German Tax Monthly

Information on the latest tax developments in Germany

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Promulgation of the Act for an Immediate Tax Investment Program

The "Act for an immediate tax investment program to strengthen Germany's business location" was promulgated in the Federal Law Gazette on 18 July 2025. The legislative process has thus been completed. The law entered into force in principle on 19 July 2025.

The Act includes the following measures, all of which are contained in the coalition agreement of the new federal government:

1. Investment Booster

The Investment Booster is designed as a temporary reintroduction and increase of declining balance depreciation. For movable fixed assets acquired or manufactured after 30 June 2025 and before 1 January 2028, a declining balance depreciation of up to 30%, but not more than three times the straight-line depreciation, is possible.

2. Reduction of corporate tax rate

Following the expiration of the Investment Booster, the corporate tax rate will be gradually reduced from currently 15% to 10% starting in 2028. The reduction will occur in five steps, decreasing by one percentage point annually:

- FY 2028 = 14%
- FY 2029 = 13%
- FY 2030 = 12%
- FY 2031 = 11%
- from FY 2032 = 10%.

According to the explanatory memorandum of the Act, the simultaneous implementation of both measures in one Act is intended to send clear signals for the location, create reliable framework conditions, and thus ensure planning security for companies.

3. Reduction of income tax rate for retained earnings taxation

To equally relieve retained earnings of partnerships, the income tax rate within the regime of preferential treatment of retained earnings will also be gradually reduced starting in 2028. According to the explanatory memorandum, this maintains the goal of tax neutrality between partnerships and corporations.

The reduction will occur in three stages from currently 28.25% to 25%:

- FY 2028 and 2029 = 27%
- FY 2030 and 2031 = 26%
- from FY 2032 = 25%.

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4. Tax incentives for electric vehicles

Declining balance depreciation: For newly acquired, commercially used, purely electric vehicles, an arithmetically declining balance depreciation with decreasing depreciation rates is introduced:

- in the year of acquisition = 75%
- in the first following year = 10%
- in the second and third following years = 5% each
- in the fourth following year = 3%
- in the fifth following year = 2%.

In addition to passenger cars, electric commercial vehicles, trucks, and buses are also included. The declining balance depreciation can be claimed for acquisitions after 30 June 2025 and before 1 January 2028.

Company cars: The upper limit of the gross list price for purely electric vehicles acquired after 30 June 2025, will be increased from currently EUR 70,000 to EUR 100,000. The upper limit is relevant for the flat-rate 1% taxation of the benefit for private use of a company car. For eligible electric vehicles, only a quarter of the gross list price is considered (the so-called quarter rule).

5. Research allowance

Changes to the Research Allowance Act include two measures to make tax incentives for research and development (R&D) more attractive:

- Expansion of **eligible expenses** (currently: wages and investment expenses) to include additional overhead and other operating costs incurred in the context of an eligible R&D project that began after 31 December 2025. These overhead and other operating costs are exclusively calculated as a flat rate amounting to 20% of the other eligible expenses incurred during the fiscal year.
- Increase of the **maximum assessment base** for the research allowance from currently ten million euros to twelve million euros for eligible expenses incurred after 31 December 2025. The maximum research allowance can thus increase from currently 2.5 million euros to three million euros.

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

On 8 August 2025, the Federal Ministry of Finance published a ministerial draft bill for an Act to amend the Minimum Tax Act and to implement further measures (Minimum Tax Amendment Act).

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. 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.

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 an 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).

Reporting

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.

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.

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.

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

A government draft is to be published shortly after the association statements have been analysed. This will be followed by the parliamentary process. 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.

Ministerial Draft Bill for a Second Act to Strengthen Company Pension Schemes

The Federal Ministry of Labor and Social Affairs has published a draft bill for a Second Act to Strengthen Company Pension Schemes and amend other laws.

The Act is intended to make company pensions even more widespread. This applies in particular to areas in which there are still large gaps in coverage, i.e. in smaller companies and among employees with low incomes. To this end, the framework conditions for the continued voluntary establishment and expansion of company pensions in labor, financial supervisory and tax law are to be improved. The Act is also intended to make selective amendments to other social legislation.

Significant changes to tax law:

- From 2018, a new tax incentive in the form of a subsidy model was introduced specifically for low-income employees, the so-called company pension subsidy. The subsidy is granted to the employer by reimbursing part of the employer's additional contribution. It can only be claimed if the gross monthly salary does not exceed a certain limit. The income limit for the subsidy is now to be made more dynamic by linking it to the contribution assessment ceiling for statutory pension insurance. In addition, as an incentive to build up an additional employer-financed company pension scheme, the maximum subsidy amount - 30% of the additional employer contribution - (currently EUR 288) is to be increased to EUR 360 per calendar year. This would subsidise additional employer contributions up to a maximum of EUR 1,200.

  According to the explanatory memorandum to the Act, this is intended in particular to prevent a loss of funding over time due to increases in wages and salaries. In addition, employers would receive planning security for corresponding company pension commitments.

- The Act is also intended to make severance payments more flexible. Accordingly, severance payments from small entitlements under the company pension scheme can be used to build additional cover under the statutory pension scheme. This flexibilisation is to be flanked by tax measures in order to ensure only deferred taxation: A tax exemption at the time of the severance payment ensures that not both the severance payment and the subsequent benefits from the statutory pension scheme are taxed.

The law should generally enter into force on the day after its promulgation. The regulations on the increased income limit for subsidy are to come into force on 1. January 2027.

Government Draft Bill for an Act to Modernise and Digitalise the Fight Against Illegal Employment

On 6 August 2025, the Federal Cabinet adopted the government draft for an Act to Modernise and Digitalise the Fight Against Illegal Employment. It also includes an extension of the retention periods for accounting documents from banks, insurance companies and securities institutions.

As a result of the amendment, the retention period for accounting documents at banks, insurance companies and securities institutions is to remain at ten years permanently. This would serve to safeguard the tax base and combat tax evasion. The restriction of the group of taxpayers to banks, insurance companies and securities institutions is based on the fact that the documents kept by these organisations in particular can be used, among other things, as control material to detect tax evasion. This applies in particular due to the high volume of non-cash payments and cash receipts and payments.

For all other taxpayers, the eight-year retention period for accounting documents continues to apply.

European Court of Justice Reference (VIII R 21/22): Potential Violation of Free Movement of Capital by Withholding Tax on Dividends for Third Country Corporations

The German Federal Tax Court has submitted several pertinent questions to the European Court of Justice (ECJ) for a preliminary ruling with its decision dated 3 June 2025 (VIII R 21/22). These questions are crucial in the context of withholding tax (WHT) on dividends paid to third country corporations.

Case scenario of domestic parent corporations

Dividends distributed by a German subsidiary corporation to its sole German parent corporation are subject to WHT of 26.375%. During the tax assessment of the parent corporation, the dividends are effectively taxed at 1.5%. The parent corporation is entitled to credit or refund the difference to 26.375%.

Case scenario of parent corporations in a third country

If the parent corporation is domiciled in a third country, the WHT of 26.375% generally has a final effect. This implies that it is not required to file a tax return in Germany concerning the dividends. A reduction of the WHT to the level established in the Double Tax Treaty (DTT) is possible by applying to the German Federal Central Tax Office. The remaining WHT may be credited in the third country, but a refund in Germany is excluded.

Facts of the case

A Japanese corporation (plaintiff) received dividends from a German corporation, of which it was the sole shareholder, during the years in dispute, 2009 to 2011. In accordance with the provisions of the DTT (Article 10, paragraph 2, DTT Germany - Japanese 1966), 15% WHT was deducted from the dividends based on an exemption certificate issued by the German Federal Central Tax Office. This tax deduction had a final effect. Due to amendments in Japanese law, the plaintiff was granted a tax exemption amounting to 95% of the dividend from 1 April 2009. Consequently, the previously possible full crediting of the German WHT against the Japanese corporate tax, as per Article 23, paragraph 2, DTT G - J 1996, became largely ineffective. The plaintiff asserts that the compensatory WHT deduction infringes upon its free movement of capital as stipulated in Article 63 of the Treaty on the Functioning of the European Union. The plaintiff demands that the WHT be refunded.

Federal Tax Court 's questions to the ECJ

The German Federal Tax Court identifies several legal questions as potentially contentious under Union law:

- The primary question is whether the freedom of establishment supersedes the free movement of capital as the standard of review.
- Should the plaintiff be able to invoke the free movement of capital, it remains uncertain whether the final WHT deduction constitutes a violation of the free movement of capital attributable to Germany, given that the unchanged crediting of the German WHT against the Japanese corporate tax, as provided for in the DTT, only becomes ineffective due to domestic Japanese legal amendments.
- Additionally, the German Federal Tax Court seeks clarification from the ECJ on whether such a restriction can be justified and whether, in the event of a restriction contrary to Union law, the refund of the WHT can be contingent upon the German Federal Central Tax Office being able to verify the plaintiff's information through an exchange of information with the Japanese tax authorities.

Federal Constitutional Court (2 BvL 19/14): Regulations on Minimum Profit Taxation Are Compatible with Constitutional Law - Even in Cases with a Definitive Effect

The Federal Constitutional Court ruled on 23 July 2025 that the so-called minimum profit taxation for corporation and trade tax is constitutional. This also applies in the particular situation in which the losses could no longer be fully utilised in the subsequent period due to insolvency proceedings and the dissolution of a loss-making corporation ("definitive effect" of the losses).

In its order for reference, the Federal Tax Court maintained that the "basic concept" of minimum profit taxation did not violate constitutional law. However, in the case in dispute, in which there was an identity of cause between loss and profit - the reversal of previously impaired receivables - it recognised that, in individual cases, the minimum taxation had the effect of completely excluding the loss deduction and triggering a taxation of assets contrary to performance. In the case in dispute, in the opinion of the Federal Tax Court, the expenses and income were based on the same legal grounds and corresponded in terms of amount. The income appeared to be a time-delayed action in the opposite direction to the expense. Such "reversal effects under balance sheet tax law", which frequently occur in the taxation practice of the dissolution of corporations, would neither result in a corresponding inflow of liquidity nor an increase in taxable performance.

The Federal Constitutional Court does not consider the unequal treatment caused by the regulations on minimum profit taxation in the so-called "basic concept" and the formal equal treatment in the special constellation of a "definitive effect" after the occurrence of a "balance sheet tax 'reversal effect'" to be arbitrary, but justified by objective reasons.

In the "basic concept", the minimum profit taxation is justified by the objective reason of continuous and near-present taxation as a special fiscal purpose. The "basic concept" also meets the constitutional requirements for standardising regulations.

Also, a definitive elimination of loss carryforwards ("definitive effect") after the occurrence of a "balance sheet tax 'reversal effect'" does not exceed the limits of the legislator's power of typification. The legislator was not required by the constitution to mitigate and thus privilege these cases by means of a hardship clause. It is not apparent that the hardships arising from the standardisation in these atypical cases could have been avoided by the legislator without difficulty by a different definition of the facts. The advantages of the standardised structure of minimum profit taxation would not be disproportionate to the hardships associated with it in individual cases as a result of the (partial) elimination of loss carryforwards caused by the termination of tax liability.

Federal Tax Court (II B 13/25): Serious Doubts Regarding the Legality of a Double Assessment of RETT in so-called Signing-Closing Cases

In its decision of 9 July 2025 (II B 13/25), the German Federal Tax Court ruled in the context of interim legal protection that it is legally doubtful whether real estate transfer tax (RETT) can be assessed twice in the case of an acquisition of shares in a land-owning GmbH (limited liability company) in which the acquisition transaction under the law of obligations (signing) and the transfer of the shares (closing) are separated in time, if the tax office at the time of the assessment of the RETT for the signing is aware, that the closing has already taken place.

In the case in dispute, the applicant (acquirer) acquired all shares in a land-owning GmbH by means of a notarized purchase agreement dated 11 March 2024 (so-called signing). The transfer of the GmbH shares (so-called closing) took place after payment of the purchase price on 29 March 2024. A RETT notification was filed only for the signing, but not for the closing. In each case, the competent tax office assessed RETT twice in notices of 30 May 2024 (with an estimated assessment basis and subject to review), on the one hand against the acquirer pursuant to section 1 (3) no. 1 Real Estate Transfer Tax Act (RETTA) (signing) and on the other hand against the landowning GmbH pursuant to section 1 (2b) RETTA (closing). The tax office has not yet decided on the objection raised by the acquirer of the shares. However, the tax office and the tax court rejected the acquirer’s application for suspension of the enforcement of the RETT assessment notice.

The Federal Tax Court has suspended the enforcement of the RETT assessment notice issued against the acquirer by way of interim legal protection. In the opinion of the Federal Tax Court, there are serious doubts regarding the legality of the RETT assessment notice based on summary examination. The legal doubts focus on the question of whether, in the case of an acquisition of shares in a land-owning GmbH in which the acquisition transaction under the law of obligations (signing) and the transfer of the GmbH shares (closing) take place at different times, RETT can be assessed twice pursuant to section 1 (2b) and section 1 (3) no. 1 RETTA if the tax office is aware at the time of the assessment of the RETT pursuant to section 1 (3) no. 1 RETTA, that the transfer of the GmbH shares (closing) has already been completed. To this extent, there would be – also taking into account the provision of section 16 (4a) and (5) RETTA – legal concerns with regard to the wording of the provision of the introductory sentence of section 1 (3) RETTA ("*[...] insofar as taxation under subsections 2a and 2b is not possible [...]*") and the criticism of the literature on the tax authorities practice. Apart from these legal concerns the Federal Tax Court has not yet decided on the disputed legal question as no main proceedings are yet pending.

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