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# EY EMEIA private equity tax network

Tax updates: hot topics Q3/4 2025



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## 1. **Germany:** New decree on the Reorganization Tax Act

On 2 January 2025, the German Federal Ministry of Finance (MoF) published the final version of its revised decree on the German Reorganization Tax Act (RTA). The new version replaces the previous version from 2011 and implements legislative changes and caselaw developments. It primarily includes updates and adjustments and does not constitute a major reform. Decrees are binding on the German tax authorities and illustrate their interpretation of the law. They are not binding for fiscal courts. If taxpayers deviate from a position outlined in the decree, they must disclose it in their tax returns.

One key amendment is the removal of the requirement that entities must be European Union or European Economic Area (EU or EEA) entities to be involved in various types of tax-neutral reorganizations. With such a change, the scope of the RTA is generally extended to third-country entities for tax transfer dates after 31 December 2021. Although the decree maintains the requirement for a strict comparability between foreign and domestic reorganizations, some minor reliefs have been introduced. For instance, the previous requirement that a foreign merger occurs under the principle of universal succession (“by act of law”) to be comparable to a domestic merger has been eliminated. Not all tax-neutral reorganizations are feasible for non-EU/EEA entities.

Further adjustments pertain to the rule restricting post-spin-off disposals. This provision denies tax neutrality for spin-offs that are deemed to be “in preparation of a disposal” (RTA, sec. 15 para.). The tax authorities closely follow the wording of the (new) law and the explanatory memorandum. In an update published on 1 August 2025, the German MoF further clarified one of the controversial examples, addressing specific circumvention structures.

Additionally, the decree introduces extensive changes for tax groups, aligning with the Federal Tax Court’s 2023 decisions. It broadens the impact of the “following in the predecessor’s footsteps” principle. It also aligns with the Federal Tax Court’s perspective on financial integration and the allocation of stakes in controlled companies.

The updated decree applies to all pending cases and replaces the decree from 2011. Therefore, it must be observed in any reorganization taking place.

## 2. Germany: Tax treatment of transaction costs

The tax treatment of legal and advisory costs incurred in connection with an acquisition or disposal of shares remains a topic frequently discussed in tax audits and tax due diligence. The tax court in Düsseldorf recently released a taxpayer-favorable ruling. While the decision explicitly outlines the court's position for a disposal scenario, it also provides various arguments that may also apply to transaction costs incurred in an acquisition.

The case involved a German parent company that commissioned and financed legal and advisory services related to its subsidiary selling shares in a lower-tier entity. The parent and its wholly owned subsidiary (both corporations) were part of a tax group for German corporate income tax and trade tax purposes (an "Organschaft").

In contrast to the tax authorities, the tax court decided that the transaction costs were fully tax-deductible as business expenses at the level of the parent company. In particular, the court decided that the expenses couldn't be reassigned to the subsidiary under state law and didn't qualify as a hidden capital contribution. In addition, the court determined that German civil law didn't constitute a legal claim for reimbursement for the parent company. Additionally, since the costs were not incurred at the level of the selling entity, the requirements for certain deduction restrictions hadn't been fulfilled. Those restrictions would only apply if the entity selling the shares had directly borne the transaction costs. The court further decided that the costs were not to be regarded as non-deductible costs related to a shareholding, since they were not substance-related expenses (such as write-offs) but ongoing business expenses.

The tax authorities have filed an appeal against the ruling with the Federal Tax Court. Until a decision is made by the highest court, comparable cases should be kept open.

## 3. UK: changes to the taxation of carried interest

From 6 April 2026, carried interest in the UK will be taxed as deemed trading income and subject to income tax and national insurance contributions at rates of up to 47%.

A 72.5% multiplier will be available for "qualifying" carried interest, which reduces the taxable amount. This results in an effective tax rate of approximately 34.1% (36.25% for those in Scotland). Carried interest will be qualifying where it meets an average holding period (AHP) of 40 months. The AHP is the average length of time that investments have been held for the purposes of the investment scheme.

The rules that apply to credit funds and funds of funds have been simplified so that carried interest from those funds can benefit from the qualifying carried interest rules where the AHP condition is met.

Non-UK tax residents who have performed UK investment management services may be within the scope of UK taxation on their carried interest. Simplifications are available for qualifying carried interest but not for non-qualifying carried interest. Non-UK tax residents will need to track their UK workdays from 30 October 2024 for the purposes of the rules.

For individuals qualifying for the foreign income and gains regime (broadly, individuals within a four-year period of UK residence after ten years of non-UK residence), an adjustment will be available to exclude from UK taxation amounts received for non-UK services. The adjustment is calculated on a day count basis.

Key points for private equity houses to consider include:

- Calculating the AHP and gathering the required data.
- The UK tax liability of a non-UK resident executive performing UK services (although the tax is due under self-assessment, the fund executive will need to know whether the carried interest is qualifying or not).
- Double tax relief (relieving provisions are restricted, and treaty mismatches may occur where carried interest in other jurisdictions is taxed as capital rather than trading income).

The UK government published draft legislation for these changes in July 2025. Final legislation will be introduced to parliament after the UK's Autumn Budget.

## 4. Italy: Milan first-tier Tax Court rules against alleged interposition of holding companies

In a recent ruling (Decision No. 3525, 5 September 2025), the First Instance Tax Court of Milan ruled in favor of an international private equity fund, rejecting the Italian Revenue Agency's attempt to tax capital gain derived from the indirect sale of an Italian company.

### Case at issue

The case concerned the sale of a well-known Italian company in the pet care sector. The seller, an international private equity fund, held its stake through two Luxembourg-based holding entities (Lux I controlled Lux II, which in turn controlled the Italian company). Lux I had sold its stake in Lux II.

The Italian Revenue Agency challenged the omission of the tax declarations and the failure to report the capital gain in Italy to be taxed at 26%. The Agency argued that the Luxembourg entities were mere conduits, invoking Article 37(3) of Presidential Decree 600/1973, which addresses interposed entities. It claimed the fund was the true beneficiary of the gain and that the structure lacked economic substance, being designed solely to avoid Italian taxation on capital gains.

The Milan Tax Court rejected the Revenue Agency's claims, emphasizing that the Luxembourg holding companies (Lux I and Lux II) were not fictitious. Rather, both structures were genuine and functionally appropriate. The judges focused on the following aspects:

- The entities had their own offices and staff, albeit modest in scale.
- Board meetings and shareholder assemblies were regularly held, involving experienced professionals, some of whom were Luxembourg residents.
- Investment decisions and dividend distributions were made autonomously by the boards of the holding companies during two separate board meetings. (i.e., there was no pre-established automatic mechanism for transferring the proceeds received).

The ruling reinforces the principle that the mere presence of a light corporate structure (such as a small office with one or two employees) does not automatically imply interposition. The economic and operational substance of foreign entities must be assessed based on concrete factors and can't be disregarded. The ruling also reinforces the importance of maintaining genuine operational substance in corporate structures to defend against potential tax challenges, even in the case of indirect sales of Italian companies.

## 5. Luxembourg: Circular LIR n°168quater/2: Clarifications on the Reverse Hybrid Entity Exemption for Collective Investment Vehicles

Circular LIR n°168quater/2, issued on August 12, 2025, provides essential clarifications regarding the reverse hybrid entity (RHE) exemption for collective investment vehicles (CIVs) under Article 168quater, paragraph 2, of the Luxembourg Income Tax Law. This guidance addresses the uncertainty asset managers have faced since the law's adoption. The circular confirms that specific investment vehicles, including undertakings for collective investment (UCIs), specialized investment funds (SIFs) and reserved alternative investment funds (RAIFs), automatically qualify for the CIV carve-out. Notably, RAIF SCS (société en commandite simple) and RAIF SCSp (société en commandite spéciale) are included in this exemption, regardless of compliance with additional conditions.

The circular outlines key criteria for determining whether a CIV is widely held, defining it as one marketed to multiple unrelated investors. For master-feeder fund structures, the circular employs a look-through approach. A limited number of investors does not automatically disqualify a fund from being widely held. Importantly, it allows for a grace period of up to 36 months post-authorization for new funds, addressing concerns during the launch phase and recognizing exceptions during the wind-down phase.

The circular also broadens the definition of securities to include various financial instruments, such as shares, equity interests and similar securities, bonds and other receivables, CIV units, deposits with credit institutions, and derivative financial instruments. It stresses the importance of a diversified securities portfolio, which must align with the investment policy and manage exposure to market risk.

The investor protection regulation criterion has been confirmed to be met in cases supervised by the Luxembourg financial regulator (i.e., CSSF), or alternative investment funds (AIFs) in line with the AIFM Directive.

The circular establishes clear criteria for classifying investors as unrelated, which is necessary for maintaining the widely held condition. It specifies that investors are considered related if one holds 50% or more of the voting rights or capital of the other, or if they share a common shareholder.

The circular provides a welcome clarification for asset managers in Luxembourg considering their investment structures and investments in Luxembourg tax-transparent funds and vehicles. The guidance reinforces Luxembourg's favorable position as a leading European jurisdiction for collective investment vehicles.

## 6. Luxembourg: carried interest tax regime proposal

On July 24, 2025, the Luxembourg government submitted a draft law to Parliament to reform the carried interest regime. Subject to parliamentary approval and if enacted, the new rules will take effect from the 2026 tax year. The proposed legislation introduces two distinct types of carried interest: contractual carried interest, which will be taxed at a maximum rate of 11.45% (based on 2025 income tax rates), and participation-linked carried interest, which may be tax-exempt under specific conditions. The reform seeks to broaden the scope of beneficiaries and align the tax framework with various carried interest models prevalent in the market.

The draft law differentiates between contractual and participation-linked carried interest. Contractual carried interest is granted without requiring the beneficiary to acquire a stake in the AIF. It's classified as speculative income and taxed at one quarter of the recipient's global income tax rate, capped at 11.45%. In contrast, participation-linked carried interest is tied to an individual's stake in the AIF and can be tax-exempt if the stake is less than 10% and held for at least six months. This new framework applies regardless of the AIF's legal structure, enhancing legal predictability for fund managers.

The draft law expands the definition of eligible beneficiaries to include individuals involved in AIF management, including independent directors of the AIF and employees of investment advisory companies. This reflects current market practice.

## 7. The Netherlands: Legislative proposal to increase taxation on carried interest and sweet equity

Lucrative interests, such as sweet equity or carried interest, are taxed in box 1 at progressive rates up to 49.5%. However, if these interests are held through an intermediary holding company and meet specific conditions, proceeds are taxed in box 2 at a capital gains tax rate up to 31%.

On Budget Day 2025, the government proposed legislative amendments that will apply a multiplier to box 2 proceeds, leading to an effective tax rate up to 36% from 1 January 2026. The legislative proposal doesn't include transitional rules, meaning it will apply to all box 2 lucrative interests from 1 January 2026, resulting in an increased tax burden for exit or liquidity events as of 2026.

The proposal is subject to parliamentary proceedings over the coming months, but it is expected that the rules will be enacted.

For existing management incentive plans (MIPs), consider the impact of this legislative proposal on the anticipated cash tax treatment on exit (or other liquidity event) in 2025 and 2026.

Taxpayers may also wish to consider whether lucrative interest qualification can be prevented, especially for pari passu investments. Currently, taxpayers may accept a combined tax treatment of strip and MIP as lucrative interests to reach an agreement with the Dutch tax authorities. Taxpayers may wish to revisit this position.

The feasibility of bonus plans or synthetic instruments for sweet investments could be considered. Payments are subject to employment tax up to 49.5%, but under certain conditions, payments may be deductible for corporate income tax purposes, providing a better overall after-tax position.

## 8. The Netherlands: Budget Day 2025 proposals

### General

In September 2025, the Dutch government released its proposed policy plan and published its budget proposals for fiscal year 2026 (Tax Plan 2026) for parliamentary review.

Tax Plan 2026 introduces minimal changes in an international direct tax context and continues to pursue a stable and predictable course for the Dutch investment climate. The corporate income tax (CIT) rate, the innovation box rate and withholding tax rates remain unchanged.

Tax Plan 2026 doesn't address certain anticipated legislative changes, including to the liquidation loss regime and anti-dividend stripping provisions. The plan mentions potential new rules regarding the taxation of currency results (particularly for participations), but the government hasn't confirmed further details.

### Transitional rule for Funds for Joint Account (FGR)

As discussed in the previous [newsletter](#), the definition of the non-transparent mutual fund or FGR changed from 1 January 2025, resulting in various practical and fiscal complications. The Dutch government is reviewing this definition, with legislative changes expected from 1 January 2027.

To prevent funds from being subject to Dutch taxation only during the period from 1 January 2025 to 1 January 2027, Tax Plan 2026 proposes a transitional rule to allow certain funds to opt out of FGR classification until 1 January 2028, under specific conditions. This transitional rule expires on 1 January 2028, or earlier if a new FGR definition is introduced in 2027.

In summary, funds that were tax-transparent before 2025 but qualify as non-transparent under the current FGR definition can choose their classification for 2025, 2026 and potentially 2027. They can opt to be treated as an FGR or tax-transparent for Dutch CIT and personal income tax purposes.

## 9. Portugal: The government applies an investment-friendly tax framework

The Portuguese tax legislation and administrative practice are, in certain fields, going through a positive and investment-fostering cycle.

Since 1 January 2025, the nominal Corporate Income Tax (CIT) rate was reduced by one percentage point to 20%. In October 2025, Parliament passed a bill introducing scheduled annual decreases of one percentage point from 2026 until 2028, resulting in rates of 19% in 2026, 18% in 2027 and 17% from 2028 onwards.

A noteworthy development is the maintenance, with no amendments, of a tax incentive for the capitalization of Portuguese companies. This allows for a notional tax deduction on certain equity increases. Although this is not a completely new regime, it has been enhanced over the years and has been widely used by Portuguese companies, potentially leading to relevant tax savings. This annual deduction is calculated using a variable rate equal to the average 12-month Euribor plus 2%. The deduction is enhanced by 30% for FY2025 and 20% for FY2026.

The deductible amount is the greater of €4 million or 30% of taxable EBITDA, with a five-year carryforward period for amounts exceeding these limits. The regime applies to new equity increases in cash or upon conversion of certain shareholder credits.

Additionally, there have been developments on the use of regulated vehicles, mostly in the private equity industry, such as venture capital corporate (VCC) vehicles, with the tax authorities confirming that conversions of regular companies into VCC are tax neutral.

A conversion may have an impact where the dividend withholding tax exemption does not apply to a pre-reorganization scenario, namely due to unqualified shareholding (for example, lower than 10%) or to other limitation circumstances. Profits distributed by a VCC to non-Portuguese participants are exempt from Portuguese withholding tax, regardless of the participation level and participant nature (provided the participant can evidence tax residency abroad). The tax authorities have confirmed in specific cases (under ruling procedures) that this withholding tax exemption may apply to profits accumulated by the VCC prior to the conversion.

VCC are fully exempt from CIT in Portugal. This means that these types of reorganization, when combined with a review of group funding structures, can generate tax optimization opportunities through tax deductions at the subsidiaries' level.

The venture capital tax regime has remained stable over the years and may offer tax-saving opportunities, upon properly structured reorganization plans. The latest developments in Portuguese tax law suggest that an investment-friendly tax framework is a government priority.

## 10. Ireland: Settlement opportunity for misclassified contractors announced

Irish companies have been provided with an opportunity to take advantage of favorable settlement terms and correct payroll tax issues for 2024 and 2025 arising from genuine errors in classifying contractors for Irish tax purposes.

To take advantage of this settlement arrangement, employers must disclose the payments where payroll taxes weren't applied for workers misclassified as self-employed (rather than employed). Income tax at the standard rate of 20% and a blended universal social charge (USC) rate of 3.5% will apply to payments disclosed, as opposed to rates of up to 40% and 8% for higher-rate taxpayers, resulting in significant tax savings for affected workers. Pay-Related Social Insurance must be applied on an actual basis.

Disclosures should be treated as a "technical adjustment" under the Code of Practice. No penalties or interest should be applied. If an employer doesn't make a disclosure and the tax authorities subsequently assess associated liabilities, re-grossing legislation may be applied along with interest and penalties.

The settlement opportunity follows an Irish Supreme Court judgment in October 2023 in "*The Revenue Commissioners v Karshan (Midlands) Ltd trading as Domino's Pizza [2023] ESC 24.*" The judgment clarified the correct approach to contractor classification and provided a framework to determine whether a worker is employed or self-employed.

The deadline for submitting disclosures and settling associated liabilities is 30 January 2026. Taxpayers can request a phased payment arrangement if required.

To benefit from the one-off settlement rates with no penalties or interest, portfolio companies should consider whether making a disclosure would be appropriate, taking into account any associated risks identified in recent or imminent transactions.

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EYG no. 009733-25GbI  
ED None

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