

German Tax Monthly

Information on the latest tax developments
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Ministerial Draft Bill for an Act to Amend the MLI Implementation Act

The Federal Ministry of Finance (MoF) has published a draft bill for an "Act to Amend the Act on the Multilateral Convention of 24 November 2016 to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI)" (MLI Implementation Amendment Act). It creates the initial condition for modifying a further 62 tax treaties multilaterally through the MLI.

The present amending act expands the MLI Implementation Act of 22 November 2020, which currently contains 14 so-called "covered tax treaties," to include a further 62 German tax treaties (double taxation treaties, DTT) that do not currently meet the BEPS minimum standard. For these 62 German tax treaties, the selection decisions made by Germany in the MLI Implementation Act are largely replicated.

The draft bill contains tabular overviews of the newly covered 62 tax treaties and the respective selection decisions. The newly covered tax treaties include, among others, Germany's most important trading partners or members of the G20, such as:

- U.S.
- China
- Poland

- Belgium
- Portugal
- South Korea
- India
- Canada
- Argentina
- Indonesia.

The expansion of the MLI Implementation Act is merely the first step in modifying the 62 tax treaties mentioned. In a second step, the modifications resulting from the MLI, taking into account Germany's selection decisions and those of the respective other contracting jurisdiction for the covered tax treaties, must be specified by expanding the MLI Application Act of 19 June 2024. For this, the respective tax treaty must have been designated by Germany and the respective other contracting jurisdiction as a so-called tax treaty covered by the MLI.

Finally, Germany must notify the OECD that the domestic procedures for the effectiveness of the MLI have been completed concerning the respective tax treaty. Only then will the modifications of the MLI become effective for the newly covered 62 tax treaties.

The Act is to come into force the day after its promulgation.

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Periodic Update of the EU Blacklist (October 2025)

Of the 14 tax treaties currently covered by the MLI Implementation Act in the version of 22 November 2020, the MLI modification of the respective tax treaties has so far been effectively implemented with the following nine countries (parenthetical note: initial application):

1. Croatia (from 2025)
2. Czech Republic (from 2026)
3. France (from 2025)
4. Greece (from 2025)
5. Hungary (from 2025)
6. Japan (from 2026)
7. Malta (from 2025)
8. Slovakia (from 2025)
9. Spain (from 2025).

Government Draft Bill for an Active Pension Act

The Federal Cabinet has adopted a government draft for an “Act to Provide Tax Incentives for Employees of Retirement Age” (Active Pension Act).

The Act aims to introduce a tax exemption for employees who continue to work beyond the statutory retirement age, with taxable income from dependent employment amounting to EUR 2,000 monthly / EUR 24,000 annually (Active Pension).

This is intended to implement a project from the coalition agreement to create tax incentives for voluntary extended work. The Active Pension aims to make working in old age more attractive and to tap additional skilled labor potential.

Key content of the Act:

- Favoring taxable income from dependent employment without applying the progression clause.
- Excluded from the favoring are, among others, contributions at company events, ongoing contributions to company pension schemes including any special payments, benefits such as severance payments, back payments, or other benefits from the first employment relationship granted for periods or earned in periods when not all conditions of the Active Pension were met.
- The prerequisite is exceeding the statutory regular retirement age (generally reaching the age of 67); the decisive factor is the time of activity and not the time of payment receipt.
- The tax exemption is already considered in the wage tax deduction procedure. The tax favoring is limited to one employment relationship. In so-called tax class VI, the employee must confirm this to the employer.
- The exemption does not apply to social security.
- The exemption amount of EUR 24,000 is to be divided so that it is only granted for calendar months in which the conditions of the norm are met. The actual monthly exemption amount is thus no more than EUR 2,000.
- The regulation is to be applicable for the first time from 1 January 2026, and cover all employments regardless of when they were established (so-called old and new cases).

Update on Real Estate Transfer Tax in so-called Signing-Closing Cases (Federal Tax Court, II B 23/25): No Serious Doubts Regarding the Tax Assessment for the Closing

In our August-September/2025 issue of German Tax Monthly, we reported on the Federal Tax Court's decision of 9 July 2025 (II B 13/25, AdV) on interim legal protection with regard to the double assessment of real estate transfer tax (RETT) in so-called signing-closing cases. The Court had granted the application for suspension of the enforcement of the RETT assessment notice (AdV) because, on summary examination, it was legally doubtful whether RETT could be assessed twice in the case of an acquisition of shares in a land-owning limited liability company (GmbH) where the acquisition transaction under the law of obligations (signing) and the transfer of the shares (closing) are separated in time if the tax office is aware at the time of the tax assessment for the signing that the closing has already taken place. These proceedings were solely concerned with the legality of the tax assessment for the signing, which was issued against the acquirer of the shares. The sole issue in dispute was whether a tax assessment for the signing may be made in addition to a tax assessment for the closing or whether, in view of the statutory priority of section 1 (2a) or (2b) Real Estate Transfer Tax Act (RETTA) over section 1 (3) RETTA, a tax assessment for the signing must be omitted from the outset.

Now, in a further decision dated 16 September 2025 (II B 23/25, AdV), which also concerned proceedings for interim legal protection, the Federal Tax Court has rejected the application for AdV – unlike in the above-mentioned proceedings. In the opinion of the Court, there is no serious doubt

on summary examination that, in the case of an acquisition of shares in a land-owning GmbH where signing and closing take place at different times, RETT may be assessed for the closing. In contrast to proceedings II B 13/25, these proceedings were solely concerned with the legality of the tax assessment for the closing, which was issued against the company owning the real estate (applicant). According to the legislative intention, the tax assessment for the closing pursuant to section 1 (2a) or (2b) RETTA should take precedence over a tax assessment for the signing pursuant to section 1 (3) RETTA. For this reason, the granting of Adv regarding the closing assessment was out of the question. Furthermore, in the opinion of the Court, there is also no legal doubt on summary examination that the applicant is not entitled to cancellation of the closing assessment pursuant to section 16 (4a) RETTA. This provision only concerns the cancellation of the signing assessment, whereas a cancellation of the closing assessment is not provided for according to the clear wording of this provision.

**Federal Tax Court (II R 26/23):
Real Estate Transfer Tax in
Cases Where the 95%
Threshold is Exceeded Again
and Application of the
Correction Provision in Cases
Where a Share Deal is
Subsequently Cancelled**

In its judgment of 7 May 2025 (II R 26/23), the Federal Tax Court ruled that an acquisition of shares in a land-owning company that leads to a renewed unification of shares pursuant to section 1 (3) Real Estate Transfer Tax Act (RETTA) is (once again) subject to real estate transfer tax (RETT). This applies to cases where the acquirer had already unified the shares in the land-owning com-

pany in the past, but whose shareholding had fallen below the required shareholding ratio in the meantime. In addition, the Court ruled that in cases where the acquisition of shares is subsequently cancelled, the fact that the previous acquisition of shares was not taxable does not preclude the application of the correction provision pursuant to section 16 (2) no. 1 RETTA.

In the case in dispute, the plaintiff (GmbH – limited liability company) initially held 94.9% of the shares in the land-owning R-AG (stock corporation). In 2011, the plaintiff acquired the remaining 5.1% shareholding, thereby unifying all shares in R-AG in one hand for the first time (acquisition transaction 1). Consequently, the tax office assessed RETT on the unification of the shares. In 2012, the parties concluded a repurchase agreement (buyback) regarding the 5.1% shareholding, with the result that the plaintiff's shareholding fell back to the original 94.9% (acquisition transaction 2). Despite the reversal of the unification of shares, the tax office rejected the plaintiff's application for cancellation of the previous tax assessment. Ultimately, in 2014, the repurchase agreement from 2012 was cancelled, which led to the plaintiff acquiring the 5.1% shareholding again, thereby unifying all shares in the land-owning R-AG in one hand for the second time (acquisition transaction 3). The tax office again assessed RETT. The appeal and action before the Lower Tax Court of Munich were unsuccessful.

However, the appeal before the Federal Tax Court was successful. The Court ruled that the tax assessment for acquisition transaction 3 was unlawful and therefore had to be cancelled (the tax assessment for acquisition transaction 1 was not the subject of the proceedings). In the first step, the Court confirmed the opinion of the

tax office and the Lower Tax Court, according to which an acquisition of shares that leads to the 95% threshold (now 90%) being exceeded again fulfils the legal requirements of a unification of shares pursuant to section 1 (3) no. 1 RETTA and is therefore (again) subject to real estate transfer tax. It is true that a mere strengthening of an already existing share unification (e.g. an increase from 95% or 90% to 100%) is not additionally subject to taxation. However, this does not apply if the already unified shares fall below the relevant shareholding threshold at a later point in time (e.g. a reduction from 100% to 94.9% or 89.9%) – as in the case in dispute as a result of the re-transfer of 5.1% shareholding in 2012 (acquisition transaction 2). An earlier unification of shares does not "immunise" the acquirer against a repeated tax liability if the unified shares fall below the relevant threshold in the meantime and then exceed the relevant threshold at a later point in time again.

In the second step, the Court ruled that the acquisition transaction 3 at issue – contrary to the opinion of the Lower Tax Court – does fall within the scope of the correction provision pursuant to section 16 (2) no. 1 RETTA. According to the Court, in the case of a succession of several acquisition transactions, the requirements for reversal within the meaning of the correction provision must be examined separately for each acquisition transaction, i.e. independently at each contractual stage. In the case in dispute, this means that acquisition transaction 3 as a "buyback" must be considered in relation to acquisition transaction 2 as an "initial acquisition", even if acquisition transaction 2 is itself a "buyback" from the perspective of acquisition transaction 1. It is irrelevant whether the initial acquisition (in

the case at hand acquisition transaction 2) was subject to RETT. This is because the legal purpose of section 16 (2) no. 1 RETTA – if the requirements are met – is aimed at ensuring that the tax assessment for both the initial acquisition and the buyback is eliminated as the original situation (prior to the initial acquisition) is restored as a result of the buyback. This must – even more so – apply in cases in which only the buyback and not also the initial acquisition is taxable. If – as in the case in dispute – the initial acquisition (acquisition transaction 2) is not taxable, it is also irrelevant for the application of the correction provision whether the initial acquisition was notified in due time in accordance with section 16 (5) RETTA. As this acquisition transaction was not subject to RETT, notification was also not required.

Lower Tax Court of Hesse (3 K 778/21): Taxation of a Contribution Gain II May Violate Merger Directive

The Lower Tax Court of Hesse has decided that the taxation of a Contribution Gain II due to a change in form of the acquiring legal entity may violate the EU Merger Directive.

The case was in the second round of proceedings, concerning the procedural amendability of a tax assessment for the purpose of retroactive taxation of a past contribution transaction under the provisions of the Reorganisation Tax Act. In the first round, the Federal Tax Court had decided that in the case of a qualified share exchange, the change in form of the acquiring corporation into a partnership within the seven-year lock-up period leads to a (harmful) disposal of the contributed share (Federal Tax Court I R 24/18).

In the case at hand, an individual contributed his 100% stake in a Spanish corporation in September

2007 into a holding limited liability company (GmbH) in exchange for company rights (qualified share exchange). For tax purposes, the holding GmbH valued the acquired shares at a value below the fair market value. In August 2008, the holding GmbH changed its form into a partnership. This was done for tax purposes at book values.

According to the Lower Tax Court of Hesse, the taxation of the Contribution Gain II in this case violates Article 8 para. 1 of the EU Merger Directive. Accordingly, the allocation of shares in the acquiring company to a shareholder of the transferring company due to the exchange of shares may not in itself trigger taxation of the capital gains of this shareholder. Article 11 para. 1 a) of the Merger Directive would also not lead to a different legal consideration. According to this, a Member State may refuse or withdraw the application of Articles 4 to 14 in whole or in part if one of the transactions mentioned in Article 1 has tax evasion or avoidance as its main motive or one of its main motives. Such a motive can be assumed if the transaction is not based on reasonable economic grounds – particularly the restructuring or rationalisation of the involved companies. In the opinion of the Lower Tax Court of Hesse, the German regulation (as in § 22 para. 2 sentence 1, 1st half-sentence Reorganisation Tax Act) violates the EU legal requirements. This is as the German regulation assumes abusive behavior in a blanket manner – without any possibility of counter-evidence – in the event of a disposal of the shares acquired by the acquiring company (holding GmbH) within seven years after the contribution and retroactively ordering the taxation of the shareholder regarding the unrealised hidden reserves in the contributed shares.

The appeal is pending at the Federal Tax Court (X R 18/25).

Periodic Update of the EU Blacklist (October 2025)

At its meeting on 10 October 2025, ECOFIN reviewed and confirmed the so-called EU Blacklist – the list of non-cooperative tax jurisdictions – without changes.

Thus, the following remain unchanged as non-cooperative tax jurisdictions:

1. American Samoa
2. Anguilla
3. Fiji
4. Guam
5. Palau
6. Panama
7. Russia
8. Samoa
9. Trinidad and Tobago
10. U.S. Virgin Islands
11. Vanuatu.

Countries that have not yet met all international tax standards but have committed to implementing reforms are listed on the EU Greylist (Annex II). One country, Vietnam, has fulfilled its commitments and is removed from the Greylist. Newly added to the Greylist are Greenland, Jordan, Montenegro and Morocco.

The updated EU Greylist includes the following 11 countries:

1. Antigua and Barbuda
2. Belize
3. British Virgin Islands
4. Brunei Darussalam
5. Eswatini
6. Greenland
7. Jordan
8. Montenegro
9. Morocco
10. Seychelles
11. Turkey.

Since no adjustment of the EU Blacklist was made in February 2025 either, the German Regulation to apply the Act to Combat Tax Avoidance and Unfair Tax Competition does not need to be amended in 2025.

The next periodic review of the EU Blacklist and Greylist will take place in February 2026.

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Editorial team

Dr. Cora Bickert (V.i.S.d.P.)
Directorin, Tax

Veronika Aschenbrenner
Manager, Tax

Christian Selzer
Senior Manager, Tax

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