Shape the future with confidence

2026 Issue 1

German Tax & Legal Quarterly 1|26

Unlocking potential for investment funds

Final bill to foster investments in renewable energy, infrastructure and venture capital published

Content

On 10 February 2026, the long-awaited bill to promote private investments and the financial sector (Standortfördergesetz – StoFöG) entered into force. The bill entails a variety of measures to remove long-standing barriers to investments in infrastructure, renewable energies, and venture capital investments by regulated investment funds. ▸

Legislation

Continued from page 1

Key measures include:

Regulatory amendments

- Open-ended public real estate funds (Sec. 230 et seq. German Investment Code, KAGB) may now invest up to 15% of their assets into participations in infrastructure companies (Infrastruktur-Projektgesellschaften) whose corporate purpose is limited to the construction, acquisition, operation, management, or holding of renewable energy assets.

- Public and special real estate funds may now also acquire and operate assets related to the operation of renewable energy or electric vehicle charging, including feeding electricity into the grid or supplying it to tenants (this permissibility should also apply to real estate companies held in a fund).

- The existing restrictions contained in the investment catalogue for open ended German special AIFs in relation to target funds are removed. Going forward, these funds may invest in any type of (target) investment fund, including closed ended funds, thereby enabling a broader fund-of-fund strategy.

Key changes in the German Investment Tax Act

- To create legal certainty for investments by (special) investment funds particularly in renewable energies and other infrastructure facilities, it is stipulated that a commercial activity is not detrimental to the status as an investment fund within the scope of application of the Investment Tax Act as long as the regulatory requirements under the KAGB are met. Several (rather technical) adjustments have been made to the taxable income categories at fund level such as domestic income, participation income, real estate income, and other income taxed at fund level. These changes aim to better align fund investments with direct investments e.g. in light of the participation of certain tax-exempt investors, particularly for commercial activities in renewable energy. As a consequence, going forward, the fund itself will be subject to corporate income tax (CIT) with said income items potentially resulting in more funds becoming subject to CIT themselves for the first time.

- Special investment funds may invest freely in renewable energy facilities (such as photovoltaic and wind power plants or EV charging stations) provided there is a connection to leased or rented real estate. This change expands investment possibilities and removes earlier legal uncertainties.

- In accordance with regulatory changes, eligible investments will now include stakes in companies involved in renewable energy activities such as generation, conversion, transport, or storage. Investing in these companies (including partnerships) is not considered active entrepreneurial management, so it does not jeopardize the tax status of a special fund.

- In alignment with regulatory changes, eligible investments of special investment funds now also include all types of domestic and foreign (target) investment funds including partnership-type funds.

With the strengthened statutory framework now established, the real estate fund industry should thoroughly analyze the new conditions and position itself as an active contributor to the energy transition.

- **Contact: christian.mundel@de.ey.com | christian.wahlster@de.ey.com**

Double RETT on the same share transaction: Seeking a solution to the signing/closing problem

In the view of the German tax authorities, the transfer of at least 90% of the shares in a real estate holding company to a new shareholder may trigger RETT twice. The first time upon the signing of the SPA, the second time upon closing if the shares are not transferred immediately with the signing (signing/closing problem). This factual double charge can only be avoided if RETT notifications are filed with the responsible tax office. In such case, only the closing RETT shall be payable. The filing deadline after the respective RETT triggering event is 14 days for domestic taxpayers and one month for foreign taxpayers.

Practice shows that the requirements for such notifications are very strict and that many taxpayers and their advisors fail to comply with the requirement to timely file the notification. Cases which are not immediately identified, e.g. group reorganizations detected in a tax audit or through investigations of the special RETT task force, will also trigger double RETT (plus a 0.5% surcharge for each month since the respective RETT triggering event).

The Federal Tax Court has expressed serious doubts about this interpretation by the tax authorities. A current Government draft bill contains a potential solution to solve the signing/closing problem.

The proposed bill recommends that, in the future, taxation should already (and only) occur upon signing. A further tax assessment at closing would be omitted, provided that the share transfer could already be taxed upon signing. The planned changes will not only shift the point in time for which RETT will be triggered to the signing instead of the closing. It will also have effects on the availability of exemptions from RETT for group reorganizations since they apply differently under the signing and the closing rules. Also, the taxpayers are different so that this should be reflected in future tax clauses. Additionally, the draft bill contains an extension of the notification period for domestic taxpayers from two weeks to one month.

The new bill shall enter into force on the day following its publication in the Federal Law Gazette. For cases in which signing occurs before the new legislation enters into force and closing occurs thereafter, transitional arrangements are planned to only apply the new legislation.

Moreover, with respect to the RETT relief for partnerships, there is an ongoing discussion about permanently removing the current sunset clause. The relief may therefore remain available beyond the end of 2026.

Another aspect of the bill refers to the German trade tax (local business tax). The trade tax is levied by the municipalities and currently amounts to at least 7%. This minimum trade tax rate is planned to be raised to 9.8%. Generally, only a small fraction of German municipalities would be affected by this change.

The bill will be discussed in Parliament shortly. Its adoption is planned for the first half of 2026.

Contact: thomas.wagner@de.ey.com | heinrich.fleischer@de.ey.com

Vietnam added to the EU Blacklist

On 17 February 2026, the EU finance ministers approved the updated EU list of non-cooperative tax jurisdictions (EU Blacklist). Vietnam and the Turks and Caicos Islands have been newly added, while Fiji, Samoa, and Trinidad and Tobago have been removed. In Germany, the EU Blacklist is particularly relevant for the application of restrictions under the German Anti-Tax Avoidance Act for Tax Havens (Steueroasenabwehrgesetz), the reporting obligations for cross-border tax arrangements (DAC6), and for Public Country-by-Country Reporting (pCbCR).

After no changes were made to the so-called Blacklist last year, the EU finance ministers decided at their meeting on 17 February 2026 to add two additional jurisdictions (Annex I). The Turks and Caicos Islands were included because the jurisdiction failed to take sufficient measures to effectively implement substance-based requirements. Vietnam was also added, having been removed from the Greylist only in October 2025.

At the same time, the EU finance ministers removed Fiji, Samoa, and Trinidad and Tobago from the Blacklist after these jurisdictions fulfilled their outstanding commitments. In total, the updated EU Blacklist now comprises ten countries and territories. The list of cooperative jurisdictions with reform commitments (Annex II) has also been updated: Antigua and Barbuda and the Seychelles, having implemented their commitments, are no longer included on the Greylist.

These newly published changes may have significant consequences for companies – depending on how EU Member States implement them at the national level. In Germany, the EU Blacklist is particularly relevant for the application of the following rules:

Anti-Tax Avoidance Act for Tax Havens (StAbwG)
For the purposes of the StAbwG, the updated Blacklist must be incorporated into German domestic law through the Tax Haven Defense Regulation (StAbwV). This typically occurs at year end based on the version of the EU Blacklist applicable at that time. The next update is expected in October 2026.

If, for example, Vietnam remains listed in October, then as of 1 January 2027, enhanced controlled foreign company taxation rules, withholding tax measures, increased cooperation and documentation obligations, and the denial of treaty benefits would apply under the StAbwG and the updated StAbwV.

Mandatory Disclosure Rules for Cross-Border Tax Arrangements (DAC6)
Arrangements involving deductible cross-border payments between associated enterprises are reportable under Hallmark C1 if the recipient is resident in a jurisdiction listed on the EU Blacklist. For the newly added jurisdictions, this requirement applies immediately for new or substantially modified arrangements.

Public Country-by-Country Reporting (pCbCR)
Under pCbCR rules, information relating to jurisdictions must be disclosed separately if the jurisdiction was listed on the EU Blacklist on 1 March of the reporting period, or if it was on the Greylist on 1 March of both the reporting period and the immediately preceding financial year.

Contact: roland.nonnenmacher@de.ey.com

Germany significantly tightens criminal enforcement of EU sanctions

Germany has transposed Directive (EU) 2024/1226 into national law, redesigning its sanctions enforcement regime. The new legislation, which entered into force on 6 February 2026, elevates numerous violations from administrative offences to criminal offences and substantially increases the associated penalties. For companies operating in or through Germany, this represents a material shift in the compliance landscape.

At the heart of the reform is a comprehensive overhaul of Sections 18 and 19 of the Foreign Trade and Payments Act (AWG). Specific forms of conduct that were previously sanctioned only with administrative fines under the Foreign Trade Regulation have been reclassified as criminal offences. This includes violations of financial sanctions, sectoral trade and services restrictions, travel bans, and certain EU reporting and disclosure obligations. Circumvention of sanctions is now expressly established as a standalone criminal offence – a provision of particular practical significance where complex group or supply chain structures are used to obscure the true nature of transactions, or where inaccurate or incomplete information is provided to authorities.

The reform also expands criminal liability to cover negligent sanctions-related violations in the area of export restrictions on military and dual-use goods. Notably, Germany has chosen not to make use of the option under the directive to exempt minor violations below EUR10,000 from criminal liability. In addition, the previously available two-day grace period for implementing new EU sanctions instruments has been abolished, meaning that sanctions now take immediate effect. On the penalty side, corporate fines can now reach up to EUR40m. The legislation does not include a provision for self-disclosure leading to immunity from prosecution; cooperative behavior will only be considered as a mitigating factor in sentencing.

Companies with operations in Germany should review and, where necessary, update their sanctions compliance frameworks. Internal screening, documentation, and monitoring processes will need to be aligned with the heightened reporting and disclosure obligations. Stronger enforcement is also anticipated, including through a dedicated coordination unit at the Customs Investigation Office under the "Customs 2030" initiative. For multinational groups, the reform underscores the need for a consistent, group-wide approach to sanctions compliance across jurisdictions, despite remaining differences in national enforcement practices across the EU.

Contact: sven.sarcevic@de.ey.com

Directive on Repair of Goods is implemented into the German Civil Code: What changes are ahead?

In June 2024 the EU adopted the Directive on Repair of Goods (EU 2024/1799) promoting sustainable consumption by increasing the repair and re-use of goods (Directive). On 15 January 2026, the German Ministry of Justice and Consumer Protection published the German draft act for the implementation of the Directive (Draft Act) containing significant additions and changes to German sales law. The Draft Act follows largely the approach of adopting the Directive verbatim. Nonetheless, several substantive and structural deviations exist.

If implemented without changes, the Draft Act will change a number of provisions on sales law in the German Civil Code (BGB). For the most part, the planned changes involve additions to the provisions on consumer law, such as:

- Manufacturers of trade goods covered by the Directive, e.g. washing machines, vacuum cleaners, fridges or cell phones, will be subject to an obligation to repair.
- All merchants – meaning sellers as well as manufacturers – must inform the consumer, prior to a potential subsequent performance, of the consumer's existing right to choose between repair and replacement, as well as of the extended warranty period in the event of a repair.
- Manufacturers must provide repairs for a reasonable price and within a reasonable time.
- The statute of limitation for consumers will be extended: The future Section 475e BGB will provide an extension of the limitation period for claims arising from a defect by twelve months if subsequent performance is provided by way of repair.

The Draft Act also foresees a substantial change to the sales law concerning both B2B as well as B2C sales contracts:

- The "usual condition of a good" within the meaning of Section 434 subsection 3 sentence 2 BGB will include the characteristic of repairability. The "usual condition" means the condition in which an item is considered in conformity with the contractual requirements. So far, it was only defined by the durability, functionality, compatibility, and safety. If the change is adopted, sellers will be liable for the absence of repairability within the framework of subsequent performance.
- The inclusion of B2B cases also goes beyond the requirements of the EU directive. The opinions given by stakeholder associations are very critical and deem this an unnecessary burden on businesses and the economy.

It remains to be seen if the Draft Act will be amended after the criticism of the stakeholder associations. Ideally, a revision would also shed light on the question of when a good is deemed "repairable". Otherwise, it is to be expected that this question will have to be answered through case law. Furthermore, a transitional period for merchants to implement their new obligations would be desirable: The infrastructure and personnel for the repairs that will be required by law in many if not most cases do not exist yet or are at least not yet sufficient to meet the potential demand. In times of craftsman shortages and the blue-collar crisis, the industry might be unable to comply with the new legal requirements regardless of their lack of conceptual clarity for very practical reasons.

- **Contact: lena.wentzler@de.ey.com**

Permanent establishments: German Federal Ministry of Finance publishes draft administrative guidance

The concept of a permanent establishment (PE) is central to determining and distributing Germany's taxing rights, particularly in cross-border situations. On 13 February 2026, the German Federal Ministry of Finance (BMF) published draft administrative guidance updating its interpretation of the PE concept, replacing large parts of the guidance from 1999. The draft mainly reflects recent case law of the German Federal Tax Court (BFH) and current international developments.

The draft confirms the traditional PE requirements under Section 12 of the German Fiscal Code (AO): a fixed place of business, sufficient geographical and temporal permanence, the carrying on of business activities, and the enterprise's power of disposal.

However, the BMF moves away from a purely formal assessment of these individual criteria. Instead, a PE is increasingly understood as a typological concept requiring an overall assessment of all relevant facts and circumstances, with a focus on the interaction between the individual PE criteria. While this approach aligns with BFH case law, it may increase uncertainty in cross-border cases.

The BMF also clarifies the relationship between Section 12 AO and Article 5 of the OECD Model Tax Convention (OECD-MTC). Although both concepts largely coincide, certain deviations remain, particularly with respect to preparatory or auxiliary activities.

The draft further provides that the interpretation of the treaty-based concept of a PE in connection with home office activities should be aligned with paragraphs 44.1 to 44.21 of the OECD Model Commentary of 19 November 2025 (OECD-MC) on Article 5 OECD-MTC.

From an inbound perspective, the guidance reiterates that an employee's home office generally does not constitute a PE due to the lack of power of disposal under German national law. An exception may apply if management functions are exercised from the home office, potentially resulting in a place of management PE.

For outbound PEs, however, it remains unclear to what extent these explanations will also affect existing German Double Taxation Agreements (DTA) (for the static versus dynamic interpretation of DTAs, see the article *"Germany adjusts its approach to interpreting tax treaties – moving toward stability while keeping strategic flexibility"* below).

The draft further addresses construction and installation projects, dependent agents, and activities carried out on third-party premises. Under German domestic law, construction sites generally constitute a PE if they last more than six months, with seasonal interruptions usually disregarded. By contrast, under Article 5 paragraph 3 OECD-MTC, a construction PE requires a duration of more than twelve months.

Under domestic law, a dependent agent is a legally distinct person who conducts the enterprise's business on a sustained basis and is subject to its instructions. The treaty-based dependent agent PE is an autonomous concept and generally requires that a person habitually concludes contracts on behalf of the enterprise. While the OECD-MTC also covers persons playing the principal role in contract conclusion, this criterion is usually not included in German tax treaties.

Once finalized, the guidance will apply to all open cases. Foreign groups with activities or personnel in Germany should review their structures in light of the more holistic PE assessment and potential impacts on their German tax position.

Contact: dirk.lambrecht@de.ey.com

New BMF guidance on refurbishment and modernization costs

The distinction between acquisition costs, production costs (including acquisition-related production costs), and immediately deductible repair and maintenance expenses is of significant practical relevance. While repair expenses are generally deductible in full in the year incurred, acquisition and production costs increase the tax basis of the building and must be depreciated over its useful life.

The German Federal Ministry of Finance (BMF) released new guidance on 26 January 2026 regarding its principles on the tax treatment of refurbishment and modernization expenses for buildings. It replaces the long-standing BMF guidance of 18 July 2003 and 20 October 2017.

The new guidance especially refines the criteria whether modernization results in a higher standard and thus production costs. In particular, the BMF now limits the assessment of the building standard exclusively to the scope and quality of heating, sanitary, electrical installations, and windows. Other measures, such as additional thermal insulation, are explicitly excluded from the standard assessment. The draft also clarifies that the installation of a heat pump or solar thermal system alone does not automatically lead to an upgrade to a high-end standard.

Of particular relevance are the statements regarding the rules on acquisition-related production costs. According to Section 6 paragraph 1a Income Tax Act (EStG), all refurbishment and modernization expenses incurred within three years after acquisition may qualify as acquisition-related production costs if, in aggregate, they exceed 15% of the acquisition costs of the building. This applies irrespective of whether the expenses were foreseeable at the time of acquisition and also includes costs for remedying hidden or age-related defects. By contrast, expenses for extensions, regularly recurring maintenance or damage demonstrably caused after acquisition (e.g. by third parties or natural events) are excluded.

The new guidance further shortens the relevant assessment period for phased refurbishments from five to three years and clarifies that there is no buffer with view to extensions. Every extension will result in production costs.

The principles are to apply to all open cases and thus also retroactively. Foreign investors and asset managers holding German real estate should therefore carefully review planned or ongoing refurbishment measures, in particular in the first three years after acquisition, to assess potential capitalization risks and timing effects on tax deductions.

Contact: andreas.bolik@de.ey.com

Finalized guidance on fund establishment costs

After presenting a draft at the end of 2024, the German Federal Ministry of Finance (BMF) has now finalized its administrative guidance on open questions relating to the income tax treatment of fund establishment costs. The finalized circular dated 19 January 2026 includes several amendments compared to the draft.

Under the rule introduced in 2019 in Section 6e of the German Income Tax Act (EStG), fund establishment costs generally qualify as part of the acquisition costs (i.e., they are not immediately deductible). This applies in particular where investors do not have material influence over the contractual arrangements. Section 6e (1) sentence 1 EStG therefore expands acquisition costs beyond the definition in Section 255 (1) of the German Commercial Code (HGB) to include fund establishment costs.

Because the application of Section 6e EStG has been accompanied by significant uncertainties and discussions during tax audits, the publication of a draft BMF circular was generally welcomed. The BMF has followed at least part of the business community's request to revise the draft in certain areas in the final version and has, among other things, introduced the following amendments: ▶

Expenditures incurred during the investment phase that must be capitalized under Section 6e (2) EStG may continue to be recorded in an adjustment or memorandum item. This item did not previously constitute a depreciable asset. Because incidental acquisition costs are generally required to follow the depreciation treatment of the asset acquired, this was considered inappropriate.

Accordingly, the guidance now provides that, once the acquisition has occurred, these items are generally to be allocated to the acquired assets and released on a pro rata basis, thereby reducing taxable income. In the event of a full or partial disposal, the memorandum item is to be released proportionately, based on the acquisition costs of the asset sold relative to the total capitalized expenses. As a simplification, the acquisition costs incurred up to the beginning of the fiscal year may be used as a basis for this allocation (para. 22).

Furthermore, the tax authorities have decided to allow interest and processing fees charged by the lending bank in the context of interim and final financing to be deducted as business expenses or income-related expenses (Werbungskosten), even where these are not paid by the investor based on a personal obligation to the lender. This gives investors in private equity and venture capital funds the ability to deduct the interest costs that the funds allocate to them as reductions to taxable profit or taxable income (para. 28).

In addition, the tax authorities have made several editorial adjustments, including aligning the wording of the finalized circular with that of Section 6e EStG.

The new circular applies in all open cases.

Contact: bjoern-alexander.niemeyer@de.ey.com

Germany adjusts its approach to interpreting tax treaties – moving toward stability while keeping strategic flexibility

Germany has long debated how much influence the OECD Model Commentary (OECD MC) should have when interpreting Double Taxation Agreements (DTA). While the German tax authorities (BMF) traditionally applied a dynamic approach, relying on the most recent OECD guidance even if it did not exist when the DTA was signed, the German Federal Tax Court (BFH) consistently rejected a dynamic approach and argued for a static interpretation. With its new guidance issued on 24 December 2025, the BMF has now largely adopted the BFH's view and shifted towards a static approach.

For international businesses, this shift has important practical implications. A static interpretation generally means greater stability and predictability. Treaty outcomes depend primarily on the OECD materials available when the treaty entered into force, rather than on later OECD updates. This can reduce uncertainty in cross-border situations and may simplify internal risk assessments. At the same time, the BMF explicitly allows newer OECD commentary to be taken into account where it merely "clarifies" earlier versions. As a result, dynamic elements are not entirely eliminated.

This will be particularly relevant in areas where the OECD recently, i.e. in November 2025, expanded and amended its OECD Model Tax Convention and its OECD MC, in particular changes to the OECD MC on Art. 5 to clarify the circumstances in which home office or remote work activities may create a permanent establishment. Companies with employees working across borders should therefore expect these newer interpretations to influence the German tax landscape.

Two points deserve particular attention for globally operating businesses:

- Increased legal certainty: The alignment between the BMF and the BFH reduces the risk of conflicting interpretations and strengthens the reliability of tax treaty outcomes.
- Remaining audit exposure: The BMF's reference to "in particular" when allowing the use of later OECD commentary leaves room for interpretation. Tax authorities may still try to apply newer OECD guidance if it supports their view in a specific case.

Overall, the BMF's shift represents a welcome move toward greater consistency and tax certainty. However, unlike Germany, many other jurisdictions continue to apply a dynamic interpretation of the OECD Commentary. This divergence may result in differing treaty interpretations and could give rise to double taxation or, conversely, double non-taxation. Companies should therefore review their permanent establishment risk profiles and reassess treaty-based positions that may be affected by recent OECD developments.

Contact: ruben.kunert@de.ey.com

Taxation of employment income under Double Taxation Agreements – Update of the administrative guidelines

On 19 December 2025, the Federal Ministry of Finance updated its guidelines regarding the taxation of employment income under double taxation agreements (DTA). The revisions specifically address the employer confirmation for cost coverage, the tax treatment of employment income during periods of leave, and the reversion of tax rights to Germany when the Dutch 30% facility is applied.

The domestic (German) employer is required to certify the percentage of salary costs that are economically borne by the employer abroad according to the arm's length principle. For the first time, a standardized template is to be used for this purpose: the "Employer Certification of Cost Coverage for Submission to the Tax Office of Residence." This certification is considered an important indicator when determining whether a company qualifies as an "economic employer." The question of whether the host (or another) company is the economic employer is particularly relevant when assessing Article 15 (2) of the OECD Model Convention (taxation right of the residence state under the 183-day rule).

As of 1 January 2024, employment income for periods of leave related to the termination of the employment relationship will generally be treated as compensation for performing work in the state where the work would have been carried out without the leave (Section 50d (15) of the Income Tax Act, EStG). This provision aligned the German legal interpretation with the OECD Model Commentary.

The tax administration clarifies in its letter that Section 50d (15) EStG does not affect the determination of days of presence under Article 15 (2) of the OECD Model Convention (183-day rule). The actual days of presence remain the determining factor. Additionally, periods of irrevocable leave should not be included when assigning tax rights for time-related compensations such as severance payments or employee stock options.

Under the Dutch 30% facility, employers can leave a portion of the employment income earned in the Netherlands tax-free. The Federal Tax Court has ruled that applying this provision does not trigger a reversion of tax rights to Germany under Article 22(1)(a) of the DTA with the Netherlands. The tax administration has adopted this ruling and has removed the conflicting example from its guidelines.

The changes will primarily take effect from 1 January 2025, while the regulations regarding "leave from work" will apply starting 1 January 2024. Upon request, the new provisions can be applied to all open cases, provided that there are no conflicting legal regulations.

Contact: ursula.beste@de.ey.com | heidi.schindler@de.ey.com

BMF revises guidance on tax groups involving atypical silent partnerships

The German Federal Ministry of Finance (BMF) has revised its administrative guidance on German tax groups (Organschaft) involving atypical silent partnerships, aligning its position with recent case law of the German Federal Tax Court (BFH).

According to the BFH, a corporation may qualify as a controlled subsidiary within a German tax group even if an atypical silent partnership exists at its level (BFH decision of 11 December 2024, case ref. I R 33/22).

In its revised guidance dated 13 November 2025, the BMF has now adopted this view. While it continues to hold that an atypical silent partnership itself cannot qualify as either a controlled entity or a controlling entity, the BMF now accepts that a corporation in which such a partnership exists may nevertheless qualify as a controlled subsidiary for tax group purposes. This clarification generally applies to all open cases. ▶

With respect to the qualification as a controlling company, the BFH has taken a more nuanced approach. In particular where an atypical silent partnership is allocated only to specific branches of a corporation and a "free" business segment remains to which the participation in the subsidiary can be attributed, the BFH considers it possible for the corporation to act as a controlling company within a German tax group (BFH decision of 11 December 2024, case ref. I R 17/21).

However, the BFH has not expressly ruled on situations where the atypical silent partnership relates to the entire commercial business of the controlling company. In its revised guidance, the BMF therefore follows the BFH's reasoning only for the specific constellation addressed by the court. Where the atypical silent partnership covers the entire business, the BMF maintains its previous restrictive position that the corporation cannot qualify as a controlling company within a German tax group.

Overall, the revised BMF guidance significantly enhances legal certainty for tax groups involving atypical silent partnerships, in particular at the subsidiary level. At the level of the controlling company, however, careful structuring and documentation remain essential where atypical silent partnerships are involved.

Contact: daniel.kaeshammer@de.ey.com | vivien.j.mayer@de.ey.com

German Federal Central Tax Office aligns interpretation on German anti-treaty shopping rule for withholding tax on royalty payments

In late 2025, the German Federal Central Tax Office (Bundeszentralamt für Steuern - BZSt) updated its fact sheet on the eligibility for an exemption or refund of withholding tax (WHT) under the German anti-treaty shopping rule applicable to royalty payments.

With this update, the German Federal Central Tax Office confirmed that its amended interpretation of the anti-treaty shopping rule, previously introduced for dividend WHT relief, also applies to WHT relief for royalty payments. This alignment had already been anticipated following several updates to the guidance relevant for dividend WHT relief published in the course of the previous year.

The key changes compared to the previous version of the fact sheet dated July 2021 result from the revised approach to personal eligibility for relief and the application of the stock exchange clause. In this respect, the fact sheet's interpretation follows a look-through approach that takes the treaty eligibility of indirect shareholders into account even if they are based on a different treaty than the one that applies to the applicant entity. With regard to the stock exchange clause, the fact sheet clarifies that the clause generally applies if a direct or indirect 100% shareholder of the income recipient is publicly traded. This is, however, subject to the condition that the listed entity and each entity in the shareholder chain is personally entitled to an identical or higher level of WHT relief than the recipient of the royalty. Effectively, this confirms the application of the look-through approach also for purposes of the stock exchange clause.

With respect to the objective eligibility for a relief (eligibility based on own activity and substance) the fact sheet for WHT relief for royalty payments deviates from the latest version for dividend WHT relief: While the European Court of Justice (ECJ) and the Fiscal Court of Cologne have confirmed that the management of assets constitutes an economic activity, the German Federal Central Tax Office currently excludes such activities from qualifying for the objective eligibility. A different interpretation for what constitutes an economic activity under the same domestic law rule appears difficult to justify. It can therefore be expected that also the interpretation of economic activity for purposes of royalties withholding tax will be amended in a future update.

Contact: katja.nakhai@de.ey.com | steffen.hoehl@de.ey.com

Tax groups: "12-month period benchmark" for the actual execution of a PLTA

German tax groups (Organschaften) are widely used in practice as they allow for tax consolidation and loss offsetting. However, the hurdles for recognition of fiscal unities are high. The German Corporate Income Tax Act (KStG) imposes strict requirements on both the contractual design and the actual execution of the profit and loss transfer agreement (PLTA) throughout its entire term. Failure to comply with these requirements leads to denial of the tax group for tax purposes, as a ruling of the German Federal Tax Court (BFH) shows (decision of 5 November 2025, case ref. I R 37/22).

In the case at hand, the profits to be transferred under the PLTA to the parent entity for the years 2009 to 2011 were recorded by the subsidiary in an offset account (Verrechnungskonto) labeled "liabilities to shareholders." Counterclaims or lump-sum payments, however, were not recorded in that account. Rather, an offsetting was not carried out until 2017. The tax authorities denied the recognition of the tax group because the profit transfer had not actually been carried out within a reasonable period and the PLTA had therefore not been properly implemented in their view.

In the BFH's view, the actual execution of the PLTA requires compliance with two conditions:

- Claims and liabilities must be recorded and presented in the annual financial statements (demonstrating the "life" of the PLTA; a cumulative presentation of the profit transfer obligations is generally sufficient for this purpose).
- The calculated profits must actually be transferred to the parent entity, either by payment or by settlement through offsetting. A mere accounting entry of the claim without a fulfillment effect is not sufficient.

To date, it had not yet been clarified by the highest courts under which temporal conditions the claims arising from a PLTA must actually be fulfilled. Various views have been expressed in the literature in this respect. In its recent decision, the BFH now takes the view that the obligations arising from a PLTA must be fulfilled within a reasonable period after the adoption of the annual financial statements or after the (civil law) due date, respectively. As a general rule, a period of 12 months may be taken as a benchmark.

Since fulfillment occurred several years after the due date (clearly exceeding the 12-month period) the BFH confirmed that the PLTA had not been properly implemented. Given the significant violation of the 12-month period, the BFH did not need to decide whether, and under what conditions, a PLTA may still be considered properly carried out despite delays caused by special circumstances or minor irregularities. The decision once again highlights the strict requirements for the recognition of a tax group.

Contact: daniel.kaeshammer@de.ey.com

Correspondence principle with respect to hidden contributions: Failure to tax capital gain does not qualify as a reduction of income at shareholder level

Under German corporate tax law, a hidden (capital) contribution (verdeckte Einlage) to a corporation generally does not increase the corporation's taxable income. An exception applies under the so-called correspondence principle: The hidden contribution (exceptionally) increases the corporation's income to the extent it has reduced the contributing shareholder's income. In a recent ruling, the German Federal Tax Court (BFH) clarified the boundaries of this rule (ruling of 19 November 2025, case ref. I R 40/23).

In the case at hand, an individual transferred his shares (held as private assets) in a corporation to a newly established corporation. The transfer was made without consideration and without issuance of new shares. As the conditions for a tax-neutral reorganization were not met, the transaction qualified as a hidden contribution. Under German income tax rules, such a hidden contribution is treated as a deemed disposal, which should have triggered a taxable capital gain at the shareholder level. However, this gain was never assessed, and the statute of limitations had since expired. The tax office argued that the untaxed deemed disposal gain constituted a reduction of the shareholder's income, thereby increasing the taxable income of the receiving corporation under the correspondence principle.

The BFH rejected this view. According to the BFH the provision does not distinguish between types of shareholders or between assets held privately or as business assets. However, the court held that the mere failure to tax a deemed gain at the shareholder level does not qualify as an income reduction in the relevant sense. Rather, the correspondence principle requires that the contribution actually led to a lower tax base for the shareholder, for instance through the deduction of expenses of the tax base. As a result, the BFH concluded that the correspondence principle did not apply in this case and that the receiving corporation's income was not to be increased.

The decision is of particular relevance as the correspondence principle is embedded in several provisions of German tax law (e.g. in the context of the participation exemption) and has now (firstly) been interpreted in a taxpayer friendly manner by the BFH. It remains to be seen whether the tax authorities will apply the ruling beyond the individual case or whether it may instead be subject to a non-application decree.

Contact: daniel.kaeshammer@de.ey.com

Multi-state workers and social security – current practices in Germany contradict European law

In a globalized world where professionals operate across borders, the social security treatment of multi-state workers is a recurring issue. According to Article 13 of Regulation (EC) No. 883/2004, a person who usually works in two or more member states is subject to the legislation of their country of residence if they perform a substantial portion of their activity there. A substantial portion is defined as at least 25% of the relevant activity. The question at hand was whether workdays in third countries should be included in this assessment.

The Social Court of Saarland dealt with a case involving a plaintiff residing in Germany, who was employed by a company based in Switzerland. During the year in question, he worked 10.5 days per quarter in Switzerland and another10.5 days per quarter from his home office in Germany. On the remaining days, he visited clients in third countries (such as Russia, Moldova, and Ukraine) for consultations, training sessions, etc.

Regulation (EC) No. 883/2004 also applies to Switzerland according to the Agreement on the free movement of persons between the member states of the European Union and Switzerland. Switzerland is treated as a member state in this regard. The German social security authorities therefore examined whether the 25% threshold had been reached. However, they considered only workdays in Germany and Switzerland and in this case the portion of work in Germany amounts to 50%. Consequently, they decided that German social security law applies. However, if workdays in third countries are included in the assessment, the portion of work performed in Germany lies below 25% and the application of Swiss law is required.

The Social Court had doubts about which approach is in accordance with European law. Therefore, on 15 November 2023, it submitted a request for a preliminary ruling to the European Court of Justice (ECJ). On 11 December 2025, the ECJ ruled that workdays in third countries must be included in the assessment (C-743/23).

The ruling now provides the much needed greater legal certainty for many mobile workers and their employers since the handling of such cases within the EU has not been consistent. Germany, along with countries like France and Switzerland, previously excluded workdays in third countries from the assessment of social security obligations.

Companies with an internationally mobile workforce should identify cases potentially affected by this decision and review their social security handling as soon as possible. It remains unclear how existing cases will be treated until the new rules are implemented. In borderline cases, it is advisable to disclose workdays in third countries to the relevant authorities and inform the affected employees.

Contact: nancy.adam@de.ey.com | ursula.beste@de.ey.com

Partially remunerated transfers and the treatment of built-in gains

Under Section 6 (5) of the German Income Tax Act (EStG), the transfer of individual business assets between different business properties of partnerships must generally be carried out at book value. This rule is intended to ensure tax neutrality where assets remain within the partnership sphere.

However, complications arise where the transfer is partially remunerated, i.e. where the consideration paid is lower than the fair market value of the asset. In such cases, German tax law treats the transaction as consisting of two parts: a remunerated part and a non-remunerated part.

For many years, the correct allocation of book value between these two parts has been the subject of considerable debate in case law, tax literature, and administrative practice. In essence, two competing approaches developed: ▶

German court decisions

1) Strict split approach ("strikte Trennungstheorie"): Traditionally applied by the tax authorities, this approach allocates the book value proportionally between the remunerated and non-remunerated parts based on the ratio of consideration to fair market value. As a result, built-in gains are partially realized in every partially remunerated transfer, regardless of whether the consideration exceeds book value.
2) Modified split approach ("modifizierte Trennungstheorie"): Under this approach, a taxable gain only arises if and to the extent that the consideration exceeds the book value of the transferred asset. Where the consideration remains below book value, no realization of built-in gains occurs. This is because the book value is to be allocated to the remunerated part, capped at the amount of the consideration paid.

In its decision of 11 December 2025 (case ref. IV R 17/23), the German Federal Tax Court (BFH) has now provided long awaited clarity on the tax treatment of partially remunerated transfers under Section 6(5) sentence 3 no. 2 EStG.

The BFH explicitly rejects the strict split approach applied by the tax authorities and confirms that the modified split approach is the correct framework for determining taxable gains in these scenarios.

As a result of the decision, realization of built-in gains is only triggered where this is necessary to safeguard taxation, namely where the consideration exceeds the book value of the transferred asset. Where the consideration remains below book value, a book value carryover continues to apply. The principles confirmed by the BFH also apply in cases where the transferred asset contains built-in losses, which must be carried forward at book value by the transferee.

It remains to be seen how the tax authorities will respond to this judgment in administrative practice.

Contact: daniel.kaeshammer@de.ey.com | vivien.j.mayer@de.ey.com

Disposal of "old" investment fund units: notional and actual losses

The German investment tax system underwent a major structural reform in 2018, fundamentally changing how investment funds and their investors are taxed. To transition from the old to the new system, the law introduced a deemed disposal of certain fund units at the end of 2017 (Section 56 German Investment Tax Act (InvStG)). The units are treated as newly acquired as of 1 January 2018. This mechanism separates pre-reform and post-reform value changes and determines which tax rules apply to each portion. For value changes arising after the system change, the applicable partial tax exemption percentages (under Section 20 InvStG) apply (a tax exemption on a fixed percentage of income depending on the type of investment funds). For value changes arising before the system changes, these exemptions do not apply. This produces complex effects, particularly when asset values rose before 2018 but then declined by the time of their disposal.

The latest decisions of the German Federal Fiscal Court (BFH) clarify how such cases should be treated to avoid unintended taxation of purely notional gains. In particular when unit prices increased as of 31 December 2017 but subsequently fell until the actual disposal, there is a risk that only notional value increases may be subject to tax.

The BFH considers the basic concept of Section 56 InvStG to be constitutional. However, the BFH applies a teleological reduction to the partial tax exemption rule in Section 20 InvStG. Section 20 InvStG applies not only to gains but also to losses, meaning losses are also only partially considered for tax purposes. The BFH holds that the partial tax exemption does not apply where a loss is attributable to the fact that the notional acquisition cost as of 1 January 2018 exceeds the historical acquisition cost. This is based on the BFH rulings of 25 November 2025 (VIII R 15/22, VIII R 22/23, and VIII R 31/23 NV). Where an actual loss exceeds the notional value increase, the "actual" portion of the loss remains subject to the partial tax exemption (and is therefore only partly utilizable), while the "notional" portion of the loss must be taken into account in full. On this point, the BFH takes a position that diverges from the administrative view set out in the BMF circular of 21 May 2019 (para. 20.2).

The decisions potentially affect both corporate and private investors. For those affected (for example, where companies have sold grandfathered investment units held as business assets), this case law may lead to an adjustment of the tax base. Irrespective of the recent court decisions, institutional investors and companies holding investment fund units as business assets should review the accuracy of their tax returns, given the differing partial exemption rates. Existing legal remedies should be examined on a case-by-case basis.

Contact: katrin.kuehn@de.ey.com

Employee share ownership: Ongoing returns as income from capital assets

Employee share ownership programs serve to attract and retain key specialists and executives. Ongoing returns, however, are not to be treated as wages solely for that reason. As long as a separate legal relationship has been established and actually acted on, such returns can regularly be qualified as income from capital assets, as the German Federal Tax Court (BFH) has recently ruled. This means that the earnings can be taxed at a flat rate of 25%, instead of the personal tax rate, which can be up to 45%.

In the first case, a manager received ongoing income from his silent partnership in his employer's company. After a payroll tax audit, the tax authorities took the view that the ongoing returns were to be classified as wages. They argued that the silent partnerships had been offered only to executives and that the employer intended thereby to strengthen their interest in a long-term increase in the company's value and to enhance their identification with the company's interests.

The BFH did not endorse this opinion. Ongoing returns must be treated as income from capital assets, provided the statutory requirements are met and the returns are based on a seriously agreed and implemented separate legal relationship (at "arm's length" with third-party investors). The returns are not directly connected to the work that has been performed. Therefore, the fact that the silent partnership is linked to the continuation of the employment relationship does not preclude its independence and is not solely sufficient to define ongoing returns as wages.

Nevertheless, ongoing profits can be taxed as wages under certain circumstances. This would be the case, for example, if profit shares are deliberately allocated to an employee in excess of the amounts owed under the contractual agreement(s).

The BFH took the same view in another case, in which an employee was granted non-voting profit participation rights in his employer company. The tax authorities classified the annual interest as wages (as did the employer for payroll withholding). The BFH rejected this view since it found no indications contradicting the valid establishment and performance of the underlying profit participation right as a corporate-law special legal relationship in the case at hand.

Both decisions show: Ongoing returns from employee participation programs can be income from capital assets. If the employee is treated in a manner that is at arm's length with third party investors, there is no room for the assumption that the returns (even if significant) are to be considered as employment income and taxed at the higher rate for wages.

Contact: martin.neutzner@de.ey.com | ursula.beste@de.ey.com

No retroactive elimination of a deemed profit distribution

The German Federal Fiscal Court (BFH) has reaffirmed that a deemed profit distribution cannot be eliminated retroactively simply because the advantage is offset in a later transaction. The case concerned a shareholder who granted his real estate company a pre-emption right over his private property in 2013, while the company assumed a personal liability on his behalf. The pre-emption right was found to have no economic value. In 2018, when the shareholder sold the property to the company, he credited the previously granted right against the purchase price, arguing that this should retrospectively remove the taxable advantage recognized in 2013.

In its judgment of 21 October 2025 (VIII R 19/23) the BFH rejected this view. The court emphasized that the later sale in 2018 represented an independent taxable event and could not retroactively alter the tax consequences of the earlier transaction. While German tax law generally allows later events to be considered if their tax relevance is fully exhausted in the year of retroactive effect, the court held that this principle did not apply in this case. The sale in 2018 had its own tax implications for this year and therefore could not undo the earlier benefit conferred in 2013 through the debt assumption. According to the BFH, tax law does not permit economically completed events to be "undone" by subsequent actions.

For practice, the decision confirms that retroactive effects are interpreted narrowly and that deemed profit distributions cannot be neutralized through later compensation or repayments. Taxpayers should therefore verify that appropriate consideration is provided at the time of the transaction to avoid unintended deemed profit distributions and prolonged controversy with the tax authorities.

Contact: ruben.kunert@de.ey.com

German property tax – BFH publishes reasons and confirms constitutionality of the federal model

Germany's property tax system has undergone a fundamental overhaul that entered into effect on 1 January 2025. The reform was triggered by a 2018 ruling of the Federal Constitutional Court which found the previous system unconstitutional because it relied on property valuations dating back to 1964 in West Germany and 1935 in East Germany, leading to significant inequality. Under the new rules, property tax is calculated using current market-based valuations rather than outdated standard values. The reformed property tax has also faced criticism since its introduction for allegedly violating the German Constitution.

On 22 January 2026, the German Federal Tax Court (BFH) published three decisions as of 12 November 2025 (case ref. II R 25/24, II R 31/24 and II R 3/25) on the constitutionality of the new property valuation system under the federal model (Bundesmodell), which is applied in most federal states. The BFH confirmed that the property valuation rules introduced by the reform do not violate the German constitution and therefore refrained from referring the matters to the Federal Constitutional Court. However, the plaintiffs already filed a constitutional complaint with the Federal Constitutional Court (case ref. 1 BvR 472/26).

The three cases decided by the BFH concerned owner occupied and rented condominiums for which the taxpayers challenged the assessed property tax values, arguing that individual circumstances were insufficiently reflected, including unfavorable location, basement units, and the inclusion of underground parking spaces subject to special usage rights. Against this background, the BFH first clarified that the federal legislator had full legislative competence to enact the property tax reform and that the relevant legislation is, therefore, formally constitutional.

The court also confirmed the constitutionality of the federal model from a substantial perspective. The legislator is especially entitled to rely on typification, standardization and lump sum elements when designing a tax that is administered as a mass procedure. According to the BFH, such simplifications are permissible under the constitutional principle of equality provided that the resulting inequalities remain proportionate. In this context, the court expressly referred to the comparatively low absolute burden of German property tax, which allows for a broader margin of simplification than would be acceptable for taxes with a more significant financial impact.

The BFH therefore upheld the use of standardized net rental values in the income-based valuation method even though actual rental income is disregarded. While acknowledging that this approach may lead to deviations from market values in individual cases, the court considered this a justified consequence of the legislator's objective to ensure a largely automated and administrable assessment process. The valuation of land based on standard land reference values (Bodenrichtwerte) determined by local valuation committees was likewise confirmed. General concerns regarding differing methodologies or quality standards between committees were held to be insufficient to establish a constitutional infringement; judicial review would only be warranted where specific errors are substantiated, or actual indications of incorrect valuation exist.

The BFH further noted that potential valuation distortions may be mitigated by the statutory option to demonstrate a lower fair market value by an expert valuation report.

Contact: jonas.schneider@de.ey.com

BFH further restricts RETT group reorganization exemption

The German real estate transfer tax (RETT) group reorganization exemption under Section 6a of the German Real Estate Transfer Tax (RETT) Act is intended to facilitate certain intra-group restructurings by exempting qualifying transactions from RETT, provided that strict requirements – including those regarding the taxable legal transaction and holding periods of dependent group companies - are met. In particular, the controlling entity must hold at least 95% of the shares in one or more dependent entities for an uninterrupted period of five years before and after the reorganization. In recent years, the German Federal Tax Court (BFH) has developed case law allowing a relaxation of the holding periods in very limited circumstances. If it is legally impossible to comply with the holding period, it should be dispensable, for example, if the dependent company is newly established as part of a qualified restructuring under the German Transformation Act (UmwG) and compliance with the pre-holding period would therefore be legally impossible.

In its judgment of 8 October 2025 (case ref. II R 33/23), the BFH has now stipulated for a taxable legal transaction under foreign law that the Senate considers compliance with a retention period to be legally possible in the case of a contribution by operation of law to a new company established by operation of law on the same day. The case concerned the indirect contribution of an interest in real estate owning partnerships into a corporation newly established by law. The taxpayer argued that the pre-holding period should be disregarded since the depending, receiving company had been established by operation of law (under foreign law) on the date the law was promulgated and the contribution, which had been stipulated by the same (foreign) law, had been effected by operation of law on the same day, which meant that there was a factual and legally impossibility of complying with the holding period. However, the BFH rejected this view as, in the opinion of the BFH, it was not proven that the transaction was a uniform contribution transaction by legal grounds, in which the receiving company itself, as a newly established company, only comes into existence as a result of the contribution. The Senate left open exactly what such proof for a uniformity would have meant in the case of contribution to a new company by operation of law under foreign law.

Nevertheless, the BFH generally emphasized that the 5-year pre-holding period can only be waived if the dependent entity comes into existence as a direct and necessary result of the reorganization – i.e., in "Umwandlung zur Neugründung" (conversion to new formation) scenarios by law. This means that the exception applies only where the establishment of the new entity is legally, inseparably linked to the reorganization and where compliance with the holding period would be legally impossible.

According to the ruling of the BFH it seems that the tax exemption remains limited to strictly defined restructuring scenarios as of conversion to new formations in accordance with the German Transformation Act or comparable foreign conversions. This means that a waiver of the pre-holding period can only be justified if the dependent entity comes into existence as a direct result of the reorganization itself, such as in the case of a spin-off or merger to a newly formed legal entity. By contrast, if a company is established independently of the reorganization and merely used as the receiving vehicle – even if founded shortly beforehand - the holding period requirement remains fully applicable. If the company could theoretically have been formed earlier, the statutory holding period cannot be disregarded for teleological reasons.

The decision provides important guidance for multinational groups planning German real estate restructurings. It confirms that the BFH continues to apply a very restrictive interpretation of Section 6a RETT Act, and groups should therefore carefully assess whether a reorganization structure genuinely qualifies for group exemption or whether RETT exposure must be factored into the transaction economics.

As the other requirements for applying the RETT group exemption were not fulfilled in the case at hand, the BFH did not need to address whether the contribution carried out under the foreign law of a non-EU country could, in principle, qualify as a privileged transaction. This is because Section 6a RETT Act explicitly limits the exemption to reorganizations carried out under the German Reorganization Act or under the law of an EU or EEA Member State. The taxpayer had argued that, due to the terms of the existing double taxation agreement between Germany and the third country, Section 6a RETT Act should be applicable.

Nevertheless, the judgment underlines the importance of early structuring and sufficient lead time when preparing German real estate transactions, particularly in an international group context where entity formation and ownership chains are often driven by non-German considerations.

Contact: heinrich.fleischer@de.ey.com | neele.goernig@de.ey.com

BFH narrows the scope of the "corporation tax clause" in partnership split-ups

In its decision of 21 August 2025 (IV R 16/22), the German Federal Tax Court (BFH) clarified how the so-called corporation tax clause applies to partnership split-ups ("Realteilung"). The ruling limits situations in which a mandatory step-up to fair market value is required and allows continued book value transfers in certain cases.

Under German tax law, the corporation tax clause is intended to prevent built-in gains from moving untaxed from the income tax regime into the corporate income tax regime.

The BFH held that this purpose is not met where assets are merely transferred between corporations that are already subject to German corporate income tax. In such cases, the transaction does not introduce assets into the corporate tax system for the first time but only reallocates them within the same tax regime.

As a result, the court concluded that i) a mandatory step-up to fair market value is not appropriate, and ii) a tax-neutral transfer at book values remains permissible.

This jurisprudence, however, is limited to restructurings carried out before 19 October 2024. With the Annual Tax Act 2024, the legislator introduced new provisions in Section 6 (5) sentence 7 Income Tax Act (EStG) together with Section 16 (3) sentence 5 EStG, which explicitly reject the BFH's teleological reduction of the "corporation tax clause" for later cases. Under the amended law, book value continuity is no longer available for transfers between two corporations, regardless of whether the assets remain entirely within the corporate income tax system. This significantly tightens the restructuring framework and increases the likelihood that transfers of partnership assets will trigger gain recognition going forward. Accordingly, only "historic restructurings" (before October 2024) may still benefit from the BFH's more favorable interpretation.

In its decision the BFH also confirmed that the temporary creation of treasury shares at the corporate partner level does not constitute a harmful disposal under Section 16 (3) sentence 3 EStG, as no consideration is received. Even if shares transferred as part of the split up become treasury shares and are later cancelled, the economic identity of the asset (shares) remains intact, and the cancellation does not trigger a taxable disposal.

Contact: daniel.kaeshammer@de.ey.com | vivien.j.mayer@de.ey.com

EU introduces flat-rate customs duty on low-value parcels as of July 2026

On 11 February 2026, the Council of the European Union gave its final approval to abolish the customs duty exemption for low-value consignments below EUR150. The reform is a direct response to the sharp increase in small parcels shipped from non-EU countries, particularly China, to consumers in the EU in recent years, which has put pressure on customs administrations and created competitive distortions for EU-based retailers.

As a transitional measure, a flat-rate customs duty will apply from 1 July 2026 to parcels with a value below EUR150 that are shipped directly to consumers by application of the IOSS (Import One Stop Shop) clearance scheme. The duty will amount to EUR3 per product category contained in a parcel. To illustrate, the Council provides the following example: a parcel containing one silk blouse and two wool blouses would be subject to a duty of EUR6, as the items fall into two distinct product categories.

This transitional regime is intended to bridge the period until the EU's new customs data platform becomes operational, which is currently scheduled for 2028. Once the platform is in place, the flat-rate duty will be replaced by standard customs duties based on the applicable tariff classifications. The transitional rules will apply until 1 July 2028 but may be extended if necessary.

The new rules are particularly relevant for e-commerce businesses selling goods from third countries directly to EU consumers. Companies affected should review their supply chain and pricing structures, as the additional cost burden may be significant at scale. Importers and online platforms should also ensure that their customs processes are prepared to handle the new duty requirements from the date of application.

Notably, from November 2026 an additional measure affecting e-commerce businesses shall be enacted. It is planned to levy a so-called handling fee, which according to current plans shall amount to EUR2 per parcel cleared under the IOSS scheme.

Both changes should be embraced by businesses to evaluate procedural and commercial impact for serving EU customers. Alternative clearance options exist and should be assessed to determine a best fit future e-commerce import clearance model.

Contact: richard.j.albert@de.ey.com

General Court of the European Union rules deduction of input VAT permissible even if invoice received in a subsequent period

The European General Court (EuG) has issued a remarkable new decision regarding the time period in which input VAT can be considered if the invoice is received in a later period than when the underlying supply was carried out.

In its judgment dated 11 February 2026 (T-689/24), the EuG ruled that the timing of the invoice receipt does not, by itself, prevent taxpayers from exercising their right to deduct VAT in the period in which the supply was performed, provided the invoice is available at the time the VAT return for that period is submitted. According to the EuG, the right to deduct VAT arises when the supply is carried out, and national rules cannot postpone the exercise of that right solely because the invoice arrives later. ▶

EU law

This interpretation departs from earlier judgements of the European Court of Justice (ECJ) such as Terra Baubedarf (judgement dated 29 April 2004 (C-152/02), in which the ECJ ruled that the deduction of input VAT requires the simultaneous presence of both the taxable supply and the invoice within the same assessment period. This is also in line with the practice of many EU Member States.

The EuG clarified that the earlier decision must be viewed in its factual context, where the taxpayer did not possess an invoice at the time they intended to exercise the right to deduct. In contrast, the current case concerns a scenario in which the taxpayer had the invoice before filing the return for the relevant period, despite the invoice being issued later.

The judgment reinforces a fundamental principle of EU VAT law: the right to deduct VAT cannot be restricted by purely formal requirements when the substantive conditions are met. This raises important considerations for companies operating in jurisdictions where national legislation or administrative practice defers the input VAT deduction to the period in which the invoice is received. Under the EuG's reasoning, such rules may conflict with EU law if they prevent the exercise of the deduction for the period in which the goods or services were supplied.

The First Advocate General of the ECJ, Maciej Szpunar, has now requested the review of the judgment of the EuG. This is not surprising given that this outcome deviates from the previous practice of many Member States and stands in a close and tense relationship with the existing ECJ case law.

As a result, the judgment does not yet take effect. A EuG judgment becomes effective only if no request for review has been submitted. The ECJ must now decide, within one month of receiving the proposal from the First Advocate General, whether the decision should be reviewed. The proceedings are already continuing under the new case number C-167/26 RX.

This decision has a substantial impact on the input VAT deduction right. However, the outcome of the decision of the ECJ should be awaited.

Contact: nina.j.kupke@de.ey.com | anna.schuster@de.ey.com

OECD's Pillar 2 Side-by-Side Package confirmed by EU – legislative changes expected from 2026 onward, but no significant relief for 2024 and 2025

On 12 January 2026, the European Commission formally acknowledged the agreement by the Inclusive Framework on the package for a "side-by-side arrangement" (the Package), thereby confirming that its rules are in line with the EU Minimum Tax Directive. Accordingly, no amendment to the Minimum Tax Directive is expected for the implementation of the Package within the EU. The new safe harbors will need to be transposed into domestic laws of the EU Member States. In Germany, legislative action to amend the German Minimum Tax Act and introducing the new safe harbors is expected in 2026.

The Package, in the form of Administrative Guidance, was published by the OECD on 5 January 2026 and includes a new Simplified Effective Tax Rate (ETR) Safe Harbor, a one-year extension of the Transitional Country-by-Country Reporting (CbCR) Safe Harbor, a new Substance-based Tax Incentive Safe Harbor and two Safe Harbors related to the so-called "Side-by-Side System", i.e. the Side-by-Side Safe Harbor and the UPE Safe Harbor. While the new safe harbor rules and the extension of the Transitional CbCR Safe Harbor promise simplifications going forward, the complex technical and compliance requirements remain challenging, particularly for 2024 and 2025. This is all the more relevant as the first major filing deadline, which is on 30 June 2026 for groups with fiscal year equaling the calendar year, is approaching not only in Germany, but across the EU and globally.

The Simplified ETR Safe Harbor will be applicable to fiscal years starting on or after 31 December 2026 (and in certain circumstances one year earlier in jurisdictions that legislate early adoption) and is intended to provide compliance simplifications for businesses and tax authorities on a permanent basis.

The Transitional CbCR Safe Harbor is extended by one year, now to apply for a period of four years (i.e. including fiscal year 2027). Taxpayers may be able to choose between the Simplified ETR and Transitional CbCR Safe Harbours during the period of overlap.

The Substance-based Tax Incentive Safe Harbor allows a Multinational Enterprise (MNE) Group to treat Qualified Tax Incentives as an addition to the Covered Taxes of the Constituent Entities located in the jurisdiction. The Safe Harbor will allow jurisdictions greater flexibility in designing their incentives regimes and thus allow MNE groups to benefit from certain incentives that require economic substance in the jurisdiction. The election can be made on a jurisdictional basis for fiscal years starting on or after 1 January 2026. There is yet no official list of qualifying tax incentives available.

The Side-by-Side (SbS) Safe Harbor provides that MNE Groups with an Ultimate Parent Entity (UPE) in a jurisdiction with a Qualified SbS Regime will not be subject to the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR) if they elect the SbS Safe Harbor. For now, only the United States was identified as having a Qualified SbS Regime. These MNE Groups will remain subject to Qualified Domestic Minimum Top-up Taxes (QDMTTs) locally, including the German QDMTT. In particular, German QDMTT returns will need to be filed irrespective of the fact that no local top-up tax arises in Germany. The SbS Safe Harbor is applicable to fiscal years starting on or after 1 January 2026. MNE Groups with a UPE in the US will thus remain subject to the global minimum tax rules and respective compliance obligations in 2024 and 2025, including the filing of the GloBE Information Return and the local Minimum Tax Return for German Constituent Entities.

The UPE Safe Harbor applies to the domestic profits of MNE Groups with a UPE in a jurisdiction that has an eligible domestic tax regime. The UPE Safe Harbor applies to fiscal years starting on or after 1 January 2026 and effectively replaces the UTPR Safe Harbor, which expired in 2025. An MNE Group that elects the UPE Safe Harbor will not be subject to the UTPR in respect of the profits located in the UPE jurisdiction.

For more details on the Package please refer to the *EY Global Tax Alert* dated 6 January 2026. The Commission notice can be found at the *website of the EU*.

Contact: dirk.nolte@de.ey.com | moritz.glahe@de.ey.com

Mandatory withdrawal button as of 19 June 2026: EU Directive affects almost the entire B2C e-commerce

As of 19 June 2026, businesses will be required to provide an electronic withdrawal function for all distance contracts concluded via an online interface (websites, apps, platforms) in the B2C area. The new regulation aims to ensure that consumers can withdraw from contracts just as easily as they can conclude them. This extends the instrument of the so called "button solutions" in e-commerce, as a withdrawal button is introduced in addition to the existing order button and cancellation button.

If the withdrawal button is missing or implemented incorrectly, extended withdrawal periods and competitive consequences may result. Businesses should therefore take proactive technical, organizational, and contractual steps well before the withdrawal button becomes mandatory, ensuring full and legally compliant implementation.

The electronic withdrawal function follows a two-step procedure:

- **First step:** A clearly visible withdrawal button labelled "withdraw from contract here" or another unambiguous equivalent wording.

- **Second step:** After entering or confirming the minimum required information, the withdrawal is transmitted using a confirmation function. This confirmation function must be easily legible and labelled "confirm withdrawal" or another unambiguous equivalent wording.

This two-step process is intended to prevent unintended declarations.

Regarding technical implementation, businesses face certain challenges:

- **Immediacy:** There must be no distracting additional content between the withdrawal button and the confirmation button. The process must be consistent, clearly structured and free of manipulative elements. Additional steps, advertising inserts or diversions between the two stages are not permitted.

- **Permanent availability:** The function must be accessible throughout the entire period, where the consumer is entitled to withdraw from the contract. However, since there are cases in which the business cannot determine, or can only determine with disproportionate effort, whether and for how long the specific withdrawal period is running, it is permissible to provide the electronic withdrawal function on a general and permanent basis. From the perspective of a reasonable consumer, this does not constitute misleading conduct, as the withdrawal period is communicated after the conclusion of the contract and, upon reasonable assessment, the mere display of the withdrawal function does not imply the simultaneous existence of a withdrawal right.

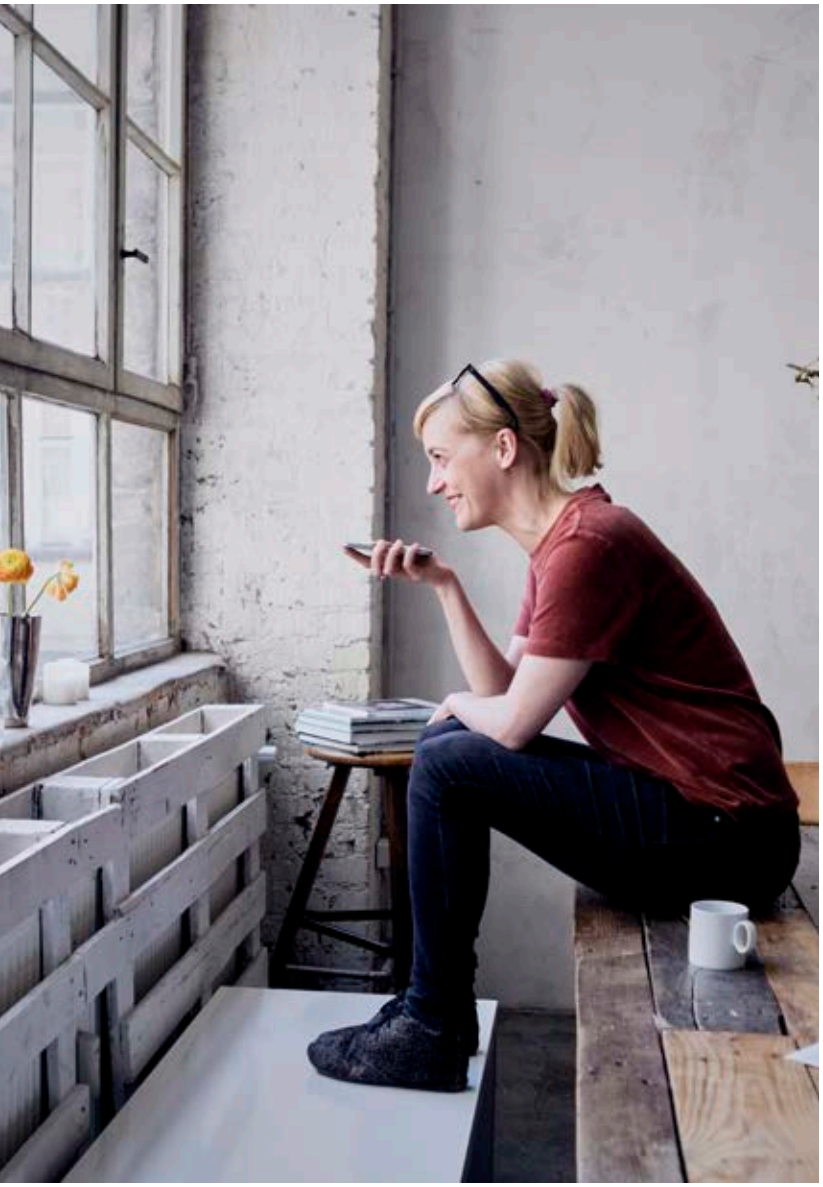
- **Login requirement:** The electronic withdrawal function must generally be accessible without requiring a login, as this is the only way to ensure that orders placed, for example, as a non-registered guest can be withdrawn just as easily as the order itself was placed. Only if the contract can be concluded exclusively by creating a customer account is it sufficient to provide the withdrawal function within the login area.

Regarding the practical implementation, businesses should place the withdrawal button in the footer, as this – as legally required – can be accessed from all subpages. However, placing it in the footer is only sufficient if the button is visually highlighted and clearly distinguishable from standard links such as the general terms and conditions, imprint or comparable links through color, font, or outlining.

If the contract is concluded via an intermediary platform, businesses must ensure that the electronic withdrawal function is provided there as well, despite the lack of technical control. This may even need to be contractually agreed with the platform operator.

- **Contact: berkan.sabanci@de.ey.com**

Misclassification of freelancers: a high risk area for businesses



For international businesses operating in Germany, the use of freelancers often appears familiar and straightforward. Yet Germany follows a distinctly different approach when it comes to assessing whether a person is truly self-employed. A person considered an independent contractor elsewhere may, under German law, be reclassified as an employee – with far reaching consequences.

Misclassification (Scheinselbstständigkeit) is not a niche issue. German authorities, in particular the statutory pension insurance institutions, place a strong and growing focus on this topic. Audits are frequent, increasingly data driven, and backed by a steadily tightening body of case law. Unlike in many other jurisdictions, good faith offers little protection: the decisive factor is not what the parties intended, but how the engagement is actually performed in practice.

German courts apply a substance over form approach. The central question is no longer how much contractual freedom a person enjoys, but how deeply they are integrated into the company's organization. Fixed working hours, use of the company's infrastructure, integration into workflows or schedules, and the absence of a genuine entrepreneurial set-up are strong indicators of employment - even for highly qualified specialists.

The financial risks are substantial. If an engagement is reclassified, the hiring company is generally liable for social security contributions retroactively for up to four years – and in cases of intent, significantly longer. Crucially, both employer and employee contributions become payable, while recovery from the freelancer is usually limited. In practice, the financial burden largely remains with the company.

In the vast majority of cases, an individual who is considered an employee under social security law needs also to be treated as an employee for tax and labor law purposes – with potentially far-reaching consequences. When a misclassification is identified, the implications should therefore always be fully examined.

Recent court decisions underline how strict the German approach has become. Teachers, IT specialists, consultants, medical professionals, and pilots have all been affected. Even long established freelance models are no longer safe if the factual circumstances resemble employment.

For international companies, the key takeaway is clear: Germany does not assess freelancer arrangements lightly. Proactive risk assessments, clear documentation, and a realistic view of how work is actually organized are essential.

Contact: nancy.adam@de.ey.com | ursula.beste@de.ey.com

EY German contacts

Cities in alphabetical order

Friedrichstraße 140
10117 Berlin
Phone +49 30 25471 0
Telefax +49 30 25471 550

Lloydstraße 4–6
28217 Bremen
Phone +49 421 33574 0
Telefax +49 421 33574 550

Westfalendamm 11
44141 Dortmund
Phone +49 231 55011 0
Telefax +49 231 55011 550

Völklinger Straße 2
40219 Düsseldorf
Phone +49 211 9352 0
Telefax +49 211 9352 550

Mergenthalerallee 3–5
65760 Eschborn/Frankfurt/M.
Phone +49 6196 996 0
Telefax +49 6196 996 550

Wittekindstraße 1a
45131 Essen
Phone +49 201 2421 0
Telefax +49 201 2421 550

Bismarckallee 15
79098 Freiburg
Phone +49 761 1508 0
Telefax +49 761 1508 23250

Rothenbaumchaussee 78
20148 Hamburg
Phone +49 40 36132 0
Telefax +49 40 36132 550

Landschaftstraße 8
30159 Hannover
Phone +49 511 8508 0
Telefax +49 511 8508 550

Titotstraße 8
74072 Heilbronn
Phone +49 7131 9391 0
Telefax +49 7131 9391 550

Börsenplatz 1
50667 Cologne
Phone +49 221 2779 0
Telefax +49 221 2779 550

Grimmaische Straße 25
04109 Leipzig
Phone +49 341 2526 0
Telefax +49 341 2526 550

Glücksteinallee 1
68163 Mannheim
Phone +49 621 4208 0
Telefax +49 621 4208 550

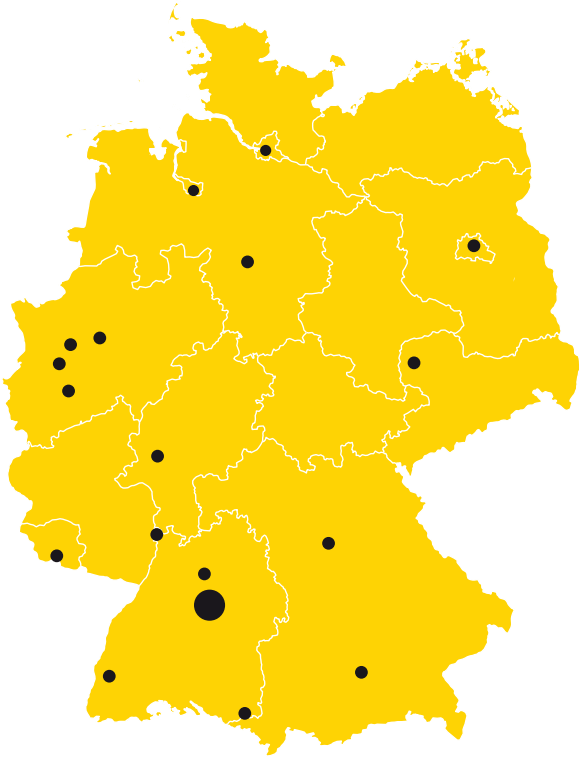
Arnulfstraße 59
80636 Munich
Phone +49 89 14331 0
Telefax +49 89 14331 17225

Am Tullnaupark 8
90402 Nuremberg
Phone +49 911 3958 0
Telefax +49 911 3958 550

Parkstraße 40
88212 Ravensburg
Phone +49 751 3551 0
Telefax +49 751 3551 550

Heinrich-Böcking-Straße 6–8
66121 Saarbrücken
Phone +49 681 2104 0
Telefax +49 681 2104 42650

Flughafenstraße 61
70629 Stuttgart
Phone +49 711 9881 0
Telefax +49 711 9881 550



EY German Tax Desks

New York
Tobias Appl
Phone +1 212 536 1318
Thomas Schmitz
Phone +1 212 773 4014

Shanghai
Wenjia Zhu
wenjia.zhu@cn.ey.com

Tokyo
Gerald Lies
Phone +81 3 3506 2110

EY publications

Please find pdf-versions of the EY publications listed below by clicking on the related picture. Browse the full range of our in-depth guides covering corporate tax, indirect tax, personal taxes, transfer pricing and law matters in more than 150 jurisdictions *here.*

Worldwide corporate tax guide 2025
The worldwide corporate tax guide summarizes the corporate tax systems in approximately 150 jurisdictions.

Worldwide personal tax and immigration guide 2024-25
This guide summarizes personal tax systems and immigration rules in approximately 150 jurisdictions.

Worldwide VAT, GST and sales tax guide 2025
This guide summarizes indirect tax systems in 150 jurisdictions.

Publisher
EY Tax GmbH Steuerberatungsgesellschaft
Flughafenstraße 61, 70629 Stuttgart

Editorial Team
Daniel Käshammer, daniel.kaeshammer@de.ey.com
Joerg Leissner, joerg.leissner@de.ey.com
Vivien Mayer, vivien.j.mayer@de.ey.com
Sarah Gietl, sarah.k.gietl@de.ey.com

About this quarterly report
This quarterly report provides high-level information on German tax developments relevant to foreign business investing in Germany.

Add to or remove from distribution list
If you would like to add someone to the distribution list, or be removed from the distribution list, please send an e-mail to gtlq@de.ey.com

Images
Adobestock

EY | Building a better working world

EY is building a better working world by creating new value for clients, people, society and the planet, while building trust in capital markets.

Enabled by data, AI and advanced technology, EY teams help clients shape the future with confidence and develop answers for the most pressing issues of today and tomorrow.

EY teams work across a full spectrum of services in assurance, consulting, tax, strategy and transactions. Fueled by sector insights, a globally connected, multi-disciplinary network and diverse ecosystem partners, EY teams can provide services in more than 150 countries and territories.

All in to shape the future with confidence.

SRE 2603-009
ED None

ey.com