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

The parliamentary groups of the governing coalition have submitted a new draft of the Ninth Act Amending the Tax Advisory Act and Other Tax Regulations. According to the explanatory memorandum, this is similar to the previous Federal Government's draft bill, which the Bundestag had adopted on 24 April 2026 but which the Bundesrat refused to approve on 8 May 2026 – albeit without the planned tax-free relief bonus of up to EUR 1,000, which employers can pay to their employees.

The new draft bill must now go through the parliamentary process again. However, the legislative process can be expedited because the bill was introduced by the coalition parties from within the parliament. The bill therefore does not first need to be submitted to the Bundesrat for comment.

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).

Minimum Local Trade Tax Rate

The local trade tax rate is calculated by multiplying the municipal assessment rate by the basic federal tax rate of 3.5 percent. Each municipality can set its own assessment rate. In 2024, the average in Germany was 409 percent, resulting in an average trade tax rate of 14.3 percent (3.5% * 409%).

However, there is a minimum rate for the municipal assessment rate, which currently stands at 200 percent resulting in minimum local trade tax rate of 7 percent (200% * 3.5%).

The minimum assessment rate is raised to 280 percent with effect from 2027. As a result, the minimum local trade tax rate increases from 7 percent to 9.8 percent (280% * 3.5%). The aim is to counteract the practice of companies using low-assessment-rate municipalities to an even greater extent than is already the case.

Real Estate Transfer Tax

Taxation in the event of a time lag between signing and closing

The direct or indirect transfer of shares in corporations or partnerships that own real estate (share deals) can trigger two taxable events, which can lead to double taxation of real estate transfer tax for the same share deal:

Content

1. At the time of signing (signing of the contract under the law of obligations – binding transaction; share consolidation / share transfer in accordance with Section 1 (3) or Section 1 (3a) of the Real Estate Transfer Tax Act (RETTA)). The tax is usually assessed against the purchaser of the shares.
2. At closing time (transfer of shares; change of shareholders in accordance with Section 1 (2a) RETTA in the case of partnerships or Section 1 (2b) RETTA for corporations). The tax is assessed against the company that owns the property.

The Annual Tax Act 2022 introduced a legal provision to avoid double taxation (Section 16 (4a) and (5) RETTA): Upon request, the (first) assessment of real estate transfer tax for the signing will be revoked or amended if the shares are transferred in fulfillment of the underlying legal transaction (signing) and the taxable event for the closing is thereby realised. However, the provision only applies if all real estate acquisitions affected by this transaction were notified to the tax office in full within the strict deadline of two weeks.

The present draft bill aims to resolve the issue of double taxation of the same transaction. To this end, the order of priority for taxation, i.e., the sequence in which the tax criteria are applied, will be reversed: in future, signing will be taxed primarily. Taxation of closing will only be secondary.

The above-mentioned procedural requirements for the necessary notification of acquisition transactions to avoid double taxation will no longer be necessary in future and are therefore to be repealed.

First-time application: The new regulation is to apply for the first time to legal transactions that are realised after the date of promulgation of the Act. In cases where the contract is concluded before the first-time application of the Act (signing), i.e., on or before the date of promulgation, but the shares are only transferred after that date (closing), only the signing is to be taxed.

Tax liability for real estate transfer tax

Under current law, at the time of signing (Section 1 (3) and (3a) RETTA), the debtor of the real estate transfer tax is the shareholder acquiring the shares and, in the case of a transfer of already combined shares (i.e. at least 90%), also the selling shareholder. At closing (Section 1 (2a) and (2b) RETTA), however, the company owning the real estate owes the real estate transfer tax. Due to the planned reversal of the taxation priority, the shareholder's tax liability would become the rule rather than the exception in the future, and vice versa regarding the tax liability of the real estate-owning company.

The draft bill therefore provides for an extension of tax liability. In addition to the acquiring shareholder – and, in the case of the transfer of combined shares, the selling shareholder – the company owning the real estate will also be liable for real estate transfer tax in future, so that, according to the explanatory memorandum to the Act, the company owning the real estate can continue to be held liable in future.

The first-time application is for legal transactions that are realised after the date of the promulgation of the Act.

Notification Period

Under current law, the notification periods for parties involved in domestic transactions are two weeks. The notification period is extended to one month. According to the explanatory memorandum to the Act, this is intended to harmonise the length of the deadlines in cases where the taxpayer has no domestic connection.

The new regulation is applicable for the first time to legal transactions that are realised after the date of promulgation of the Act.

Real estate transfer tax reliefs for partnerships

The current time limit on certain real estate transfer tax reliefs for partnerships shall be repealed (in particular Sections 5 and 6 RETTA. Under current law, these benefits would expire on 31 December 2026.

The removal of the time limit is intended to maintain the current legal position – which has been largely established by decades of case law – for the time being. Consequently, partnerships with legal capacity continue to be treated as joint ownership for the purposes of real estate transfer tax, and their assets as joint assets, so that the benefits provided for in particular in Sections 5 and 6 RETTA remain in force for the transfer of a property to or from a joint ownership (in particular partnerships).

Federal Tax Court (III R 28/24): Trade Tax Add-back for Renting Event Spaces and Hotel Rooms

In its ruling of 15 January 2026, the Federal Tax Court ruled that the expense for renting event spaces and hotel rooms is subject to the trade tax add-back if these are objectively and subjectively designed to permanently serve the business operations according to the actual operating conditions.

In Germany, a peculiarity is that corporations pay not only corporate tax but also trade tax, which

is entirely due to the municipalities. The tax base for both taxes is the profit from business operations. In trade tax, however - unlike corporate tax - there is the peculiarity that certain expenses that would normally be tax-deductible as operating expenses are (partially) added back, thereby increasing the tax base and ultimately the municipalities' tax revenue. This also includes half of the rent and lease interest for the use of immovable fixed assets owned by another. The trade tax add-back is intended to tax the objective profitability of a business, irrespective of its financing structure (equity or debt, owned or leased property).

The Federal Tax Court has clarified in its ongoing case law the condition for the trade tax add-back of rental expenses. Depending on the specific business object, the add-back of rental expenses occurs only if the rented assets are intended to permanently serve the business. The duration of the rental is generally not decisive.

In the present case, the business activities of the plaintiff (a German corporation) consisted primarily of organising conferences, events, and trips. It rented rooms, event spaces, technology, and services in its own name at conference hotels. The plaintiff's clients were the conference organisers, to whom the plaintiff invoiced all items. The tax office added the rental expenses to the plaintiff's profit from business operations despite the fairness rule in the guidance of 2 July 2012.

The Federal Tax Court also confirms in the present case that there is a trade tax add-back when the rented assets are objectively and subjectively intended by actual operating conditions to permanently serve the plaintiff's business operations. They do not have to serve directly or immediately, need not be essential, and do not have to be concerned with the core business. Whether the duration and frequency of rental make permanent availability of the assets in operation necessary depends on the specific business concept pursued. In cases of repeated short-term rental of real estate - here hotel rooms in the context of events - an add-back is at least conceivable if, according to the specific business conditions, such real estate are constantly kept ready for business use and either always involve the same accommodations or the only temporarily rented properties are interchangeable with regard to their location.

Concurrently, the Federal Tax Court decided on the same issue in cases III R 39/22 and III R 3/23. In all three cases, however, the court referred the matter back to the Lower Tax Court because the required factual determinations by the lower instance were lacking.

The rulings are relevant for companies in the event industry that regularly rent rooms and equipment, as well as for companies that rent accommodation for their employees who work away from home.

Federal Tax Court (VI R 25/24): Tax Exemption for Special COVID-19 Payments

The Federal Tax Court ruled that special coronavirus payments are tax-exempt, even if they are offset against other voluntary employer benefits. The prerequisite is that the payments are granted by the employer for the specific purpose of alleviating the burdens caused by the coronavirus crisis – however, a specific (individual) burden on the beneficiary employees resulting from the coronavirus crisis is not required.

In the case at hand, the plaintiff (operator of grocery shops) had paid his employees holiday pay and a bonus on a voluntary basis in the year in dispute 2020 (as in previous years). In 2020, however, he reduced the holiday pay and bonus payments by half and offset these reductions by granting the employees two additional, separately itemised special coronavirus payments of a corresponding amount, tax-free due to the "unusual coronavirus period". Consequently, employees were paid higher net amounts than in previous years.

The tax office took the view that the plaintiff had wrongly granted the special coronavirus payments tax-free: it was not apparent that the special payment had been made in recognition of the particular working situation during the coronavirus period. Rather, the plaintiff had converted a portion of the promised (taxable) holiday pay and the (taxable) bonus payment into a (tax-free) special coronavirus payment solely to enable a higher net payment. In the opinion of the tax office, the plaintiff must therefore pay back tax on the payments reported as special coronavirus payments.

The Federal Tax Court has now ruled on the case on appeal and confirmed the tax-exempt status of the special coronavirus payments. Allowances and support granted by the employer to its employees in the period from 1 March 2020 to 31 March 2022, in addition to the wages already due, in the form of grants and benefits in kind due to the coronavirus crisis, are tax-free up to a maximum amount of EUR 1,500. Accordingly, for the relevant tax exemption to apply, it is sufficient for the special coronavirus payment to be granted by the employer (as occurred in the present case) for the specific purpose of alleviating the burdens caused by the corona-

virus crisis. Contrary to the tax office's view, the law does not require a specific (individual) burden on the beneficiary employee as a prerequisite for tax exemption. In the present case, the special coronavirus payment was also made in addition to the wages already owed, as voluntary employer benefits (such as holiday pay and bonus payments in the case in question) do not form part of the wages already owed. It therefore does not affect the tax exemption, if the employer offsets a voluntary additional benefit (in this case the special coronavirus payment) against another voluntary additional benefit (in this case holiday pay or a bonus payment) or allocates the latter to a different purpose by converting it.

The findings of the decision could, on the basis of identical conditions, be applicable to the tax-free inflation adjustment allowance, which could be granted during the period from 26 October 2022 to 31 December 2024.

Lower Tax Court of Münster (13 K 905/24 K): Partial Write-Down of a Shareholder Loan to a Start-Up Company

In its judgment of 17 February 2026, the Lower Tax Court of Münster ruled that a partial write-down on a shareholder loan is tax-deductible in individual cases on the basis of proof of arm's length terms.

In the case at hand, the plaintiff (parent company) granted a shareholder loan to its subsidiary (start-up company). Due to the subsidiary's insolvency, the plaintiff wrote down the value of the loan in the tax year 2021. The issue in dispute was whether the expense arising from this write-down falls under the general prohibition on deduction (Section 8b (3) sentence 4 of the German Corporation Tax Act (CTA)) or is tax-deductible on the basis of the exception regulation (Section 8b (3) sentence 7 CTA). The decisive factor is whether the loan was granted on arm's length terms.

The Lower Tax Court of Münster affirmed the applicability of the exception, meaning that the partial write-down on the shareholder loan must be considered for tax purposes. According to the Court, the loan terms (5% interest, conversion options, no collateral) are, overall, to be regarded as arm's length. In exceptional cases, contrary to the explanatory memorandum to the underlying Act, the granting of a loan may be in line with arm's length principles even without an agreement on collateral. Particularly in the venture capital market, i.e. in the field of start-up financing, a lack of security is regularly offset by increased potential returns – such as through conversion options. Finally, the fact that the loan was left outstanding does not preclude the application of the 'escape clause' under Section 8b (3) sentence 7 CTA. Indeed, it is not apparent that the plaintiff could have reclaimed the convertible loan.

The judgment of the Lower Tax Court of Münster is not final. An appeal to the Federal Tax Court has been granted.

Federal Central Tax Office: Acceptance and Exchange of Minimum Tax Reports

By 30 June 2026, affected (multinational) corporate groups must submit a minimum tax report to the Federal Central Tax Office for the first time for the 2024 reporting period. These minimum tax reports will be exchanged with EU member states on the basis of the DAC 9 Directive and with third countries on the basis of the GIR MCAA (Multilateral Competent Authority Agreement on the Exchange of GloBE Information Returns).

Business units in Germany are exempt from submitting a minimum tax report if the minimum tax report was submitted by the ultimate parent company or a business unit commissioned by it to submit the report in its respective country of domicile and the country of domicile is a member state of the European Union or an effective international agreement exists that provides for the automatic exchange of minimum tax reports by the respective country of domicile with the competent tax authority in Germany for the financial year.

A total of 33 jurisdictions currently expect to have a fully functional system for submitting minimum tax reports by 31 May 2026 and to exchange minimum tax reports based on the GIR MCAA for the first time by 31 December 2026.

If the minimum tax report is submitted centrally in one of these jurisdictions, the following should be waived:

- penalties that would otherwise apply in connection with local reporting obligations, or
- the enforcement of local reporting obligations before the initial exchange deadline.

The following jurisdictions have agreed on such an approach:

1. Australia
2. Austria
3. Barbados
4. Belgium
5. Bulgaria
6. Canada
7. Croatia
8. Czech Republic
9. Denmark
10. Finland
11. France
12. Germany
13. Gibraltar
14. Greece (Note: Greece only applies this procedure to EU Member States)
15. Hungary
16. Ireland

17. Italy
18. Japan (Note: Japan has implemented a recognised primary supplementary tax regime that will apply from 1 April 2024. Corporate groups can only file a minimum tax report in Japan via Central Filing if the financial year starts no earlier than 1 April 2024).
19. Korea
20. Liechtenstein
21. Luxembourg
22. The Netherlands
23. Norway
24. Poland (Note: Poland only applies this procedure to EU member states)
25. Portugal
26. Romania
27. Spain
28. Sweden
29. Switzerland
30. Slovenia
31. South Africa
32. Turkey
33. the United Kingdom.

Federal Ministry of Finance: Guidance on the Turnaround Exemption Clause as an Exception to the Loss Limitation Rules in the Event of a Change of Control

According to German loss limitation rules (change of control), losses not utilized by a corporation are forfeited in total if within a period of five years more than 50% of the share capital in a corporation is transferred directly or indirectly to an acquirer or his/her related parties (Section 8c Corporate Income Tax Act – CITA). According to the turnaround exemption clause a change in ownership is not detrimental if it serves the purpose of turning around the business of the loss-bearing corporation (Loss-Co).

The Federal Ministry of Finance (MoF) issued a guidance dated 29 April 2026 on the application of the turnaround exemption clause.

Restructuring within the meaning of this provision is a measure aimed at preventing or eliminating the insolvency or over-indebtedness of the corporation and at the same time maintaining the essential operating structures.

The application of the turnaround exemption clause presupposes that, according to the assessment of an objective third party, the Loss-Co is in need of restructuring and capable of restructuring at the time of the acquisition of the shareholding and that the restructuring measures are suitable for preventing or eliminating insolvency or over-indebtedness.

The Loss-Co is in need of restructuring if insolvency or over-indebtedness is imminent or has already occurred.

The Loss-Co is capable of restructuring if, at the time the measures are taken, it is objectively possible to eliminate or prevent over-indebtedness or insolvency.

The measures are suitable for restructuring if they do not appear unsuitable in the context of an objective foresight to maintain the company and make it profitable again.

The preservation of the essential operating structures of the Loss-Co presupposes that:

1. the Loss-Co follows a concluded works agreement with a workplace regulation, or
2. the sum of the relevant annual wage bills of the Loss-Co within five years of the acquisition of the shareholding does not fall below 400 percent of the initial wage bill, or
3. significant business assets are added to the Loss-Co through contributions. A substantial contribution of business assets exists if, within twelve months of the acquisition of the shareholding, new business assets are added to the corporation that correspond to at least 25 percent of the assets contained in the tax balance sheet at the end of the preceding financial year.

The MoF goes into detail about these requirements in its guidance. Clarifications that are important for restructuring practice relate in particular to restructuring in group structures (separate examination of the turnaround clause for each Loss-Co in the group structure; but no extension of the scope of restructuring to downstream partnerships), the allocation of business assets through contributions, the distribution of previously contributed significant business assets and special features in connection with tax groups.

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