German Tax Monthly

Information on the latest tax developments in Germany

July | 2026

Content

Draft Bill for the Annual Tax Act 2026

The Ministry of Finance (MoF) has published a draft bill for the Annual Tax Act 2026 (ATA 2026). It is a “classic” annual tax act. The draft bill contains a total of 32 articles covering a wide range of individual measures in various areas of tax law that are not thematically related and are predominantly of a technical nature.

1. Allocation of the Total Purchase Price for a Developed Property

If a developed property is acquired and a total purchase price is paid for it, this **total purchase price** must be allocated between the land and the building. This allocation is particularly relevant for determining the **depreciation** of the building. The allocation method has not yet been regulated by law. The ATA 2026 is now intended to standardize the principles for this allocation.

If the contracting parties have agreed on an allocation of the total purchase price in **the purchase agreement** for the developed property, this allocation must generally be used. However, the agreed allocation is not binding if it does not correspond to the actual value ratios or appears economically untenable.

If a contractual allocation of the purchase price is unacceptable for the aforementioned reasons or if the purchase agreement does not contain a purchase price allocation, the purchase price must be allocated according to the new uniform procedure. The allocation must be based on the respective **market values**.

To **estimate** the value of the land and building, the “Regulation on the Principles for Determining the Market Values of Real Estate” must be used, which, according to the explanatory memorandum, contains recognized principles for determining the market values of real estate.

To date, the MoF provides a **tool** for the simplified allocation of a total purchase price on its homepage. This tool is intended to remain available for use in the future. According to the explanatory memorandum, the tool constitutes a **qualified estimate**, which may, however, be **rebutted** by the taxpayer based on a **valuation report** prepared by an expert or appraiser.

The new regulation **applies** for **the first time** to developed properties acquired after the date of promulgation of the ATA 2026.

2. Withholding Tax

Exemption from withholding tax without application for licensed rights

Remuneration for **cross-border licensed rights** is subject to withholding tax in Germany. Withholding tax must generally be withheld even if German taxation is excluded under a Double Tax Treaty (DTT).

For several years now, however, there has been a simplified exemption option for cases with minor fiscal impact, in which individual licensors receive payments of up to EUR 10,000 per year per payee. If this amount is not exceeded with respect to the individual licensor, the licensee has the option to refrain from withholding tax without first having to go through an administratively burdensome application procedure with the Federal Central Tax Office (BZSt) **(exemption option without application)**. One of the prerequisites is that German taxation is excluded under a DTT in any case. However, the payer is required to file a tax return even if they are not required to withhold and pay tax.

The exemption threshold is to be **raised to EUR 100,000** under the ATA 2026. According to the explanatory memorandum, this is intended to enable significantly more payers than before to take advantage of the simplified rule.

The increased tax threshold is **to apply for the first time** to remuneration received by the licensor with limited tax liability **after 31 December 2026**.

Tax threshold for artists and athletes

Remuneration for **artistic, athletic, entertainment, or similar performances** carried out in Germany is also subject to withholding tax. However, withholding tax is not levied if the revenue for each performance is EUR 250 or less. This tax threshold is to be **raised** to **EUR 500** per performance. The increased tax threshold will apply starting with the **2027 tax assessment period**.

Exclusion of the exemption from withholding tax for major shareholders

Dividends paid by a domestic stock corporation to foreign shareholders are generally subject to withholding tax, even if the Parent-Subsidiary Directive or a DTT excludes German taxation rights or a DTT permits only a reduced withholding tax rate. For **foreign major shareholders** with holdings in domestic stock corporations of at least 10 percent, it is possible, upon issuance of a **tax exemption certificate**, to receive the dividends either tax-free or with withholding tax deducted only at the reduced DTT tax rate.

According to the explanatory memorandum, there is a **potential for abuse** in these scenarios in the form of circumvention of dividend taxation. To this end, domestic shareholders or foreign minority shareholders who themselves have **no corresponding right to relief** could transfer shares to foreign holders of a tax exemption certificate shortly before the dividend record date.

For this reason, the **exemption procedure** is to be **excluded** for such dividends. However, this applies only to shares held in **collective custody or** in **special custody**.

Relief from withholding tax may still be requested retroactively through a **refund procedure**. According to the explanatory memorandum, the tax authorities may review the circumstances surrounding share transactions around the dividend record date.

The new regulation **applies for the first time** to dividends received by the foreign taxpayer after 31 December 2026. The validity of exemption certificates already issued ends no later than this date.

Authority to audit data on capital gains withholding tax

In 2021, comprehensive **reporting and disclosure requirements** were established for the entity paying out **investment income** regarding the certification and remittance of capital gains withholding tax as well as the identity of shareholders. The reporting regime applies for the first time to investment income received by the payee after 31 December 2026.

The ATA 2026 introduces an **audit authority** for the tax authorities to verify the basis and amount of the information to be transmitted to the Federal Central Tax Office with the **custodians and intermediate custodians** involved in the transmission of the information. The regulation enters into force on the day following the promulgation of the ATA 2026.

3. Research Allowance

The research allowance provides funding of up to EUR 3 million for eligible research and development (R&D) projects by companies, and up to EUR 4.2 million for small and medium-sized enterprises. However, the **EU state aid ceiling** must be observed. Currently, the total amount of state aid granted for an R&D project, including research allowances, may not exceed EUR 15 million per company and per R&D project. This maximum amount is to be increased **to EUR 25 million** with retroactive **effect as of 1 January**

2026. This transposes the current threshold of the EU's General Block Exemption Regulation (GBER) into national law.

The application for and granting of the research allowance follow a **two-step procedure**. First, a certificate must be requested from the research allowance certification authority confirming that an eligible R&D project exists. In a second step, the research allowance must be applied for at the tax office by submitting the certificate.

While there is no deadline for the first step (application for certification), the **deadline** for filing the claim with the tax office is generally **four years**. The deadline begins at the end of the calendar year in which the entitlement to the research allowance arose. ATA 2026 introduces a provision intended to prevent eligible companies from being prevented from successfully applying for the research allowance if the certificate is issued by the certifying authority only after the expiration of this four-year assessment period (**suspension of the statute of limitations**). Accordingly, it is sufficient if the application for a certificate (Step 1) is submitted before the expiration of the regular assessment period for the research allowance. The assessment period will then be two years from the end of the calendar year in which the certifying authority decided on the application. The new suspension of the statute of limitations **applies to all** assessment periods that have not yet expired as of 31 December 2026.

4. Increase in the Interest Rate for Late Payment and Refund Interest

Since 1 January 2019, the interest rate for **interest on arrears and refunds** has been 0.15 percent per month (1.8 percent per year). The law provides for the appropriateness of the interest rate to be evaluated considering the **development of the base interest rate**. According to the explanatory memorandum, the base interest rate has risen significantly since 1 January 2022. For this reason, and to ensure the appropriateness of the interest rate, the interest rate for interest periods beginning on or after 1 January 2027, will be increased to 0.3 percent per month (3.6 percent per year).

5. Minimum Tax Act

The Minimum Tax Act implements new provisions from the administrative guidelines for the administration of the GloBE Model Rules adopted by **the Inclusive Framework on BEPS on 5 January 2026**.

On the one hand, this concerns the introduction of rules regarding **the Side-by-Side Safe Harbor**, and **Ultimate Parent Entity Safe Harbor**. These rules apply for the first time to fiscal years beginning on or after 31 December 2025.

Second, the **transition period** for **the CbCR safe harbor** is extended to fiscal years beginning on or before 31 December 2027 and ending before 1 July 2029.

6. Country-by-Country Reporting

According to the explanatory memorandum, there are cases in practice where individual corporate groups fail to make the necessary **corrections to** Country-by-Country Reports (CbCR), even when requested to do so by the Federal Central Tax Office. For this reason, a **correction obligation subject to penalties** is now being introduced. If a company subsequently realizes that a submitted CbCR is incorrect or incomplete, it is obligated to immediately both report the inaccuracy or incompleteness and make the necessary corrections. Failure to do so may constitute an **administrative offense**. The obligation to correct **applies** for **the first time** to fiscal years beginning after 31 December 2023. The new regulation on administrative offences is only to be applied from 1 July 2027.

7. Exchange of Information on Digital Platforms

The Platform Tax Transparency Act regulates the obligations of certain digital platform operators to report information to tax authorities regarding income generated by providers on these platforms. To date, this information has been automatically exchanged **within the EU** (DAC7).

The ATA 2026 establishes the conditions for expanding the automatic exchange of collected information with **third countries** based on international agreements. Germany signed the corresponding Multilateral Competent Authority Agreement (MCAA) on 26 November 2024. The legislative process for ratifying the MCAA was initiated in March 2026.

The new regulations **apply** to **reporting periods** beginning on or after 1 January 2027.

8. Outlook

The Cabinet is scheduled to review the bill on 1 July 2026. Thereafter, the government's draft bill could be submitted to the parliamentary legislative process. Significant changes to the draft bill may still be made during the legislative process. The legislative process is expected to be completed toward the end of the year.

Update: Ninth Act Amending the Tax Advisory Act and Other Tax Regulations

On 11 June and 12 June 2026, the Bundestag and the Bundesrat adopted the Ninth Act Amending the Tax Advisory Act and Other Tax Regulations.

In addition to amendments to the Tax Advisory Act, the Act also provides for an increase in the minimum local trade tax rate and amendments to the Real Estate Transfer Tax Act (to exclude possible double taxation in the event of a time lag between signing and closing, to extend the notification period for real estate acquisitions and to ensure that tax reliefs for partnerships continue to apply).

For further details see GTM June 2026.

Promulgation of the Act to Amend the MLI Implementation Act

On 5 June 2026, the "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 Implementation Amendment Act) was promulgated in the Federal Law Gazette. The legislative process is thus complete.

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 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 Act 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.

For further details see GTM November 2025.

Federal Tax Court (I R 13/23): Relief from German Withholding Tax (WHT) for a U.S. S-Corporation

In its judgment of 11 March 2026, the Federal Tax Court ruled that a U.S. S-corporation is entitled to the so-called participation exemption under Art. 10 (3) of the Double Tax Treaty (DTT) between Germany and the US with respect to German WHT on dividends.

If a German corporation distributes a dividend to its U.S. parent corporation, it is generally required to withhold 26.375% German WHT. However, the U.S. parent corporation can obtain a full refund of the German WHT by filing an application with the German Federal Central Tax Office, referring to Art. 10 (3) DTT Germany - US (the participation exemption).

It has not been conclusively clarified, however, whether the participation exemption also applies where the U.S. parent company is an S-corporation which, for U.S. tax purposes, is treated as a partnership, while from a German perspective it qualifies as a corporation and is held by individuals resident in the United States. From a U.S. perspective, the income of the S-corporation is attributed to these individuals and taxed at their level. If one were to focus on the individuals, relief would only be possible down to a 15% rate (Art. 10 (2), sentence 1 (b) DTT Germany – US).

Under German tax law, there is no dispute that in such cases the refund application must be filed by the individuals (Section 50d (1), Sentence 11 Income Tax Act (ITA), now identically worded in Section 50d (11a) ITA). However, it is controversial whether, based on the wording of the provision, the relevant relief claim is that of the S-corporation (full relief) or that of the individuals (relief only down to 15%).

The Federal Tax Court ruled that Section 50d (11) ITA merely governs, from a procedural standpoint, who may assert the claim arising under the tax treaty, but does not determine the level of relief to be granted. Consequently, the amount of the participation exemption had to be based on the U.S. S-corporation. The factual lack of residence of the U.S. company is substituted by a legal fiction pursuant to Art. 1 (7) DTT Germany - US. A look-through to the individual shareholders does not take place in this respect. The wording of Section 50d (1), Sentence 11 ITA / Section 50d (11a) ITA does not preclude this.

As a result, the S-corporation was entitled to a full refund of German WHT.

Federal Tax Court: Dividends Paid During a Liquidation Period May Benefit from the Parent Subsidiary Directive

On 3 March 2026, the Federal Tax Court issued a ruling (VIII R 8/24) that dividend distributions made during a liquidation period can qualify for the nil withholding tax (WHT) rate under the German implementation of the EU Parent-Subsidiary Directive (PSD). The exemption is subject to the distributed profits being generated before the commencement of the liquidation.

Under the German rules implementing the PSD, dividends paid by a German subsidiary to a qualifying EU parent company are generally exempt from WHT. However, the exemption does not apply with respect to dividends that are accrued when a subsidiary is liquidated or reorganized.

The case concerned a Luxembourg parent company that held 100 percent of a German GmbH (Ltd.) that was dissolved as of 31 December 2010 and subsequently entered liquidation. During the liquidation period, the GmbH made profit distributions to its Luxembourg parent company. The distributed amounts were derived from profits generated prior to the commencement of liquidation. The German tax authorities treated the distributions as being accrued in connection with the liquidation and therefore denied the full WHT exemption. Instead, the authorities granted relief in form of a 10 percent WHT rate based on the applicable tax treaty between Germany and Luxembourg.

The Federal Tax Court rejected the tax authorities' position and confirmed that the distributions qualified for full exemption from WHT. The Court held that the limitation to distributions in the context of liquidation does not apply to distributions that are funded out of operating profits that were generated before the liquidation period, even if the dividend was resolved and paid during the liquidation period. According to the Court, the decisive criterion is the origin of the distributed profits, not the timing of the distribution. The PSD exemption therefore remains available for pre-liquidation earnings distributed after the start of liquidation.

The Federal Tax Court did not have to decide how to qualify for a distribution of liquidation gains that accrue after the dissolution of a corporation and that do not consist of the repayment of nominal capital. This legal question was not raised by the plaintiff in the proceedings before the Federal Tax Court.

CJEU Judgment "Nova Iberomoldes" on Portuguese Real Estate Transfer Tax in Share Deals

In its judgment of 4 June 2026 (case "Nova Iberomoldes", C-837/24), issued in response to a Portuguese request for a preliminary ruling, the CJEU held that the Portuguese rules on real estate transfer tax in share deals are contrary to the requirements of EU law under the Capital Duties Directive (the "Directive") insofar as real estate transfer tax ("RETT") is levied on the formation of a capital company whose capital is paid in entirely through the contributing company's equity interests in other real estate-owning capital companies, and where the contributing company receives, in return, the entire capital of the capital company thus formed.

The CJEU judgment may also be relevant for the German RETT rules governing the taxation of share deals, provided that the underlying share transfer constitutes a contribution of capital or a restructuring operation within the meaning of the Directive.

Facts

The Capital Duties Directive (Directive 2008/7/EC of 12 February 2008) prohibits Member States, under Article 5, from levying indirect taxes on capital companies especially in cases of "contributions of capital" (Article 3) and "restructuring operations" (Article 4).

In the main proceedings, Nova Iberomoldes was incorporated in 2019, the year in dispute, as a public limited company under Portuguese law. Its share capital was fully paid up by contributions in kind consisting of shareholdings that its sole shareholder held in various companies. Part of the assets of one of those companies, a limited liability company whose share capital is now held 100% by Nova Iberomoldes, consisted of two immovable properties. The Portuguese tax authorities took the view that the contribution transaction was subject to Portuguese RETT. The Portuguese arbitral tribunal had doubts as to the compatibility of the Portuguese RETT rules with the Directive and therefore referred the matter to the CJEU for a preliminary ruling.

Decision

In the CJEU's view, the Portuguese rules on RETT in share deals are contrary to the requirements of EU law under the Directive insofar as RETT is levied on the formation of a capital company whose capital is paid in entirely through the contributing company's equity interests in other real estate-owning capital companies, and where the contributing company receives, in return, the entire capital of the capital company thus formed.

By way of reasoning, the CJEU first states that the Portuguese formation or contribution transaction at issue qualifies as a "restructuring operation" within the meaning of Article 4 of the Directive. The CJEU also considers Portuguese RETT to be an "indirect tax" within the meaning of Article 5 (1) of the Directive and rejects the application of the exceptions under Article 6 (1) (a) to (c) of the Directive. Finally, the CJEU assumes that the taxation of share deals with Portuguese RETT is also not justified by the objective of preventing tax fraud and avoidance.

Implications for German Real Estate Transfer Tax in Share Deals

Under German real estate transfer tax law, the so-called supplementary provisions in section 1 (2a) to (3a) RETTA govern the taxation of share deals. Accordingly, German RETT applies to the direct or indirect transfer of shares in a partnership or corporation owning German real estate if, as a result, at least 90% of the shares are transferred to new shareholders or at least 90% of the shares are unified in the hands of one acquirer or already unified shares are transferred to one acquirer. Under the so-called group exemption clause in section 6a RETTA, real estate transfer tax is not levied in cases of domestic reorganisations, contributions and other acquisition transactions based on company agreements, or comparable legal transactions under the law of an EU Member State or a State to which the Agreement on the European Economic Area applies, provided that certain requirements are met.

As early as 2007, the Federal Tax Court held in its judgment of 19 December 2007 (II R 65/06), concerning the predecessor directive (Directive 69/335/EEC of 17 July 1969), that the Court had "*no doubt*" as to the compatibility of section 1 (3) no. 1 RETTA with Community law and was therefore not obliged to refer that legal question to the CJEU for a preliminary ruling. In 2024, the Federal Tax Court then had to consider the current version of the Directive for the first time in its judgment of 25 September 2024 (II R 36/21; see also GTM April 2025).

In that case too, the Federal Tax Court was convinced that section 1 (3) RETTA did not infringe the Directive. A referral to the CJEU by way of a request for a preliminary ruling was therefore, once again, not required. The claimant lodged a constitutional complaint against this judgment with the German Federal Constitutional Court (currently pending under case no. 1 BvR 574/25).

A further appeal on points of law concerning this issue is currently pending before the Federal Tax Court under case no. II R 8/23. It is to be expected that, in the currently pending appeal proceedings II R 8/23, the Federal Tax Court will re-examine the compatibility of the contested section 1 (3) no. 4 RETTA with the Directive, taking due account of the current CJEU judgment, and will make, or will have to make, its own German request for a preliminary ruling if doubts arise under EU law.

Imprint

Published by

KPMG AG
Wirtschaftsprüfungsgesellschaft
THE SQUAIRE / Am Flughafen
60549 Frankfurt

Newsletter subscription
KPMG Newsletter

Editorial team

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

Veronika Aschenbrenner
Manager, Tax

Alexander Hahn
Senior Manager, Tax

Julian Fey
Senior Manager, Tax

Christiann Selzer
Senior Manager, Tax

www.kpmg.de / www.kpmg.de/socialmedia