

Austrian Tax News

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Pillar 2 Update: Austria's Local Pillar 2 Tax Return is now available!

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Local Pillar 2 Tax Return in FinanzOnline

The electronic form for the Austrian Minimum Tax Advance Return (local Pillar 2 tax return) is now available in FinanzOnline:

- For MNE Groups with a fiscal year ending on 31 December, the return for fiscal year 2024 must be filed by 31 December 2026. For MNE Groups with a non-calendar fiscal year 2024/25, the filing deadline is 31 December 2027. The Austrian Minimum Tax Advance Return is not covered by the quota system for tax advisors.
- Nil returns are also mandatory in Austria, particularly where the Transitional CbCR Safe Harbour applies.
- Any Top-up Tax due is self-assessed and must be paid by the filing deadline for the Austrian Minimum Tax Advance Return. Accordingly, for MNE Groups with a calendar-year fiscal year, any Top-up Tax due for fiscal year 2024 must be paid by 31 December 2026.
- The return requires information on the central GloBE Information Return (GIR) submitted by the Group, the Constituent Entity liable for the Minimum Tax in Austria (i.e. the Austrian Pillar 2 taxpayer), and the amount of Top-up Tax payable. In the return, taxpayers must also confirm that the total Top-up Tax payable reported in the Austrian Minimum Tax Advance Return is consistent with the information reported in the GIR.

Our EY tax experts are happy to support you with all matters relating to the Austrian Minimum Tax Advance Return, including the determination of the relevant Austrian Constituent Entity liable for the Minimum Tax and the eligibility of the Transitional CbCR Safe Harbour.



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EU: blacklist of non-cooperative jurisdictions updated

International Tax Law

On 9 October 2026, the Council of the EU announced in a [press release](#), that Panama and Vietnam have been removed from the EU list of non-cooperative jurisdictions for tax purposes, the so-called "EU blacklist" (Annex I). The EU list now comprises eight jurisdictions.

Background

The EU list was established in December 2017 and is part of the EU's external strategy on taxation. Jurisdictions are assessed against criteria set by the Council in the areas of tax transparency, fair taxation and implementation of international standards against base erosion and profit shifting (BEPS). The updates are prepared by the Code of Conduct Group for Business Taxation. The Council updates the list twice a year.

Why is the EU blacklist relevant for Austrian companies?

- Controlled Foreign Company rules: Foreign subsidiaries in these jurisdictions are deemed to be low-taxed (Sec 10a /11 Corporate Income Tax Act (Körperschaftsteuergesetz)).
- DAC 6 reporting obligation: Cross-border intra-group payments to associated enterprises in these jurisdictions may trigger a reporting obligation (Sec 5/1/b EU Mandatory Disclosure Act (EU-Meldepflichtgesetz)).
- Public CbCR: The list is relevant for the publication of country-by-country income tax information reports (Sec 9/1/1 Country by Country Report Publication Act (CBCR-Veröffentlichungsgesetz)).

Which jurisdictions are currently on the list?

Annex I of the EU list now comprises the following eight jurisdictions:

- American Samoa
- Anguilla
- Guam
- Palau
- Russia
- Turks and Caicos Islands
- US Virgin Islands
- Vanuatu

Why were Panama and Vietnam removed?

Panama had been on the list since February 2020. The country has since reformed its harmful foreign-source income exemption regime. Panama has also been granted a new review by the OECD Global Forum of its compliance with the international standards on the exchange of tax information on request. Until this review is completed, Panama will be included in Annex II. Annex II covers jurisdictions that do not yet fully comply with international tax standards but have committed to implementing the necessary reforms.

EU: blacklist of non-cooperative jurisdictions updated

Vietnam was only added to Annex I in February 2026, after a Global Forum review found that the country did not meet the standards on the exchange of information on request. Following a series of reforms, Vietnam has also been granted a new review. Until this review is completed, Vietnam will likewise be included in Annex II.

The next update is scheduled for February 2027.

Real Estate Transfer Tax on Collapse Mergers: CJEU to clarify compatibility with EU Law

Real Estate Transfer Tax

By order dated 3 September 2026, the Austrian Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) requested a preliminary ruling from the Court of Justice of the European Union (CJEU) on whether real estate transfer tax levied on the accretion of the assets of a property-owning general partnership as a result of an intra-group merger is compatible with Directive 2008/7/EC concerning indirect taxes on the raising of capital. The CJEU's answer could be relevant to numerous reorganisations involving property-owning partnerships.

What is the scope of the VwGH's request for a preliminary ruling on real estate transfer tax?

The VwGH referred two questions concerning the interpretation of the Directive to the CJEU by order dated 3 September 2026, EU 2026/0007-1 (Ro 2025/16/0011). In essence, the issue is whether Austria may levy real estate transfer tax on a collapse merger triggered by a prior intra-group merger.

The relevant legal basis for the case at hand is Directive 2008/7/EC concerning indirect taxes on the raising of capital (the Directive). It generally prohibits indirect taxes on restructurings of capital companies but permits taxes on the transfer of property when immovable property is contributed (Article 5/1/e and Article 6/1/b of the Directive). According to the CJEU judgment of 4 June 2026, *Nova Iberomoldes* (C-837/24), this exception for taxes on the transfer of immovable property does not apply where neither legal nor beneficial ownership of immovable property is transferred in the course of an intra-group restructuring. According to the VwGH, the question is therefore whether real estate transfer tax on collapse merger constitutes a prohibited indirect tax on a restructuring.

What are the specific facts of the case?

The proceedings are based on the following facts:

- Acquisition of interests: Two sister companies, A GmbH and B GmbH (both limited liability companies under Austrian law), acquired the interests in a property-owning general partnership with unlimited liability of all partners ("Offene Gesellschaft" or "OG"). A GmbH held 100% of the assets of the OG, while B GmbH was a partner contributing services only. Under the Austrian Real Estate Transfer Tax (RETT) Act (Grunderwerbsteuergesetz), RETT is triggered in certain situations where a person or legal entity acquires the shares in a property-owning

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legal entity. For this reason, RETT had already been paid for the acquisition of the shares in the property-owning OG.

- Side-stream merger: B GmbH was subsequently merged into A GmbH pursuant to Article I of the Austrian Reorganisation Tax Act (Umgründungsteuergesetz; entry in the company register on 18 July 2023). As only one partner remained in the OG after the merger, the OG ceased to exist without liquidation, and its assets, including the immovable property, passed to A GmbH by way of accretion ("collapse merger") pursuant to Sec 142 Austrian Commercial Code (Unternehmensgesetzbuch). The transfer of ownership over the property from the OG to A GmbH triggers RETT under Austrian law (this has also been confirmed by the VwGH in its decision of 4 May 2023, Ro 2020/16/0013).

During the proceedings in the first instance, only the amount of the tax base was disputed, specifically whether the RETT paid on the initial acquisition of the OG may be deducted from the RETT triggered by the collapse merger under the Austrian RETT Act. The Federal Fiscal Court (Bundesfinanzgericht, BFG) rejected this deduction (BFG 20 March 2025, RV/7102097/2024), as the two transactions did not take place between the same parties – a statutory requirement for a deduction of RETT in subsequent transactions under Austrian law. The compatibility of RETT with EU law had not been raised in the proceedings before the BFG; however, the VwGH has now raised the issue of its own motion in the proceedings on an appeal against the BFG's decision.

What questions did the VwGH refer to the CJEU?

Question 1: Is a property-managing OG treated as equivalent to a capital company? The VwGH seeks to ascertain whether an OG under Austrian law whose purpose is the management of immovable property operates for profit within the meaning of Article 2/2 of the Directive and is therefore treated as equivalent to a capital company.

Question 2: Does the Directive preclude real estate transfer tax on the collapse merger? If the first question is answered in the affirmative, the CJEU is asked to clarify whether Article 4/2, Article 5/1/e and Article 6/1/b of the Directive preclude a national provision under which the merger of the only two partners of a property-owning OG, and the resulting collapse merger, gives rise to taxation of the acquisition of the real property.

Does the OG fall within the definition of a capital company?

The OG is neither listed in the Annex to the Directive, nor are its interests capable of being traded on a stock exchange. Moreover, its partners have unlimited liability. According to the VwGH, the OG therefore does not fall under the definition of "capital company" under Article 2/1 of the Directive. The only remaining basis is therefore treatment as equivalent to a capital company under Article 2/2 of the Directive, should the OG be considered to "operate for profit".

The Directive does not define the term "operating for profit". The VwGH apparently does not consider the existing distinction under Austrian income tax law between asset management and business activities to be relevant for the purposes of the Directive. In light of the CJEU's broad interpretation (CJEU, 22 December 2022, *IMGA*, C-656/21), the VwGH considers a property-managing OG to be likely to "operate for profit."

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Does the transaction constitute a restructuring within the meaning of the Directive?

The collapse merger is not covered by the restructurings contained in Article 4/1 of the Directive, because no interests were acquired and no securities were provided as consideration. The VwGH therefore examines the applicability of Article 4/2 of the Directive, namely the transfer of the assets of a capital company to its sole capital company shareholder. In doing so, it relies on the following considerations:

- A comparison of the English and French language versions of the Directive indicates that Article 4/2 of the Directive covers the transfer of the company's entire assets and not merely "all claims and liabilities", as the German version suggests.
- Immediately before the accretion, A GmbH held a 100% interest in the OG.
- The fact that the transferring company ceases to exist as a result of the collapse merger does not preclude the provision's application.

In the VwGH's view, the prevailing arguments therefore support the existence of a restructuring under Article 4/2 of the Directive. Under Article 5/1/e of the Directive, such a restructuring should, in principle, not be subject to any indirect taxes.

Does an exception for taxes on transfers of assets apply?

In the VwGH's view, the exception under Article 6/1/c of the Directive is not applicable because there is neither a contribution nor consideration. However, the VwGH examined whether the exception under Article 6/1/b of the Directive, which applies to duties on transfers of businesses or immovable property to a capital company, was applicable.

In *Nova Iberomoldes*, the CJEU held that the exception for taxes on the transfer of immovable property does not apply, where neither legal nor beneficial ownership of immovable property is transferred in the course of an intra-group restructuring. However, unlike in *Nova Iberomoldes*, legal ownership of the immovable property passed to A GmbH as a result of the collapse merger in the case before the VwGH. The fact that A GmbH had already been able to exercise indirect control over the immovable property does not alter this. The VwGH therefore tends towards the view that RETT may be levied as a permissible tax on transfers of assets as a result of a collapse merger. However, in the absence of relevant CJEU case law, the issue is not so clear as to leave no scope for reasonable doubt.

What does the request for a preliminary ruling mean in practice?

Although the VwGH appears inclined to consider the real estate transfer tax permissible, the outcome of the proceedings remains open. The following practical implications arise:

- The preliminary ruling is particularly relevant to intra-group restructurings in which property-owning partnerships cease to exist by way of collapse merger (Sec 142 Austrian Commercial Code)
- Although the proceedings concern the law applicable in 2023, they are also highly relevant to the current legal framework in force since 1 July 2025.
- If the CJEU follows the VwGH's interpretation of Article 2/2 and Article 4/2 of the Directive but finds that the exception under

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Article 6/1/b of the Directive does not apply, the real estate transfer tax in such cases could be incompatible with EU law.

- Comparable cases should be kept procedurally open, for example by appealing real estate transfer tax assessments or, in cases of self-assessment, by examining the options available under Sec 201 Austrian Federal Fiscal Code (Bundesabgabenordnung).

We will keep you informed of further developments in the proceedings before the CJEU.

Pillar 2: OECD Update

BEPS Pillar 2 In September 2026, the OECD released three new Pillar 2 publications:

1. Updated GIR form

- The [revised version of the GIR](#) (September 2026) includes, in particular, the implementation of the Side-by-Side System published in January 2026 (SbS, see our [Austrian Tax News dated 19 January 2026](#)) and applies to fiscal years beginning after 31 December 2025.
- It should be noted that the revised version also includes additional guidance in the Explanatory Notes that is unrelated to the Side-by-Side System and concerns pre-existing data points. These additions apply with immediate effect and are relevant for GIRs relating to fiscal years beginning before 31 December 2025 (see paragraph 36.1 of the Introduction).

2. Administrative Guidance

- The [new Administrative Guidance](#) covers Explicitly Conditional Taxes and the use of local financial accounting standards for QDMTT purposes in case of mismatching fiscal periods.
- Explicitly Conditional Taxes: A conditional tax is a tax which is designed to apply to a taxpayer of an in-scope MNE Group in a jurisdiction only when such MNE Group is subject to the IIR or UTPR in another jurisdiction and is not eligible for the SbS Safe Harbour. The guidance confirms that Explicitly Conditional Taxes are not to be treated as Covered Taxes.
- Use of local financial accounting standards for QDMTT purposes: Under certain conditions, a QDMTT may need to be calculated using financial accounts prepared based on the local financial accounting standard. This guidance clarifies that the QDMTT Safe Harbour continues to apply when the QDMTT is calculated based on the local financial accounting standard and the required QDMTT fiscal period does not align with the UPE's fiscal Year.

3. Full Legislative Review on qualified status of local Pillar 2 rules

- The new OECD document [“Global Minimum Tax: Terms of Reference and Assessment Methodology for the Full Legislative Review”](#) sets out the framework for assessing and recognizing domestic Pillar 2 rules as “qualified” rules.
- The Inclusive Framework agreed to develop a peer review process based on a common assessment and recognition of the qualified rule status of

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the IIR, UTPR and Domestic Minimum Top-up Tax (“DMTT”), as well as the eligibility for the QDMTT Safe Harbour, in each jurisdiction.

- This process consists of a transitional qualification mechanism, a full legislative review and an ongoing monitoring process. Under the transitional qualification mechanism, the respective jurisdiction performs a self-assessment of its domestic Pillar 2 rules. The transitional qualified status generally expires upon completion of the full legislative review.
- The full legislative review relies on a detailed analysis of the text of the national legislation to assess consistency with the GloBE Rules as well as the jurisdiction’s framework to ensure such a consistency. The implementing jurisdiction will be given the opportunity to provide explanations on the interpretation of its legislation and will also be invited to explain whether and how its domestic legislation achieves consistent outcomes as those provided in the GloBE Rules.

Our EY tax experts closely monitor all OECD developments relating to Pillar 2 and are available at any time to discuss any questions.

Expected social security values for 2027

General Social Security Act

Maximum contribution base 2027

Subject to official publication, the following maximum contribution bases are expected to apply for 2027:

- monthly: EUR 7,410 (2026: EUR 6,930). This includes the extraordinary increase of EUR 5 per day under the Budget Accompanying Act 2027-2028 (Budgetbegleitgesetz 2027-2028), resulting in a total increase of 6.93%.
- annually for special payments: EUR 14,820 (2026: EUR 13,860)
- monthly for freelancers without special payments: EUR 8,645 (2026: EUR 8,085)

Marginal income threshold 2027

The monthly marginal income threshold is EUR 551.10. Due to a provision in the Budget Accompanying Act 2027-2028, it once again remains unchanged in 2027 at the level of 2026 and 2025.

As of 1 January 2017, the daily marginal income threshold was abolished. Therefore, only the monthly marginal income threshold is relevant for determining whether an employment relationship is marginal.

Failed triangulation transactions cannot be remedied ex nunc either

Value Added Tax Act

In its [judgment](#) (Case T-773/25, German version only) of 7 October 2026, delivered following a request for a preliminary ruling from the Supreme Administrative Court (Verwaltungsgerichtshof), the European General Court (EGC) had to decide whether the legal effects of the simplification regime

Failed triangulation transactions cannot be remedied ex nunc either

for intra-Community triangulation transactions can be triggered with ex nunc effect. The case concerned an intermediary who issued invoices with the required reference to the customer's VAT liability only years after the transaction.

Can a failed triangulation transaction be remedied retroactively?

The EGC held that this is not possible. In its earlier judgment in *Luxury Trust* (Case C-247/21) of 8 December 2022, the Court of Justice of the European Union (CJEU) had already ruled out the retroactive application of the simplification where an invoice had not been properly issued and did not refer to the transfer of the VAT liability to the customer. The triangulation simplification is optional. To apply it, the intermediary must expressly designate the customer as the person liable for the VAT. Only this reference shifts the taxation of the acquisition to the final customer.

According to the EGC, an invoice issued years later is not merely a correction of an existing invoice. Rather, it is the first invoice to contain the information required for the triangulation transaction. Fulfilling material requirements after the fact cannot justify applying the simplification regime retroactively.

No ex nunc effect of a delayed "invoice correction"

The EGC builds on this reasoning of the CJEU and also denies any legal effect of an "invoice correction" for the present or the future. Granting ex nunc effect would ultimately also amount to retroactive effect. This is, because the rules that applied to the transactions concerned until the new invoices were issued, and therefore the legal position of the final customer, would be changed after the fact.

Why does the EGC reject subsequent application?

The EGC bases its reasoning on the objectives of the triangulation regime. On the one hand, the regime is intended to spare the intermediary from having to register for VAT in the Member State of destination. However, this objective can no longer be achieved after the fact, because the relevant registration, filing and tax obligations arose years earlier and do not lapse retroactively.

On the other hand, the simplification regime for triangulation transactions is intended to ensure that the intra-Community acquisition is taxed at the level of the final customer and to prevent double taxation at the level of both the intermediary and the final customer. Applying the simplification after the fact could, however, jeopardise proper taxation in the Member State of destination if circumstances change, for example if the final customer no longer exists.

Failed triangulation transactions cannot be remedied ex nunc either

Practical implications of the judgment: correct invoice references from the outset

The decision is particularly relevant in practice, because Advocate General Kokott had expressly supported an ex nunc effect in her Opinion in Case C-247/21, *Luxury Trust*. The CJEU did not follow this approach in its judgment. The EGC has now also rejected the Commission's proposal to allow subsequent application where the intermediary acted in good faith or where taxation in the Member State of destination was ensured.

If the original invoice does not state that the transaction is an intra-Community triangulation transaction and that the customer is liable for the VAT, the result is a failed triangulation transaction. Businesses should therefore pay particular attention to this material requirement when issuing invoices. In addition, intra-Community triangulation transactions must be reported in the recapitulative statement, although this is a formal requirement.

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Contact

International Tax

Roland Rief
+43 1 211 70 1257
roland.rief@at.ey.com

Markus Stefaner
+43 1 211 70 1283
markus.stefaner@at.ey.com

Transfer Pricing

Manuel Taferner
+43 1 211 70 1104
manuel.taferner@at.ey.com

Indirect Tax

Ingrid Rattinger
+43 1 211 70 1251
ingrid.rattinger@at.ey.com

People Advisory Services

Regina Karner
+43 1 211 70 1296
regina.karner@at.ey.com

Global Compliance & Reporting

Martin Lehner
+43 732 790 790 5618
martin.lehner@at.ey.com

Tobias Speigner
+43 662 2055 5266
tobias.speigner@at.ey.com

Transaction Tax

Andreas Sauer
+43 1 211 70 1625
andreas.sauer@at.ey.com

Editor and owner of the medium

Ernst & Young
Steuerberatungsgesellschaft
m.b.H. („EY“)
Wagramer Straße 19, IZD-Tower
1220 Vienna

Responsible Partner

Klaus Pfleger
+43 1 211 70 1179
klaus.pfleger@at.ey.com

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