German Tax Monthly

Information on the latest tax developments in Germany

May | 2025

Coalition Agreement for a New Federal Government

The leaders of the Christian Democratic Union of Germany (CDU / CSU) and Social Democrats (SPD) have agreed on a **coalition agreement** about six weeks after the Bundestag elections. The ministries were also distributed between the parties. The Federal Ministry of Finance is to be filled by the SPD. Friedrich Merz is to be elected Chancellor in the Bundestag at the beginning of May.

The coalition agreement contains a large number of tax policy measures. However, all measures of the coalition agreement are subject to **financing**.

In the following, we summarise the main tax policy plans of the governing coalition.

Business Taxes and International Taxation

- Reduction of **corporate income tax** in five steps by one percentage point each, starting on 1 January 2028.
- Significant improvement of the **option for partnerships** to be taxed as a corporation and of the regime of preferential treatment of **retained earnings** for partnerships in order to enable taxation that is neutral in terms of legal form.
- Retention of the **solidarity surcharge** in its current form, i.e. levy on high income and corporate income.
- **Trade tax:**
  - Increase in the **minimum trade tax rate** from 7% to at least 9.8% (depending on the respective city).
  - Taking all available administrative measures to effectively counter fictitious relocations of registered offices in **trade tax havens**.
- **Employment / Work incentives:**
  - **Overtime**: Tax exemption for overtime bonuses that go beyond full-time work agreed in a collective agreement or based on collective agreements.
  - **Extension of working hours:** Tax relief for bonuses paid by the employer to extend working hours from part-time to full-time work; avoiding false incentives and deadweight effects.
  - Tax exemption of the salary up to 2,000 euros per month for those who voluntarily continue to work beyond the statutory **retirement age**; avoiding false incentives and deadweight effects.
  - Strengthening **employee share ownership** through a practical design of tax law and social security law.

Content

- **R&D tax allowance**: Significant increase in the funding rate and the assessment basis as well as simplification of the procedure.
- **Global minimum tax:**
  - **Maintaining** the minimum tax for large corporations and supporting work at international level for sustainable **simplification.**
  - At the same time, efforts should be made at European level to ensure that the current international divergences do not put German companies at a **disadvantage** in international competition.
- The coalition wants to advocate a **common corporate tax base** in the EU to prevent tax dumping and unfair tax competition.
- Support for a **financial transaction tax** at European level.
- Strengthening the **creative industries** and improving **film funding**, among others through tax incentives.
- Promotion of Germany as a location of the **gaming industry** through tax incentives.

Investment Incentives

- Introduction of an **investment booster** in the form of a degressive depreciation on equipment investments of 30% (annually) in 2025, 2026 and 2027.
- Promotion of **e-mobility** with **purchase incentives** and the following **tax measures**, among others
  - Tax relief for **company cars** through an increase in the maximum price limit for tax incentives for e-vehicles from 70,000 to 100,000 euros.
  - Additional **depreciation** for e-vehicles.
  - **Motor vehicle tax exemption** for electric cars until 2035.
- Creation of a competitive framework for investments by **funds** in **infrastructure** and **renewable energies**, also through targeted adaptation of tax regulations.
- Further improvement of the framework conditions for **start-ups**, in particular by increasing the availability of venture capital through better participation opportunities for institutional investors.

Real Estate

- Boost **housing construction** and **property ownership** through an investment, tax relief and bureaucracy reduction offensive.
- Improvement, among other things, of tax measures for the **formation of home ownership** for families ("start-up support home ownership"), for the promotion of **new construction** and for the **renovation** of existing housing.
- Tax "reward" for **cheap rentals**.
- Tax deductibility of costs for **energy-efficient renovations** of inherited real estate.

Tax Procedure, Reduction of Bureaucracy, Combating Tax Evasion and Avoidance

- An immediate program for the **reduction of bureaucracy** (essentially non-fiscal measures); at least **one bureaucracy reduction law** per year, and a reduction of **bureaucracy costs** for the economy by 25% (around 16 billion euros) and the **compliance costs** for companies, citizens and administration by at least 10 billion euros.
- Commitment **to tax simplification** through typifications, simplifications and lump sums.
- Gradual conversion to **self-assessment** of corporations and partnerships.
- Strengthening of the **tax authorities** through more **digitalisation** and **artificial intelligence**; accompanied by a gradual obligation to submit tax returns **digitally**.
- Examination of necessary further legal measures to **combat tax evasion** and for **effective tax enforcement.**
- Examination of further measures to avoid possible unjustified tax benefits in dividend taxation ("**Cum-Cum-transactions**").
- Commitment for the consistent inclusion of non-cooperative tax jurisdictions in the EU's "**black list**" in order to be able to take effective action against **tax havens**.
- Closing gaps in the **transparency register**; if one or more beneficial owners cannot be identified, legal transactions of legal entities that exceed the amount of 10,000 euros net may not be carried out by obligated entities under money laundering law.

Federal Tax Court (I R 33/22 and I R 17/21): Tax Group and Atypical Silent Partnership

The Federal Tax Court has ruled in two - partially identical - judgements on the existence of a tax group in the case of atypical silent partnerships.

In the dispute I R 33/22, the controlling entity held a silent partnership interest (10 %) in the controlled company. The taxpayer and the tax office unanimously assumed that this was an atypical silent partnership for tax purposes and therefore a business partnership. In the profit and loss accounts, the annual result before profit transfer, the profit transferred on the basis of the profit and loss transfer agreement (90 % of the annual result) and the allocation of the result to the controlling company as a silent partner (10 % of the annual result) were recognised. The tax office agreed with the view already expressed by the tax audit that the requirements for a tax group under corporation tax law had not been met because a limited liability company in which an atypical silent partnership exists cannot be a controlled company in a tax group.

In the dispute I R 17/21, the controlling company had several controlled companies. The company was a consultancy firm. All companies had various branches. In the years in dispute, there were atypical silent partnerships with one or more partners of the consulting firm involved in both the controlling company's own branches and the majority of the controlled companies or their branches. Separate accounts were kept for each individual atypical silent partnership/branch (a business partnership for tax purposes). The result determined in accordance with the separate and uniform profit assessment was allocated to the respective subsidiaries or the plaintiff.

In particular, it was questionable whether the atypical silent partnership in a controlled company precludes the transfer of the entire profit of the controlled company to its parent company.

In its judgements, the Federal Tax Court has now established the following principles on the topic of "tax group and atypical silent partnership":

1. If there is an atypical silent partnership in a corporation (either in the entire company or only in a part of the company), it can nevertheless be a controlled company in a tax group under corporation tax law, as it can transfer its net profit for the year under commercial law, determined taking into account the profit participation of the silent partner, to the controlling company as "entire profit" within the meaning of Section 14 (1) sentence 1 Corporate Income Tax Act. The object of the transfer obligation from the profit and loss transfer agreement is - also for tax law purposes - the net profit for the year within the meaning of Section 301 sentence 1 Stock Corporation Act combined with the authoritative nature of the determination of profit under commercial law. This authoritative determination of profit under commercial law means that the profit share of the (atypical) silent partner must be recognised as an expense, which reduces the net profit for the year to be transferred. This (reduced) annual profit then represents the "entire profit" within the meaning of Section 291 para. 1 sentence 1 Stock Corporation Act, which must be transferred under commercial law and subsequently also under tax law.

2. If several atypical silent partnerships exist independently of one another, each (only) in different branches of a corporation, then this corporation can in principle be the controlling company of a tax group under corporation tax law. However, it depends on the specific structure in the individual case, in particular to which business division the tax group participations are to be allocated and who is entitled to the transferred profit.

3. The legal consequences of a tax group under trade tax law generally do not arise if an atypical silent partner is involved in the business operations of a controlled company. This does not apply if the atypical silent partner only participates in one of these business areas if there are several sufficiently separate business areas of the controlled company. If, for example, the subsidiaries maintain individual branches in which there are no atypical silent partnerships, this branch/business division would have to be allocated solely to the subsidiary corporations as a separate business operation and the legal consequences of the tax group under trade tax law would have to be applied in this respect due to the absence of a business partnership. The fact that an atypical silent partnership may exist in another branch of the subsidiary corporation would not be detrimental to the recognition of the tax group. The same applies in general if, in addition to the "operation of the branches", the subsidiary corporations have a separate business division in which no other person is involved as a business partner.

German Constitutional Court (2 BvR 1505/20): Unsuccessful Constitutional Complaint against Solidarity Surcharge

In its judgement of 26 March 2025, the Constitutional Court rejected a constitutional complaint against the Solidarity Surcharge Act 1995 in the version of the Act on the Reduction of the Solidarity Surcharge 1995 as of 10 December 2019.

The federal government has been levying a solidarity surcharge as a supplementary tax to income tax and corporation tax without interruption since 1995. With the Act on the Reduction of the Solidarity Surcharge 1995 as of 10 December 2019, the surcharge was continued unchanged for 2020 and the exemption limit provided for in Section 3 Solidarity Surcharge Act 1995 was raised from 2021, as a result of which around 90 percent of payers of assessed income tax and wage tax should no longer be burdened with the solidarity surcharge.

The complainants are of the opinion that the continued levying of the solidarity surcharge, which was originally based on the costs of the German Reunification, became unconstitutional when the so-called Solidarity Pact II expired on 31 December 2019. They also allege unequal treatment of different income earners (violation of the general principle of equality) and a violation of the guarantee of property caused by the Act on the Reduction of the Solidarity Surcharge 1995.

The constitutional complaint against the unchanged continuation of the solidarity surcharge obligation in 2020 and against the only partial reduction of the solidarity surcharge from 2021 was unsuccessful:

1. The supplementary levy, as which the solidarity surcharge qualifies, presupposes a task-related additional financial requirement of the federal government, which, however, can only be outlined by the legislator in its basic features. In the case of the solidarity surcharge, this is the additional financial requirement of the federal government caused by reunification.

2. An evident discontinuation of the additional financial need on which a supplementary levy is based justifies an obligation on the part of the legislature to abolish the levy or to adjust the conditions for its collection. In this respect, the legislator - in the case of a longer-lasting levy of a supplementary levy - has a so-called duty of observation.

3. However, even today an evident discontinuation of the additional requirement of the federal government due to the accession of the then new federal states could not (yet) be established. Consequently, there was and is no obligation on the part of the legislator to abolish the solidarity surcharge from the 2020 assessment period.

Federal Ministry of Finance: Revised Guidance on Interest Limitation Rule

The Ministry of Finance (MoF) published a revised guidance on the interest limitation rule (ILR) on 24 March 2025. The reason for the new version is in particular the legal changes to the ILR by the so-called Secondary Credit Market Promotion Act of 22 December 2023.

The legal changes concerned in particular the following aspects:

- The definition of interest was expanded. Borrowing costs include interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance (the wording of the law refers to Art. 2 of the EU Anti-Tax-Avoidance-Directive (ATAD)).
- The exceptions to the ILR were revised:
  - The exceptions to the IRL only apply to current borrowing costs of a year. To the extent **borrowing costs were increased due to interest-carried forward from** the previous year, the exceptions do not apply.
  - The stand-alone clause and the equity escape were adapted to the requirements of the ATAD while being retained in principle. Accordingly, the stand-alone clause only applies if the taxpayer does not have an associated enterprise (§ 1 (2) Foreign Transactions Tax Act) or a permanent establishment outside the country in which the registered office or place of business is located.
- Subsequent amendments were made to the provisions regarding harmful shareholder loans (§ 8a Corporate Income Tax Act - CITA): The shareholder loan provision in connection with the stand-alone clause was deleted (§ 8a (2) CITA). The shareholder loan provision in connection with the equity escape rule was tightened.

The legal changes to the ILR are to be applied for the first time for financial years beginning after 14 December 2023 and not ending before 1 January 2024, i.e. for the first time from the financial year 2024 in the case of a financial year of the same calendar year. The new version of shareholder debt financing (§ 8a CITA) is to be applied with effect from the 2024 assessment period. The old version of § 8a CITA (in the version in force on 31 December 2023) shall continue to apply insofar as it refers to the old regulations of the ILR in the version in force on 31 December 2023.

The revised MoF guidance concerns questions of application of the ILR and shareholder debt financing in the version of the Credit Secondary Market Promotion Act.

For financial years for which the new statutory provisions do not yet apply, the original MoF guidance of 4 July 2008 continues to apply.

Important changes in the revised MoF guidance

Borrowing costs und interest revenues

The definition of borrowing costs and interest revenues will be adapted to the new wording of the law. Borrowing costs within the meaning of the ILR are interest expenses on all forms of debt, other costs economically equivalent to interest and expenses incurred in connection with the raising of finance within the meaning of Article 2 (1) ATAD. Interest revenues within the meaning of the ILR are income from capital claims of any kind and economically equivalent income in connection with capital claims. The terms borrowing costs and interest revenues are to be understood congruently. Furthermore, a list of borrowing costs within the meaning of ATAD (with reference to Art. 2 (1) ATAD) has been added.

In the case of borrowing costs that have been capitalised as production costs of an asset (e.g. interest on the construction period), the previous opinion of the MoF has changed. Accordingly, the subsequent derecognition or depreciation of the corresponding asset now leads to borrowing costs within the meaning of the ILR (previously: no borrowing costs). However, the MoF has included a transitional regulation: this handling does not apply to borrowing costs capitalized in financial years that began before 15 December 2023 or that began after 14 December 2023 and ended before 1 January 2024. If interest on borrowed capital has been included in the cost of production, the amount of interest capitalized in the financial year must be stated for each item of the fixed asset.

With regard to the assignment of a receivable, the tax authorities return to their view from the original MoF guidance from 2008. In contrast, in the draft letter from October 2024, it was argued that both recourse and non-recourse forfaiting/factoring are considered to be independent provision of debt capital within the meaning of the ILR. In the final MoF guidance, a distinction is now again made as follows:

- The assignment of a claim for an amount below the nominal value is considered to be an independent provision of borrowed capital within the meaning of the ILR if the assignment is to be assessed according to general principles as the granting of a loan by the assignee to the assignor (so-called “recourse forfaiting / factoring”).
- In the case of non-recourse forfaiting or factoring, in which the assignee also assumes the risk of the debtor's default, the assignment does not result in borrowing costs and interest revenues within the meaning of the ILR for either the assignor or the assignee. However, there is still no objection if the assignee and the assignor treat the non-recourse forfaiting or factoring as the transfer of borrowed capital based on a concurring written application to be submitted to the tax office. The recognition of interest revenues at the level of the assignee depends on the corresponding recognition of interest expenses at the assignor.

The ILR is only subject to borrowing costs and interest revenues that have reduced or increased the relevant profit or income. In the new version, the MoF guidance addresses the relationship to interest that is already non-deductible under other provisions (e.g. expenses in connection with tax-exempt dividends or capital cains), interest that is considered a hidden profit distribution and special business expense deduction prohibitions (e.g. anti-hybrid rules). This interest is not subject to the ILR because it does not reduce income. This also applies to adjustments due to transfer prices that are not arm's length under the Foreign Transactions Tax Act.

The following additions were made to expenses and income not covered by the ILR:

- Amortization to the lower fair value of a capital claim generally do not lead to borrowing costs or interest revenues
- New exemplary list: discounts and bonuses, non-acceptance compensation, travel expenses, notary costs and appraisal costs, exchange rate gains and losses, insofar as they result from changes in the value of capital claims or liabilities due to exchange rate fluctuations.

New are statements on receivables and liabilities with an interest component: Receivables and liabilities that economically contain an interest component lead to interest revenues or interest expenses within the meaning of the ILR. Expenses and income within the meaning of the ILR can arise if interest has been expressly agreed or interest is to be assumed economically (e.g. bullet loan from delivery).

Interest-carry forward and EBITDA-carry forward

Interest-carry forward – consideration of the new regulation: The exceptions of § 4h (2) ITA do not apply if borrowing costs have been increased due to an interest-carry forward. This means that the exceptions only apply to the current (net) borrowing costs of a year. If the exemption limit of EUR 3 million, including the interest-carry forward, is not exceeded in the year carried forward, only the current exceeding borrowing costs are subject to the exemption limit. The interest-carry forward is only deductible in accordance with the basic rule of the IRL up to the amount of the interest revenues remaining after offsetting against the current borrowing costs and the offsetable EBITDA in the year carried forward. Current borrowing costs are offset against interest revenues before the interest carry forward.

EBITDA carry forward (carry forward of unused interest capacity): An EBITDA carry forward does not arise in financial years in which borrowing costs do not exceed interest revenues or an exception (§ 4h (2) ITA) excludes the application of the ILR. It should be noted that the exceptions from paragraph 2 now only apply to the current exceeding borrowing costs of a year and no longer to borrowing costs resulting from an interest-carry forward. There is therefore no exclusion in the above sense of the application of the ILR if the ILR applies only to part of the exceeding borrowing costs (= interest-carry forward), while an exception (§ 4h (2) ITA) applies to the other part (= current exceeding borrowing costs of one year).

Exceptions

The remarks on the stand-alone clause are adapted to the new legal regulation: The taxpayer must not be related to any person within the meaning of § 1 (2) FTTA (in particular shareholdings of at least 25%) and must not have a permanent establishment outside the country in which his residence, habitual residence, registered office or management is located. In order to make use of the stand-alone clause, these requirements must be met throughout the entire financial year.

Equity-escape - reconciliation calculation to determine the equity ratio: If the annual financial statements or individual financial statements of the business do not comply with the accounting standard of the consolidated financial statements, a reconciliation statement must be prepared and reviewed by the auditors in accordance with the principles of the auditing standard of the Institute of Public Auditors in Germany (PS 900). The accounting standard of the consolidated financial statements is decisive.

Harmful shareholder debt financing: The remarks on shareholder debt financing are adapted to the new statutory provisions: Application only to the equity escape rule and aggregation of the remuneration for debt capital of all relevant shareholders, including related parties and third parties entitled to recourse.

Loans for the financing of long-term public infrastructure projects

Principles for the new legal regulation (§ 4h (6) ITA) are included, according to which borrowing costs or interest revenues for certain loans used to finance long-term public infrastructure projects do not constitute borrowing costs or interest revenues within the meaning of the ILR. In this context, the exemplary list of loans exempted from the ILR already contained in the MoF guidance of 2008 will be adopted in the revised MoF guidance:

- promotional loans from development institutions (within the meaning of the agreement between the EU Commission and the Federal Republic of Germany on the orientation of legally independent development institutions in Germany of 1 March 2002),
- public and non-public construction loans,
- housing welfare funds,
- funds that are associated with conditions (e.g. occupancy rights or rent control).

Federal Central Tax Office: Information Sheet on the Interpretation of the German Anti-Treaty/Directive Shopping Rule

In the case of a foreign corporation, the withholding tax (WHT) relief to which it is entitled - on the basis of a Double Taxation Treaty (DTT) or an EU directive (Section 43b and Section 50g Income Tax Act) - with regard to certain payments from Germany is linked to the substance requirements of the German anti-treaty/directive shopping rule (Section 50d (3) Income Tax Act). The wording of Section 50d (3) Income Tax Act is subject to interpretation and dispute. There is also hardly any case law on the current version of the substance requirements. However, the current information sheet (as of 03/2025, coordinated with the Federal Ministry of Finance) addresses the interpretation of the substance requirements from the perspective of the tax authorities, who have relaxed their strict view in some cases.

In positive terms, a foreign corporation is entitled to relief from German WHT on the basis of a DTT / EU directive, insofar as alternatively

- its shareholders would be entitled to this claim in the event of an imaginary direct receipt of the income from Germany (so-called hypothetical relief claim of shareholders)

  or

- the source of income from Germany has a significant connection with its economic activity. The mere generation of income, its transfer to shareholders and an activity, insofar as it is carried out with a business operation that is not appropriately set up for the business purpose, is not considered an economic activity (passive holding activity)

  or

- it is itself listed on the stock exchange (so-called stock exchange clause)

  or

- it is able to prove that none of the main purposes of its involvement is to obtain a tax advantage (so-called principal purpose test in order to ensure that the provision complies with European law).

Hypothetical relief claim of shareholders – simplification:

According to the explanatory memorandum to the law, the shareholder must be entitled to relief under the same provision.

According to the explanations in the new information sheet, it should now only be necessary to check whether there is an entitlement to relief on the merits, i.e. irrespective of the legal basis on which this entitlement to relief is based. In future, the entitlement to relief will only be restricted in terms of amount if the parties involved would have a lower entitlement to relief. This applies to both direct and indirect shareholdings.

Stock exchange clause – simplification:

In practice, the question arises as to whether and under what conditions the stock exchange listing of the shareholders could also be sufficient. According to the explanatory memorandum to the law, the fact that a shareholder is listed on the stock exchange is probably only sufficient if the shareholder is entitled to relief under the same provision. This view is further relaxed by the new information sheet. In future, the stock exchange clause is also to be applied if the relief claim at the level of the shareholder is either identical or higher. However, the prerequisite for this is that, in the case of an indirect shareholding, all intermediate corporations also have an identical or higher relief entitlement compared to the foreign corporation.

It should be noted that the wording of the information sheet only applies to income from capital assets, i.e. not to license and interest income.

Federal Ministry of Finance: Information Sheet on Transaction Matrix

The Federal Ministry of Finance (MoF) has published an information sheet on the new transaction matrix.

The transaction matrix was introduced at the end of October 2024 with the Fourth Bureaucracy Relief Act as a new component of transfer pricing documentation (Section 90 (3) sentence 2 number 1 Tax Procedure Law). The transaction matrix is a structured, tabular overview that contains relevant information on the taxpayer's cross-border business relationships with related parties and permanent establishments. It is intended in particular to support risk-orientated case and audit field selection in the context of tax audits.

The information sheet explains the individual components of the transaction matrix in more detail and attaches two sample transaction matrices.

The MoF also comments on the timing of application. The new regulations will apply from 1 January 2025. It should be noted in particular that the tax authorities interpret the application regulation in such a way that the transaction matrix must also be prepared for previous years if an audit order issued from 1 January 2025 also covers audit periods prior to 2025, which is currently still likely to be the rule. In this case, the following must be submitted from 1 January 2025 without a separate request within 30 days of notification of the audit order:

a) the master documentation if the size categories are exceeded,

b) records of extraordinary business transactions and

c) the transaction matrix.

Federal Ministry of Finance: Guidance on the Application of CbCR for Transparent Entities and the CbCR Safe Harbour under the Minimum Tax Act

The Federal Ministry of Finance has published principles for reporting the details of a fiscally transparent partnership in the country-by-country report pursuant to Section 138a of the German Tax Procedure Law (Country by Country Reporting - CbCR) and for the CbCR safe harbour pursuant to Section 84 of the German Minimum Tax Act.

The guidance contains statements on

A. general information, including

a. the disclosure of information (e.g. annual result before tax, equity, number of employees etc.) of a fiscally transparent partnership with a domestic or foreign legal form in the country-by-country report

b. definitions (e.g. transparent company, group company)

c. issues between parent company and permanent establishment.

B. special features of individual partnership structures

a. domestic partnership (with asset management activities)

b. domestic partnership (with commercial income) and partners resident in Germany

c. domestic partnership (with commercial income) and partners resident abroad

d. foreign partnerships.

The guidance is applicable to financial years beginning after 31 December 2023.

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