in the years 2016 to 2019, which it had acquired as an investment with the intention of making a profit. No income has been generated with the classic cars to date. In the trade tax returns for the years in dispute, the plaintiff applied for the extended property deduction, which was not taken into account by the responsible tax office in the trade tax assessment notices.

According to the Federal Tax Court, it does not matter whether an activity is remunerated or not. According to the Court, this interpretation is supported by the wording of Section 9 no. 1 sentence 2 Trade Tax Act as well as the system, purpose and history of the provision. This is because remuneration is not an additional constituent element, but the wording of the provision only refers to the activities expressly mentioned therein. Only the legal consequence of the extended deduction is based on income that is to be reduced insofar as it results from the management and utilisation of own real estate.

Furthermore, the interpretation of the Third Senate does not deviate from the case law of the Grand Senate of the Federal Tax Court, other Senates of the Federal Tax Court or its own previous decisions. Insofar as the Fourth Senate addressed the issue of non-remuneration in its order for reference dated 21 July 2016 (IV R 26/14), it can be left open whether this means that harmfulness for deduction should also be denied in a case such as this. That case concerned a different set of facts. Furthermore, in two more recent decisions, the Fourth Senate expressly left open the question of whether only a remunerated activity can be detrimental to a deduction.

Federal Tax Court (II R 31/22): Application of the RETT Group Exemption Clause in Cases of Spin-Off by Way of Absorption

In its judgement of 21 May 2025 (II R 31/22), the Federal Tax Court ruled that the application of the RETT group exemption clause pursuant to Section 6a Real Estate Transfer Tax Act (RETTA) in cases of spin-off by way of absorption – in contrast to spin-off by way of new formation – requires that the five-year holding period prior to the reorganisation is observed. It does not matter whether the absorbing company was (only recently) founded by the transferring legal entity itself. Compliance with the five-year holding period prior to the reorganisation is de facto possible in the case of a spin-off to an already existing legal entity and is therefore mandatory.

In the case in dispute, the plaintiff (GmbH – limited liability company) was founded in March 2015. The sole (founding) shareholder was a municipality. In November 2015, the municipality decided to transfer a municipally managed business, whose assets also included real estate, to its subsidiary GmbH in exchange for an additional share (so-called spin-off by way of absorption). The spin-off was entered in the commercial register in December 2015 and was recognised for tax purposes with retroactive effect to the date on which the GmbH was founded. The tax office assessed real estate transfer tax against the GmbH and refused to apply the RETT group exemption clause. The appeal to the tax office and the action before the Lower Tax Court of Nuremberg were both unsuccessful. In the opinion of the Lower Tax Court, the municipality had only held the shareholding in the absorbing GmbH for a few months at the time of the spin-off and not, as required by Section 6a sentence 4 RETTA, five years prior to the reorganisation.

The appeal against this decision was rejected by the Federal Tax Court. In line with the legal opinion of the Lower Tax Court and the tax office, the Court ruled that the conditions for the application of the RETT group exemption rule were not met in the case in question. In its reasoning, the Court firstly stated that the spin-off transaction in question was indisputably a taxable acquisition transaction. The legal change of ownership of the real estate caused by the spin-off became effective at the time of the entry into the commercial register and was subject to real estate transfer tax at this time. In principle, the entry requirements of the RETT group exemption rule pursuant to Section 6a sentence 1 RETTA were fulfilled for such a reorganisation. However, the provision was not applicable in the case in dispute because the five-year holding period prior to the reorganisation was not observed.

The Court had already ruled in two judgements (II R 16/19 and II R 2/22), both on the case of a spin-off by way of new formation, that the holding periods set out in Section 6a sentence 4 RETTA (i.e. five-year period prior to the reorganisation and five-year period after the reorganisation) only have to be complied with if their observance is legally possible due to the legal nature of the reorganisation. Since in the case of a spin-off by way of forming a new company, the newly formed company only comes into existence as a result of the spin-off, it is legally impossible to comply with the five-year holding period prior to the reorganisation, which means that it does not need to be complied with according to the case law of the Court (this is also the view of the tax authorities, see identical decrees issued by the tax authorities of the federal states on Section 6a RETTA dated 25 May 2023, No. 3.2.2.1). However, these legal principles are not applicable if the company does not come into existence as a result of the reorganisation, but already existed before the reorganisation, so that it would have been de facto possible to comply with the five-year holding period prior to the reorganisation. In the case in dispute, the municipality held 100% of the shares in the absorbing GmbH at the effective date of the spin-off. However, the shareholding had not been held for five years prior to the spin-off because the subsidiary GmbH had only been founded by the municipality a few months earlier. According to the Court, this different treatment of the spin-off by way of new formation and the spin-off by way of absorption for RETT purposes does not violate constitutional law, as the two situations are not comparable under civil law.

Lower Tax Court of Hesse (7 K 1188/21): Continuation of Book Value Despite Hidden Encumbrances and Transfer to the Partner's Business Assets

Contrary to the administrative opinion, the Lower Tax Court of Hesse has decided that a continuation of the book value pursuant to Section 3 (2) sentence 1 Reorganisation Tax Act is also possible if the fair market values are below the book values (hidden encumbrances) and the transferred assets do not become business assets of the acquiring partnership, but remain in the business assets of the partners.

The case at issue concerned the accounting tax treatment of a change of legal form. A limited liability company was changed to a limited partnership with retroactive effect from 01.01.2013. The limited partnership was not commercially oriented and was active in asset management with real es-

tate located in Germany. The limited partners were two corporations (50% each), which held their participation in the business assets. The limited partnership applied for the book values to be continued for the transferred properties, whereby the book value of the real estate exceeded the fair market values (so-called hidden encumbrances).

The tax office did not follow the book value application: In the opinion of the tax authorities, the book value approach is excluded if the fair market value of the assets is less than the sum of the book values of the transferred assets. Furthermore, the tax authorities require that the partnership earns income from commercial operations, so that a continuation of the book value in the case of an asset-managing, non-commercial partnership is generally excluded.

The Lower Tax Court of Hesse ruled against the opinion of the tax authorities and decided that a continuation of the book value was permissible even in the case of hidden encumbrances. The wording of Section 3 (2) sentence 1 Reorganisation Tax Act is not unambiguous, but in the opinion of the court it must be understood in such a way that the restriction to the fair market value ("at most, however, with the value according to para. 1") refers exclusively to the case of the intermediate value approach, but not to the book value approach. Otherwise, the potential for tax losses would be lost by reducing the book values without the economic capacity of the acquiring company having increased. This would contradict the spirit and purpose of the Reorganisation Tax Act, which is intended to enable restructuring that makes sense from a business point of view in a tax-neutral manner. Also, with regard to an interpretation of Section 3 (2) sentence 1 Reorganisation Tax Act in conformity with Constitutional Law, hidden encumbrances are not to be treated differently from hidden reserves.

In addition, the Lower Tax Court clarified that – contrary to the unambiguous wording of Section 3 (2) sentence 1 no. 1 Reorganisation Tax Act – the exclusion of the right to choose the book value approach does not apply if the transferred assets remain tax-entangled in the business assets of the partners. Accordingly, the book values could be continued here, even if the limited partnership was an asset-managing partnership and therefore had no business assets. Since the participation of the limited partners was held in the business assets of their corporations, the condition of continued tax liability was met. In this respect, Section 8 Reorganisation Tax Act (transfer of assets to a legal entity without business assets) is to be teleologically reduced to the fact that this is only applicable if participation in the partnership is held as private assets. Only in this case would there be a tax disentanglement of the assets and, as a result, a loss of tax base. The right of choice under Section 3 (2) Reorganisation Tax Act is therefore applicable according to its meaning and purpose to the extent that tax-entangled business assets continue to exist – regardless of the level. In the opinion of the Lower Tax Court, the requirements of Section 3 (2) sentence 1 no. 1 Reorganisation Tax Act are therefore related to the partner, i.e. must be examined individually for each partner.

The appeal is pending before the Federal Fiscal Court (IX R 15/25).

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