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**Germany – Territorial  
Scope of Income Tax for  
Offshore Projects Altered**

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## flash Alert

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A new law has been enacted in Germany that amends the territorial scope of German income tax laws with regard to offshore wind farms.<sup>1</sup>

### Why This Matters

German and foreign companies participating in the construction, maintenance, or operation of wind farms in the German Exclusive Economic Zone should be aware that the territorial scope of the German income tax laws has been extended with effect from 1 January 2015. Individuals working on such projects are now more likely to become subject to German income tax on their related salary income. German and foreign employers should be aware that they may have a withholding obligation for German wage tax and solidarity surcharge.

Companies involved in renewable energy projects in the German Exclusive Economic Zone should review their wage tax obligations for 2015 and, if applicable, even earlier years, to avoid liability risks.

### Background

There are several projects underway in the North Sea and the Baltic Sea to erect, connect, maintain, or operate facilities for the generation of power from renewable energy sources. Germany has recently updated its territorial definition for income tax purposes to account for such activities taking place off the German coast in its so-called Exclusive Economic Zone ("EEZ"). An extended definition of what is now treated as "German territory" for income tax purposes became effective on 1 January 2015. The tax authorities claim that the new wording is only a clarification of the existing law. This would mean it could be applied to earlier years as well. (Whether this would hold up in a court, remains to be seen.)

### Dependent Services Performed in Germany

The construction and maintenance of offshore wind parks require highly specialized labor and many of these experts are recruited from abroad. If they do not reside in Germany and work at sea, they may not expect to be taxable in Germany. However, if these individuals work in German coastal waters or the EEZ, they may be subject to German income tax even if they are regarded as nonresidents of Germany, especially if their salaries are borne by a German company or a German permanent establishment of a foreign employer.

A nonresident employee is subject to German income tax on the salary allocable to services performed in Germany.

<sup>1</sup> "Gesetz zur Anpassung des nationalen Steuerrechts an den Beitritt Kroatiens zur EU und zur Änderung weiterer steuerlicher Vorschriften" (StÄnd-AnpG-Kroatien).

Until 31 December 2014, German territory, for income tax purposes, included "the continental shelf that is allocable to Germany, to the extent it is used (...) for the generation of energy using renewable energies."<sup>2</sup> It was unclear, in particular, whether this included the construction phase of a wind park (along with cable-laying activities etc.). After the amendment, German territory now specifically includes "Germany's Exclusive Economic Zone, to the extent it is used to build or operate facilities for the generation of energy using renewable energies."<sup>3</sup>

#### **KPMG Note**

While the amendment came into force with effect from 1 January 2015, the tax authorities regard the amended wording as a mere clarification of the existing law. It has therefore become more likely that activities performed before 2015 are to be treated under the same rules.

#### ***Withholding Obligations for German Employers and Foreign Employers with Permanent Establishment in Germany***

This means that employees working on offshore energy projects in the EEZ perform the work in Germany. They are thus subject to German income tax on the salary, regardless of their residence status. German employers as well as foreign employers having a permanent establishment in Germany (including the EEZ) are obliged to withhold German wage tax and solidarity surcharge on these salaries. If the employer fails to meet its withholding obligations, it can be held liable for the under-withheld tax.

#### **Treaty Exemptions May Be Available**

It is possible, of course, that residents of a country with which Germany has concluded a double taxation treaty are exempt from German taxation or entitled to a foreign tax credit based on the applicable treaty rules.

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The information contained in this newsletter was submitted by the KPMG International member firm in Germany. The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

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<sup>2</sup> § 1 (1) sentence 2 German Income Tax Act of 8 October 2009.

<sup>3</sup> § 1 (1) sentence 2 no. 2 German Income Tax Act as published on 30 July 2014 ("Croatia Law") (see official name in German noted in footnote 1).