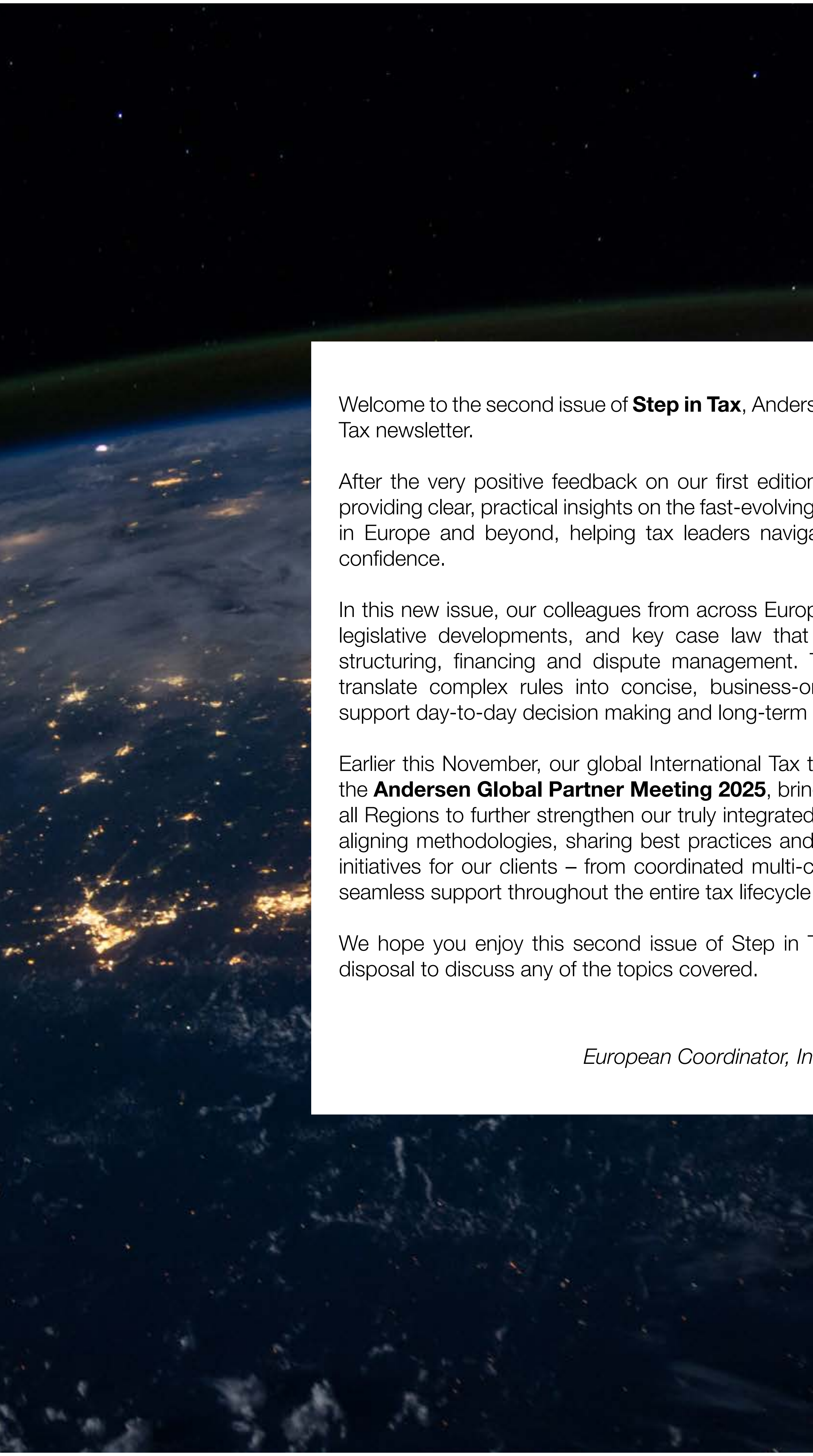
Step in Tax

No.1/2026

Designed for companies and tax managers who want to stay ahead of the fast-evolving regulatory landscape in Europe.
Each quarter, our team of European experts provides practical insights and analysis on national and EU legislation that may impact business operations, strategy, and compliance.



Welcome to the second issue of **Step in Tax**, Andersen's European International Tax newsletter.

After the very positive feedback on our first edition, we remain committed to providing clear, practical insights on the fast-evolving international tax landscape in Europe and beyond, helping tax leaders navigate regulatory change with confidence.

In this new issue, our colleagues from across Europe share updates on recent legislative developments, and key case law that are shaping cross-border structuring, financing and dispute management. The aim is unchanged: to translate complex rules into concise, business-oriented guidance that can support day-to-day decision making and long-term planning.

Earlier this November, our global International Tax team met in **Las Vegas** for the **Andersen Global Partner Meeting 2025**, bringing together partners from all Regions to further strengthen our truly integrated approach. We worked on aligning methodologies, sharing best practices and designing joint, high-value initiatives for our clients – from coordinated multi-country advisory projects to seamless support throughout the entire tax lifecycle.

We hope you enjoy this second issue of Step in Tax and we remain at your disposal to discuss any of the topics covered.

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Transfer Pricing documentation in Germany

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What needs to be considered from 1 January 2025?

With the Fourth Bureaucracy Relief Act, the legislator has amended the filing requirements for transfer pricing-related matters in Section 90(3) of the German Fiscal Code (AO) with effect from 1 January 2025 onwards. According to Section 90(3) sentence 2 AO, the documentation requirements include:

- an overview of the business transactions (transaction matrix)
- a description of the business transactions (factual documentation)
- a description of the economic and legal basis for an agreement on terms, in particular prices (transfer prices), that complies with the arm's length principle, as well as information on the date of the transfer price determination, the transfer pricing method used, and the arm's-length data used (documentation of appropriateness).

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For companies with a turnover of at least EUR 100 million, the documents to be submitted also include the master file of the international group of companies.

In the event of a tax audit, the following documents must be submitted unsolicited within 30 days of the tax audit notification:

- The transaction matrix
- The master file
- Documentation of extraordinary events.

In addition, the tax authorities may request the submission of further records, particularly the local file, within a submission period of 30 days as part of a tax audit.

In a letter dated 2 April 2025, the Federal Ministry of Finance set out what information must be included in the transaction matrix, which is a new documentation element and not de fined by law. According to this, the transaction matrix is a tabular overview of intra-group cross-border business relationships with the following content:

- Business partner and country of residence
- Type of business relationship
- Volume and remuneration for the business relationship
- Contractual basis for the business relationship
- Transfer pricing method applied
- Standard or preferential taxation in the other tax jurisdiction.

The mandatory submission of the transaction matrix also applies to previous years if a tax audit is announced in 2025 that also covers audit periods prior to 2025, which will regularly be the case. Even if the tax audit notification was issued before 1 January 2025, the transaction matrix can be requested with

a submission deadline of 30 days.

If the transaction matrix is not submitted, a surcharge of EUR 5,000 shall be imposed in accordance with Section 162 (4) sentence 1 of the German Fiscal Code (AO).

Recommended action

Practice shows that even within the 60-day submission requirement that has been in force to date, taxpayers have often been unable to prepare the relevant transaction data. Even if the data collection does not appear critical at first glance, experience shows that a large amount of information can only be collected accurately and completely in cooperation with the foreign business partner. In addition, it must now also be disclosed whether the income is not subject to standard taxation at the receiving foreign group company. This applies to cases where a preferential tax regime (e.g., a license or patent box) applies in the relevant foreign tax jurisdiction.

We therefore recommend that taxpayers prepare the transaction matrix promptly, for example when preparing their tax returns. This not only has the advantage that the required data can be submitted to the tax authorities within the statutory deadline. This approach also has the advantage that any weaknesses in the pricing of cross-border business relationships become immediately apparent and countermeasures can be taken promptly. These weaknesses, which are usually only identified when preparing transfer pricing documentation and cannot be remedied retrospectively, include, for example:

- the cost plus method was applied incorrectly (e.g., incorrect profit margin, incorrect cost basis)
- the agreed target operating margin (transactional net margin method) was not achieved
- the license fee was calculated on an incorrect sales basis.

We would be happy to assist you in preparing the transaction matrix or defining a systematic process for data collection to ensure that a transaction matrix that complies with legal requirements can be created in a timely manner.

Germany's Royalty Barrier Rule

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Background of the Royalty Barrier Rule

The German royalty barrier rule (RBR), also known as the *Lizenzschranke*, has been subject to increasing debate. In force since 1 January 2018, the rule aims to limit the tax deductibility of German businesses that pay royalties to related foreign entities resident in low-tax (or "preferential tax") jurisdictions.

Regimes previously considered preferential by the German tax authorities include the UK patent box regime and the intellectual property box regime of Luxembourg (due to alignement with the Modified OECD Nexus Approach, the version of the UK Patent Box no longer exists in its original form). Even though they have since been discontinued, these regimes could still have an impact on royalty payments made between 2018 and their expiry date, as the RBR applies to this period.

The rule targets royalty payments made by German taxpayers, including permanent establishments, to related parties benefiting from such preferential regimes. In other words, if the licensor related to the German business is subject to a low-tax regime, the royalty expense may not be fully deductible in Germany. Initially, a foreign tax rate was considered low if it fell below 25 percent, but from January 1, 2024, this threshold was reduced to 15 percent. However, the limitation does not apply if the regime is aligned with the modified OECD's nexus approach.

Practical applications of the RBR

Since the RBR's introduction in 2018, diverse interpretations regarding its scope of application and compatibility — particularly given its broad and potentially disproportionate wording — with higher-ranking legal frameworks such as constitutional and EU law have raised concerns.

Therefore, pending cases are likely to play a key role in shaping the legal treatment of the rule. The local tax court decision will generally depend on the nature of the legal concerns raised by the RBR. If the tax court deems the RBR to be unconstitutional under German law, it may refer the case to the Constitutional Court. Alternatively, if the measure is seen as potentially violating one of the EU's fundamental freedoms, a referral to the Court of Justice of the European Union would be more appropriate. However, if the tax court concludes that neither form of referral is necessary, it will proceed to interpret and apply the contested provision.

Transfer Pricing documentation issues

Further complexity arises from newly introduced documentation requirements. The German Ministry of Finance released a fact sheet introducing a mandatory transaction matrix for transfer pricing documentation. This requirement applies to tax audit notices issued from January 1 with retroactive effects, meaning that the transaction matrix must be prepared for all prior years covered by the audit. To capture all relevant details about cross-border transactions with related parties or PEs, a matrix organizing the information in a clear, tabular format is required, detailing the transaction type and subject, involved parties, transaction volume and value, contractual terms, applied transfer pricing method, involved tax jurisdictions, and whether any party benefits from a preferential tax regime. Not submitting the transaction matrix could lead to a penalty of €5,000.

In this regard, it is strongly recommended to prepare the matrix in advance for all years subject to audit to avoid a rushed process and ensure sufficient time for completion, especially since it must be submitted within 30 days of receiving the tax audit notice.

Politics and the possible abrogation of the RBR

All EU member states were required to transpose the EU directive on global minimum taxation into national law by December 31, 2023.

On July 10, 2023, the German MOF released a revised draft of the so-called Minimum Tax Implementation Act (*Mindestbesteuerungsrichtlinie-Umsetzungsgesetz - MinBestRL-UmsG*) regarding the national implementation of the EU directive on global minimum taxation. This updated version reflects public feedback and takes into account certain amendments and explanations put forward in the OECD's February 2023 administrative guidance. Furthermore, it suggests modifications to tax regulations outside the pillar 2 implementation act (*Mindeststeuergesetz (MinStG)*), such as the removal of the royalty barrier from 2024 onward.

The Bundestag passed the law November 10, 2023, and the Bundesrat gave its final approval on December 15, 2023. Finally, the law was published December 27, 2023.

The original intention to abolish the RBR as part of these reforms was ultimately not adopted. Instead, the threshold for low taxation triggering the RBR was reduced to 15 percent, beginning January 1, 2024.

On December 2, 2024, the German MOF published a second discussion draft on the Minimum Tax Adjustment Act (*Mindeststeueranpassungsgesetz (MinStAnpG*). The draft adds further provisions and modifications to several tax laws and incorporates the OECD's administrative guidance from June 2024. One of the key changes being considered is the potential repeal of the RBR.

Future developments of the RBR

Following the federal elections, the new German government will likely continue the legislative process, starting with the publication of a new draft. This will be reviewed by the Bundesrat, followed by parliamentary consultation in the Bundestag.

Although the RBR remains in effect for now, its relevance may decline due to, among other reasons, the implementation of pillar 2. However, it is essential to understand the main difference in their application. While the 15 percent global minimum tax under pillar 2 assesses the effective tax rate on a jurisdictional basis, concerning the consolidated results of all constituent entities, the RBR is based on an entity-specific approach. As such, even if a multinational meets the 15 percent tax threshold at the jurisdictional level, the RBR may still apply if the gross royalty income of a foreign licensor is taxed below 15 percent.

For this reason, in the meantime, we suggest that taxpayers involved in cross-border licensing arrangements assess their potential exposure, ensure they comply with the updated 15 percent threshold, and prepare for the new retroactive documentation requirements set to come into effect from January 1, 2025. At the same time, it is important to keep an eye on future government decisions and the ongoing legal challenges to the RBR, as evolving case law may significantly affect its future application.

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Global minimum tax: Italian guidance issued on the form “Comunicazione Rilevante” (GloBE Information Return)

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On October 16, 2025, the Italian Ministry of Economy and Finance approved a decree regulating the content of the form “***Comunicazione Rilevante***” (GloBE Information Return - **GIR**).

The GIR must be sent to the Italian Revenue Agency by every Italian entity whose group falls within the scope of the *Global Minimum Tax*. Italian entities that use the *GIR notification form* (published by a Provision of the Director of the Italian Revenue Agency on August 7, 2025) to delegate a designated local or foreign company, or the parent company, to submit the GIR on their behalf, are exempt from this obligation.

Structure and content of the GIR

In terms of both structure and content, Annex 1 of the Decree incorporates a *standard template*, as set out in DAC9 and developed by the OECD Inclusive Framework in the GloBE Information Return.

The GIR is divided into the following **three sections**:

1. **Information on the multinational or national group of companies:** this section includes the identification of the reporting company and general information on the group and its structure
2. **Simplified regimes and jurisdictional exclusions:** this documents cases in which additional taxation is reduced to zero as a result of the application of a *CbCR safe harbour* (Ministerial Decree 20/05/2024) or the de minimis exclusion (Article 37 of Legislative Decree 209/2023). This section must be completed for each jurisdiction in which the group operates
3. **Calculations**: this final section provides details of the calculations used to determine the effective tax rate (ETR) and any additional tax due for each low-taxed constituent entity located in a country where *safe harbours* are not applicable.

Terms and conditions of submission

The GIR must be sent to the Italian Revenue Agency by June 30th 2026, with reference to fiscal year 2024. Starting from fiscal year 2025, the form must be submitted within the fifteenth month following the relevant tax year.

The technical submission procedures will be set out in a specific provision, which has not yet been published.

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The biggest changes in decades: Lithuania’s 2026 tax reform

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On January 1, 2026, a tax reform will come into force, which the Government presents as one of the most significant in recent decades. According to the Government, its goal is to ensure greater tax fairness and social equality, raise sufficient funds for national defense and security needs, and at the same time promote innovation, education, and scientific progress. The reform will affect the main taxes in Lithuania: personal income tax (**PIT**), corporate income tax (**CIT**), real estate tax, VAT, and even excise duties on certain goods.

Personal income tax

The key change concerns the PIT model. Commencing in 2026, Lithuania will introduce a more developed progressive rate system. Annual income will be summed up and taxed at three progressive PIT rates (that was not a case before 2026), linked to the average wage (AW), which is projected at EUR 2,304.50 in 2026.

- Annual income up to 36 AW, that is, up to EUR 82,962, will be taxed at 20% PIT rate
- Income exceeding 36 AW and up to 60 AW (that is, up to EUR 138,270) will be taxed at 25% PIT rate
- Income above that amount will be taxed at the highest rate of 32%.

This progressive tax rate scheme will apply to employment source and self-employment income, board member fees, property lease and other similar types of income. A separate 15% PIT rate will apply to dividends, certain benefits, income from the sale of the real estate kept for at least 5 years and other specific exceptions.

Self-employed individuals will also face significant changes as follows:

- income up to EUR 20,000 will be taxed at 5% PIT rate
- income not exceeding the amount of EUR 42,500 will be subject to a gradually increasing PIT rate from 5% to 20%
- for income exceeding EUR 42,500, the general progressive rates, same as for wages, will apply
- holders of business licenses will continue to pay a fixed tax up to EUR 50,000, but income above that threshold will also be taxed progressively; and
- agricultural income will be subject to separate rates:
  - 15% for income up to 60 average wages (EUR 138,270)
  - 20% for amounts above that threshold.

Corporate tax

The business sector will also face CIT changes. The standard rate will increase in the second year in a row from 16% to 17% in 2026. Small companies with revenue not exceeding EUR 300,000 will be taxed at 7% instead of 6%. Newly established companies will be able to take advantage of a two-year "tax holiday" if they meet the prescribed conditions.

At the same time, a restriction on carry forward losses is introduced. From now on, companies will be able to carry forward 70% of accumulated losses. The CIT law amendments introducing immediate depreciation, i.e. certain long-term assets, such as computer equipment or freight vehicles, may be depreciated immediately, allowing businesses to recoup investments quicker. Companies will also be able to deduct up to EUR 2,500 per year in scholarships granted to university students or researchers in STEM fields.

Real estate

Real estate taxation applicable to individuals will also become more differentiated. For the primary residence, a high tax-free threshold has been set – EUR 450,000 for a single owner (applicable for each spouse) or EUR 900,000 for two co-owners. Only amounts exceeding these limits may be taxed by municipalities at the rates from 0.1% to 1%.

Secondary real estate (second home) will be taxed progressively:

- 0.2% on values from EUR 50,000 to EUR 200,000
- 0.4% from EUR 200,000 to EUR 400,000
- 0.6% from EUR 400,000 to EUR 600,000
- 0.8% from EUR 600,000 to EUR 1,000,000
- 1% above EUR 1,000,000.

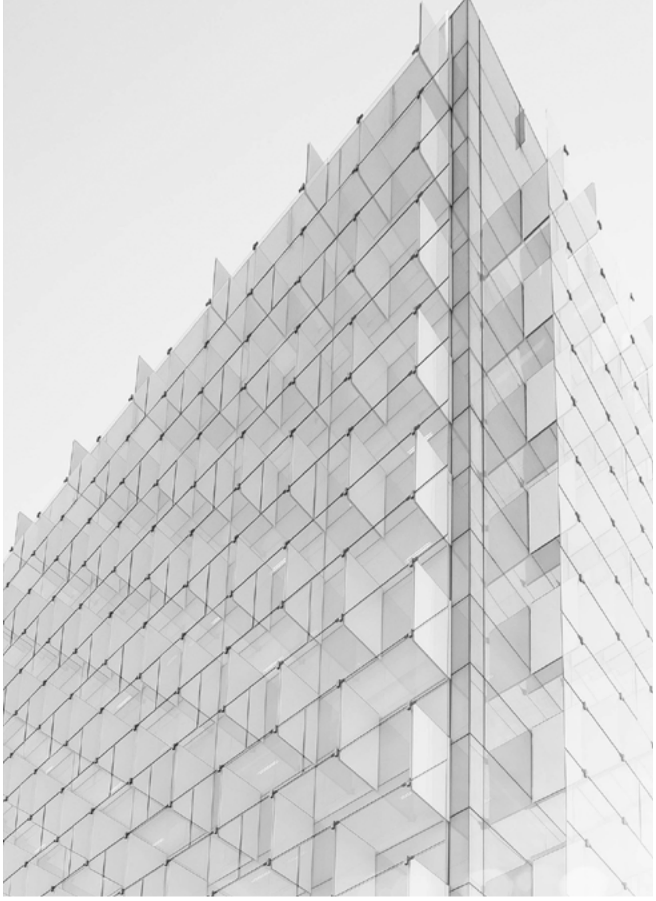
Abandoned/unattended property will be taxed significantly more – from 1% to 5%, while commercial real estate will be taxed from 0.5% to 3%, rates to be set by the municipalities.

VAT

Starting 2026, two reduced VAT rates will apply – 5% and 12%. The VAT rate applicable to accommodation services, passenger transport on regular routes, and cultural and art events will increase from 9% to 12%. A reduced rate of 5% will apply to books and non-periodical publications, both printed and electronic. At the same time, VAT relief for heating, hot water, and firewood will be abolished – these goods will be subject to the standard 21% VAT rate.

Sugar tax

Finally, a new excise duty on sweetened beverages, also known as the "sugar tax," will be introduced. On January 1, 2026, amendments to the Law on Excise



Duty (**LED**) will come into force, according to which non-alcoholic sweetened beverages will become subject to excise duty. Sweetened beverages are defined as beverages containing added sugars in excess of 2.5 g per 100 ml of beverage, or non-alcoholic beverages containing sweeteners, as well as beverage concentrates.

In addition, excise duty does not apply only to beverages in which the only source of sugar is natural sugar, such as honey. In all other cases where added sugar or sweeteners are present, excise duty would apply unless the product is covered by the exemptions provided for in the law. Accordingly, added sugars are sugars added during the production of non-alcoholic sweetened beverages. Regulation (EU) No. 1169/2011 of the European Parliament and of the Council of October 25, 2011, defines sugars as all monosaccharides and disaccharides present in food, except polyols.

If 100 milliliters of the beverage contain less than 8 grams of added sugars, the excise rate will be EUR 7.4 per hectoliter. If the amount of added sugar is 8 grams or more, the rate will rise to EUR 21 per hectoliter. In cases where 100 milliliters of the beverage contains up to 2.5 grams of sugar and sweeteners or only sweeteners, the rate will also be EUR 7.4 per hectoliter. Beverage concentrates will be subject to higher rates – EUR 105 per hectoliter if liquid, or EUR 4.3 per kilogram in other cases.

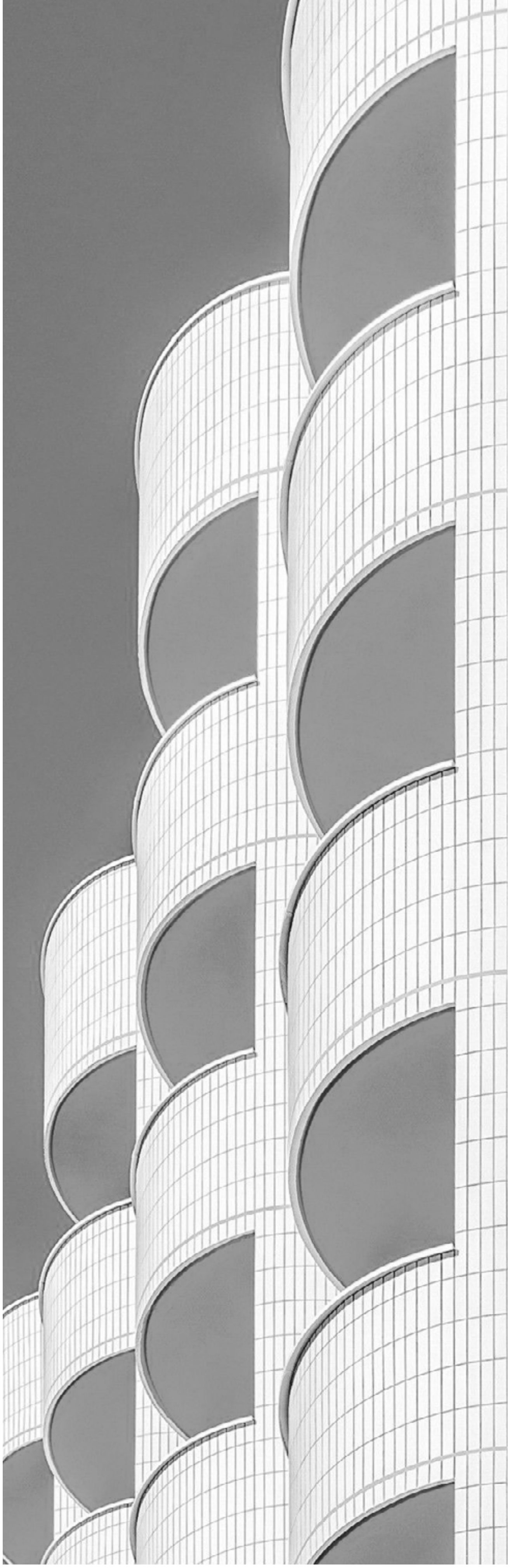
National defense contributions

Another novelty is the so-called defense contribution, which will apply to insurance premiums. The law stipulates that mandatory motor third-party liability insurance premiums will be subject to a 0% rate, while other non-life insurance premiums will be taxed at 10%.

Thus, while mandatory motor insurance will not create an additional burden, other non-life insurance policies – for example, property, travel, or health insurance – will become more expensive.

In summary, this tax reform fundamentally changes the PIT system. It strengthens progressive taxation, introduces new restrictions for businesses, and broadens the base of real estate and consumption taxes.

Officially, it is claimed that the purpose is to ensure defense funding, reduce social inequality, and encourage investment in high value-added sectors. However, in practice, both individuals and businesses will need to reconsider their budgets as the tax burden for many businesses and individuals will increase.



Proposed reforms to the taxation of Norwegian mutual funds

Chapter 8, Budget Bill 2026

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In the proposed fiscal budget for 2024, the Ministry of Finance presented important changes to the Norwegian tax regime for Norwegian Mutual Funds. In brief, the proposal provides that Norwegian mutual funds will be effectively exempt from tax, with the result that Norwegian mutual funds, similar to mutual funds in many other jurisdictions, may accumulate profits rather than be "forced" to distribute to investors as under the current regime. The proposal is highly welcomed by the industry as it should allow Norwegian Mutual Funds to compete on equal terms with non-resident mutual funds, and has already resulted in many major asset managers in the Norwegian mutual fund industry cancelling their plans to migrate mutual funds to neighboring jurisdictions.

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Current regime

Under current law, Norwegian mutual funds (No: verdipapirfond) are separate tax subjects and, in principle, follow the general corporate tax rules. In short, this entails that income from debt investments are taxed at 22% and income from shares eligible for the Norwegian participation exemption regime is fully exempt/97% exempt from tax (income from non-qualifying shares are taxed at 22%). Under the current regime, Norwegian mutual funds may, however, deduct any distributions made to investors if the distribution is taxed as interest income at the level of the investor.

Distributions are characterised by the statutory equity-ratio proxy:

- distributions from funds with more than 80 per cent equity share are taxed as share dividends
- below 20 per cent as interest income
- between 20 and 80 per cent split proportionally.

Realisation gains on fund units follow the ordinary rules:

- For corporate unitholders
  The exemption method applies proportionately to the fund's equity share
- For individuals
  The equity-proportionate part is subject to the dividend gross-up.

The ratio between share investments and debt investments are set at the beginning of the respective income year.

Historically, Norwegian mutual funds holding debt investments have not been able to accumulate funds, resulting in an uneven playing field and a competitive disadvantage compared to funds residing in jurisdiction with more favorable tax regimes. Depending on the ratio for the respective year, Norwegian mutual funds have also been required to distribute an amount exceeding the annual result in order to obtain a full deduction for interest income.

Proposed rules

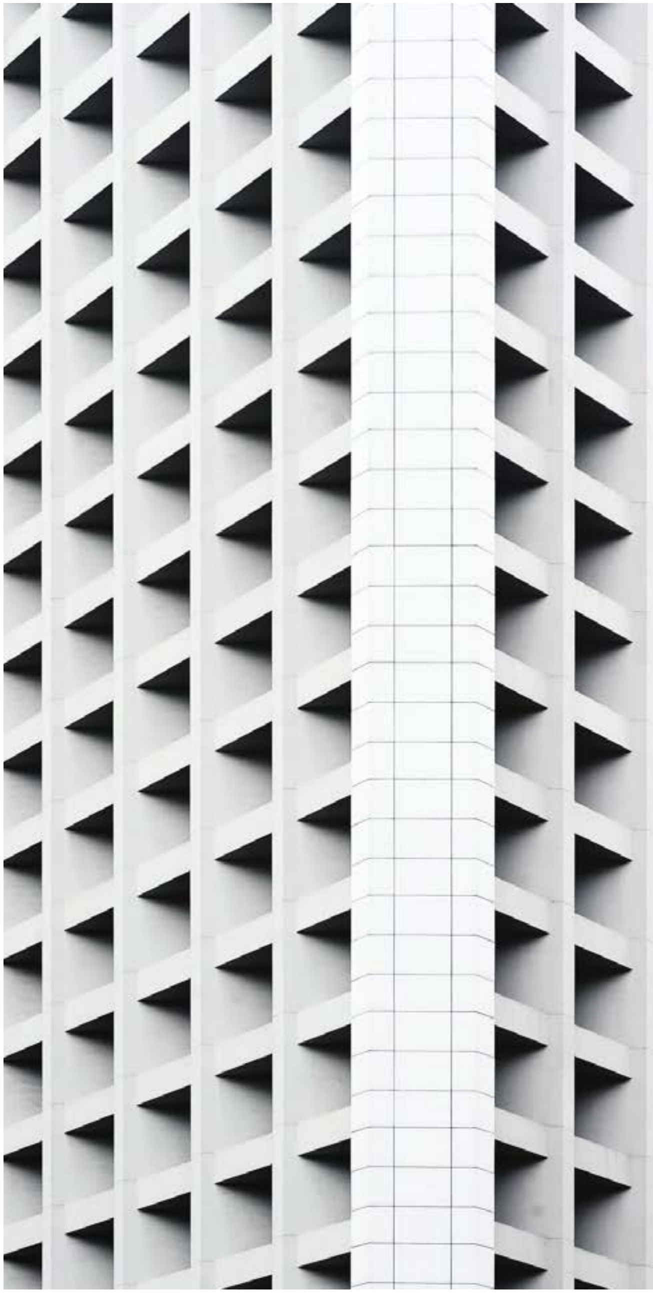
The Government's proposal seeks to modernise this framework by improving neutrality, eliminating economic double taxation of interest at fund level, clarifying the scope of the fund regime, and preventing the misuse of fund-specific rules to erode the Norwegian tax base. These aims are expressly tied to "*creating coherent, practicable rules that preserve the integrity of the tax system while providing competitive, predictable conditions for fund investment and management in Norway.*"

Substantively, the reform exempts from ordinary taxation at fund level both equity income (dividends and gains) and interest income, as well as income from financial instruments used as part of the management of share and fixed-income portfolios. To preserve a minimal taxation nexus and a basis for cost allocation—and to support access to tax treaties—the proposal couples these exemptions with a narrow deemed-income rule:

- one per cent of dividends received by a qualifying fund will be treated as gross taxable income in the fund
- all management costs are deductible against this deemed income
- losses may be carried forward for up to five years
- no foreign withholding tax credit is granted against the deemed base.

This design is intended to achieve neutrality between direct and fund-mediated investment, ensure symmetry in the treatment of hedging instruments, and maintain a fund-level tax footprint that can matter for treaty residence and "liable to tax" analysis.

At the unitholder level, the mechanics of taxation remain unchanged. Distributions will continue to be characterised by reference to the fund's equity ratio, and gains on units will follow the ordinary rules (with proportional application of the exemption method for corporate unitholders and gross-up for individuals). The principal changes for unitholders concern the alignment of scope: the same delimitation of "mutual fund" that applies at fund level will determine the funds covered by the unitholder provisions and, correspondingly, which funds qualify as "funds" under Section 2-38(1)(b) of the exemption method. In scope at fund level are UCITS funds, Norwegian



"national funds," and funds established in other EEA states that are equivalent to Norwegian national funds. At unitholder level, the rules are aligned to the same delimitation and are extended to cover unitholders in equivalent funds established outside the EEA. This alignment is designed to reduce mismatches and to confine preferential treatment to vehicles that meet the core regulatory characteristics of Norwegian funds or their foreign equivalents.

The proposal is intended to take effect immediately for the 2026 income year. Recognising that tightening the definition of "mutual fund" may cause some vehicles to lose pre-existing exemptions, the Government includes a transitional step-up of the tax cost base: for affected funds, the basis of shares in companies resident outside the EEA will be set to market value as at 31 December 2025. This mitigates cliff-edge effects and avoids forcing

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disposals merely to secure historic tax positions under the outgoing rules.

From an international coordination perspective, the Ministry expects that Norway will generally treat qualifying funds as residents for treaty purposes (subject to the “liable to tax” criterion) and that the proposed deemed-income rule will help sustain treaty access.
It acknowledges, however, that treaty entitlement ultimately depends on the counterparty state’s assessment, including questions of transparency, beneficial ownership and the application of LoB-clauses.
The design therefore balances broader fund-level exemptions with a minimal, stable domestic tax base to facilitate cross-border investment without unduly increasing administrative complexity or jeopardising treaty benefits.

Finally, the reform strengthens the case for establishing and managing mutual funds in Norway. Sweden has since 2012 treated funds as effectively tax-exempt at fund level and shifted taxation to investors via a standardised income; aligning the Norwegian framework with this European practice reduces incentives to domicile funds abroad solely for tax reasons and helps retain both customer assets and management competence onshore.

Given the high mobility of fund management and investor capital, permitting accumulation within Norwegian funds on competitive terms is expected to curb outflows to foreign funds offering similar deferral, foster efficient competition, and support a robust domestic fund ecosystem.
While the management business itself remains fully taxable in Norway and the overall design avoids distortions in resource allocation.

In short, the package combines international alignment with principled neutrality and tax-base protection, thereby improving the legal and commercial environment for domiciling mutual funds in Norway.

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Spanish Central Administrative Court confirms discrimination of foreign tax groups on reimbursement of withholdings

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On 20 October 2025, the Spanish Central Administrative Court (**TEAC**) has issued a significant resolution that changes its criterion on the treatment of non-resident groups regarding the recovery of withholding tax on income earned in Spain.

Background

The resolution addresses the claim of a French company, dependent company of a French consolidated tax group, which received royalty income from a Spanish company. Spanish tax was withheld on these royalties under the Non-Resident Income Tax rules. However, the French group, due to overall losses, was unable to absorb the full Spanish withholding as a tax credit in the French consolidated corporate income tax return. Unable to offset the retained tax due to insufficient taxable profit, the company sought a refund from the Spanish tax authority.

The Spanish tax authority had previously rejected similar claims, arguing that international double taxation agreements assign refund responsibility to the country of residence, and that Spanish law did not discriminate because resident entities may also face limits to offsetting credits in loss-making years. However, the claimant argued that Spanish resident groups, in analogous cases, could receive a refund of withheld taxes if their aggregate result was negative.

EU jurisprudence and legal reasoning behind the resolution

A relevant change occurred upon issuance of the Sentence of the European Court of Justice of 19 December 2024 (Case C-601/23) which clarified that EU law (including the principle of free movement of capital) is breached if non-resident entities are denied reimbursement of withholding tax in loss-making years, when resident entities are not. Such criterion was embraced by the Spanish National Court in its recent sentence of 28 July 2025.

Based on these, the TEAC has recognized, establishing a criterion that is binding for the Spanish Tax Administration, that Spain must allow non-residents in a comparable situation to claim the refund, deeming the previous approach discriminatory.

For such purposes it must be considered that when determining comparability, the status as part

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of a consolidated tax group is a key matter. Thus, the non-resident group must be compared to a hypothetical Spanish tax group in an equivalent financial position—in particular, a group that would qualify for a refund of withholding tax if unable to offset it due to losses.

Additionally, as regards the statute of limitations, the TEAC's Resolution establishes that the limitation period starts not at the time of withholding, but once the group's consolidated tax return in the country of residence showed it could not claim the credit. This aligns with the "actio nata" doctrine, which dictates that limitation periods begin only once the right to claim arises, that is, when the loss position is confirmed abroad.

Key takeaways

The recent judgment offers important insights and opportunities for non-resident tax groups engaged in cross-border transactions with Spanish entities in which they suffer withholdings:

1. Non-resident entities, especially those within fiscal consolidation groups, may now request refunds of Spanish withholding taxes when not all credits can be utilized due to losses.
2. Timely claims are critical due to statute of limitations rules. However, new timing for limitation periods - based on deadline for filing the corporate income tax return in the home country - facilitate later filings.
3. The refund claims shall be supported by clear evidence of the group's inability to use the withheld taxes in the home country and perform benchmarking against the refund mechanisms available to equivalent Spanish resident groups.
4. The ruling mandates Spanish tax authorities to verify whether a Spanish group in the same financial situation would have received a similar refund and to determine the proper reimbursable amount.

Updated to the OECD Model Convention: Micro PE’s

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A welcome change

The OECD recently released their eagerly awaited updates to the Model Tax Convention and its commentaries.

The reason for the anticipation was that they had promised new guidance over how to treat homeworkers who are resident in a different country from their employers and whether they create a Permanent Establishment (**PE**). Something that has become much more common following the global pandemic.

It is important to note from the start that the new rules only apply to general employees and not the self-employed, one man service companies, people who make the major decisions for a business, or third parties - the dependent agent rules are unchanged.

So what do we have?

The first relaxation is the time component. Where the employee is using their own home (or other non-employer provided space), then generally, the person will need to be in the other country for 12 months to be considered a fixed place of business. However, the OECD has also taken the opportunity to reinforce that repeated use over a period of years can be a fixed place of business, whether that be a homeworker or more generally. So whether your employee goes to their beach house every summer, or you set up a stall at a winter market, the six and 12 month limits can be ignored.

The second area is also related to time. For an employee’s home to be made available to the business then it is expected that they will work from there for at least 50% of the time. Allowing your staff to work from home on two days of the week is ok, three not so much, at least from a tax point of view.

Finally, the employee’s presence has to be business related. If they are in the second country for their health, personal choice or to save costs (even if that is your costs) then that is not related to the business and no PE should be created. However, if they are in the other country to, for example, assist customers in the location then a PE is likely to be created.

There is another ambiguity as regards these changes and that is from when they take effect. The OECD refers to them as both a clarification, so should always have had effect, and an extension, i.e. new and potentially only from when countries say they are adopting them and/or new treaties are negotiated. As these rules are generally an easement let’s hope they settle on the former.

Mine all mine

The revisions to the commentary also include a new stand alone provision relating to extractive industries. This is aimed at allowing the source state to have greater taxing rights and lowers the threshold for a

PE to exist, not least by making it clear that offshore activities are included as are services for the relevant site.

This new provision is to be agreed in bilateral discussions and is designed to provide a common framework, rather than the ad hoc measure included in treaties up to now.

Let's be friends

There are also a number of changes to the Mutual Agreement Procedure, to clarify that the OECD Transfer Pricing Guidelines need to be considered for transfer pricing cases and a new provision to make clear how treaties alongside the General Agreement on Trade in Services, something we all face on a day to day basis.

I don't agree

Finally, countries have taken the opportunity to update their observations and reservations to the commentaries, an area of the commentaries the unwary often overlook as they can have a major impact on the scope of a particular treaty.

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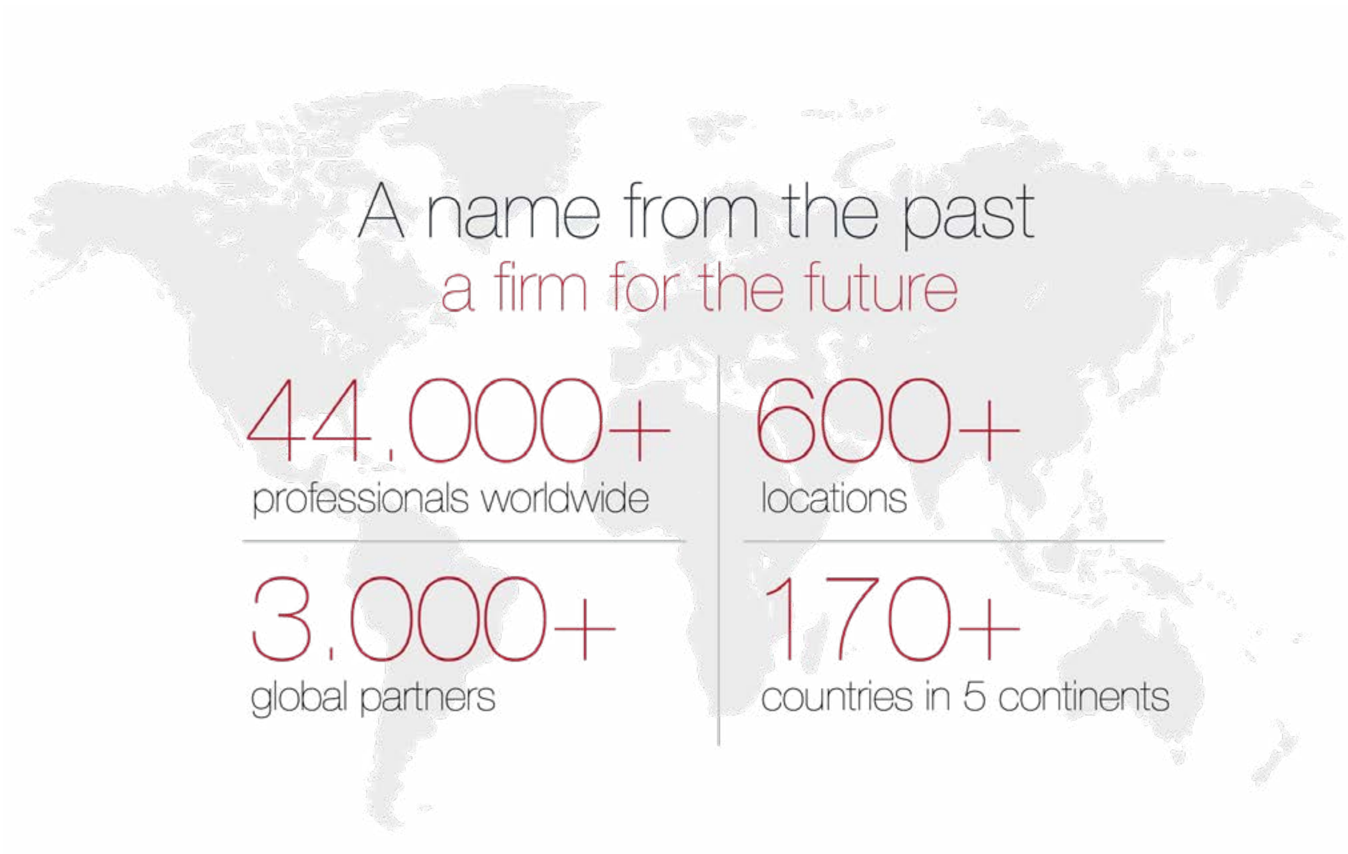

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