By PwC Deutschland | 14. August 2025

Federal Ministry of Finance publishes draft bill for a Minimum Tax Adjustment Act

On August 6, 2025, the Federal Ministry of Finance (MoF) sent the draft bill for a law to adjust the Minimum Tax Act (“MTA”) and implement further measures (“MTAA – Draft”) to the associations for comment by August 11, 2025. The draft bill includes measures for the implementation of the OECD Administrative Guidance on Article 9.1 of the Global Anti-Base Erosion Model Rules from January 2025 as well as “accompanying measures" that are intended to contribute to the simplification of international tax law ("decluttering") outside the scope of the MTA.

Content

Adjustments to the Minimum Tax Act

(Non-)recognition of asset surpluses for companies preparing their accounts in accordance with the German Commercial Code (HGB)

The draft bill provides for an addition to Section 50(1) Sentence 2 No. 3 MTA on how to deal with the set-off of deferred tax assets against deferred tax liabilities and the waiver of the recognition of a total deferred tax asset when determining the total amount of adjusted deferred taxes. The same now also applies to deferred taxes from the period prior to the transition year (Section 82 (4) No. 1 MTAA - Draft).

Recognition and reversal of deferred taxes

The recognition and reversal of deferred taxes is generally based on the differences in the values recognized in the individual financial statements in accordance with the applicable accounting standard and the tax balance sheet. However, as the Minimum Tax Act contains a wide range of adjustments to these values, the related deferred taxes must also be adjusted accordingly.

Section 50 (1a)MTAA - Draft implements the relevant OECD guidelines from Chapter 2 of the Administrative Guidance on GloBE Model Rules of June 2024, as also provided for in the second discussion draft.

Subsequent taxation of deferredtax liabilities

Section 50 (4) MTA establishes the principle that, under the current legal rules, the tax expense recognition of deferred tax liabilities must be corrected (subsequent taxation) to the extent that these deferred tax liabilities are not reversed within five years. The question of whether a reversal has occurred is currently decided on an "item-by-item basis," meaning that each individual difference must be tracked separately. In practice, this is not possible. A simplification of the regulations has long been called for.

Section 50a MTAA - Draft implements the relevant provisions of Chapter 1 of the OECD's Administrative Guidance of June 2024 (already included in the second draft version).

Treatment of reorganisation profits/losses in the event of restructuring

Section 66(2) No. 1 MTA provides that, in derogation of Section 66(1) MTA, where a minimum tax reorganisation under Section 66(5) MTA occurs, any reorganisation profits/losses of the transferring business unit shall be disregarded. For the purposes of calculating the minimum tax profit or minimum tax loss of the acquiring business unit, Section 66(2) No. 2 MTA currently only requires the book values to be transferred at the time of the transfer of the transferring business unit.

No. 2 should be supplemented, as already proposed in the second draft for discussion, by a provision providing that reorganisation profits/losses are not to be taken into account when calculating the minimum tax profit or loss. In the case of upward reorganisations, however, this should not apply with regard to reorganisation profits (but still apply to reorganisation losses) if the profit from the sale of the share in the transferring company would not have been reduced under Section 21 MTA. This may apply, for example, in cases where the dissolved shareholding in the transferring company does not qualify as a participation-privileged shareholding within the meaning of Section 20(1)(1) MTA or where an application has been made under Section 39 MTA for the non-application of Section 21 MTA.

Revision of Section 82 MTA

Section 82 MTA is given a completely new structure in the draft. The previous provisions of Section 82 (2) to (4) MTA are distributed within the newly introduced Sections 82a, 82b, and 82c MTAA - Draft and partially revised. The original provisions of Section 82(1) are divided between paragraphs 1–4.

Section 82(1) Sentence 1 MTAA - Draft stipulates that when determining the effective tax rate in the transition year and the following years, the deferred tax assets and liabilities reported in the business unit's reporting packages must be taken into account. According to the current legal situation, the financial statements of the respective business units are used as a basis. In terms of time, the reporting package preceding the transition year within the meaning of Section 87c MTAA - Draft is used. Only for insignificant business units and those held for sale are the annual financial statementsto be used.

Section 82(4) No. 2 MTAA - Draft states that deferred taxes relating to blended CFC taxation from the period prior to the transition year are disregarded under the MTA.

The newly inserted Section 82a MTAA - Draft contains provisions which mean that certain deferred taxes from the period prior to the transition year cannot be taken into account under the MTA. Deferred tax assets are therefore excluded if they relate to items that

1. would be excluded from the calculation of the minimum tax profit or minimum tax loss under Part 3 (Section 82a (1) No. 1 MTAA - Draft);
2. are related to tax deductions or tax losses, insofar as these are not offset by actual expenses (Section 82a (1) No. 2 MTAA - Draft);
3. are related to an increase in the tax book value or similar business transactions that are not offset by a corresponding inclusion in the tax base (Section 82a (1) No. 3 MTAA - Draft);
4. are related to a tax allowance based on a government measure (Section 82a (1) No. 4 MTAA - Draft);
5. are related to a tax loss arising from a fiscal year that predates the entry into force of a corporate income tax regime of a state by more than five fiscal years (Section 82a (1) No. 5MTAA - Draft).

Section 82a (1) Sentence 2 MTAA - Draft stipulates that the restriction under Sentence 1 Nos. 1 to 4 only applies if the deferred taxes arise from business transactions that took place after 30 November 2021.

Section 82a (2) MTAA - Draft provides that certain deferred tax assets and, in some cases, deferred tax liabilities, which cannot be taken into account under Section 82a (1) MTAA – Draft, may be taken into account if falling within a grace period up to the amount of an exemption (see below). This applies to deferred tax assets and in the case of Section 82a (1) Sentence 1 No. 3 MTAA - Draft also to deferred tax liabilities, which

1. are related to a government measure (as defined in Section 82a (3) MTAA - Draft) that was adopted or extended before 19 November 2024,
2. are related to an option that retroactively changes the tax treatment of a transaction in a tax period that has already been determined or for which a tax return has been filed, provided that this option was exercised or changed before 19 November 2024,or
3. are based on differences between the tax and commercial law valuation, if these differences are based on a corporate income tax system that was adopted before 19 November 2024.

According to Section 82a (4), the grace period covers all financial years beginning after 30 December 2021, and before 1 January 2026 (for Section 82a (2) Nos. 1 and 2 MTAA - Draft) or all financial years beginning after 31 December 2024, and before 1 January 2027 (for Section 82a (2) No. 3 MTAA - Draft).

The exemption amount (Section 82a (5) MTAA - Draft) is 20% of the active and passive deferred taxes when they are first recognized in the balance sheet. Deferred taxes may be considered at the level of the minimum tax rate and no higher. Measures, options, or legal changes made after 18 November 2024 may not be considered.

Further requirements for the QDMTT safe harbour within the meaning of Section 81 MTA

Section 81(1) Sentence 3 Nos. 5 to 7 MTAA - Draft adds further cases in which elections for the application of the QDMTT Safe Harbour to a particular tax jurisdiction are not permitted. Thus, according to **No. 5**, the QDMTT Safe Harbour cannot be applied for tax jurisdictions in which securitization companies are not subject to a domestic minimum top-up tax. Furthermore, an election to apply the QDMTT Safe Harbour is not permissible under to **No. 6** if deferred tax assets and deferred tax expenses resulting from reversals may be taken into account because no provisions comparable to Section 82a and Section 87 MTA are applicable in the relevant tax jurisdiction. According to **No.7**, the QDMTT safe harbour is also excluded for tax jurisdictions in which there is an option to apply the domestic minimum top-up tax that has not been irrevocably exercised.

Further adjustments in connection with the CbCRsafe harbour

1. Additional requirements for simplified covered taxes

According to the previous Section 87 No. 3 MTA, simplified covered taxes correspond to the income tax expense reported in the Enterprise Group's qualified consolidated financial statements, after adjustment for all taxes that are not covered and for uncertain tax provisions. According to Section 87(4) Sentence 2 MTAA - Draft, deferred tax assets and the tax expense resulting from the reversal of the items listed in Section 82a (2) Nos. 1-3 MTAA - Draft are now also considered as taxes that are not covered.

2. Revision of Section 84 (2) MTAA - Draft

According to the newly revised Section 84 (2) **Sentence 1** MTAA **-** Draft, different residences for the purposes of CbCR and minimum taxation should result in employees, wage costs, and tangible assets not being considered in either tax jurisdiction for the purposes of the CbCR Routine Profit Test. Under previous legal rules, however, the application of the CbCR safe harbour was completely excluded in such cases.

However**,** in the event that a business unit for the purposes of country-by-country reporting does not have a permanent establishment under the terms of the Act, **Sentence 2** regulates that for the purposes of the CbCR safe harbour**,** the disclosures and accounting information must be aggregated with the disclosures and accounting information of the parent company or with those of the group member. If the parent company has the legal form of a tax-transparent entity, the aggregation is to be performed by the group member.

Regulation to ensure uniform application of the law

The introduction of Section 99(5) MTAA - Draft is intended to enable the Federal Ministry of Finance to determine by statutory instrument

- which tax jurisdictions have a recognised Qualified Domestic Minimum Top-Up Tax (Section 7 (2)), a recognised Income Inclusion Rule (Section 7 (3)),and a recognised Undertaxed Profit Rule (Section 7 (5))
- and whether the requirements of Section 81(1) sentence 1 MTAare met.

Other adjustments to the Minimum Tax Act

The new MTAA also contains a number of other adjustments, suchas:

1. Section 7(19) No. 6 MTAA - Draft is supplemented to the effect that entities which are not themselves subject to supervisory regulations but whose management is subject to such regulations qualify as Investment Entities. The rule is in line with the OECD model regulations.
2. In Section 18 MTAA - Draft, the previous numbers 14 and 15 are combined and a linguistic clarification is made so that the minimum tax annual surplus or minimum tax annual deficit is

increased or reduced by adjustments in accordance with Parts 6 and 7.

3. The provision in Section 82(2) MTAA - Draft is moved to the newly introduced Section 82b MTA-Draft. The same applies to Section 82(3) MTA- Draft, which is moved to Section 82c MTA- Draft.
4. Section 86(3) MTAA - Draft clarifies that a transparent entity for CbCR safe harbour purposes always qualifies as a stateless business entity, unless the transparent entity is the ultimate parent company. These transparent entities are therefore excluded from the application of the CbCR safe harbour.

Accompanying measures outside theMinimum Tax Act

Abolition of the licence barrier (Section 4j ITA)

Section 4j ITA provides for the (proportional) non-deductibility of licence expenses paid to related parties if the corresponding licence income is subject to preferential low taxation deviating from standard taxation and the preferential treatment does not comply with the OECD's nexus approach.

Section 4j ITA is to be deleted according to the current draft. Section 4j ITA will be applied for the final time in the 2024 assessment period, as specified in Section 52(8c) Sentence 3.

The reason given for the abolition is, on the one hand, that the transition period granted by the OECD for the abolition or nexus-compliant adjustment of preferential rules has now expired and, on the other hand, that global minimum taxation has been introduced, so that there is no longer any justification for an internationally uncoordinated measure such as the licence barrier.

No abolition of the prohibition of deduction of special operating expenses for transactions with a foreign connection (Section 4i ITA)

The deletion of Section 4i ITA, which was still included in the second draft for discussion, is no longer included in the draft bill.

Adjustment of exemption limits for mixed income (Section 9 Foreign Taxes Act)

Section 9 Foreign Taxes Act contains so-called absolute and relative exemption limits with regard to the application of the CFC rules where both active and passive income (mixed income) exist. If both exemption limits for passive income are not exceeded, there is no additional taxation.

The previous absolute exemption limit for passive income is to be increased from EUR 80,000 to EUR 100,000 (the draft bill dated 5 December 2024, still provided for EUR 250,000). In addition, the relative exemption limit is to be increased from the current 10% to one third in line with the ATAD. In this regard, the previous shareholder-related exemption limit is to be abolished. In future, the exemption limit will therefore only have to be checked at the level of the intermediate company, which should simplify the standard.

According to Section 21 (9) Foreign Taxes Act- Draft, the increase in the exemption limits is to apply for the first time to assessment or collection periods with relevant CFC income for fiscal years of the intermediate company or permanent establishment beginning after 31 December 2025 (the draft discussion paper of 5 December 2024, still referred to 31 December 2021).

Adjustments to the provisions governing the reduction amount (Section 11 Foreign Taxes Act)

Section 11 of the Foreign Taxes Act provides for the granting of a so-called "reduction amount", which is intended to prevent double taxation arising from CFC taxation on the one hand and on the other the taxation of dividend income or capital gains subsequently received from the intermediate company.

Under current law, a reduction amount is granted if the "income" (or capital gain) is taxable. Where the (exemption) provisions of Section 8b(1) and (2) Corporation Tax Act (CTA) apply the reduction amount will be zero. Currently no consideration is given to the fact that 5% of the income or gains exempt from tax under the aforementioned provisions are subject to taxation as non-deductible operating expenses under Section 8b (3) and (5) CTA.

Under the proposed regulation, the reduction amount would also be applied to the additional amounts assessed in accordance with Section 8b (3) and (5) CTA. According to the explanatory memorandum, the intention is to ensure that a one-off tax burden is imposed solely in the amount of the CFC add-back, and to prevent a renewed tax burden resulting from non-deductible lump-sum operating expenses.

In addition, a new Section 11(6) Foreign Taxes Act- Draft will now expressly regulate the application of Section 11 Foreign Taxes Act in group structures. Accordingly, the reduction amount is to be applied at the level of the subsidiary in accordance with paragraphs 1 to 4 of the provision. According to the explanatory memorandum to the draft, this is intended to ensure that the reduction amount is applied at the same level as the CFC add-backs.

The amendments to Section 11 Foreign Taxes Act are to apply for the first time to the 2022 assessment or collection period in accordance with Section 21(8) sentence 1 Foreign Taxes Act- Draft.

(Partial) retroactive adjustment of the extended taxation for investments in passive foreign investment companies (PFIC) (Section 13 Foreign Taxes Act)

Section 13 Foreign Taxes Act currently contains the so-called "extended PFIC taxation" for participations in passive foreign investment companies which generate income of a capital investment nature. The PFIC tax is "*extended*" because the provision also applies if there is no domestic control within the meaning of Section 7 Foreign Taxes Act.

Unlike the draft bill of 5 December 2024, the draft for discussion now available no longer proposes deleting the provision. Instead, a minimum participation threshold of 10% of the voting rights or nominal capital of the foreign company is introduced as a prerequisite for the provision to apply (Section 13 (1) Sentence 1 Foreign Taxes Act- Draft). To prevent circumvention, the shares and voting rights of related parties must be included in the calculation of the 10% threshold. Small shareholdings below this threshold are therefore no longer subject to the extended PFIC taxation.

According to the explanatory memorandum, the amendments are intended to simplify the administration of the provision for both the tax authorities and taxpayers. Due to the introduction of the above-mentioned limit, the stock exchange clause currently contained in Section 13(1) Sentence 4 Foreign Taxes Act for shareholdings of less than 1% is to be deleted.

Another amendment concerns the second half of the 1st sentence in Section 13(1) Foreign Taxes Act. Currently, the wording applied states that the (extended) PFIC taxation of participations in PFICs is carried out in accordance with the principles of Section 13 (1) Foreign Taxes Act, "also" where the requirements of Section 7 (1) Sentence 1 Foreign Taxes Act are not otherwise met. The word "also" is to be deleted. According to the explanatory memorandum, this deletion is intended to clarify that in cases of control, only Sections 7 to 12 Foreign Taxes Act apply and not "also" Section 13 Foreign Taxes Act. The deletion of the word "also" in Sentence 1 is intended to clarify the wording. The amendment is likely to be understood as a response to the debate in the literature as to whether Section 13 Foreign Taxes Act also applies in cases of control.

According to the explanatory memorandum to the draft, the introduction of the minimum participation threshold of 10% in Section 13(1) Sentence 1 of the Foreign Taxes Act and the deletion of Sentence 4 are favourable to the taxpayer and thus will be implemented retroactively from the initial introduction of Section 13 Foreign Taxes Act in the ATAD Implementation Act: The changes will therefore apply for the first time to assessment or collection periods with relevant PFIC income for fiscal years of the intermediate company or permanent establishment beginning after 31 December 2021 (Section 21(8) sentence 2 Foreign Taxes Act-Draft).

As a result of the planned amendment to Section 9 Foreign Taxes Act- Draft (see above), the exemption limit contained in Section 13 (1) Sentence 3 Foreign Taxes Act- Draft is also to be adjusted. The relative exemption limit will be combined with an absolute exemption limit at company level of EUR 100,000. The previous shareholder-related exemption limits are to be abolished, which, according to the explanatory memorandum to the draft, is intended to make the provision easier to administer. Unlike the other amendments in Section 13(1) Foreign Taxes Act- Draft, the change to the exemption limit will not apply retroactively but will apply for the first time to assessment or collection periods with relevant PFIC income for fiscal years of the intermediate company or permanent establishment beginning after 31 December 2025, is to be added (Section 21 (9) Foreign Taxes Act- Draft).

Schlagwörter

CFC provisions, Foreign Taxes Act, deferred taxes, minimum taxation