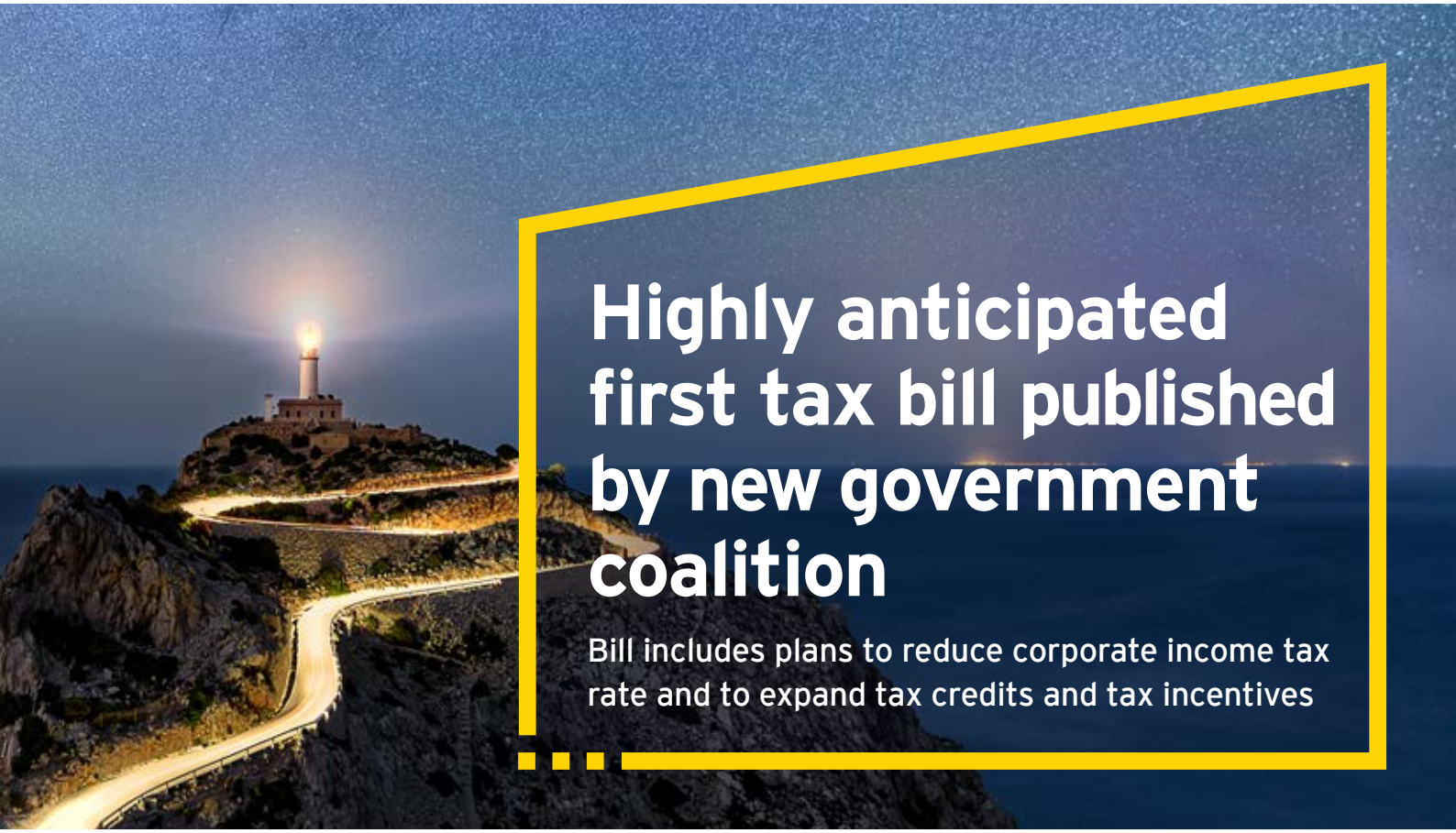
Shape the future with confidence

2025 Issue 2

German Tax & Legal Quarterly 2|25



Highly anticipated first tax bill published by new government coalition

Bill includes plans to reduce corporate income tax rate and to expand tax credits and tax incentives

Content

The government draft of the highly anticipated first coalition tax bill includes significant reform measures in corporate taxation that were announced in the coalition agreement. Highlights include the planned temporary reintroduction of the declining balance depreciation and a reduction in the corporate tax rate starting in 2028. Additionally, the coalition aims to improve the research & development tax credit and to expand tax incentives for electric vehicles.

The government draft published on 4 June 2025 is part of the immediate reform program that the federal government adopted on 28 May 2025. It includes staggered and partially time-limited tax relief measures, which, according to the financial projections, will increase from an initial EUR 630 million (2025) to up to EUR 17 billion in 2029.

To foster private investments, the declining balance depreciation is reinstated in sec. 7 para. 2 Income Tax Act (EStG). It is intended to apply to movable assets that are acquired or produced after 30 June 2025 and before 1 January 2028. This includes, for example, operating equipment, vehicles, or business and office equipment, but not real estate or intangible assets. A depreciation rate of up to 30% is planned, but no more than three times the straight-line depreciation rate. ▸

Highly anticipated first tax bill published by new government coalition

Continued from page 1

Subsequently, starting 1 January 2028, the corporate tax rate is to be reduced by 1% per year over five years, resulting in a rate of 10% by 2032. This would lead to an overall tax burden, including trade tax, for corporations of about 25%, which is more or less in line with the current average of other OECD countries. Additionally, the retained earnings tax rate for partnerships in sec. 34a EStG is to be reduced in several steps. The current rate of 28.25% is planned to be lowered to 27% for the assessment periods 2028 and 2029, to 26% for the assessment periods 2030 and 2031, and to 25% starting from the assessment period 2032.

To promote electric mobility, the draft also includes an optional special declining-balance depreciation for electric vehicles in fixed assets. This allows for fixed depreciation rates of 75% in the first year, followed by 10%, 5%, 5%, 3%, and finally 2% of the acquisition costs over six years, which is applied to the original acquisition costs each year. The specified sequence of depreciation rates leads to a full depreciation by the sixth year. The depreciation is to be applicable to all kinds of electric vehicles such as cars, trucks and busses which are acquired after 30 June 2025 and before 1 January 2028. Additionally, the gross list price limit for the preferential taxation of company cars for electric vehicles (a quarter of the assessment basis) is to be raised from EUR 70,000 to EUR 100,000.

Regarding the R&D tax credit, the draft includes an increase in the maximum assessment basis for eligible expenses from currently EUR 10 million to EUR 12 million starting in 2026. Additionally, there will be a flat-rate surcharge for overhead and other operating costs of 20% on the assessment basis, provided that the maximum assessment basis is not exceeded. The surcharge will be granted for all types of eligible expenses, such as personnel expenses, flat hourly rates for sole proprietors/shareholders of a partnership, acquisition costs of R&D related assets, and contract research.

The completion of the legislative process is planned to take place in July. However, it is still uncertain whether the governing coalition can count on the necessary support from the Federal Council (Bundesrat, upper house of parliament), where it does not have its own majority.

Contact: roland.nonnenmacher@de.ey.com

The coalition agreement of the new German government – highlights from a tax perspective

In a 146-page-long coalition agreement, the new German coalition under Chancellor Friedrich Merz outlined their program for the upcoming four years. From a tax perspective, the most important measures are already underway in the above-mentioned bill. However, several reform measures are about to follow until 2029:

- The minimum trade tax rate will rise from 7 to 9.8%.
- Germany will stay committed to the global minimum tax. It also supports international simplification efforts and aims at avoiding disadvantages for German companies in international competition.
- The solidarity surcharge remains unchanged.
- Electricity tax for all businesses is to be reduced to the European minimum rate.
- Income tax for small and medium-sized incomes is to be reduced by the middle of the legislative period.
- Tax incentives to increase individual work hours are to be introduced.
- The collection of import VAT is to be converted to a settlement model.
- The coalition states that it supports a financial transaction tax (FTT) at the European level. While it is expected that this will, eventually, not lead to the introduction of an EU FTT due to a lack of unanimity among EU members, this implies a certain risk in case of an unexpected FTT breakthrough at the EU level.
- The coalition announces that it will work on the simplification and digitization of the taxation process. however, the coalition agreement does not provide concrete measures in this regard.

The agreement also states that the coalition would consider the introduction of a fee for online platforms utilizing media content, which could be interpreted as a form of digital levy or tax. In late May, Federal Government Commissioner for Culture and the Media, Wolfram Weimer, mentioned in an interview that the German government was already working on a draft bill. However, in the following days it was clarified that this was not a coordinated initiative within the Federal Government. For the time being, Germany is not expected to push the digital levy as this would complicate the ongoing negotiations between the US and the EU on new tariffs and retaliatory US measures against pillar 2 and other EU taxes. A digital levy might realistically be back on the table only if these negotiations fail – and in that case, this would probably be an EU directive and not a unilateral German levy.

Contact: roland.nonnenmacher@de.ey.com

The coalition agreement of the new German government – highlights from a legal perspective

The coalition agreement contains plans for changes in different areas of law. We have summarized the most important measures.

Corporate law
To support start-up company creations the coalition plans to look into the establishment of a so-called start-up protection zone with i.a. simplified notarial actions and a one-stop-shop system for all applications.

The coalition agreement also provides for a reform of the Stock Corporation Law regarding deficiencies of shareholders' resolutions.

In context with the Anti-Money-Laundering Act the agreement envisages that legal entities without a beneficial owner documented in the transparency register shall not be entitled to take legal actions exceeding EUR 10,000. ▸

Legislation

Digital infrastructure
The coalition prioritizes digitalization and has already established a Ministry for Digitalization and State Modernization.

Digital law
The coalition plans to overhaul data protection supervision. The national implementation of the AI Act shall be innovation-friendly and minimize bureaucracy.

ESG
According to the coalition agreement the national Supply Chain Act (LkSG) shall be abolished and replaced by a law on international corporate responsibility. The reporting obligation under the LkSG will be abolished immediately. The European Supply Chain Directive (CSDDD) will be implemented in a low-bureaucracy and enforcement-friendly manner.

Foreign trade law
In the area of foreign trade law, the new federal government has committed to amend the Foreign Trade Act. The focus is on accelerating and simplifying review processes. A paradigm shift is aimed at export permit processes, moving away from continuous reviews to random checks, accompanied by severe penalties for violations.

Labor and social law
A comprehensive reform of labor law is not included in the coalition agreement. However, there is a trend towards the long-overdue flexibilization and digitalization of certain regulations, particularly regarding working hours, written form requirements, company constitution, and the determination of employee status. Maternity protection shall also be offered to self-employed people. Additionally, tax incentives are intended to counteract the shortage of skilled workers.

Public economic law
Although the coalition agreement is still unclear in many aspects, one thing is certain: The state will continue to play a decisive role in economic life, whether as a (de)regulator, provider of subsidies, so-called anchor customer or (co-)financier. Due to the special infrastructure fund and the easing of the debt brake for defense spending, the new federal government will also be able to spend significantly more money than previous federal governments. State aid and public procurement law are to be simplified and accelerated, thresholds standardized and raised for direct and negotiated procurements. The suspensive effect of legal remedies against the decisions of public procurement chambers is to be abolished. The nationwide expansion of charging infrastructure for cars and trucks shall be promoted.

Public law, planning and approval
Planning and approval processes are to be further simplified and accelerated. This is a genuine and significant cross-cutting issue for many areas – particularly for industrial facilities and infrastructure projects, as well as for renewable energy and climate protection initiatives. For example, cut-off regulations are to be introduced to determine the applicable legal framework in the process, and rights to sue and participate are to be reduced to directly affected parties. Acceleration potentials in the Federal Immission Control Act (BImSchG) shall be realized through the revision and simplification of the Technical Instructions on Air Quality (TA-Luft) and Noise (TA-Lärm). By legally establishing a "superior public interest," particularly for projects of the special fund for infrastructure, these projects are to be granted with increased enforceability against the relevant substantive legal requirements, following the model of the acceleration regulations of the Liquefied Natural Gas Acceleration Act (LNGG). This shall not only shorten permitting processes but also reduce the chances of legal challenges against such projects from the start.

Real estate
The coalition agreement promises changes regarding index rents and municipal pre-emption rights in share deals in neighborhood protection areas.

In addition, it provides for a revision of the Federal Building Code in two phases: implementation of a residential construction "turbo" followed by a fundamental reform to speed up construction.

The coalition also revisits topics from the previous legislative period as e.g. the Building Type E Act and rent control. On 28 May 2025, the German government already passed its law for an extension of the legal basis for the rent freeze until 31 December 2029.

Contact: martina.buhr@de.ey.com

Germany and the Netherlands revise double taxation agreement

Germany and the Netherlands signed an amendment protocol to the existing double taxation agreement (DTA) on 14 April 2025. Both countries agree, among other things, on changes to the dividend article and new regulations regarding remote work for cross-border commuters.

Like other DTAs concluded by Germany, the DTA with the Netherlands assigns the right to tax income from employment to the contracting state in which the work is performed. Remuneration for workdays in third countries, however, can be taxed by the state of residence only. The updated DTA now introduces a de minimis rule: If the activity is performed in whole or in part in the residence state or in a third country on less than 35 days, the other contracting state may tax the proportionate remuneration for those days. The new de minimis limit ensures that, for example, there is no change in the right of taxation for parts of the income if an employee occasionally works from home, thereby reducing the administrative burden for employers and tax authorities. However, this rule shall not apply to the extent that it contradicts the DTA of the residence state with a relevant third country. Furthermore, the amendment protocol specifically clarifies that remuneration for days of work release after termination of the employment relationship ("garden leave") is treated as remuneration for an activity in the contracting state where the work would have been performed without these circumstances.

Regarding fund investments, for the first time the term "collective investment scheme" will be included in the definitions, which includes German investment funds and special investment funds. Minor changes are also planned regarding the dividend article. This includes that the treaty privilege (reduction of withholding tax to 5%) does not apply to dividends paid by a Real Estate Investment Trust (REIT) or by or to a collective investment scheme. Such dividends are therefore subject to the regular withholding tax rate of 15%. According to changes in the protocol to the agreement, the provisions regarding the treatment of hybrid entities are explicitly intended to apply also in the case of the dividend article. Furthermore, the protocol to the agreement now incorporates an "atomistic perspective" at the treaty level, defining the term "income" to also encompass its individual parts of income.

Before coming into force, the DTA must be transformed into national law in Germany through an implementation act. Subsequently, the exchange of ratification instruments can take place, and the protocol enters into force on the last day of the month following the month of the exchange of ratification instruments. For example, if both countries were to exchange the instruments of ratification in November 2025, the amendment protocol would enter into force on 31 December 2025, and would generally be applicable as from 1 January 2026.

Contact: ruben.kunert@de.ey.com | ursula.beste@de.ey.com

Updated administrative guidelines on cross-border audit cooperation

Against the backdrop of the DAC7 Directive, the Federal Ministry of Finance (BMF) updated its position on joint audits, simultaneous audits, and the presence of tax officials from other countries in Germany and vice versa in a revised administrative guideline (BMF letter dated 15 May 2025).

Part I provides an overview of administrative cooperation forms and their legal basis, and Part II contains the actual regulations and descriptions. The information sheet distinguishes these forms from international advance agreements, risk assessments, and dispute resolution procedures.

Notably, the BMF states that, under the DAC7 Directive, a prior hearing of the involved parties is no longer required for joint or simultaneous audits with EU member states. Taxpayers will now only be notified by letter of the decision to conduct a joint or simultaneous audit, provided that the auditing authorities in Germany and abroad have no objections.

Therefore, the joint or simultaneous audit may be conducted secretly from now on. This reflects the new legal situation implemented in Germany as well.

The Central Liaison Office of the Federal Central Tax Office (BZSt) decides whether to inform the taxpayer by weighing the involved interests. Unlike in EU cases, taxpayers should be consulted in advance in joint audits with third countries.

Conversely, the guideline emphasizes that taxpayers may request a joint or simultaneous audit. For instance, this would be appropriate if the transfer pricing issue in question could lead to disputes over the tax base between the involved countries. This could occur, for example, in the case of cross-border IP transfers. However, the guideline reiterates that tax authorities are not legally obligated to conduct such audits and may reject taxpayers' requests.

The BMF asserts that information about how the audit is conducted cannot be demanded by legal action. Findings from a joint audit must be documented in a joint audit report. The report can include differing findings and interpretations of the facts by the participating tax authorities, but it is not required. A sample report is provided as an appendix. The report must be written in the language agreed upon.

Taxpayers will be informed of the results within 60 days of the report's completion and will receive a copy of the report with the notification. This new information sheet replaces the previous one on coordinated foreign tax audits (BMF letter dated 9 January 2017) and supplements the information sheet on mutual administrative assistance through information exchange (BMF letter dated 29 May 2019).

As expected, the BMF letter does not strengthen taxpayers' legal position in cross-border audits. Taxpayers cannot be certain that they will be informed about such audits, and their legal standing in proceedings is weaker than under national standards. Thus, taxpayers should pay close attention, especially when similar tax audits occur simultaneously in multiple EU member states.

Contact: juliane.sassmann@de.ey.com | nevada.melan@de.ey.com

Federal Tax Office publishes amended view on German anti-treaty shopping rule

On 17 March 2025, the German Federal Central Tax Office (BZSt) published an update to the fact sheet on the eligibility for an exemption or refund of withholding tax (WHT), applicable to dividends under the German anti-treaty shopping rule.

The fact sheet does not provide new insights on the requirements for objective eligibility for a relief (eligibility based on own activity and substance) or for the alternative "main benefit" test (which allows the taxpayer to prove the absence of a tax motivation for an interposed entity). However, it gives important insights on the personal eligibility for a relief and the stock exchange clause. In this regard, the fact sheet's interpretation now agrees (again) with 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. This view seems closer aligned with the wording of the German anti-treaty shopping rule and the relevant jurisprudence of the European Court of Justice (ECJ).

The fact sheet is especially relevant for taxpayers with higher-tier shareholders residing outside of the European Union (EU) to which the benefits of the EU Parent Subsidiary Directive are not directly available. So far, the updated fact sheet is only relevant for dividend WHT and it remains to be seen whether the fact sheet for WHT relief for royalty payments will be updated accordingly. The new interpretation based on the fact sheet should nonetheless be helpful in discussions with the BZSt regarding royalty cases.

For more details, please refer to our *EY Global Tax Alert dated 20 March 2025*.

Contact: katja.nakhai@de.ey.com | carola.wehling@de.ey.com

Revised BMF application letter on German interest barrier rules leads to changes in deductibility of interest expenses

On 24 March 2025, the German Federal Ministry of Finance (BMF) published its revised application letter on the German interest barrier rule. The new decree applies for financial years beginning after 14 December 2023 which do not end before 1 January 2024. For matters referring to previous financial years, the former decree of 2008 remains applicable.

In the updated application letter, the BMF summarizes its current interpretation of the new German interest limitation rules. The rules were amended at the end of 2023 to align the German interest barrier rule to the Anti-Tax-Avoidance Directive (ATAD). Although Germany is considered one of the first jurisdictions to apply interest limitation rules, the former rule did not fully comply with the ATAD in all aspects. Therefore, Germany used a transitional period for the required changes of the law. With the amendment and the broadened definition of interest, the changes have tightened interest deductions in Germany.

The main part of the decree covers the new definition of interest and outlines which categories shall be considered interest expenses and interest income. Since the definition of interest expenses in German tax law includes an explicit reference to the definition of the ATAD, the BMF has included the relevant catalogue of borrowing costs as defined by the ATAD. In this respect, the BMF concludes that not only regular interest should fall under the revised definition of interest expenses but also costs associated with borrowing, such as financing fees. This expansion leads to the recognition of more expenses under the interest barrier rule, thereby increasing the tax burden for many companies.

The BMF asserts that expenses and income should be treated equally, meaning that all expenses classified as interest by the payer will be considered interest income for the recipient. However, this interpretation lacks absolute legal certainty since the decree is not binding for fiscal courts.

The final letter also confirms that expenses related to the depreciation of capitalized interest (e.g., capitalized financing costs being part of the production costs) will be classified as interest under the interest barrier rule, but only for interest expenses capitalized in fiscal years starting after 14 December 2023 and not ending before 1 January 2024. This provision is particularly beneficial for the real estate sector, as it avoids the need for complex reviews of historical production costs to identify interest components under a specific relief possibility.

Contact: steffen.hoehl@de.ey.com

German BMF publishes draft decree on the application of the German restructuring privilege

Under the German change of ownership rules, a transfer of more than 50% of the shares in the loss-carrying corporation to a single acquirer, to a related party or to a group of acquirers acting in concert generally results in a forfeiture of the entire tax losses carried forward for corporate income tax and trade tax purposes as well as current year tax losses. Besides the built-in gains exception and the group exception, the German change of ownership rules provide for an additional exception if the shares are acquired for the purposes of a business restructuring (so-called restructuring privilege). Provided that the requirements of the restructuring exception are fulfilled, the share transfer is disregarded for determining the relevant threshold for a harmful change of ownership. Therefore, any tax losses carried forward and current year tax losses available at the time of the share transfer should be preserved.

While there has been little official guidance available on the application of the exception rule, the German Federal Ministry of Finance (BMF) published a draft decree regarding the restructuring privilege on 24 March 2025. The draft letter includes detailed explanations on the specific requirements for the application of the exception rule.

For an acquisition to qualify for purposes of a business restructuring, evidence of such intention is required. The draft decree outlines that such evidence can be provided inter alia in the form of a restructuring plan prepared for the purposes of insolvency law or an expert opinion on the restructuring (prepared in accordance with specific standards from the German Institute of Public Auditors).

One of the key criteria to apply restructuring privilege is the maintenance of the essential operational structures of the loss-carrying corporation. According to the law, this can be achieved by e.g. contributing a significant amount of business assets (at least 25% of the total assets of the tax balance sheet of the preceding fiscal year) within 12 months after the share transfer. In this respect, the BMF stipulates that the waiver of liabilities qualifies as relevant contribution to the extent the underlying receivable is recoverable. Furthermore, the BMF notes that reorganizations at the level of the loss-carrying corporation (e.g., contribution of a separate business unit) shall only be considered with the value recognized under the German Reorganization Tax Act (tax book value, intermediate value or fair market value). This should apply irrespective of the actual value of the assets and liabilities transferred.

Stakeholders had the opportunity to comment on the draft decree until 5 May 2025. The German BMF has not indicated when the review of the opinions submitted will be completed and when a final version of the decree can be expected.

Contact: steffen.hoehl@de.ey.com

German Ministry of Finance published administrative guidance on transaction matrix

In 2024, the German legislature introduced changes to the scope of the German transfer pricing (TP) documentation and its filing requirements. A taxpayer needs to submit a transaction matrix without further notice within 30 days after the tax audit order has been received effective 1 January 2025. The changed rules apply for all open tax years that are subject to a tax audit.

In addition to internally well-known data points for a transaction matrix (e.g., transacting parties, jurisdictions, type of intercompany transaction, currency and value), the justification of the law suggests additional data points such as TP method applied, contractual basis, subject to ordinary taxation. As per the law, the data requirements are supposed to be defined in the executive order on TP documentation (Gewinnabgrenzungsaufzeichnungsverordnung) that is still outstanding.

In the meantime, on 2 April 2025, the German Ministry of Finance (BMF) published administrative guidance on the transaction matrix to clarify some key points.

The BMF stresses that the transaction matrix requirement also applies for previous tax years if a tax audit order issued in 2025 is subject to examination periods prior to 2025. Therefore, companies should understand the timing, scope and extent of the changed rules and evaluate the significance of changes and established practice in their organizations.

For more detailed information, please refer to the *EY Global Tax Alert dated 10 April 2025.*

Contact: cornelia.wolff@de.ey.com

Update on developments around Pillar 2 in Germany

Global minimum tax entered into force in Germany in late 2023, and the 2024 year end was the first time that German groups were required to perform detailed calculations in this respect. However, "Pillar 2" faces strong opposition, particularly from the US, and there have been some initiatives in Germany advocating for its abolition or at least a temporary pause. Nevertheless, the newly formed German government has confirmed in the coalition agreement that it continues to support the global minimum tax while striving for simplification and ensuring at the European level that no disadvantages are created for German groups. Drafts of a minimum tax legislation adjustment law have been published in the past, and a bill is expected to be implemented by the new government later this year. The law is anticipated to primarily include the German implementation of further agreed administrative guidance published by the OECD.

Accordingly, implementation measures regarding the global minimum tax continue at both the national and European levels. In particular, a new directive has been approved as an addition to the existing "Directive on Administrative Cooperation (DAC)", referred to as DAC9. This directive must be implemented into domestic law by the end of 2025. A German draft for implementation legislation is not yet available. Essentially, the directive introduces a new standard form in line with the GloBE Information Return (GIR) as developed by the OECD, and provides the mechanism for exchange of relevant data between EU member states. It aims to standardize and reduce the multi-country filing obligations of groups subject to the global minimum tax. ▸

German tax authorities

In addition, the German Ministry of Finance (BMF) published on 3 April 2025 a circular regarding the treatment of tax-transparent entities for Country-by-Country Reporting (CbCR) and CbCR Safe Harbour purposes. Tax-transparent partnerships – which are widely used in Germany – must be included in the CbCR of a group and must also be considered for global minimum tax purposes. The desired treatment of partnerships is explained in four cases summarized below:

- Domestic non-trading partnerships are treated as stateless; their financial data is allocated to the partners (Case 1).
- The financial data of domestic trading partnerships (i.e., those with income from business activities) is allocated to the permanent establishment created by them for its partners, except for equity and retained earnings. In purely domestic cases, financial data may be recognized at the level of the partnership (Cases 2 and 3).
- Foreign partnerships that have foreign partners and are not subject to an income tax comparable to the German trade tax are treated as stateless; their financial data is allocated to the partners (Case 4).

It is expected that further circulars will follow, detailing the interaction between the particularities of German tax law and the systematic approach of the global minimum tax.

Contact: dirk.nolte@de.ey.com | philipp.borchert@de.ey.com

BMF draft decree clarifies key changes to the German Investment Tax Act introduced by the Growth Opportunities Act and the Annual Tax Act 2024

The German Federal Ministry of Finance (BMF) published on 3 April 2025 a draft decree which essentially clarifies the changes to the German Investment Tax Act (InvStG) introduced by the Growth Opportunities Act from the perspective of the German tax authorities and their impact on existing and future fund structures.

The Growth Opportunities Act, effective 27 March 2024, amends Sec. 2 (9a) of the InvStG to tighten the rules regarding the (foreign) real estate partial exemption for investors. This exemption is disallowed if the income from rental, leasing, or disposal by the investment fund or an intermediary is either not taxed or more than 50% exempt. The draft BMF circular clarifies this regulation and provides examples which investment structures continue to qualify for the (foreign) real estate fund quota and the scenarios that may lead to a change or loss of the exemption, including fictional disposals at the investor level.

According to the BMF draft, a low or reduced tax rate in the property's country of residence does not exclude it from the (foreign) real estate fund quota. Additionally, it permits the inclusion of a tax-exempt (foreign) real estate company with a minimum distribution quota of 90% and a withholding tax burden of at least 15% in the quota. However, claw-back taxation related to property disposals is insufficient for inclusion in the (foreign) real estate fund quota. Further, the initial application of Sec. 2 (9a) InvStG shall be postponed to 1 January 2026.

Changes in value from the disposal of shares in domestic and foreign corporations after 27 March 2024 which are based on more than 50% of domestic real estate (domestic real estate corporations) will be subject to taxation at the fund level for the first time since the enactment of the Growth Opportunities Act. The BMF draft includes simplification rules for publicly traded shares or shares admitted to trading on an organized market as well as for participations of the investments of the fund with less than 25% of the nominal capital.

For investment funds subject to limited tax liability, the BMF draft provides relief for the disposal of domestic real estate by domestic real estate corporations if the required participation threshold of 50% is not met. In this case, the statutory recognition of hidden reserves will only occur if the participation in the domestic real estate corporation is actually disposed of within 365 days.

Additionally, the Annual Tax Act 2024 extends the five-year liquidation phase, during which distributions of investment funds can be treated as tax-free capital repayments at investor level, to ten years.

Contact: frederik.wolf@de.ey.com | christian.wahlster@de.ey.com

German Constitutional Court upholds "solidarity levy"

Corporate and higher-income individual taxpayers in Germany are subject to a mandatory "solidarity levy" (Solidaritätszuschlag) amounting to a 5.5% surcharge on their regular income tax bill, which was introduced in the 1990s to meet the costs of German reunification. In the recently decided Constitutional Court case (dated 26 March 2025, case reference 2 BvR 1505/20), the claimants had argued that more than 25 years after its introduction, the solidarity levy could no longer be justified with a temporary and extraordinary need for fiscal revenue related to the German reunification and hence had become unconstitutional. The court rejected this argument and pointed to the fact that several studies still supported an ongoing additional financing need caused by the German reunification. As long as such additional financing need existed, the solidarity levy was to be regarded as constitutional. The court also confirmed that there was significant political discretion to decide on whether such financing need existed. Separately, the court also confirmed that the limitation of the solidarity levy application to high income-individual taxpayers could be justified with the principle of taxpaying ability.

Contact: christian.ehlermann@de.ey.com

Interest on German withholding tax levied in violation of EU law

Foreign companies seeking tax refunds for German withholding tax (WHT) are currently facing significant delays in the refund process. As of 2024, the average processing time for these refund procedures has reached nearly two years (615 days). Under German domestic tax law, both resident and non-resident taxpayers are not entitled to interest on German WHT levied.

However, in a recent decision dated 25 February 2025 (case reference VIII R 32/21) and published on 15 May 2025, the German Federal Tax Court (BFH) ruled that foreign companies eligible for a refund of German WHT on profit distributions are entitled to interest under EU law if the refund is withheld in violation of EU law.

In the case in question, an Austrian parent company received profit distributions from its German subsidiary. The Federal Central Tax Office (BZSt) initially rejected the refund claim under the Parent-Subsidiary Directive. Subsequently, the European Court of Justice (ECJ) ruled in the cases of Deister and Juhler Holding (20 December 2017, C504/16 and C613/16) that the German anti-treaty and directive shopping provision (Sec. 50d para. 3 of the Income Tax Act (EStG), in its version until 2012 respectively until 2021) violated EU law. Following the ECJ decision, the BZSt refunded the German WHT on the profit distributions. The Austrian parent entity then claimed interest on the refunded German WHT due to this violation of EU law.

The BFH confirmed that the Austrian parent was entitled to interest as a result of the violation of EU law. According to the BFH, the interest period begins three months after the submission of a formally correct and complete refund application and ends on the day the refund amount is repaid to the taxpayer. The interest for the respective periods must be calculated to the day and at a rate of 6% p.a. for interest periods until 1 January 2019. In the case at hand, the BFH did not need to determine whether the interest rate of 6% applies to interest periods from 1 January 2019 onwards, as the repayment – and thus the end of the interest period – occurred in 2018. From 1 January 2019 onwards, the ▸

interest rate for specific cases has been reduced to 1.8% p.a. However, it has not yet been decided whether the general interest rate of 6% p.a. or the reduced interest rate of 1.8% will apply.

Taxpayers who are currently claiming a tax refund of German WHT on profit distributions or who have already received a refund within the last two years should assess their eligibility for interest on the German WHT. As noted, such an interest claim requires a violation of EU law. Given the (excessively) long procedures for withholding tax refunds, there are compelling arguments that these delays may constitute a violation of the principle of effectiveness under EU law, leading to interest claims for foreign taxpayers.

Whether third countries (i.e., non-EU/EFTA states) may also rely on a violation of the free movement of capital – the only freedom that also protects non-EU/EFTA states – is currently under consideration by the BFH (case reference VIII R 21/22). If the BFH rules in favor of the taxpayer, then non-EU/EFTA states may also be entitled to claim interest on German withholding tax.

Contact: katja.nakhai@de.ey.com | jakob.auer@de.ey.com

BFH allows sales- or profit-dependent bonus deduction for AG shareholder/director

German case law has traditionally created high hurdles for deducting any kind of profit- or sales-dependent employment compensation to an owner/manager in a German GmbH, and, especially where the manager/director controlled – alone or with related parties – the GmbH, often recast such compensation as a non-deductible deemed dividend. In a case dated 24 October 2024 (case reference I R 36/22), the BFH had to decide whether the same principles applied in an AG situation, where a minority shareholder, who was a director (Vorstand) of the AG at the same time, received a profit- and sales-related bonus. Due to the structural governance differences between an AG and a GmbH, where in an AG, contrary to the GmbH, a supervisory board exists which is independent from the AG's directors and which decides on compensation matters, the court held that the strict principles established for GmbH shareholder/director compensation did not apply in an AG context, unless in a particular case the supervisory board's decision only followed the specific director's interests.

Contact: christian.ehlermann@de.ey.com

BFH extends the recognition of a partnership holding company as a controlling company within the framework of an income tax group

A partnership with management in Germany can be a controlling company within the framework of an income tax group if it carries out a commercial activity as defined by the Income Tax Act. It has been disputed whether a partnership engaged purely in management activities fulfils the requirement for such commercial activity. The tax authorities do not consider purely managerial activities to be sufficient but require the partnership to engage in its own commercial activity, for example by providing services to its subsidiaries in return for payment (see Ministry of Finance letter dated 10 November 2005, margin number 18). The Federal Tax Court (BFH) has now contradicted this (decision dated 27 November 2024, case reference I R 23/21). For the BFH, it is sufficient if the partnership acts exclusively as a managing holding company. Intra-group services provided for remuneration or other additional commercial activities are not required in such a case.

However, the management activity must be recognizable to outsiders, according to the BFH. This can be achieved, for example, by issuing guidelines on business policy for the controlled companies, by written instructions to them or by joint meetings and consultations. The mere exercise of shareholder rights that does not indicate any substantial influence on the operating business of the associated companies is not sufficient. Whether the requirements are met must be examined in each individual case, taking all circumstances into account.

In the underlying case, a partnership held interests in a total of nine subsidiaries. It did not provide any operating services of its own and did not have any personnel of its own. In its assessment, the BFH relied heavily on the minutes of the management meetings held every 14 days. According to these minutes, day-to-day business was discussed, and measures were decided upon to improve margins and adjust training, and even details of day-to-day business were agreed upon and implemented.

The BFH expressly left open in its ruling whether a managing holding company can only be regarded as commercially active if it manages at least two subsidiaries, as this was given in the underlying case.

If the tax authorities do not amend their opinion as expressed in the Ministry of Finance letter of 10 November 2005, taxpayers should consider bringing similar cases before a tax court themselves.

Contact: klaus.bracht@de.ey.com

BFH rules losses from write-downs of shareholder loans as deductible in a case where the lender was an asset-managing partnership

In the case I R 21/22, the plaintiff, a GmbH, had a 2.02% stake in an asset-managing limited partnership (KG) which was primarily involved in managing assets. The KG held 100% of the shares in two GmbHs, which became insolvent in fiscal year 2015. The KG wrote off its investments in these GmbHs and also recorded losses from loans it had granted to them. However, the tax office not only treated the loss from the write-off of the shareholdings, but also the loss from the write-off of the shareholder loans as non-deductible for tax purposes.

Under German corporate income tax law, losses of corporate shareholders suffered from write-offs of the shares are generally non-deductible. Losses from shareholder loans are non-deductible as well if the loan-granting shareholder holds a stake of more than 25% directly or indirectly in the debtor (Sec. 8b para 3 sent. 4 et seq. German Corporate Income Tax Act, KStG), unless it is documented that the loan grant met a third party-test. ▸

German court decisions

In its decision dated 27 November 2024, the court held that Sec. 8b para 3 sent. 4 KStG is to be interpreted in a way that where an asset managing partnership is the shareholder and lender, the individual participation quotas of the entities involved in a partnership, rather than the partnership itself, are relevant for the determination whether the 25% threshold of the rule is fulfilled. This means that in the given case, due to the plaintiff's minor stake (2.02%) in the KG, Sec. 8b para 3 sent. 4 KStG does not prevent the claimant from deducting the loss from the write-down from its tax base.

This provides clarity on how Sec. 8b Abs. 3 Satz 4 KStG is to be applied in practice, in particular in cases where asset managing partnerships are used as pooling vehicles for investors in German corporate entities. To the extent the pooling entity is held by shareholders owning indirectly 25% or less in the respective corporation, the pooling entity may grant financing to the corporations without an inherent risk of non-deductibility of losses from write-offs in case of financial distress of the German corporations.

Contact: stefan.m.mueller@de.ey.com

German Federal Tax Court rules on tax consequences of parallel imports in pharmaceuticals industry

On 2 May 2025, the German Federal Tax Court (BFH) published a ruling (dated 11 December 2024, case reference I R 41/21) addressing the tax consequences for German distribution entities of foreign multinational pharmaceutical groups with respect to so-called parallel imports of (original) pharmaceutical products in Germany.

Parallel importers purchase original pharmaceuticals from wholesalers in European Union (EU) member states with a relatively low price level for resale in another member state (e.g., Germany) with a relatively high price level. Thus, parallel importers act as competitors of the pharmaceutical group's respective national distribution entities. German pharmacies are legally required to source a portion of original pharmaceuticals from parallel importers if they are significantly cheaper (Sec. 129 para. 1 sentence 1 no. 2 SGB V). Consequently, pharmacies decide whether to provide patients with products from parallel importers or German distributors. In practice, a dispute ensues between taxpayers and German tax authorities as to whether the German distribution entity is entitled to additional remuneration for parallel imports.

Reversing the decision of the lower tax court in Nuremberg (ruling dated 20 July 2021, case reference 1 K 1388/19), which had denied the possibility of an income adjustment, the BFH confirmed that an income adjustment (constructive dividend) could apply in such cases. The marketing activities performed by the German pharmaceutical distribution entity (unintentionally) increase the sales of parallel imports in Germany and, therefore, increase the profit of the foreign parent entity. This means that the foreign parent entity, as shareholder, benefits by saving on marketing expenses if the German pharmaceutical distribution entity is not appropriately remunerated for the marketing activities of parallel imports. Accordingly, this can result in an income adjustment for the German pharmaceutical distribution entity, the BFH concluded.

However, the BFH could not make a final assessment because the legal examination by the lower tax court was insufficient. Therefore, on remand, the lower tax court must (1) first determine whether an income adjustment (constructive dividend) in principle applies for the case at hand and (2) if the answer to the first question is yes, address how the income adjustment amount should be determined.

It remains to be seen if, and to what extent, the lower tax court will consider the so-called "synthetic approach" in this regard. The synthetic approach is frequently applied to determine transfer prices for German pharmaceutical distribution entities of foreign groups. Applying this concept, all marketing expenses of the German pharmaceutical distribution entity, including mark-up, are already subject to an arm's-length remuneration, which would essentially not leave any room for an income adjustment amount.

Contact: simone.walk@de.ey.com | oliver.wehnert@de.ey.com

BFH rules on how an atypical silent partnership with the respective contractual partners of a fiscal unity affects the recognition of a fiscal unity for income tax purposes

An atypical silent partnership is a special form of partnership under German company law. Despite the "silent" (i.e. undisclosed) participation, the atypical silent partner is treated as a partner for tax purposes.

Atypical silent partnership in the subsidiary
In its ruling of 11 December 2024 (case reference I R 33/22), the Federal Tax Court (BFH) ruled that a corporation can also be a subsidiary within the framework of a corporate tax group if it has to transfer a share of its profits to an atypical silent partner. In the case in question, the parent company itself had an atypical silent participation in the entire business of the subsidiary.

The lower court, referring to previous tax court rulings and statements by the tax authorities, held that an atypical silent participation in the subsidiary precluded recognition of the tax group because not the "entire profit" was transferred, as required. The BFH disagreed with this view, referring to the determination of profits according to commercial law principles, whereby the profit share of the atypical silent partner must be recognized as an expense. The remaining annual surplus then represents the "entire profit" that must be transferred.

The BFH did not have to comment on the effects on the trade tax group in the present case. In this context, the BFH previously held that atypical silent participation in the subsidiary precludes recognition of the trade tax group (BFH ruling of 25 October 1995, case reference I R 76/93). The BFH has now limited this blanket denial of the legal consequences of the trade tax group in its second ruling of 11 December 2024 (case reference I R 17/21) to the effect that a trade tax group is at least possible if the atypical silent partner only participates in one of the business areas of the subsidiary in the case of several objectively sufficiently distinct business areas.

Atypical silent participation in the parent company
In its ruling of 11 December 2024 (case reference I R 17/21), the BFH also dealt with atypical silent participation in the parent company. This issue is controversially discussed in the literature. At least in the special case presented to the BFH (participation of partners in individual branches of the parent company), atypical participation in the parent company does not appear to preclude income tax recognition of the fiscal unit.

In the present case, the atypical silent partners only participated in the profits and losses and the hidden reserves of the respective branches and not in the "entire company" of the parent company. This means that the parent company, as the owner of the commercial enterprise, may have retained a separable business area in which no other persons are involved under civil or tax law. In the opinion of the BFH, the participation in the (respective) subsidiary can be allocated to such a "free" business area.

Due to insufficient fact finding, the BFH was unable to make a final assessment of the case, which is why the lower tax court must deal with the case again.

Legal uncertainties therefore remain regarding atypical silent participations in the parent company. This is because the recognition of the fiscal unity is not precluded only in the special case at hand (atypical silent participation in certain branches).

Taxpayer should, therefore, carefully consider the risks of establishing atypical silent partnerships in case of a fiscal unity.

Contact: klaus.bracht@de.ey.com

German Federal Tax Court on the income adjustment for permanent establishments under Sec. 1 (5) Foreign Tax Act

In two rulings, the German Federal Tax Court (BFH) clarified that the determination of profits of a domestic dependent permanent establishment (PE) cannot be rejected solely on the basis of Sec. 1 (5) Foreign Tax Act (AStG) and that a reallocation of profits cannot be carried out, as Sec. 1(5) AStG is a pure income adjustment provision and not an income determination rule for PEs.

Regarding the allocation of profits between the head office and the PE, Sec. 1(5) AStG's national implementation of the Authorized OECD Approach (AOA) provides a legal fiction of independence for PEs. According to this approach, the arm's length principle applies to "dealings" between the parent company and the PE.

In the first case, a Hungarian corporation (parent company) provided third parties with services under work contracts through a permanent establishment. Apparently, the German PE of the corporation passed on its own construction and assembly service costs to the Hungarian parent company without adding a surcharge. However, the tax office assumed that there was a "dealing" between the PE and the parent company without further investigation. Therefore, it rejected the profit determination with reference to Sec. 1(5) AStG and recalculated the PE's profit, taking into account a fictitious surcharge of 10%. In its ruling of 18 December 2024 (case reference I R 45/22), the BFH confirmed the decision of the lower court of Nuremberg (judgment of 27 September 2022, case reference 1 K 1595/20) in principle and saw no evidence of a "dealing." Therefore, it rejected the use of fictitious surcharges. According to the BFH, Sec. 1(5) AStG is a pure income adjustment provision, not an independent provision for determining PE profits. Therefore, Sec. 1(5) AStG does not justify rejecting the determination of a PE's profits without further investigation and replacing it with a determination based on a cost-oriented transfer pricing method. Furthermore, the wording cannot be interpreted as having any knock-on effect outside the scope of Sec. 1 AStG, particularly with regard to the general determination of profits under Sec. 4 et seq. Income Tax Act (EStG), a causality test would have to be carried out solely on the basis of the personnel functions performed by the respective parts of the company.

Additionally, the BFH explicitly states that Sec. 1(5) AStG is not a general provision requiring a (re)allocation of profits in accordance with the principles described therein. Rather, an off-balance sheet adjustment must be made only if the actual circumstances deviate from the fictitious conditions expected vis-à-vis third parties at the expense of domestic taxation.

The BFH also ruled on these principles in a second decision dated the same day (judgment of 18 December 2024, case reference I R 49/23 (NV), previous instance Munich tax court, judgment of 10 July 2023, case reference 7 K 1938/22).

Contact: juliane.sassmann@de.ey.com | nevada.melan@de.ey.com

BFH judgments on permanent establishment creation provide further insight on "fixed presence" and "permanence" criteria

Two recent judgments of the German Federal Tax Court (BFH), both dating from 18 December 2024, provide interesting insights into the criteria needed for establishing a business permanent establishment (PE) in a cross-border context.

In the first judgment (case reference I R 47/21), a sole entrepreneur, who had a taxi business, lived in Germany, but used the facilities of a shared taxi office in Switzerland. In this office, the taxpayer used shared desks, communications equipment, and he had a locked file container, where he kept his bookkeeping files. The BFH confirmed that in particular the file container constituted such personal "fixed" structure that a fixed presence over which the taxi entrepreneur had power of disposal existed in Switzerland. Moreover, the BFH found that by engaging in administrative and bookkeeping work from the Swiss office, the taxpayer had actually managed his business from Switzerland, and not just engaged in auxiliary activities that would have led to no PE being assumed under the German/Swiss tax treaty despite the fixed presence. As a consequence of the judgment, the income from the taxi business was to be solely taxable in Switzerland and exempt from German taxation.

The second case (case reference I R 39/21) deals with a gold-trading German resident individual, who had set up an office in the UK to engage in certain gold trades. While the trading activity was indisputably carried out from the UK office, the actual trading activity (time between first acquisition and last sale) was less than 6 months in total; the liquidation of the UK office however took longer. The taxpayer claimed the existence of a UK permanent establishment, to which all gold trading income was allocable and therefore to be exempt in Germany under the UK-German tax treaty (under applicable German law at the time, for purposes of applying the German progression clause, the investment in gold could effectively reduce your ETR for the fiscal year to zero, which may have been the desired effect of the structure).

The BFH decided against the taxpayer in this case, as, in the BFH's view, a fixed presence PE always required a minimum of 6 months of business presence in the foreign jurisdiction, and only actual trading activities were to be considered for determining the 6-month period, not mere administrative liquidation or unwinding actions. This would apply even if the whole business activity as such was short-term, did not exceed 6 months, and was exclusively carried out in the other country.

Contact: christian.ehlermann@de.ey.com

(Tax-effective) Contributions in the context of an economic re-establishment

A recent ruling by the Federal Tax Court (BFH) clarifies how capital contributions are treated when a previously inactive entity is economically re-established – especially with respect to the tax capital contribution account (TCCA), up to which distributions can be made tax-free in Germany.

In the case reviewed, a German stock corporation (AG) had ceased operations and was essentially a legal shell. It only had a small bank balance, a significant loss carryforward, and subscribed capital stock (EUR 50,000), of which 75% had not yet been paid in (EUR 37,500 outstanding contributions). A new shareholder acquired all shares and initiated a restart of business activities, which German law refers to as an "economic re-establishment." Together with filing an economic re-establishment with the commercial register, the shareholder transferred EUR 12,500 to the company's account to meet capital requirements, labeled as a 25% capital contribution.

The tax authority classified this payment as a renewed contribution to the subscribed capital stock (i.e. as a payment of outstanding contributions) and excluded it from the tax contribution account (only contributions to e.g. the capital reserve are considered here, but not contributions to the nominal capital).

However, the BFH did not follow the view of the tax authority (ruling of 25 February 2025, case reference VIII R 22/22). The court ruled that the payment was not meant to settle initial capital stock obligations but was a fresh contribution to fulfill the requirements for the filing of the commercial re-establishment. According to the BFH, a contribution obligation fulfilled previously by the founder cannot be "revived" in the case of a commercial re-establishment. As such, the payment is to be classified as a contribution to the capital reserve and included in the TCCA, therewith making it eligible for future tax-free return of capital contributions (i.e., an increase in the TCCA under Sec. 27 (1) of the German Corporate Income Tax Act (KStG)). The wording in the bank transfer was deemed irrelevant.

This decision is important for foreign investors using German shelf companies or restarting dormant entities.

Contact: kerstin.bangen@de.ey.com | vivien.j.mayer@de.ey.com

Regional tax court of Duesseldorf rules that advisor costs for the sale of a sub-subsidiary are immediately deductible

After the completion of a transaction (buy-side / sell-side), the tax treatment of the advisor costs incurred in connection with the acquisition / disposal is often scrutinized by the German tax authorities. While the taxpayers prefer the deduction as ordinary business expenses, the German tax authorities typically qualify such costs as ancillary acquisition costs or disposal costs, which are not tax deductible.

In its decision dated 26 February 2025, the regional tax court of Duesseldorf (case reference 7 K 1811/21 K) held that advisor costs can be immediately deducted at the level of the parent entity. The decision was made on a sale of a sub-subsidiary by a subsidiary with the advisor costs being incurred at the parent level. Those costs were incurred in the parent's own name and for its own account. The parent and subsidiary formed a tax group for German corporate income tax and trade tax purposes. The regional tax court of Duesseldorf had to decide whether the advisory costs incurred at parent level were tax deductible or not.

The court ruled that the advisor fees should be immediately deductible. In the decision it emphasized inter alia that the advisor fees do not qualify as hidden contribution from the parent into the subsidiary since there is no contributable asset which could be recognized at the subsidiary level nor as disposal-related costs, since the parent entity did not realize ▸

the sale. The judgement is not affected by the fact that the parent and subsidiary were part of the same income tax group since the taxable income transferred from the subsidiary to the parent did not include any advisor costs which may be subject to the participation exemption under which actual disposal costs incurred are treated as non-deductible. Moreover, the court noted that no reimbursement obligation arises for the subsidiary under agency law, as the parent acted independently and without intent to claim reimbursement.

The ruling is significant for M&A transactions, confirming that group parents can deduct advisory costs for disposals (and likely also for acquisition scenarios) of lower-tier subsidiaries – provided that they act in their own name and interest, among other things. An appeal is pending before the Federal Tax Court (I R 7/25), and similar cases may be suspended pending its outcome.

Contact: steffen.hoehl@de.ey.com

Taxation of carried interest under the Germany–US Double Tax Treaty

In its decision dated 8 October 2024 (case reference 3 K 37/22, EFG 2025, 389), the Schleswig-Holstein tax court addressed the classification of "carried interest" under the Germany–US Double Taxation Treaty (DTT). The case involved a German tax resident who received a carried interest distribution through a transparent US partnership structure. The dispute focused on whether carried interest, although taxed as self-employment income under German domestic law, should instead be treated as capital gains or other income under the DTT.

Contrary to the taxpayer's position, the court concluded that the income does not qualify as "business profits" (Article 7 DTT, which generally includes income from self-employment), which would have granted taxing rights to the US. Instead, Germany retains the right to tax – potentially leading to economic double taxation if the US also asserts taxing rights based on their interpretation.

Carried interest has long been debated in Germany. Initially considered tax-free, the introduction of Sec. 18(1) No. 4 of the German Income Tax Act (EStG) in 2004 established a partial tax liability (50%, later 60%) for carried interest from asset-managing partnerships.

In the case at hand, the carried interest was derived from a US-based LLC classified as a transparent partnership under both US and German tax principles. The income was reported under Sec. 18(1) No. 4 EStG as self-employment income.

The court emphasized that Sec. 18(1) No. 4 EStG constitutes a domestic legal fiction. While carried interest economically stems from the asset management sphere, German law reclassifies it as self-employment income for German tax purposes. This reclassification, however, does not extend to treaty interpretation according to the court. Therefore, the carried interest does not fall under Article 7 DTT (business profits), but rather under Article 13(5) (capital gains) or Article 21 (other income). As a result, Germany retains the full taxing right.

Although the ruling aligns with the position of the German Federal Tax Court (BFH) on the domestic qualification of carried interest as profit allocation, the BFH will now have to determine the appropriate treaty classification (pending appeal I R 24/24).

Fund managers/initiators and their tax teams should monitor the outcome closely. Particular attention should be paid to the income classification, the existence (or absence) of a permanent establishment, and the consistency of tax reporting across jurisdictions.

Contact: martin.neutzner@de.ey.com | korbinian.wintermeier@de.ey.com

Federal Labor Court rules that remuneration obligation ceases during a release period only if continued employment was unreasonable

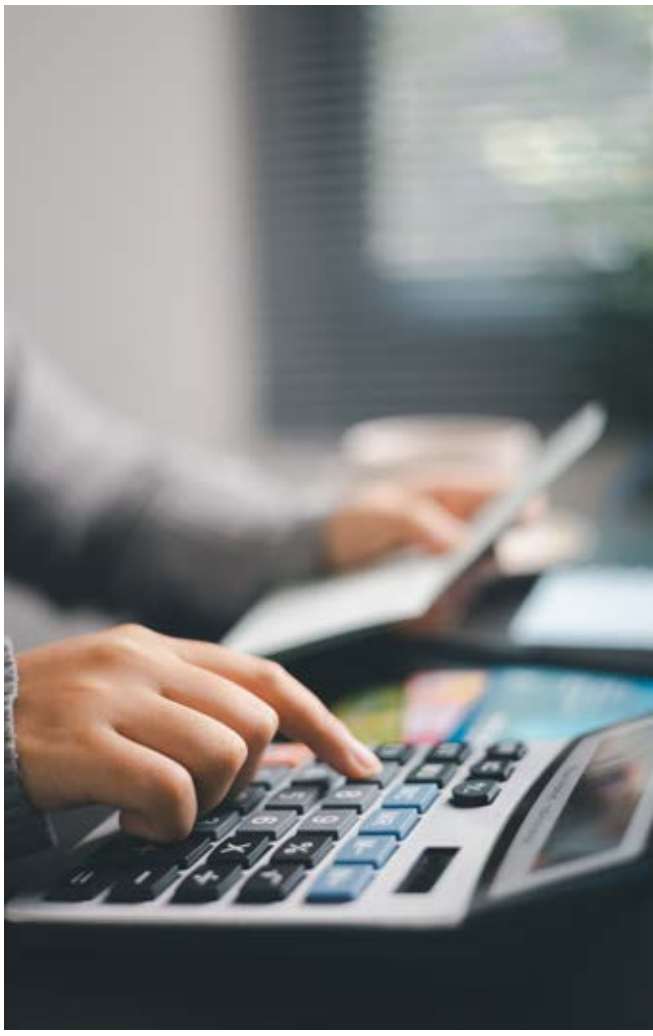
Employers cannot simply stop salary payments if released employees do not seek new employment within their notice period. This was decided by the Federal Labor Court (BAG) in a ruling on 12 February 2025 (case reference 5 AZR 127/24).

The plaintiff received ordinary notice of termination from his employer. The employer irrevocably released the plaintiff from performing his work while continuing to pay his salary. During the release period, the employer sent the plaintiff 43 job offers from job portals. The plaintiff only applied for seven of them and only at the end of his notice period.

The employer no longer paid the plaintiff any remuneration for the last month of the notice period, arguing that the plaintiff had been obliged to apply for the job advertisements during the release period. Thus, the plaintiff maliciously failed to seek alternative employment. The employer therefore believed the plaintiff should be credited with a hypothetical earning according to Sec. 615 sentence 2 of the German Civil Code (BGB). The plaintiff subsequently sought the outstanding salary through legal action.

The Labor Court of Villingen-Schwenningen dismissed the claim, while the Regional Labor Court of Baden-Württemberg (LAG) upheld it. The employer's appeal to the BAG was unsuccessful.

The BAG ruled against the employer, confirming the LAG's decision. It was stated that the employer was in default of acceptance due to the unilateral release of the plaintiff during the notice period and therefore owed the plaintiff the agreed remuneration for that time according to Sec. 615 sentence 1 BGB in conjunction with Sec. 611a paragraph 2 BGB.



According to the BAG, the employee should not be credited with hypothetical earnings before the end of the notice period, as he did not maliciously neglect other earning opportunities. The crediting of hypothetical earnings under Sec. 615 sentence 2 BGB is only justified if the employee remains inactive in bad faith. This is a matter of equity, meaning the employee's obligations cannot be assessed independently of the employer's duties. In this context, the employer needed to demonstrate that it was unreasonable to fulfill the employee's ongoing employment claim during the notice period, which the BAG found the employer failed to do.

For the period after expiration of the regular notice period, the BAG previously clarified that assessing bad faith must consider the overall balance of employer and employee interests. An employee may act in bad faith under Sec. 11 No. 2 of the Protection Against Dismissal Act (KSchG) if he does not take up reasonable work or deliberately prevents the commencement of employment. For the period prior to the expiration of the notice period, however, the current BAG decision imposes high requirements on the employer's burden of presentation and proof: Employers must demonstrate that the employee's continued employment was unreasonable to effectively defend remuneration claims due to the employer's default of acceptance during the release period. Therefore, employers should carefully assess releases and comprehensively document their reasons and circumstances.

Contact: martina.buhr@de.ey.com | sarah.romero.holanda@de.ey.com

Navigating tax compliance for upcoming sporting events in Germany

There are always big sports events taking place in Germany. The biggest one was certainly the UEFA EURO 2024 last year, but new events such as the Women's Handball European Championship in 2025 as well as various golf and tennis tournaments are coming up this summer. It is essential for athletes, artists, and organizers to understand the tax implications associated with their participation ideally before contracts are concluded but in any event before remuneration is paid. (Non-resident) performing artists may have specific German tax responsibilities even if they are only present in Germany for a couple of days for the events. The term "performing artists" under domestic German law is very broad and encompasses those involved in public performances (actors, singers, musicians, influencers performing before the camera, participation in red carpet events, TV commentators commenting on sports events while in Germany).

For self-employed non-resident performing artists, income tax is typically withheld directly by the paying agent under sec. 50a Income Tax Act (which can be German or foreign) who has to file quarterly withholding tax returns and remit the tax to the German Federal Central Tax Office (BZSt). The same applies to employed individuals if there is no German employer and the non-resident employer does not have a German permanent establishment/a German resident agent. For resident and non-resident individuals who are employed with a German employer, the German employer must withhold wage withholding tax.

Under the double tax agreements (DTAs) concluded by Germany, remuneration for domestic performances is typically also allocated to Germany. To avoid double taxation, the artist's home country may either exempt this income or provide a tax credit based on taxes paid in Germany, depending on the DTA specifics.

Adhering to the requirements for tax relief or exemptions is crucial, as non-compliance can result in significant penalties or legal issues. In the past, the BZSt contacted non-resident organizations after big sporting events and requested them to file withholding tax returns for remuneration paid to performing artists. Therefore, early communication with tax authorities is highly recommended to ensure that the excitement of these major sporting events does not lead to compliance challenges or unexpected financial burdens.

Contact: katja.nakhai@de.ey.com | heidi.schindler@de.ey.com

German Federal Cartel Office initiates proceedings under new competition law to address market disruptions

For the first time, the German Federal Cartel Office (BKartA) initiated proceedings under Sec. 32f (3) of the Act Against Restraints of Competition (GWB) in March 2025. This provision allows the authority to investigate competitive disruptions without requiring evidence of antitrust violations. The decision to open a further investigation follows a sector inquiry into the fuel wholesale market, which was prompted by significant price increases after the Russian invasion of Ukraine. This situation has raised concerns regarding the effectiveness of competition in this critical sector.

Sec. 32f GWB authorizes the BKartA to impose remedies to address significant and continuing malfunctioning of competition. This provision is particularly relevant in scenarios where traditional antitrust enforcement may not be applicable, such as cases of tacit collusion or parallel behavior among firms without direct communication. The authority can now take proactive measures to ensure market integrity.

The inquiry revealed that the fuel market is characterized by great import dependence, vertical integration, and a high level of market transparency at all levels of the value chain, which may facilitate collusion and price manipulation. The BKartA has noted that the existing pricing mechanisms, while intended to promote transparency, can inadvertently create conditions conducive to anti-competitive behavior. This is particularly concerning given the recent volatility in fuel prices, which directly impacts consumers and businesses alike. ▸

Under the new framework, the BKartA can mandate various measures to restore competitive conditions. These may include establishing transparent standards, rules for contractual arrangements, prohibition to unilaterally disclose information, and enforcing the separation of business areas within companies.

This is an important development. The ability of the BKartA to act decisively in the face of competitive disturbances is crucial for maintaining market stability. For businesses and consumers, this means a commitment to fair pricing and the prevention of market abuses that could lead to inflated costs. The proceedings initiated by the BKartA will be closely monitored, as the outcomes may set important precedents for future regulatory actions across various sectors.

In conclusion, the introduction of Sec. 32f GWB represents a significant development in German competition law, reflecting a proactive approach to ensuring fair market conditions. The first proceedings under Sec. 32f (3) GWB and the authority's further actions in this regard could be pivotal in shaping the competitive landscape, ultimately benefiting consumers and fostering a more equitable market environment.

Contact: alexander.aumueller@de.ey.com | nils.gildhoff@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

Graf-Adolf-Platz 15
40213 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

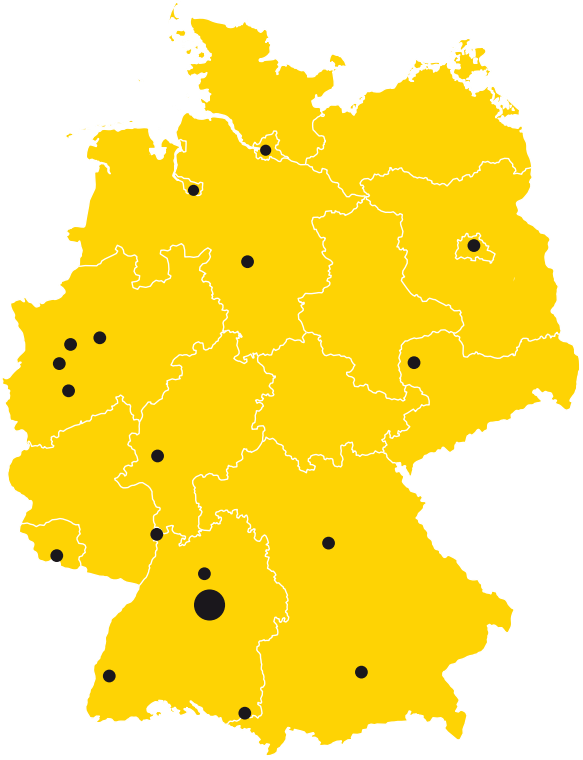
Arnulfstraße 59
80636 Munich
Phone +49 89 14331 0
Telefax +49 89 14331 17225

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
Titus von dem Bongart
Phone +86 21 2228 2884

Singapore
Doreen Steyrer
Phone +65 67181261

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 2024
The worldwide corporate tax guide summarizes the corporate tax systems in more than 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
Christian Ehlermann, christian.ehlermann@de.ey.com
Joerg Leissner, joerg.leissner@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 enl.tax@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 2506-027
ED None

ey.com