EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

Shape the future with confidence

The better the question. The better the answer. The better the world works.

1. Pillar Two Global Minimum Tax: side-by-side system

On 5 January 2026, the Organisation for Economic Co-operation and Development (OECD) released a side-by-side (SbS) package. The package is in the form of administrative guidance that will be incorporated into the global anti-base erosion (GloBE) model rules. It includes a Simplified Effective Tax Rate (ETR) Safe Harbour, a one-year extension of the Transitional Country-by-Country Reporting (CbCR) Safe Harbour, a new Substance-based Tax Incentive Safe Harbour and two Safe Harbours related to a SbS system.

The SbS Safe Harbour applies to Multinational Enterprise (MNE) groups headquartered in jurisdictions that have a pre-existing eligible domestic tax regime and an eligible worldwide tax regime (a qualified SbS regime). MNE Groups with an Ultimate Parent Entity (UPE) in a jurisdiction with a qualified SbS regime will not be subject to the Income Inclusion Rule (IIR) or Undertaxed Profits Rule (UTPR) provided they elect into the SbS Safe Harbour. These MNE groups will remain subject to qualified domestic minimum top-up taxes (QDMTTs). The US is currently the only jurisdiction that is confirmed as having a qualifying SbS regime (from 1 January 2026).

The UPE Safe Harbour provides that the UTPR will not apply to profits (in the UPE jurisdiction) of MNE groups headquartered in jurisdictions that have a pre-existing eligible domestic tax regime. The group must elect into the Safe Harbour.

MNE groups with a UPE in the US will remain subject to the IIR in 2024 and both the IIR and UTPR in 2025. The SbS Safe Harbour does not apply to a non-US-parented MNE group that has a US intermediate parent entity. This means that IIRs and UTPRs will continue to apply to intermediate US entities and their subsidiaries with non-US UPEs.

Funds and their portfolios that are within the Pillar Two rules will need to continue their compliance preparations for the years before the SbS package takes effect. They will also need to track further activity at both domestic and international levels to establish how the package will be implemented globally.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

2. **Germany:** German Federal Fiscal Court (Bundesfinanzhof, BFH) ruling on tax consolidation groups for taxes on income – actual execution within a 12-month period after its due date

German tax consolidation groups are widely used in practice as they allow for efficient tax consolidation and for profits and losses of a parent and subsidiaries to be offset.

A group must satisfy several conditions to be recognized as a tax consolidation group for taxes on income. Besides the strict requirements on contractual design, the German tax authority often disputes whether the profit and loss transfer agreement (PLTA) has been executed throughout its entire term. Failure to comply with the requirements leads to denial of the tax consolidation group for tax purposes (potentially retroactively since inception).

On 5 November 2025, the BFH published a decision (IR 37/22) that clarifies the prerequisites regarding the time aspect of the actual execution. In the case, the profits to be transferred under the PLTA to the parent entity for the years 2009 to 2011 were recorded by the subsidiary entity in an offset account. Counterclaims or lump-sum payments were not recorded in that account. An offsetting was not carried out until 2017. According to the BFH, the obligations arising from a PLTA must be fulfilled within a reasonable period after the approval of the annual financial statements or after the civil law due date, respectively whereby a period of 12 months may be taken as a benchmark. In this case, fulfillment occurred several years after maturity, exceeding this 12-month window. This led the BFH to conclude that the PLTA had not been actually executed. The BFH emphasized that mere bookkeeping on a clearing account is insufficient if it does not qualify as a proper current account with actual settlement effects. This reinforces that timely and effective fulfillment within the 12-month period is crucial for recognizing the PLTA's actual execution.

For private equity investments, key areas for consideration include:

- Tax Due Diligence (TDD): In the context of a TDD, the actual execution of the PLTA should be analyzed, with particular focus on the timing and recognition in the accounts.
- Share Purchase Agreement (SPA): The SPA should include tax indemnities to manage adverse tax consequences of a tax consolidation group being denied. Additionally, a provision in the tax guarantee that addresses costs/expenses exceeding the tax consequences covered under the indemnity could be considered.
- Structuring: If it is envisaged to terminate a tax consolidation group during the fiscal year, actual execution in a timely manner should be completed.
- Post-Closing: If there are uncertainties regarding the criterion of actual execution, a new structured process in this regard as well as a monitoring system is recommended.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

3. The Netherlands: proposed changes to foreign exchange and the Dutch participation exemption

The Dutch Ministry of Finance has published a consultation proposing changes to the treatment of foreign exchange (FX) results under the participation exemption. This was pre-announced as part of the FY26 Budget Plan. Under current law, FX results may, upon request, be allocated to the participation exemption where they are sufficiently connected to the value development of the underlying participation. This includes certain hedging arrangements associated with the acquisition of shares. As a result, the FX result would be exempt from Dutch corporate income tax.

The Dutch government proposes that, for financial years starting on or after 1 January 2027, only the non-priced-in currency result of a transaction will remain to be exempt under the participation exemption. The priced-in currency result will no longer fall within the scope of the participation exemption. The measure is intended to be included in the 2027 Tax Plan.

The Dutch Ministry of Finance also seeks to resolve several formal issues observed in practice:

- Opt-out possibility: Taxpayers will be given the option, upon request, to exclude specific hedging instruments from the scope of the participation exemption.
- Timing and application: The legislation will clarify that the participation exemption applies from the moment the legal act is entered into, or, if later, from the moment a complete request has been filed (and will only be exempt if the taxpayer explicitly requests such treatment). In addition, any legal remedies will be limited to assessing whether the relevant legal act genuinely qualifies as a hedge of the currency risk linked to the participation.

Overall, the proposed changes may reduce the scope for achieving tax neutral FX outcomes at the level of Dutch acquisition or financing entities and should be considered when modeling returns, structuring acquisition financing, and designing hedging strategies in private equity transactions. In addition, the absence of grandfathering rules in the consultation document suggests that existing portfolio structures, particularly those with prior clearance on the allocation of FX results to the participation exemption, may also be impacted from 2027 onward.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

4. **The Netherlands:** Dutch Supreme Court clarifies anti-abuse test for tax-neutral demergers

The Dutch tax-neutral demerger facility allows a legal demerger to be carried out without immediate taxation, provided certain conditions are met, including that the transaction is not primarily aimed at tax avoidance or deferral. Under the Dutch Corporate Income Tax Act, a statutory presumption of abuse historically applied where direct or indirect ownership in the demerged or demerging entity was transferred to a third party within three years. In such cases, taxpayers were required to demonstrate that the demerger was driven by valid business motives, such as operational restructuring or rationalization.

This presumption has now been fundamentally challenged by the Dutch Supreme Court in its decision of 27 February 2026. Referring to the EU Merger Directive (2009/133/EC), the Court confirmed that a presumption of abuse is only justified where transactions lack valid commercial reasons. The Court held that a disposal within three years – even where a sale was already intended at the time of the demerger – does not, in itself, demonstrate tax avoidance. As such, the Dutch statutory presumption is incompatible with EU law.

As a result, the burden of proof no longer automatically shifts to the taxpayer. Instead, the tax inspector must first establish at least prima facie evidence that the demerger lacks valid business reasons or is primarily tax driven. This significantly limits the ability of the tax authorities to deny tax-neutral treatment solely based on the timing of a subsequent disposal. This court case is particularly relevant for transactions involving post-demerger disposals, including carve-outs, regulated divestments and distressed sales.

This court case may reduce transaction risk in situations involving recently demerged targets and post-deal carve-out plans. The judgment suggests that pre-sale demergers should not automatically be regarded as avoidance solely based on a subsequent disposal, which may provide additional comfort in transactions. The extent to which this translates into greater deal certainty will depend on how the tax authorities apply the revised framework in practice. A careful assessment of the underlying business rationale remains important, although the evidentiary balance appears to have shifted somewhat in favor of the taxpayer.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

5. **Spain:** Supreme Court decision on beneficial ownership

In its judgment of 12 January 2026, the Spanish Supreme Court examined a case involving royalty payments within a multinational group. Following a restructuring, a Spanish company paid royalties to a Dutch group company acting as a sublicensee. That Dutch entity subsequently transferred almost all the royalties to another group company that ultimately owned the intellectual property. Although formally incorporated in the Netherlands, this latter entity was tax resident in Curaçao.

The Spanish tax authorities denied the withholding tax exemption applied to the royalties, taking the view that the Dutch recipient was not the beneficial owner of the income, as required by both the EU Interest and Royalties Directive and the Spanish rules transposing that Directive. The authorities, as well as the lower courts, also rejected the application of the reduced 6% withholding tax rate provided for in the Spain–Netherlands tax treaty.

The Supreme Court upheld this position, holding that, under the principle of primacy of EU law, where a payment falls within the scope of the Interest and Royalties Directive but the exemption is denied due to the absence of beneficial ownership, it is not possible to rely on the applicable tax treaty to determine the withholding tax rate. Instead, domestic law must apply. According to the Court, Spanish domestic rules fully transpose the Directive, which establishes a complete and priority regime for interest and royalty payments between associated EU companies, thereby excluding the application of tax treaties in this context. Consequently, the applicable withholding tax was the domestic rate (24.75% for the relevant year), rather than the treaty rate of 6%, even though the treaty does not contain a beneficial ownership requirement.

Note that the decision is highly fact driven and linked to an almost complete pass through of royalties.

The Court's decision examines the interaction between EU directives and tax treaties. EU directives in the field of double taxation provide minimum standards and are complementary to domestic law and tax treaties, as confirmed by Article 9 of the Interest and Royalties Directive.

The judgment appears to import a beneficial ownership requirement into a treaty that does not contain one. This approach differs from earlier case law such as Stryker and Colgate. It could also result in different outcomes for EU-based associated entities compared to other taxpayers.

Due to the current fragmented case law on this topic, organizations may anticipate a beneficial ownership challenge. It may be appropriate to build a robust, fact-based position focused on supporting business purpose, economic substance, autonomy and economic risk.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

6. **Spain:** new Spain-Netherlands tax treaty

On 10 March 2026, the Spanish Council of Ministers authorized the signing of a new tax treaty between Spain and the Netherlands. This will replace the existing 1971 treaty once it enters into force. The new agreement reflects current OECD international tax standards and incorporates developments arising from the Base Erosion and Profit Shifting (BEPS) project.

A key change is the introduction of source-country taxation on capital gains derived from the disposal of shares in entities that derive their value primarily from immovable property located in the source jurisdiction. This aligns the treaty with Article 13(4) of the OECD Model Convention and represents a significant shift for cross-border real estate investment structures.

Under the new treaty, gains from the sale of shares in companies whose value consists of more than 50% of real estate located in the source state may be taxed in that state. Previously, such gains were generally taxable only in the seller's country of residence. Given that Spanish real estate investments are frequently held through Dutch holding companies, this change materially affects common investment structures by granting Spain taxing rights upon exit.

The treaty incorporates BEPS minimum standards, including a Principal Purpose Test (PPT), an arbitration mechanism, and specific rules addressing income obtained through tax-transparent entities. It also includes provisions dealing with triangular cases involving permanent establishments in low-tax jurisdictions.

The treaty text has been agreed by both countries and authorized for signature by Spain. Following signature, it must be approved and ratified by both jurisdictions. The treaty will enter into force upon exchange of the instruments of ratification. The new source taxation rules will generally apply from 1 January of the year following entry into force.

Investors using Dutch intermediate holding companies to own Spanish real estate may be subject to Spanish taxation on capital gains upon disposal. Assessing whether the 50% real estate threshold is met will require robust valuation support and periodic monitoring of asset composition. Existing structures may need to be reviewed and restructured or alternative holding arrangements considered to manage tax exposure under the new regime.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

7. **Italy:** VAT on transaction costs – new developments and recovery opportunities

Recent guidance from the Italian tax authorities suggests a more open approach to the VAT treatment of transaction costs incurred by special purpose vehicles (SPVs or BidCos). In particular, Resolution No. 7/2026 explicitly acknowledges that such entities may be entitled to deduct input VAT on acquisition-related costs, while Ruling No. 58/2026 focuses on the procedural mechanisms for recovering VAT that was not previously deducted.

Against this background, taxpayers that historically treated VAT on transaction costs as non-deductible may now consider revisiting their position. Two main recovery routes are emerging in practice. The first consists of adjusting the VAT position through the VAT return, relying on the principle that the right to deduct may still be exercised where the substantive conditions are met. This approach, however, requires careful verification that the revised treatment remains consistent with the original factual and transactional framework.

Alternatively, taxpayers may file a refund claim under Article 30-ter of Presidential Decree No. 633/1972, commonly referred to as an "anomalous" refund. This route has been expressly endorsed by recent administrative practice and typically requires evidence that the VAT was effectively incurred and not deducted. It should be noted that this procedure may expose the taxpayer to potential disputes, particularly where the claim is challenged by the tax authorities.

Considering these developments, BidCos that did not previously deduct input VAT on transaction costs may consider performing a case-specific analysis. This should focus on the actual role played by the SPV, the link between the costs incurred and downstream taxable activities of the targets, and the most appropriate recovery strategy – whether through the VAT return or via a refund claim. Given the evolving and not entirely consistent nature of the current administrative practice, a careful case-by-case assessment remains essential.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

8. Portugal: new VAT group regime

A VAT group regime has been introduced in Portugal, allowing entities to consolidate their VAT returns for periods beginning on or after 1 July 2026.

This new VAT framework aims to allow groups to manage their cash flow and allocate resources in a more efficient manner, enabling VAT groups to consolidate their periodic VAT balances into a single periodic return. Although referred to as a "VAT group regime," it is not a true VAT Group consolidation regime pursuant to Article 12.º of the EU VAT Directive, meaning that all intragroup transactions will continue to be subject to VAT under the general rules.

This new regime applies to groups where the parent and its subsidiaries are linked through financial, economic and organizational ties, notably by a qualified shareholding when the parent entity holds, directly or indirectly, at least 75% of the subsidiaries' share capital and more than 50% of the voting rights. It is also necessary that all entities within the VAT group pursue complementary, similar or interdependent objectives and operate under a common management structure or follow the same business strategy.

The decision to apply for the VAT group regime is taken by the parent entity and applies to subsidiary entities that meet the following main criteria:

- Head office or permanent establishment in Portugal
- Within the monthly VAT regime
- Full or partial right to deduct input VAT
- Part of the group for more than one year from the start of the regime (unless the entity was incorporated less than one year ago by the parent entity or another VAT group member)

It should be noted that VAT groups must apply the regime for at least three years, after which it may continue indefinitely unless grounds for termination arise.

In summary, this regime should improve companies' cash flow, reduce VAT refund processes, simplify and speed up procedures through the consolidation of VAT balances payable to or refundable by the tax authorities. However, some uncertainties remain regarding specific aspects of its application – particularly in relation to the requirement for a mandatory economic and organizational linkage between the entities wishing to form a VAT group.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

9. **Poland:** withholding tax (WHT) – recent administrative practice and impact on dividend and exit structures

Outbound dividends from Poland are generally subject to 19% withholding tax (WHT), reducible under an applicable double tax treaty or the EU Parent-Subsidiary Directive (PSD). The PSD exemption requires the EU/EEA recipient to hold a minimum direct qualifying shareholding for a continuous two-year period and to be subject to tax in its jurisdiction without benefiting from a full exemption. A substantive beneficial ownership assessment is mandatory; the recipient must demonstrate genuine business activity, not merely formal eligibility. Anti-abuse rules deny exemptions where the principal purpose of the arrangement is to secure a tax benefit through an artificial structure.

Recent court practice has materially tightened the compliance standard. In a final ruling of October 2025, the Supreme Administrative Court confirmed that the domestic dividend exemption must be read with reference to the applicable tax treaty. Where the treaty's authoritative English text uses the term "beneficial owner", that condition modifies the effective scope of the domestic exemption – even though the domestic statute does not expressly require beneficial ownership status. The court denied the exemption to a Cypriot holding vehicle found to lack genuine economic substance, acting as a conduit for the ultimate beneficial owner. In a nonfinal ruling of December 2025, the Voivodeship Administrative Court in Warsaw confirmed that withholding agents must perform a substantive beneficial ownership test, even under the PSD exemption, and endorsed the look-through approach. Where the direct recipient is not the beneficial owner, WHT should be applied based on treaties at the level of the actual beneficial owners.

Substance is non-negotiable. Board composition, decision-making autonomy and economic risk-bearing must be documented proactively.

Look-through analysis is a prerequisite. Multi-tier fund structures may wish to prepare investor-level beneficial ownership and residency documentation before any dividend distribution or exit repatriation.

Pay-and-refund is a cash-flow risk on exit. Under Polish corporate income tax law, related-party payments exceeding PLN2 million trigger statutory-rate WHT; alternatively, an "opinion on preference" from the Polish tax authority can preserve treaty treatment at source and avoid refund delays affecting deal waterfalls.

EY EMEIA private equity tax network

Tax updates: hot topics Q1/2 2026

10. **Poland:** mandatory e-Invoicing (KSeF) practical implications for PE-backed groups

Poland's national e-invoice system (KSeF) is a government-operated platform through which VAT-registered businesses must issue and exchange B2B invoices in a standardized XML format. Rather than circulating invoices bilaterally between trading parties, taxpayers submit structured electronic invoices to KSeF, which assigns a unique reference number – at which point the invoice is deemed issued and received. The system is being introduced in phases: taxpayers whose 2024 gross turnover (including VAT) exceeded PLN 200 million became obligated from 1 February 2026, with all other VAT-registered businesses following from 1 April 2026.

From a buyer's perspective, a key question has arisen: what happens when a supplier – despite being obligated – issues an invoice outside KSeF? The VAT Act does not impose on the buyer an obligation to verify whether the supplier was entitled to issue the invoice in a given form. Multiple 2026 individual tax rulings confirm that the buyer's right to deduct input VAT is not forfeited solely based on such a formal deficiency – deduction rights are governed by the substantive conditions under the VAT Act, and issuing an invoice outside KSeF does not appear on the statutory negative list. This position is grounded in the fundamental VAT neutrality principle, which may only be restricted by explicit statutory provisions.

Perimeter mapping is urgent. Portfolio companies fall into different go-live tranches based on 2024 turnover; sponsors should map all platform entities and align ERP/AP integration timelines accordingly.

Intragroup flows are in scope. Management fees, IP licenses and intercompany service charges are B2B taxable supplies subject to KSeF – a frequent blind spot in holding/OpCo structures.

Supplier noncompliance creates audit exposure. While VAT deduction is generally preserved where substantive conditions are met, portfolio companies should consider implementing exception-handling workflows and audit trails for noncompliant counterparties.

This edition's contributors

Alice Hoskins
EY LLP, London

Emma Channon
EY LLP, London

Christian Linseisen
EY Tax GmbH Steuerberatungsgesellschaft, Munich

Lukas Kronen
EY Tax GmbH Steuerberatungsgesellschaft, Munich

John van Geffen
EY Belastingadviseurs B.V, Eindhoven

Maarten Sonneveld
EY Belastingadviseurs B.V, Rotterdam

Alfonso Brandín Clastre
Ernst & Young Abogados S.L.P, Madrid

Manuel Paz Figueiras
Ernst & Young Abogados S.L.P, Madrid

José Enrique Padilla Garcia
Ernst & Young Abogados S.L.P, Malaga

Stefano Pavesi
Studio Legale Tributario Ernst & Young, Milan

Davide Laruffa
Studio Legale Tributario Ernst & Young, Milan

Bruna Melo
Ernst & Young S.A, Lisbon

José Miguel Anjos
Ernst & Young S.A, Porto

Sérgio Pereira
Ernst & Young S.A, Lisbon

Tomás Coelho
Ernst & Young S.A, Porto

Michal Szwed
EY Doradztwo Podatkowe Krupa sp. k.Warsaw

Michal Pacyga
EY Doradztwo Podatkowe Krupa sp. k.Warsaw

Register for the EY free online tax tool, Tax News Update: Global Edition, to receive timely alerts on the most significant global tax developments:
https://globaltaxnews.ey.com/Register/Register.aspx

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, multidisciplinary 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.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. Information about how EY collects and uses personal data and a description of the rights individuals have under data protection legislation are available via ey.com/privacy. EY member firms do not practice law where prohibited by local laws. For more information about our organization, please visit ey.com.

© 2026 EYGM Limited.
All Rights Reserved.

EYG no. 112402-26-GBL
ED None

UKC-044038.indd 06/26. Artwork by Creative UK.

This material has been prepared for general informational purposes only and is not intended to be relied upon as accounting, tax, legal or other professional advice. Please refer to your advisors for specific advice.

ey.com