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Germany

Last Reviewed - 26 June 2019

Overview

Germany, located in Central Europe, is bordered by Denmark to the north; Poland and the Czech Republic to the east; Austria and Switzerland to the south; France to the southwest; and Belgium, Luxembourg, and the Netherlands to the west. Germany has the largest economy and is the second most populous nation (after Russia) in Europe. It is divided into 16 provinces, and its capital is Berlin. The official language of Germany is German, and the currency is the euro (EUR).

Germany is a key member of the European economic, political, and defence organisations. The German economy is the fourth largest economy in the world and is a leading exporter of machinery, vehicles, and chemicals. It also benefits from a highly skilled labour force.

PwC audits and advises leading companies of all sizes in all fields of activity in Germany. The German firm of PwC has some 11,145 partners and staff employed at 21 locations.

Corporate - Significant developments

Last Reviewed - 27 June 2019

The European Union Anti-Tax Avoidance Directive (EU-ATAD), which entered into force in August 2016, must be implemented into national law in the main by no later than 31 December 2018 and is to be generally applied from 1 January 2019 onwards. As a result, possible changes have been under discussion for some time, and a substantial reform of the German CFC-rules is being planned. No draft for new CFC-regulations has been published officially yet, but it is being keenly anticipated.

In May 2017, the Council of the European Union further adopted a directive amending the EU-ATAD (ATAD II). The member states must transpose ATAD II into national law by 31 December 2019 and apply it generally from 1 January 2020 onwards. To date, the legislative procedure for the implementation of these rules into national law has not yet begun in Germany.

In May 2018, an EU-directive on the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements (DAC 6) was introduced. Although not yet transposed into German law, taxpayers and intermediaries have been required to monitor cross-border arrangements since 25 June 2018 and to prepare to report such arrangements to the financial authorities. The directive has to be transposed into national law by 31 December 2019. The regulation should become applicable from 1 July 2020 onwards. Various aspects of the rules set out in the directive as well as the question as to how Germany should transpose the directive into national law are currently under discussion in Germany. To date, the legislative procedure for the implementation into German law has not yet started.

In the context of the discussions in respect of the taxation of the digital economy, the German Federal Ministry of Finance together with the French Ministère de l'Economie et des Finances have presented plans for a Global Anti Base Erosion (GloBe) Project, which are intended to be discussed on an international level. In essence, it proposes the introduction of a world-wide minimum taxation (level playing field). Furthermore, in May 2019, the Federal Ministry of Finance published a draft for a bill containing, *inter alia*, a tightening of the rules for levying Real Estate Transfer Tax (RETT) in connection with share transfers. The proposed change in the rules has been a topic of discussion in Germany for some time.

Likewise, a draft bill for a research and development (R&D) subsidy and a draft for a reform of local property tax are under discussion.

Corporate - Taxes on corporate income

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Germany taxes its corporate residents on their worldwide income. However, most double tax treaties (DTTs) exempt income attributable to a foreign permanent establishment (PE). Non-residents with PE or property income are taxed by assessment on German-source income; those earning royalties and dividends are taxed by withholding at source. Interest paid abroad is, in most cases, free of German tax altogether.

German business profits are subject to two taxes, corporation tax and trade tax.

Corporation tax (*Körperschaftsteuer*)

Corporation tax is levied at a uniform rate of 15% and is then subject to a surcharge of 5.5% (solidarity surcharge). This results in a total tax rate of 15.825%.

Trade tax (*Gewerbesteuer*)

The trade tax rate is a combination of a uniform tax rate of 3.5% (base rate) and a municipal tax rate (*Hebesatz*) depending on where the PEs of the business are located. Currently, municipalities with at least 80,000 inhabitants currently levy trade tax at a rate of between 12.6% (*Hebesatz* of 360%) and 20.3% (*Hebesatz* of 580%).

The basis for this tax is the adjusted profit for corporation tax purposes: in particular, 25% of all financing costs over 100,000 euros (EUR), including the implicit financing costs in leasing, rental, and royalty payments, are added back to taxable income.

If the basis for the two taxes is identical (unlikely in practice), the overall burden on corporate profits earned in Munich would be approximately 33%. In Frankfurt, the burden would be 32%. In Berlin, it would be 30%.

Corporate - Corporate residence

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A corporation is resident in Germany for tax purposes if its place of incorporation or its main place of management is in Germany. A corporation meeting neither of these criteria will be regarded as non-resident with tax obligations limited to its income from German sources. These include active business activities through a PE or the letting of property and equipment rental (leasing), as well as specific investment income and royalties. Income of the first three categories is generally taxed by assessment on the actual net earnings. That of the last two is usually taxed at source by withholding from the gross amount payable. Interest paid to a non-resident is generally not taxable (certain exceptions apply, e.g. in respect to interest on convertible or profit-sharing bonds).

Permanent establishment (PE)

Domestic law defines a PE as any fixed business facility serving the corporate purpose. A permanent representative is someone who 'habitually' deals on behalf of the principal acting on the principal's instructions. In its tax treaty PE definitions, Germany consistently follows the Organisation for Economic Cooperation and Development (OECD) model;

consequently, purchasing activities, delivery stores, and independent agents acting in the ordinary course of their business are regularly excluded from the PE concept. Recent tax treaties generally reflect the Authorised OECD Approach to PE income, and Germany has also negotiated corresponding amendments to a number of older treaties. The Authorised OECD Approach has been adopted into domestic law and is generally followed in practice unless doing so would lead to double taxation from continued adherence to the old approach (of treating a PE as part of the same legal entity as its head office) in the other state.

Corporate - Other taxes

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Value-added tax (VAT)

Proceeds of sales and services effected in Germany are subject to VAT under the common system of the European Union at the standard rate of 19% (7% on certain items, such as food and books). The taxpayer generally is entitled to deduct the VAT charged on inputs from that payable on outputs.

VAT is generally administered by the tax office in the district where the taxable person operates one's business, wholly or predominantly; for taxable persons established abroad, the responsible tax office depends upon the taxable person’s country of establishment. As a general rule, preliminary VAT returns are filed on a monthly or quarterly basis by the tenth day of the following month (e.g. monthly for new businesses or where the VAT payable in the previous calendar year exceeded EUR 7,500). The taxpayer may be relieved from the obligation to file preliminary returns if the VAT payable in the previous calendar year did not exceed EUR 1,000. A permanent filing extension of one month is generally available against an advance payment of one-eleventh of the total net tax due during the previous year. Otherwise, payment is due by the tenth day of the following month as well.

Legally, VAT is an annual tax. Each taxpayer must file an annual return for each calendar year, regardless of the actual accounting date for the business. If the sum total of the annual return does not agree with the total of the monthly or quarterly returns, the tax office can generally be expected to ask for a detailed explanation.

For taxable persons established abroad providing telecommunications services, radio and television broadcasting services, and electronically supplied services, different rules on VAT returns may be applicable under certain conditions.

There are additional reporting obligations in certain cases, particularly in cases of cross-border intra-EU supplies of goods and services to other taxable persons.

Customs duties

Customs duties are levied under a common system on imports into the European Union. The rate is set at zero on most imports from EU candidate countries and on many imports from countries with which the European Union has an association agreement.

For manufactured products from other countries, the rates generally lie within the range of 0% to 14%. The basis is the import value of the goods and thus includes uplifts for royalty or other payments associated with their use but not apparent from the transit documents.

The European Commission (EC) also sets ‘countervailing’ duties from time to time on specific imports from specific countries in order to counter dumping attempts. The countervailing duty rate is set to fully absorb the dumping margin and is therefore usually much higher than 14%.

Excise taxes

Excise taxes on fuel, electric power, and some other products are not a compliance issue for businesses other than dealers in bonded goods, although they can be a significant additional cost factor for business users. These excise taxes also have an environmental element in as much as the rates are set to discourage excessive use of pollutants. However, an air passenger duty is the only tax on pollution as such. Energy producers (such as power stations) can claim a refund of the excise tax borne in the cost of the energy products used in the production process.

Property taxes

There are no taxes on wealth or capital employed. There is a minor local authority tax on property, but the effect of this is partly offset by an additional trade tax deduction.

Stamp taxes

The only significant German stamp tax is the real estate transfer tax (RETT) on the consideration on conveyances of German property. The rate varies by province; in 2019, the rate is 3.5% for property in Bavaria and Saxony; 4.5% in Hamburg; 5% in Baden-Württemberg, Bremen, Lower Saxony, Mecklenburg-Western Pomerania, Rhineland-Palatinate, and Saxony-Anhalt; 6% in Berlin and Hesse; and 6.5% in Brandenburg, North Rhine-Westphalia, Saarland, Schleswig-Holstein, and Thuringia.

This tax is also levied on indirect transfers from the acquisition of at least 95% of the shares in property-owning companies. This applies to shares of the shareholder throughout the corporate chain. A tightening of the rules for levying RETT in connection with share transfers is currently being considered (e.g. lowering the 95% threshold to 90%). A draft bill (*Referentenentwurf*) has been circulated. If passed as currently drafted, the new rules should generally apply as of 1 January 2020.

In general, RETT is calculated based on the value of the consideration. Where RETT is triggered due to a restructuring, unification of shares, change of partners in a partnership, or in cases where a consideration does not exist, the tax base is determined based on the valuation principles applied for inheritance tax purposes.

Under certain conditions, German RETT is not levied on direct or indirect transfers (without the payment of consideration) in the course of a corporate reorganisation under the laws of a member state of the European Economic Area (EEA), provided at least 95% of the ultimate interest in the property remains unchanged for five years before and after the transaction (group privilege).

Payroll taxes

Employers are required to pay employee remuneration under deduction of the income tax due. The amounts deducted are paid over to the tax office at regular, usually monthly, intervals. The actual deductions are calculated from the gross pay, taking the employee's marital, family, and other personal circumstances into account. The necessary personal details can be downloaded from a government database. For the employee, the payroll tax deduction is a prepayment on the income tax due after filing one's annual income tax return. As such, the payroll tax is a withholding tax (WHT) and not a financial burden on the employer. However, employers are required to deduct the correct amounts and are thus exposed to the risk from a later tax audit assertion of under-deduction, especially as there are often legal or practical impediments to recovery from the employees after the event. The administrative effort involved is also far from insignificant.

Social security contributions

All employers are required to account for social security contributions on wages and salaries paid, up to set monthly limits. There are four separate types of insurance: for old-age pensions, unemployment benefits, health care, and invalidity care. Employees regularly earning more than EUR 60,750 in 2019 can opt out of the health and invalidity insurances if they take out appropriate coverage with a private insurance company. The pension and unemployment insurances are compulsory for all employees. The upper monthly salary limit is EUR 6,700 in 2019 in the western part of Germany and EUR 6,150 in 2019 in the eastern part of Germany) for the pension and unemployment insurances and EUR 4,537.50 in 2019 for the health and invalidity insurances. Currently (2019), the rates are as follows:

- Pension insurance: 18.6%, of which the employee's share is one half.
- Unemployment insurance: 2.5%, of which the employee's share is one half.
- Health insurance: 14.6%, of which the employee's share is one half. The health funds may levy a supplement (0.90% on average).
- Invalidity insurance: 3.05% (plus a surcharge of 0.25% in some cases), of which the employee's share is one half.

Corporate - Branch income

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Both corporation tax and trade tax are imposed on the taxable income of a foreign company's German branch. The rates are the same for branches as for resident German companies, although the WHT on dividend distributions by German companies is not deducted from profits transferred by a German branch to its foreign head office.

Corporate - Income determination

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The taxable income is generally determined on the basis of a tax balance sheet, which in turn is based on the statutory accounts according to German generally accepted accounting principles (GAAP). There are certain specific tax law and accounting adjustments to be made to the statutory accounts, and additional accounting options are available. If accounting options are exercised in the tax balance sheet that diverge from the financial statements according to German GAAP, a register must be kept of the resulting variances between the financial statements and the tax computation showing the basis on which each arose and its reversal. International Financial Reporting Standards (IFRS) financial statements are not accepted as a basis for computing taxable income.

Inventory valuation

Inventories normally are valued at the lower of actual cost, replacement cost, and net realisable value. However, any write-downs below actual cost must be made for specific reasons. If specific identification of the inventories is not possible, valuation at either standard or average cost is acceptable. The last in first out (LIFO) method is accepted as an option. First in first out (FIFO) is not accepted unless its assumption accords with the facts.

Long-term liabilities and accruals

Non-interest bearing liabilities with a remaining term of 12 months or more as at the balance sheet date, other than advance payments received, must be discounted at 5.5% per year. A similar provision applies to refurbishment (to restore an asset to its original condition) and other accruals that accumulate over time.

Capital gains

Generally, capital gains realised by a corporate entity from a disposal of business assets are treated as ordinary income. It is possible to postpone the taxation of part or all of the gain on real estate by offsetting the gain against the cost of a replacement property.

Capital gains from the sale of investments in other corporations are exempt from corporation and trade taxes. Corresponding losses are not deductible. However, 5% of the capital gains are added back to taxable income as non-deductible, directly-related expenses where the seller is resident or has a PE/representative in Germany.

Dividend income

Dividends received on significant holdings are exempt from corporation and trade taxes. Portfolio dividends are taxable. For corporation tax and trade tax purposes, different qualified portfolio holdings are applicable. With respect to corporation tax, a minimum shareholding of at least 10% is required and must be met at the beginning of the calendar year. For trade tax purposes, additional or rather different requirements need to be fulfilled (e.g. an active income criterion for certain foreign-source dividends) and different rules apply for German-source and foreign-source dividend income from shareholdings of at least 15% (or 10% insofar as the Parent/Subsidiary Directive is applicable). In this context, a scheduled amendment envisages simplified rules, in particular a unified minimum shareholding of at least 15%.

For corporation tax purposes, 5% of the tax-free gross dividend is added back to taxable income as non-deductible business expenses. For dividends exempted for corporation as well as for trade tax purposes, the taxable amount of 5% of the dividends for corporation tax purposes is also taxable for trade tax purposes.

Note that, for example, banks do not enjoy this exemption on dividends from securities held for trading.

Stock dividends

In principle, a declaration of stock dividends (by converting reserves to capital stock) by a company will not lead to taxable income for the shareholder or to other tax effects. Subsequent capital reductions, however, will be treated as cash dividends in most circumstances. In general, there is no German tax reason for distributing a stock dividend as opposed to merely leaving accumulated profits on the books to be carried forward. The decision, therefore, depends upon the situation in the investor's home country.

Interest income

Interest received is taxed as part of a company's ordinary trading income. There is no exemption corresponding to the trade tax disallowance of 25% of the interest expense or to the general tax disallowance of net interest expense in excess of 30% of 'earnings before interest, tax, depreciation, and amortisation' (EBITDA) under the interest limitation rule (*see the Deductions section*). However, since the interest limitation is based on the net interest margin, a company can benefit from earning income as interest as opposed to an interest substitute.

Royalty income

Royalties received are taxed as part of a company's ordinary trading income. There is no special regime such as an IP Box or the like.

Foreign income

Foreign income, except dividends, received by a resident corporation from foreign sources is included in taxable income for corporation tax unless a tax treaty provides for an exemption. Foreign PE income, in most cases, is exempt from corporation and trade taxes, while double taxation on most items of passive income (e.g. interest and royalties) is avoided by foreign tax credit or, at the taxpayer's option, by a deduction of the foreign taxes as an expense.

Irrespective of any tax treaty, income from a foreign branch or partnership is, in general, not charged to trade tax. However, with effect from the 2017 period of assessment, certain passive income arising to a foreign PE will be deemed to have been earned by a domestic PE for trade tax purposes.

The Foreign Tax Act provides for anti-avoidance (including controlled foreign company [CFC]) rules with respect to subsidiaries in certain lines of business subject to a low-tax regime. A low-tax regime is one in which the rate applicable to the income in question is less than 25%. Most forms of passive income fall under the CFC rules, which essentially attribute the income to the German shareholder as though it had been earned directly. Active business income is not generally caught where the business operates from properly established facilities. Due to EU-ATAD, an extensive revision of German CFC rules has to be expected.

Investment income held in an EU/EEA subsidiary is also exempt from attribution, provided the subsidiary is commercially active in its country of operation and maintains at least a minimum establishment.

Other provisions give the tax office the right to insist on full disclosure of all the facts and circumstances surrounding a transaction as a condition for the deduction of a business expense incurred within an essentially tax-free environment for the supplier. This rule operates independently of ownership or shareholding considerations.

Corporate - Deductions

Last Reviewed - 27 June 2019

Depreciation and amortisation

Depreciation on movable fixed assets is calculated on the straight-line method over the asset's anticipated useful life. Depreciation takes the residual value of the asset into account only if it is material, with any gains on a sale being treated as normal business income. Certain assets worth less than EUR 800 can be depreciated in total in the year of acquisition. Alternatively, certain assets acquired in one business year worth less than EUR 1,000 each can be pooled together as a compound item and depreciated over five years.

Buildings are depreciated on a variety of straight-line or reducing-rate systems designed to reach a full write-down between 25 and 50 years, depending on the age of the building and on whether the taxpayer was its first owner.

In addition to normal depreciation, special depreciation is deductible for tax purposes in certain limited circumstances (e.g. small businesses, ancient monuments, buildings in designated renovated city zones).

Acquired intangibles are amortised straight-line over their estimated useful lives; goodwill is amortised over 15 years.

Assets such as securities, stocks and bonds, shares, land, and working assets cannot be depreciated according to plan.

Start-up expenses

Start-up and formation expenses are deductible as incurred.

Interest limitation

Annual net interest expense (the excess of interest paid over that received) of group companies is only deductible at up to 30% of EBITDA for corporation and trade tax purposes. The 30% limitation applies to all interest, whether the debt is granted by a shareholder, related party, or a third party.

This limitation does not apply where the total net interest expense for the year is less than EUR 3 million or where the net amount paid to any one shareholder of more than 25% (or a related party) is no more than 10% of the total. However, this latter concession is dependent on the demonstration that the equity-to-gross assets ratio of the company is no more than two percentage points below that of the group as a whole. Unused EBITDA potential may be carried forward for up to five years to cover future excess interest cost. Non-deductible interest expenses can be carried forward without time limit and will be deductible from future income as if it were interest of the relevant year (viz. there is an excess of EBITDA). This carryforward is otherwise subject to the same principles as the loss carryforward, including curtailment on change of shareholder(s).

In a decision as of 14 October 2015, the Federal Fiscal Court held the interest limitation to be in breach of the constitution and has asked the German Federal Constitutional Court to give a definitive ruling. Since the Federal Fiscal Court is of the view that the provision is unconstitutional, it has suspended the proceedings in a pending case and submitted the question to the Constitutional Court. Only the Constitutional Court is authorised to decide if the regulation is unconstitutional and may thus no longer be applied.

It is emphasised that the interest limitation is additional to, and not a substitute for, the transfer pricing requirement that related-party finance be at arm's length.

Royalty limitation

Following (and beyond) the OECD recommendations on Action 5 of the Base Erosion and Profit Shifting (BEPS) Project, Germany has introduced a restriction on the deductibility of certain royalty payments to related parties applicable from 2018 onwards to counter so-called harmful preferential tax regimes. According to the royalty limitation rules, expenses arising after 31 December 2017 for the assignment of use or the right to use rights, in particular of copyrights and industrial property rights, in trade, technical, scientific and similar know-how, knowledge, and skills (e.g. plans, designs, processes), may not be a deductible business expense or may only be partially deductible.

The limitation will apply where:

- the recipient of the income from the assignment of rights is a related party, *vis-à-vis* the debtor
- the income in the hands of the (direct or indirect) recipient is subject to a special preferential regime, which does not correspond to the OECD Modified Nexus Approach, and
- the income received for the assignment of the rights is taxed at a rate less than 25% (low taxation) at the level of the (direct or indirect) recipient.

If the conditions of the provisions are met, the expenses in question will become proportionately non-deductible. The non-deductible portion of expenses is calculated as follows:

(25% - Income tax burden in %) / 25%

Bad debts

Bad debts incurred on trading with unrelated parties are deductible once it is apparent that they are irrecoverable and all attempts to pursue the debt have failed or been abandoned. Provision for future bad debts may be made; general

provisions must reflect the past experience of the business; specific provisions require specific justification based on the actual circumstances. Expenses from the write-down of loans or similar liabilities due to shareholders of more than 25% or to their related parties may not be deducted from taxable income unless a third-party creditor would have granted the loan or allowed it to remain outstanding in otherwise similar circumstances.

Charitable contributions

Donations to recognised charities in cash or in kind are deductible up to the higher of 20% of otherwise net taxable income or 0.4% of the total of sales revenue and wages and salaries paid during the year. Donations to charities registered in other EU/EEA member states also qualify for deduction if the recipient charity meets the German requirements for recognition.

Fines and penalties

Fines and other penalty payments levied by a court, or other authority, with an intent to punish are not deductible. By contrast, those levied to confiscate ill-gotten gains, or to relieve damage to the victims or to the public good, are deductible. Penalty payments levied for attempted tax evasion are not deductible, but late payment surcharges are deductible if the tax itself is (e.g. VAT).

Taxes

All taxes borne are deductible except for corporation tax, trade tax, and the VAT on most non-deductible expenses.

Net operating losses

Net operating losses are carried forward without time limit. For corporation tax (but not trade tax), there is an optional carryback to the previous year of up to EUR 1 million.

The loss relief brought forward claimable in any one year is limited to EUR 1 million plus 60% of current income exceeding that amount. The remaining 40% of income over EUR 1 million is charged to trade and corporation taxes at current rates. This is referred to as ‘minimum taxation’.

The loss carryforward, as well as current losses of the ongoing fiscal year accrued up to the date of the harmful share transfer, is forfeited if a single (immediate or ultimate) shareholder acquires more than 50% of the issued capital (voting rights) within a five-year period.

The forfeiture rule does not apply to share acquisitions as part of a group internal reorganisation without effect on the single ultimate shareholder, or inasmuch as the loss carryforward is covered by hidden reserves in the company’s assets that, on realisation, will lead to German taxation. This excludes the appreciation in value of shareholdings in other companies as well as business assets held in tax exempt foreign PEs.

Further, there is an exemption from the forfeiture of tax loss carryforwards for share transfers for the purpose of restructuring the respective corporate entity.

For harmful share transfers occurring after 31 December 2015, an application may be made under a provision introduced in December 2016 to avoid a loss forfeiture. Relief may be available where the company has maintained exclusively the same business during a specified observation period and during this period no ‘harmful event’ has occurred. In this context, harmful events include, for example, the discontinuance of the business, the commencement of an additional business, and a change in activity/business sector. Where the conditions are fulfilled and the company has made the application, the total tax loss carryforward available at the end of the period of assessment, in which the harmful share transfer occurred, will be classified as so-called ‘continuance-bound’ loss carryforward (*Fortführungsgebundener Verlust*).

The occurrence of one of the harmful events as set out in the provision will result in the forfeiture of the continuance-bound loss carryforward last assessed as far as the continuance-bound tax loss carryforward is not matched by hidden reserves under the hidden reserve exception.

In a decision of 29 August 2017, the Lower Tax Court of Hamburg has referred the question to the German Federal Constitutional Court whether the full forfeiture of losses in the case of a harmful share transfer of more than 50% is unconstitutional, which is the opinion of the Lower Tax Court of Hamburg. Only the Constitutional Court is authorised to decide if the regulation is unconstitutional.

Payments to foreign affiliates

A German corporation can claim a deduction for remuneration, such as interest charges (subject to the interest limitation) service fees, and royalties (subject to the royalty limitation), paid to foreign affiliates, provided the amounts are at arm's length. Detailed provisions covering both form and substance define this. In particular, all services must be covered by prior written agreement, and it is also necessary to conclude agreements for the purchase and sale of goods in writing where this would be usual between third parties (e.g. for quantity rebates on sales). The substance tests must be satisfied, both as to value for money and as to business relevance. Thus, the manager of a German subsidiary must be able to show an adequate business benefit from a related-party transaction. These and all other aspects of inter-company (related-party) trading fall under strict and extensive documentation requirements, breach of which can lead to serious penalties.

Special features for trade tax

There are a number of differences between the income subject to trade tax and to corporation tax. The most significant is the trade tax disallowance of one-quarter of the interest costs, including interest implicit in leasing, rental, and royalty charges. Banks have an exemption from this interest disallowance.

Corporate - Group taxation

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If a parent holds more than 50% of the voting rights in a subsidiary having its place of management in Germany, the two may conclude a formal court-registered profit and loss pooling agreement (PLPA), which must be concluded for a period of at least five years. If certain conditions are fulfilled, the ensuing relationship is referred to as an *Organschaft*. Effectively, the annual results of an *Organschaft* are pooled at the level of the parent. The tax group subsidiary itself is only subject to tax with respect to 20/17 of the compensation payments made to outside minority shareholders, if applicable. Profits and losses within a group can therefore be offset, but there is no provision for the elimination of intra-group profits from the total tax base. It should also be noted that negative income of the parent or of the subsidiary incurred within an *Organschaft* is excluded from offset in the same or another year if a foreign country takes it into account in the taxation of an *Organschaft* member, or of any other entity.

The main conditions for a tax group for corporate tax/trade tax purposes are:

- The subsidiary is financially integrated; in effect, the parent must have held the shares in the subsidiary without interruption from the beginning of its business year sufficient to give it a majority of the voting rights in the subsidiary.
- The parent of an *Organschaft* must be an individual, a trading partnership, or a non-tax exempt corporation, association, or estate.
- The investment in the subsidiary must, from a functional point of view, be attributable to a German branch of the parent, and the income of the branch must be subject to German tax and not be exempt under a DTT.
- The subsidiary must be a corporation having its place of management in Germany and its registered seat in an EU/EEA member state.
- The parent and the subsidiary must have concluded a qualifying profit and loss pooling agreement (PLPA) to run for at least five years and be consistently applied throughout the term of the agreement. Under the PLPA, the subsidiary surrenders its entire income to the parent. Conversely, the parent is obligated to compensate the losses incurred by the subsidiary throughout the term of the agreement.

Transfer pricing

Extensive rules on transfer pricing in respect of all transactions with foreign-related parties are in force. The basic principle is that all cross-border inter-company business transactions should be priced at arm's length, but the documentation requirements go far beyond the level of documentation normally found sufficient to demonstrate a conscientious approach to true third-party business. Failure to meet these rules exposes the company to serious risk of

penalties as well as unfavourable estimates by the tax authorities, who have the right to exercise every possible leeway or margin to the taxpayer's disadvantage.

Germany has adjusted its transfer pricing documentation rules to meet the recommendations of the OECD BEPS Project. The taxpayer has to prepare documentation specific to the country and each business (local file) as well as a master file with information regarding the global business operations of the group. Furthermore, a so-called country-by-country reporting (CbCR) must be submitted if the group's revenues exceed EUR 750 million.

Documentation (local file and master file) need not be set up at the time of transaction nor in the course of a tax return, but only needs to be provided upon request during a tax audit. However, in case of extraordinary business transactions (e.g. restructurings, cost sharing, other material long-term agreements), documentation needs to be prepared within six months after the end of the business year in which the business transaction occurred (but again, it only needs to be provided upon request during a tax audit).

Usually, in preparation of a tax audit, the tax authorities request the relevant records/documentation. Upon request of the tax auditor, the documents must be furnished within 60 days of the request or, in case of extraordinary business transactions, within 30 days.

The CbCR has to be submitted within one year after the end of the respective business year.

Thin capitalisation

There are no thin capitalisation rules as such; their substitute is the 'interest limitation' to, basically, 30% of EBITDA discussed in the *Deductions section.*

Controlled foreign companies (CFCs)

Pursuant to the German CFC taxation rules regulated in the Foreign Tax Act (FTA - *Außensteuergesetz*), certain low-taxed (less than 25%) income, referred to as passive income generated by a CFC, shall be subject to German tax at the level of the German shareholder, provided the CFC is deemed to be a so-called intermediate company (*Zwischengesellschaft*) and the German ownership criterion is fulfilled.

Passive income generated by a CFC that qualifies as an intermediate company will be attributed to the German shareholder regardless of whether it is actually distributed or not (CFC income). The CFC income is subject to German corporation tax and trade tax.

EU/EEA subsidiaries will not be qualified as an intermediate company if a so-called motive test is fulfilled (i.e. the German shareholders prove that the specific income is derived from a genuine economic activity performed in the state of residence of the CFC).

Following the introduction of EU-ATAD, an extensive revision of German CFC rules has to be expected.

Corporate - Tax credits and incentives

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Germany does not offer tax incentives except in very limited circumstances, not usually of direct business relevance (e.g. special depreciation for buildings under a conservation order). Partly, this is a question of the state budget, and partly, it reflects the constitutional requirement for equal treatment of all taxpayers.

Currently, a draft bill for an R&D subsidy is being considered. According to the present plan, a tax-free subsidy of 25% of salaries and wages for R&D purposes should be granted up to a limit of EUR 500,000.

Other incentives

Local authorities may offer facilities on favourable terms, such as the provision of cheap land on industrial estates.

Foreign tax credit

If foreign-source income is not exempt from German taxation, a credit will be given for the foreign tax actually paid and not otherwise recoverable. However, the credit is limited to the corporation tax (including the solidarity surcharge) on the net income after deducting the related expense (a per-country limitation applies). Unused credit is lost, as there are no provisions for carryforward or for offset against other taxes, such as trade tax. There are still a few cases of fictitious foreign tax credits under tax treaties with developing countries (to protect the treaty partner's investment incentives), but German treaty policy is to abandon such provisions at the first opportunity.

Corporate - Withholding taxes

Last Reviewed - 27 June 2019

Resident corporations paying certain types of income are required to withhold tax as shown in the following tables. There is also a solidarity surcharge of 5.5% on the tax due.

General

Recipient of German-source income	WHT (%)		
	Dividends (1)	Interest (1)	Royalties
Resident corporations and individuals	25	0/25 (2)	0
Non-resident corporations and individuals (1):			
EU corporations (4, 5)	0/25	0/25 (3)	0/15
Non-treaty corporations	25	0/25 (3)	15
Non-treaty individuals	25	0/25 (3)	15

Notes

1. Corporate recipients of dividend and interest income (interest on convertible and profit-sharing bonds) can apply for refund of the tax withheld over the corporation tax rate of 15% plus solidarity surcharge, regardless of any further relief available under a treaty.
2. Generally, only interest paid by banks to a resident is subject to a WHT. A 25% tax plus solidarity surcharge is also withheld from income on convertible or profit-sharing bonds.
3. Interest paid to non-residents other than on convertible or profit-sharing bonds and over-the-counter transactions is generally free of WHT. Tax on loans secured on German property is not imposed by withholding, but by assessment to corporation tax at 15% (plus solidarity surcharge) of the interest income net of attributable expenses. The tax authorities can order a WHT of 15.825% (including solidarity surcharge) if ultimate collection of the tax due is in doubt. Both forms of tax are reduced by treaty relief.
4. Where the EC Parent/Subsidiary Directive applies, dividends paid by a German company to a qualifying parent company resident in another EU member state are exempted from German WHT. The minimum shareholding is 10%, to be held continuously for at least one year.
5. The EC Interest and Royalties Directive exempts payments from WHT if made to an associated company in another EU member state. The association must be through a common shareholding of at least 25%.

Treaty rates

Recipient of German-source income	WHT (%)		
	Dividends (1, 4)	Interest (1, 2, 3)	Royalties

Recipient of German-source income	WHT (%)		
	Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Albania (5)	5/15	5	5
Algeria (5)	5/15	10	10
Argentina (5, 8)	15	10/15	15
Armenia (5)	7/10/15	5	6
Australia (5, 8, 10)	0/5/15	0/10	5
Austria (5)	5/15	0	0
Azerbaijan (7, 8)	5/15	0/10	5/10
Bangladesh (5)	15	10	10
Belarus (7)	5/15	0/5	3/5
Belgium (5, 8)	15	0/15	0
Bolivia (5)	10	15	15
Bosnia-Herzegovina (5, 9)	15	0	10
Bulgaria (5)	5/15	5	5
Canada (7, 8)	5/15	0/10	0/10
China, People’s Republic of (5, 8)	5/10/15	0/10	10
Costa Rica (5, 8)	5/15	0/5	10
Croatia (5)	5/15	0	0
Cyprus	5/15	0	0
Czech Republic (11)	5/15	0	5
Denmark (5)	5/15	0	0
Ecuador (8)	15	10/15	15
Egypt (5, 7)	15	15	15/25
Estonia (5, 8)	5/15	0/10	10
Finland (5)	5/15	0	0
France	5/15	0	0
Georgia (5)	0/5/10	0	0
Ghana (5, 8)	5/15	0/10	8
Greece	25	10	0

Recipient of German-source income	WHT (%)		
	Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Hungary (5)	5/15	0	0
Iceland	5/15	0	0
India (5)	10	10	10
Indonesia (5, 7)	10/15	10	10/15
Iran	15/20	15	10
Ireland, Republic of (5)	5/15	0	0
Israel (5, 8)	5/10/15	0/5	0
Italy (5, 7, 8)	15	0/10	0/5
Ivory Coast (5)	15	15	10
Jamaica (8)	10/15	10/12.5	10
Japan (5)	0/5/15	0	0
Kazakhstan (5, 8)	5/15	0/10	10
Kenya	15	15	15
Korea, Republic of (5)	5/15	10	10
Kosovo (5, 9)	15	0	10
Kuwait (5)	5/15	0	10
Kyrgyzstan (5)	5/15	5	10
Latvia (5)	5/15	10	10
Liberia (7, 8)	10/15	10/20	10/20
Liechtenstein (5)	0/5/15	0	0
Lithuania (5)	5/15	10	10
Luxembourg (5)	5/15	0	5
Macedonia (5)	5/15	5	5
Malaysia (5)	5/15	10	7
Malta (5)	5/15	0	0
Mauritius (5)	5/15	0	10
Mexico (5, 8)	5/15	5/10	10
Moldova (5, 6)	15	5	0

Recipient of German-source income	WHT (%)		
	Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Mongolia (5)	5/10	10	10
Montenegro (5, 9)	15	0	10
Morocco	5/15	10	10
Namibia (5)	10/15	0	10
Netherlands (5)	5/10/15	0	0
New Zealand (5)	15	10	10
Norway (5)	0/15	0	0
Pakistan (5, 8)	10/15	10/20	10
Philippines (5)	5/10/15	10	10
Poland (5, 8)	5/15	0/5	5
Portugal (5, 8)	15	10/15	10
Romania (5)	5/15	0/3	3
Russia (5)	5/15	0	0
Serbia (5, 9)	15	0	10
Singapore (5)	5/15	8	8
Slovakia (11)	5/15	0	5
Slovenia (5)	5/15	5	5
South Africa	7.5/15	10	0
Spain	5/15	0/15	0
Sri Lanka (5, 8)	15	0/10	10
Sweden (5)	0/15	0	0
Switzerland (5)	0/15	0	0
Syria (5)	5/10	0/10	12
Taiwan (5)	10	10	10
Tajikistan (5)	5/15	0	5
Thailand (7, 8)	15/20	10/25	5/15
Trinidad and Tobago (7, 8)	10/20	10/15	0/10
Tunisia (7)	10/15	10	10/15

Recipient of German-source income	WHT (%)		
	Dividends (1, 4)	Interest (1, 2, 3)	Royalties
Turkey (5)	5/15	10	10
Turkmenistan (5)	5/15	10	10
Ukraine (5, 7, 8)	5/10	5	0
United Arab Emirates (5)	5/10/15	0	10
United Kingdom (5)	5/10/15	0	0
United States (5, 10)	0/5/15	0	0
Uruguay (5)	5/15	10	10
Uzbekistan (5, 7)	5/15	5	3/5
Venezuela (5)	5/15	5	5
Vietnam (5)	5/10/15	10	10
Zambia	5/15	10	10
Zimbabwe (5)	10/20	10	7.5

Notes

1. Corporate recipients of dividend and interest income (interest on convertible and profit-sharing bonds) can apply for refund of the tax withheld over the corporation tax rate of 15% plus solidarity surcharge, regardless of any further relief available under a treaty.
2. Generally, only interest paid by banks to a resident is subject to a WHT. A 25% tax plus solidarity surcharge is also withheld from income on convertible or profit-sharing bonds.
3. Interest paid to non-residents other than on convertible or profit-sharing bonds and over-the-counter transactions is generally free of WHT. Tax on loans secured on German property is not imposed by withholding, but by assessment to corporation tax at 15% (plus solidarity surcharge) of the interest income net of attributable expenses. The tax authorities can order a WHT of 15.825% (including solidarity surcharge) if ultimate collection of the tax due is in doubt. Both forms of tax are reduced by treaty relief.
4. The lower rates on dividends apply under certain conditions (minimum shareholding, specific shareholders, in some cases minimum holding period).
5. The treaty does not limit the taxation of certain profit-based interest income, which is deducted by the debtor from their tax base; consequently, the domestic rate (plus solidarity surcharge) applies.
6. The USSR treaty continues in force with Moldova.
7. The applicable maximum WHT rate on royalties depends on the type of royalty granted (film and television royalties, trademarks, patents, franchises, etc.).
8. The lower rate on interest income applies under certain circumstances (e.g. for certain recipients, such as banks or pension funds, or for interest paid in connection with certain purchases on credit).
9. The Yugoslav treaty continues in force with Bosnia-Herzegovina, Kosovo, Montenegro, and Serbia.
10. The dividend exemption applies under certain conditions to corporate shareholders with at least 80% throughout the previous 12 months.
11. The Czechoslovak treaty continues to apply to the Czech Republic and to Slovakia. Interest on profit-sharing bonds is taxed as a dividend.

Treaties or protocols amending existing treaties have been signed but await ratification with Oman, South Africa, and Tunisia.

Corporate - Tax administration

Last Reviewed - 27 June 2019

Taxable period

The tax year in Germany is the calendar year.

Tax returns

Returns are filed for each calendar year and reflect the financial statements for the business year ending in that calendar year. Assessments are issued once the tax office has reviewed the return.

For tax periods starting after 31 December 2017, returns are, in principle, due by 31 July of the following year (31 May for earlier tax periods). However, for tax returns prepared by a professional tax adviser, the deadline is extended to the last day of February of the subsequent year. Under certain conditions (e.g. known late-filers and those with a record of other irregularities), one can be asked to submit their returns before these extension dates, though not before 31 July.

Electronic returns

Monthly or quarterly returns for WHT from employee salaries, dividends, interest, royalties, and other payments, and for VAT must be submitted electronically. The same applies to the annual returns for corporation tax, trade tax, and VAT. There is also an electronic filing requirement for the financial statements supporting the return.

Payment of tax

Taxes are payable in quarterly instalments during the year, with a final settlement when the assessment is issued. The quarterly instalments are based on the estimated ultimate liability. Usually, this is the total tax due shown by the last assessment issued, as adjusted by any rate changes. The corporation tax instalments are due on the tenth day of March, June, September, and December. For trade tax, the due dates are the 15th day of February, May, August, and November. Failure to pay by the due date followed by a three day grace period leads to a penalty of 1% per month.

Corporation and trade tax assessments bear interest on the net amount payable after deduction of all credits and previous payments. The rate is 0.5% per month simple interest, and the period runs from 1 April of the second year following the year of assessment until the date set for payment. The start of the interest period is independent of the actual date of assessment. It thus runs in retrospect on assessments issued later, for example following a tax audit. In the light of the long standing low-interest-period, the Federal Fiscal Court in a decision dated 25 April 2018 expressed doubts with respect to the compatibility of the interest rate of 0.5% per month with constitutional law. Several cases with respect to this question are pending with the German Federal Constitutional Court.

Rulings

Tax offices are able to issue binding rulings in respect of planned transactions, provided the taxpayer can show a particular interest in the tax consequences of the intended action. The fee varies between EUR 241 and EUR 109,736, depending upon the amount of tax involved (no fee is charged if the tax amount is less than EUR 10,000).

Advance pricing agreements (APAs)

A taxpayer can request the Central Tax Office to negotiate an APA on related-party transactions with a foreign tax authority on one's behalf. The vehicle is the mutual agreement procedure under the treaty, and the fee is a lump sum EUR 20,000 for each new agreement.

Tax audit process

Germany relies heavily on tax audits as a means of ensuring taxpayer discipline. Audits of small businesses are carried out on a random basis, although those for larger corporations and for the local subsidiaries of foreign groups tend to be

regular. With some district variations, audits are usually conducted at four to five yearly intervals, though not always with equal intensity for the entire period since the auditors' previous visit.

Statute of limitations

The statutory limitation period for the issue or correction of assessments is four years from the end of the year in which the return was filed. If no return was filed, the period runs from the end of the third year following the end of the year of assessment. The four-year period is extended to five in cases of taxpayer negligence and to ten in the event of evasion.

The statutory limitation period for the collection of tax debts is five years from the end of the year in which payment became due.

Topics of focus for the tax authorities

Tax office reviews of tax returns prior to issuing the assessment notice and payment demand are often rather superficial. Audits, though, are intense, being field reviews on site often lasting for several weeks or even months. Companies with an international focus can expect significant audit emphasis on all aspects of their dealings with their foreign business partners. If the company is a member of an international group, its most important audit component will usually be its transfer pricing on its dealings with foreign-related parties and the relevant documentation. It is emphasised that these two topics are separate fields, as documentation deficiencies can lead to unfavourable estimates on the taxpayer, even if the taxpayer is able to justify the taxpayer's group-company pricing in terms of overall result.

Corporate - Other issues

Last Reviewed - 27 June 2019

International exchange of information

In recent years, Germany has been vigorous in promoting the international exchange of tax information and has either agreed to obligations regarding the exchange of information in DTTs or concluded Tax Information Exchange Agreements (TIEAs) with countries with which it has not concluded a general DTT.

The Foreign Account Tax Compliance Act (FATCA) agreement of 31 May 2013 with the United States (US) on the automatic exchange between national tax authorities of bank account information on each other's residents has been in force since December 2013.

Moreover, Germany has signed and implemented into domestic law the Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information as of 29 October 2014, which is based on the Convention on Mutual Assistance in Tax Matters (1988/2010), which itself was also signed and implemented into domestic law by Germany. The first exchange of information on financial accounts in tax matters based on the so-called common reporting standard (CRS) from Germany took place in September 2017.

Automatic exchange of information has further been pushed as part of the BEPS Project of the OECD. The Multilateral Competent Authority Agreement on the Automatic Exchange of Country-by-Country Reports as of 27 January 2016 was signed by Germany and implemented into domestic law in 2016. At the level of the EU, the Directive on Administrative Cooperation in the Field of Taxation was extended with respect to the exchange of information regarding CbCR as well as advance cross-border tax rulings and APAs. Both amendments were implemented by Germany into domestic law in December 2016

Furthermore, at the EU level, an extension of the EU Directive on Administrative Cooperation in the Field of Taxation with reference to the exchange of information on cross-border tax planning schemes ('arrangements'), including the imposition of reporting requirements on so-called intermediaries and taxpayers, was adopted in May 2018. The new rules must be implemented into domestic law by 31 December 2019 and will become applicable from 1 July 2020. It should be noted, however, that the reporting rules also cover reportable cross-border arrangements where the first step is implemented between 25 June 2018 and 30 June 2020. While the legislative procedure to implement these rules into local law has not started yet in Germany, a first discussion draft for a bill has been circulated.

BEPS Project of the OECD

On the initiative of the G20 group of countries, the OECD developed a 15-point Action Plan to address BEPS by multinational companies. It aims to adjust local tax regimes and DTTs to keep pace with globalisation and technical developments.

Some jurisdictions of the European Union have already started implementing parts of the actions into their national law. Germany has already transposed some of the measures developed by the OECD or provided for by the European Union into domestic law, in particular rules concerning the international exchange of information in tax matters. Further, applicable from 2018 onwards, Germany introduced a restriction on the deductibility of royalty payments to related parties in certain cross-border situations where a preferential tax regime is considered harmful.

In August 2016, the EU Anti-Tax Avoidance Directive (EU-ATAD) entered into force, which includes certain minimum standards to combat tax avoidance schemes (interest limitation rule, exit taxation, general anti-abuse rule, CFC rules, hybrid mismatches). In this context a reform of German CFC rules is planned.

In May 2017, the Council of the European Union further adopted a directive amending the EU-ATAD (ATAD II) to address hybrid mismatches. The member states must transpose the ATAD II into national law by 31 December 2019 and apply it generally from 1 January 2020 onwards. However, so far the legislative procedure to implement these rules into national law has not yet commenced in Germany.

Together with numerous other countries, Germany signed the so-called 'Multilateral Instrument' (MLI) at an official signing ceremony on 7 June 2017. It is expected that Germany will seek to conclude additional bilateral agreements with respect to each DTT to be amended; these amendments should both identify the articles to be amended and set their terms in order to implement the provisions of the MLI into domestic law to the extent they have been accepted by Germany. As at 1 January 2018, Germany started negotiations on a protocol to amend the existing DTTs with 17 of the 30 countries on the preliminary list of DTTs to be amended through the MLI.

Individual - Significant developments

Last Reviewed - 25 August 2019

Social security contributions

As of 1 January 2019, the income ceiling for mandatory pension insurance has increased from 78,000 euros (EUR) to EUR 80,400 (EUR 73,800 in the new federal states). The increase of the contribution ceiling is also applicable to unemployment insurance.

Additionally, the income ceiling for mandatory health and long-term care insurance increased from EUR 53,100 to EUR 54,450.

As of 1 January 2019, the contribution rate to German state unemployment insurance was reduced from 3.0% to 2.5%, whereas the rate for nursery care insurance was increased from 2.55% to 3.05%. The contribution rate to the health insurance system was fixed at 14.6% and the rate for pension insurance was kept at 18.6%. All mentioned rates are shared equally between employer and employee.

Planned partial abolition of solidarity surcharge tax

On 20 August 2019, the German government proposed a bill for the partial abolition of the solidarity surcharge tax. Based on the draft law, as of 2021, no solidarity surcharge should be levied for individuals filing separately and having an income tax burden of not more than EUR 16,956 (approximately equivalent to a gross income of EUR 73,874) as well as for married filing jointly taxpayers with an income tax burden of not more than EUR 33,912 (approximately equivalent to a gross income of EUR 151,990). Where the aforementioned thresholds are exceeded, a sliding scale applies so that the current 5.5% solidarity surcharge would eventually only apply in full for individuals filing separately and having a gross income of approximately EUR 109,451 or approximately EUR 221,375, respectively, for a married filing jointly couple with two children where only one spouse is the earner.

Individual - Taxes on personal income

Last Reviewed - 25 August 2019

All resident individuals are taxed on their worldwide income. Non-resident individuals are taxed (usually by withholding) on German source income only.

Taxable income covers income from the following categories:

- Agriculture and forestry.
- Trade or business.
- Independent professions.
- Employment.
- Capital investment.
- Rents and royalties.
- Other income (as defined by tax law).

Net income

Net income is based on all gross earnings received during a calendar year and reduced by income related expenses during the same period for each of the above categories. Losses from one of the seven basic income categories (except capital investment) can fully be offset against positive income from another income category (exceptions for 'other income' may apply).

Taxable income

The total income after deductions in each category, which may be further reduced by lump-sum deductions or, within limits, by actual payment for special expenses defined by tax law, represents the taxable income.

Personal income tax rates

Germany has progressive tax rates ranging as follows (2019 tax year):

Taxable income range for single taxpayers (EUR)		Taxable income range for married taxpayers (EUR)		Tax rate (%)
Over	Not over	Over	Not over	
0	9,168	0	18,336	0
9,168	55,960	18,336	111,920	14*
55,960	265,326	111,920	530,652	42
265,326	and above	530,652	and above	45

* Geometrically progressive rates start at 14% and rise to 42%.

Surcharges on income tax

To improve the economic situation and infrastructure in the five 'new' eastern states of Germany, the German government is levying a 5.5% solidarity surcharge tax. The surcharge is imposed as a percentage on all individual income taxes. A partial abolition of the solidarity surcharge tax is planned as of 2021 (*see the Significant developments section*).

Members of officially recognised churches pay church tax as a surcharge on their income tax. The rates are either 8% or 9%, depending on the federal state where the individual resides.

Trade income tax

Trade income tax is levied on business income, whereas for individuals and partnerships a tax-free amount of EUR 24,500 has to be considered (i.e. not for corporations).

The respective municipality is responsible for the final tax assessment. The rate fixed by the municipality ('*Hebesatz*') is for larger cities between 200% and approximately 550% of the basic amount, which is 3.5% of the business income.

Local and state income taxes

There are no local or state income taxes levied in Germany.

Individual - Residence

Last Reviewed - 25 August 2019

Generally, individuals are deemed to be resident:

- if they have a residence in Germany that they use, or that is at least available to them, or
- if they have a habitual abode in Germany. This can be assumed if the individual is physically present in Germany for more than six months in any one calendar year, or for a consecutive period of six months over a year-end.

Nationality is not, in itself, a criterion for determining residence or tax liability.

Where an international assignee has a residence in two or more countries, the employee is deemed, for application of a double tax treaty (DTT), to be a resident of the contracting state in which the employee has a centre of vital (personal and economical) interests.

Individual - Other taxes

Last Reviewed - 25 August 2019

Social security contributions

The following social security contributions (as of January 2019) are levied on employment income. Employer contributions are generally tax-free.

- Pension insurance: 18.6%, up to an income ceiling of EUR 80,400 annually (EUR 73,800 in the new federal states). A contribution of 9.3% each is borne by both the employer and the employee.
- Unemployment insurance: 2.5%, up to an income ceiling of EUR 80,400 annually (EUR 73,800 in the new federal states). A contribution of 1.25% each is borne by both the employer and the employee.
- Health insurance: 14.6%, up to an income ceiling of EUR 54,450 annually. A contribution of 7.3% each is borne by both the employer and the employee.
- Long-term care insurance: 3.05% (3.3% for childless individuals, beginning with age 23), up to an income ceiling of EUR 54,450 annually. The contribution is borne 1.525% by the employer and 1.525% (1.55% for childless individuals, beginning with age 23) by the employee.
- Work accident scheme depends on the industrial sector and the accident risk; these contributions are borne by the employer.
- Insolvency contribution only payable by the employer amounts to 0.06%, up to the income ceiling of EUR 80,400.

An individual can apply for private health and long-term care insurance if certain conditions are met.

Self-employed individuals generally do not have to pay mandatory social security contributions.

Consumption taxes

Value-added tax (VAT)

Proceeds of sales and services provided in Germany are subject to VAT under the common system of the European Union (EU) at the standard rate of 19% (7% on certain items, such as food and books). The taxpayer generally is entitled to deduct the VAT charged on input from that payable on output.

Net wealth/worth taxes

At this point of time, no wealth taxes are levied in Germany.

Inheritance, estate, and gift taxes

Inheritance tax is a tax on lifetime gifts and on transfers of value passing on death. This tax is imposed on German residents. An individual who is not resident in Germany is liable to this tax only in relation to their assets situated in Germany.

Progressive tax rates of 7% up to 50% and tax-free amounts between EUR 20,000 and EUR 500,000 apply, depending on the value and the degree of the relationship between donor and beneficiary. For a surviving spouse, an additional tax-free allowance of EUR 256,000 is granted. This allowance is reduced by the discounted value of any pension entitlements, which are not subject to inheritance tax.

Property tax

There is a local tax on real estate property. The respective municipality is responsible for the final tax assessment.

Luxury taxes

There are no additional taxes on luxury goods in Germany.

Real estate transfer tax

Real estate transfer tax is levied at 3.5 to 6.5% of the consideration on all conveyances of German property.

It is also levied on indirect transfers on acquisition of at least 95% of the shares in property owning companies.

The tax is not levied on direct or indirect transfers without consideration in the course of a corporate reorganisation, under the laws of a member state of the European Economic Area (EEA), provided that at least 95% of the ultimate interest in the property remains unchanged for five years before and after the transaction.

Customs duties

Customs duties are levied under a common system on imports into the EU. The rate is set at zero on most imports from EU candidate countries and on many imports from countries with which the EU has an association agreement. For manufactured produce from other countries, the rates generally lie within the range of zero to 10%. The basis is the import value of the goods. The European Commission also sets 'countervailing' duties from time to time on specific imports from specific countries in order to counter dumping attempts. The countervailing duty rate is set to fully absorb the dumping margin and is therefore usually much higher than 10%.

Individual - Income determination

Last Reviewed - 25 August 2019

Employment income

Salaries paid under the German payroll are subject to wage withholding tax (WHT), which is withheld by the employer and credited against the final annual income tax charge. Account is taken of the personal situation by the application of certain tax classes and certain deductions are applied.

Salaries that are paid by a foreign employer (who does not have a permanent establishment in Germany) but are recharged to the German company are also subject to WHT. The same applies as of 2020 for salary that is not actually recharged, but should have been recharged under an arm's-length perspective. The German company is deemed to be

the 'economic employer' and thus required to calculate and transfer the appropriate wage tax return to the tax office on a monthly basis.

Salaries that are paid by a foreign employer but not charged to the German company (and as of 2020 should not have been recharged under an arm's-length perspective) are generally not subject to WHT. As with other income, tax for these employees is levied by assessment generally following the first annual return. Pension income is also taxable, subject to further allowances.

Equity compensation

Stock options are basically taxable when exercised. Taxable income is computed at the time of exercising the option, normally as the difference between the market price of the shares and the exercise price. Tax exemption may be granted if during the period between grant and vesting employment was not performed in Germany and thus the employment income was not taxable in Germany. The stock option benefit is sourced based on workdays between grant and vesting.

Shares provided free of charge or at a low-price may be tax-free up to an amount of EUR 360 *per annum* if certain conditions are fulfilled. This relief is granted for shares of the employing company and of the parent company controlling and consolidating its subsidiary.

A favourable tax rate may apply if the period between grant and exercise exceeds 12 months and if the employee is employed with the granting company at least for the first 12 months of this period.

Business income

Tax on net income from professional activities or from carrying on a trade or business is collected by assessment. Quarterly instalments might be assessed on an estimated basis and credited against the final income tax burden.

Capital gains

Capital gains (sale of shares) are subject to a flat tax rate of 25% plus a solidarity surcharge, which is basically withheld at source. Capital gains qualify for an 'investor's allowance' of EUR 801 per taxpayer and year but related expenses cannot be deducted. This amount is doubled in the case of married taxpayers filing jointly. Special rules apply on the taxation of capital gains from the sale of a significant interest in a corporation (1% or more).

Other capital gains are taxable in Germany at individual progressive rates only if the sale is within one year (for movable assets) or ten years (for real property) after the purchase date. These capital gains are only taxable if the profit exceeds EUR 600 per year in total. Further tax relief may be applicable under specific conditions if the property was used for private purposes.

Dividend income

Dividend income is subject to a flat tax rate of 25% plus solidarity surcharge which is basically withheld at source. Dividend income qualifies for an investor's allowance of EUR 801 per taxpayer, whereas related expenses cannot be deducted. This amount is doubled in the case of married taxpayers filing jointly.

Interest income

Interest income is subject to a flat tax rate of 25% plus solidarity surcharge which is basically withheld at source. Interest income qualifies for an investor's allowance of EUR 801 per tax payer, whereas related expenses cannot be deducted. This amount is doubled in the case of married taxpayers filing jointly.

Note that the investor's allowance is only provided one time for the total of interest and dividend income and capital gains.

Rental income

Rents received less allowable expenses form part of taxable income. Under treaty provisions rental income from sources abroad is mostly exempt. Tax exemption with progression will be applicable if sources are not located within the EU/EEA.

Exempt income

Employment income connected to special construction, engineering, or consulting work outside Germany, lasting at least three months, might be exempt if:

- The employee works abroad for a German employer or an employer located in the European Union.
- There is no tax treaty with the foreign country.

Individual - Deductions

Last Reviewed - 25 August 2019

Employment expenses

Various properly documented and necessarily incurred income related expenses may be deducted by an individual unless they are - in cases of employment relationship - reimbursed by the employer.

For employees common tax deductions include:

- costs of travelling to and from work
- business literature
- professional dues, and
- work equipment.

There is a blanket employee allowance for business deductions of EUR 1,000 per year. To the extent actual employment connected expenses exceed the lump sum of EUR 1,000, they are deductible if they can be substantiated.

Personal deductions

Alimony payments

Individual taxpayers may take deductions up to EUR 13,805 for the alimony paid to a divorced partner.

Charitable contributions

Contributions to German charities and certain international charities are deductible up to 20% of adjusted gross income. Church tax is also fully deductible.

Childcare expenses

Fulfilling certain requirements, the actual expenses for child care can be deducted up to a maximum of EUR 4,000 per year/child for children younger than 14 years or for handicapped children.

Education expenses

30% of tuition fees (except for housing, care, and food) of a recognised private school located in the EU/EEA countries or of German schools is applicable, if special tax relief for children is granted and if graduation is approved by the government. The special expenses which can be claimed are limited to EUR 5,000 *per annum* per child.

Social security contributions

Social security contributions and insurance premiums can be deducted up to specified limits, as follows.

Health insurance and long-term care contributions

Contributions to a health insurance are completely tax deductible as far as these contributions are paid for primary healthcare. Contributions to a long-term care insurance are also tax deductible.

Unemployment insurance contributions

Additionally, contributions paid to certain other insurance policies (e.g. unemployment insurance) can be deducted up to a maximum of EUR 2,800 per year (EUR 1,900 for employees and pensioners). This only applies if these amounts have not already been utilised for health and long-term care insurance contributions.

Pension scheme contributions

Contributions to old-age pension schemes are, in general, tax deductible up to an overall limit of EUR 24,305 (EUR 48,610 for married taxpayers filing jointly). However, for a transitional period (2005 to 2025) only a reduced amount can be deducted. In 2019, the tax deduction amounts to 88% of the actual contributions, at a maximum of 88% of

EUR 24,305 (EUR 48,610), and increases by 2% in each of the subsequent years up to the year 2025. For employees contributing to the state pension scheme, the deductible amount will be reduced by contributions paid by the employer to the state pension scheme, as those contributions are already tax exempt under the income tax act.

Mortgage deduction

Mortgage interest is only deductible against income from the property (i.e. not deductible for privately used property).

Standard deductions

A lump sum special expense deduction totalling EUR 36 for a single person or EUR 72 for married couples is provided without need for proof. Furthermore, there are also a number of other specific allowances and reliefs, for example, for children, the elderly and the disabled.

Personal allowances

Deductions are allowed for extraordinary burdens such as:

- Subsistence for parents and children with low income (documentary evidence of low income is required) if entitled by law. The maximum deduction is EUR 9,168 and may be reduced by the standard of living of the country and the personal income situation of the beneficiaries.
- Deductions for children who are being educated in Germany or abroad (within limitations), who are older than 18, and living outside the parents' household amounting to EUR 924 per year. If the child lives abroad, the amount may be reduced by the standard of living of the appropriate country.
- Further deductions may be granted, for example, for handicapped family members and expenses for household help.

The allowances shown below are deductible in computing taxable income.

Per year / per taxpayer	EUR
Employee's allowance	1,000
Investor's allowance (for interest, dividends, and capital gains)	801
Social security allowance	variable
Lump sum special expense deduction	36
Child allowance - per child registered in Germany	3,810

Business deductions

Fixed assets and intangibles are subject to depreciation or amortisation.

For businesses common tax deductions are:

- interest expenses
- personnel expenses
- operating materials, and
- work equipment.

Losses

Losses not offset in the year in which they occur can either be carried back to the previous year up to EUR 1 million or carried forward to future years up to EUR 1 million (double amount for married taxpayers filing jointly). A loss carry-forward exceeding EUR 1 million is subject to further detailed limitations.

Individual - Foreign tax relief and tax treaties

Last Reviewed - 25 August 2019

Foreign tax relief

If a double tax treaty (DTT) exists, double taxation is usually avoided by exempting the foreign income with progression. Foreign income taxes can only be credited against German income tax if a tax credit is provided in the applicable DTT or a DTT does not exist. A tax credit is only possible up to the amount of German income taxes on the specific foreign income.

Tax treaties

German national income tax law has been modified and superseded by various tax treaties with foreign countries to ensure that income is not taxed by more than one country. Germany has concluded DTTs, applicable for income taxes, with nearly 90 countries, amongst them most of the industrialised countries. However, DTTs have not been concluded with Brazil and Hong Kong.

Germany currently has double-taxation agreements with the below mentioned countries:

Albania	Iran	Philippines
Algeria	Ireland, Republic of	Poland
Argentina	Israel	Portugal
Armenia	Italy	Romania
Australia	Jamaica	Russia
Austria	Japan	Serbia
Azerbaijan	Jersey	Singapore
Bangladesh	Kazakhstan	Slovak Republic
Belarus	Kenya	Slovenia
Belgium	Korea, Republic of	South Africa
Bolivia	Kosovo	Spain
Bosnia and Herzegovina	Kuwait	Sri Lanka
Bulgaria	Kyrgyzstan	Sweden
Canada	Latvia	Switzerland
China, People's Republic of *	Liberia	Syria
Cote d'Ivoire	Liechtenstein	Taiwan
Croatia	Lithuania	Tajikistan
Cyprus	Luxembourg	Thailand
Czech Republic	Macedonia	Trinidad and Tobago
Denmark	Malaysia	Tunisia
Ecuador	Malta	Turkey

Egypt	Mauritius	Turkmenistan
Estonia	Mexico	Ukraine
Finland	Moldova	United Arab Emirates
France	Mongolia	United Kingdom
Georgia	Montenegro	United States
Ghana	Morocco	Uruguay
Greece	Namibia	Uzbekistan
Hungary	Netherlands	Venezuela
Iceland	New Zealand	Vietnam
India	Norway	Zambia
Indonesia	Pakistan	Zimbabwe

* Without Hong Kong and Macau

Estate and gift tax conventions

Estate and gift tax conventions have also been concluded with a number of countries, including the countries listed below:

- Denmark (included in the DTT)
- France
- Greece
- Sweden (included in the DTT)
- Switzerland
- United States

Totalisation agreements

Totalisation agreements (i.e. social security agreements) have also been concluded with a number of countries, including the countries listed below:

- Albania
- Australia
- Bosnia and Herzegovina
- Brazil
- Canada and Quebec
- Chile
- China
- India
- Israel
- Japan
- Korea
- Kosovo
- Macedonia
- Moldova
- Montenegro
- Morocco
- Philippines

- Serbia
- Tunisia
- Turkey
- United States
- Uruguay

Individual - Other tax credits and incentives

Last Reviewed - 25 August 2019

There are no other significant tax credits or incentives for individuals in Germany.

Individual - Tax administration

Last Reviewed - 25 August 2019

Taxable period

The tax year is the calendar year.

Tax returns

Married couples file joint returns unless they are legally separated or one spouse requests otherwise. Annual returns must be filed by 31 July of the year following the tax year, after which the tax office then issues a final assessment notice. The filing deadline expires on 28 (29) February of the second year following the tax year if the income tax return is prepared by a certified tax advisor.

There is no self-assessment. A non-resident taxpayer will have to file a return and receive an assessment only if the German income is not subject to WHT. Where income is subject to WHT, the income tax liability is normally settled through the withholding system and no returns or assessments are required.

Payment of tax

In general, taxes are payable within one month of the date that the final assessment is issued. Tax on wages and salaries is withheld at source with the amounts withheld used as payment toward the final income tax liability. The amounts withheld are treated as a payment on account of the final income tax liability. If taxpayers have additional non-employment income, they will usually be asked to make quarterly instalments. Assessed quarterly instalments are due on 10 March, 10 June, 10 September, and 10 December.

A self-employed person must prepay income tax that will be offset on filing an annual return. The advance payment is determined on the basis of the return made for the previous year. In the event of a new business, the advance will be calculated on the basis of estimates made by the owner of the business. The advance payment is made on the dates mentioned above.

Tax audit process

The supreme tax authority in Germany is the Federal Ministry of Finance (*Bundesministerium der Finanzen*), whereas the taxpayer usually deals with the local tax offices. Employees are usually not audited as the annual income tax return is already subject to review. However, employees with income exceeding EUR 500,000 per year might be subject to regular audits.

Statute of limitations

The statute of limitation for income tax returns usually amounts to four years. An extension up to five years is possible in cases of tax evasion or up to ten years in cases of tax fraud. Further prescriptions have to be considered regarding the start date and suspension of the statute of limitation.

Topics of focus for tax authorities

Tax authorities in the meanwhile focus on international mobile employees and assignees. Specific forms within the annual income tax return have to be filed to provide the tax office with more detailed information about the assignment.

Individual - Sample personal income tax calculation

Last Reviewed - 25 August 2019

Facts and assumptions

- This is a sample tax calculation for the year 2019.
- Married couple with two dependent children under age 18 years.

Income

- Gross salary of husband of EUR 100,000.
- No employment related expenses exceeding the lump sum allowance of EUR 1,000.
- Rental income from German sources of husband totals a loss of EUR 5,000.

Expenses

- Church tax of EUR 1,974 (wage church tax).
- Donations of EUR 250.

Tax computation

	EUR	EUR
Earned income:		
Gross salary	100,000	
Lump sum deduction employment related expenses	(1,000)	
Income from employment		99,000
Rental loss	(5,000)	
Net income		94,000
Deductions:		
Church tax	(1,974)	
Donations	(250)	
Insurance premiums (lump sum deduction)	(10,329)	
Child allowance (EUR 7,620 per child)	(15,240)	
Taxable income		66,207
Income tax	12,502	
Child benefit for two children	4,776	
Solidarity surcharge	688	

Church tax	1,125	
Total tax due		19,091
Less prepayments:		
Wage tax	(20,160)	
Solidarity surcharge on wages	(813)	
Church tax on wages	(1,331)	
Total tax paid		(22,304)
Total tax refund after tax assessment		**(3,213)**

Individual - Other issues

Last Reviewed - 25 August 2019

Immigration and work permit

If foreign nationals shall become employed with or assigned to a German branch or subsidiary, German immigration law requirements have to be observed. The requirements have to be checked in each individual case from an immigration expert.

Generally, EU nationals no longer need a German work permit. Foreign nationals of non-EU member states intending to work in Germany need a work and residence permit, which is regularly granted as an electronic permit (so called *'elektronischer Aufenthaltstitel'*).

Some nationals are privileged (US, Canada, Australia, New Zealand, Korea, Japan, Israel), and they do not need to apply for a visa when entering Germany for working purposes. They can directly apply for their German work and residence permit in Germany within a certain time after entrance. However, they are not allowed to start working before they have registered their German address and at least a preliminary permit is issued by the immigration office.

All other nationalities (Visa-nationals) have to apply for an entry visa for working purposes (D-Visa) at the Germany embassy/consulate in the country where one officially resides abroad.

German immigration law provides various different work permit types, depending on the type of employment (assignment vs. local hire), salary level, qualification of the employee, nationality etc. In 2012, Germany also implemented the EU Blue Card for high qualified individuals.

Germany contacts

Klaus Schmidt
Tax Leader
+49 89 5790 6706

Aline Kapp
Partner Human Resource Services
+49 69 9585 6469

Emma Moesle
Corporate Tax Manager
+49 201 438 1975

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