Germany Country Profile

EU Tax Centre

July 2016

Key tax factors for efficient cross-border business and investment involving Germany

EU Member State Yes

Double Tax Treaties With:

Albania	Czech Rep.	Jamaica	Namibia	Thailand
Algeria	Denmark	Japan	Netherlands	Trinidad & Tobago
Argentina	Ecuador	Jersey	New Zealand	Tunisia
Armenia	Egypt	Kazakhstan	Norway	Turkey
Australia	Estonia	Kenya	Pakistan	Turkmenistan
Austria	Finland	Rep. of Korea	Philippines	UK
Azerbaijan	France	Kosovo	Poland	Ukraine
Bangladesh	Georgia	Kuwait	Portugal	United Arab Emirates
Belarus	Ghana	Kyrgyzstan	Romania	Uruguay
Belgium	Greece	Latvia	Russia	US
Bolivia	Hungary	Liberia	Serbia	Uzbekistan
Bosnia & Herzegovina	Iceland	Liechtenstein	Singapore	Venezuela
Bulgaria	India	Lithuania	Slovakia	Vietnam
Canada	Indonesia	Luxembourg	Slovenia	Zambia
China(a)	Iran	Macedonia	South Africa	Zimbabwe.
Costa Rica	Rep. of Ireland	Malaysia	Spain	
Croatia	Israel	Malta	Sri Lanka	
Cyprus	Italy	Mauritius	Sweden	
	Ivory Coast	Mexico	Switzerland	
		Moldova	Syria	
		Mongolia	Taiwan	
		Montenegro	Tajikistan	
		Morocco		

Notes: (a) Treaty with China is not applicable to Hong Kong and Macau.

Forms of doing business

Stock corporation (AG)

Limited company (GmbH)

Limited partnership with a limited company as general partner (GmbH & Co. KG)

Limited partnership (KG)

General partnership (OHG)

Societas Europae (SE)

Legal entity capital requirements	AG: EUR 50,000 GmbH: EUR 25,000 SE: EUR 120,000
Residence and tax system	A corporate entity is resident in Germany for tax purposes if either its place of incorporation (registered seat) or its place of central management is in Germany. Resident companies are taxed on their worldwide income. Non-residents are taxed only on their German source income, as defined in German tax law.
Compliance requirements for CIT purposes	Companies can choose their balance sheet date at will, meaning that the fiscal year does not have to coincide with the calendar year. The fiscal year is not allowed to exceed 12 months. However, the change of a fiscal year which coincides with the calendar year to a fiscal year which deviates from the calendar year needs approval of the tax authorities. In general, CIT returns have to be filed 5 months after the end of the fiscal year. CIT generally accrues at the end of the fiscal year. However, when assessed, there are four advance payments due (March 10, June 10, September 10, December 10). Electronic filing of the CIT return required.
Tax rate	23-34 percent (i.e. 15.825 percent CIT rate including solidarity surcharge and 7-18 percent trade tax depending on local trade tax multiplier).
Withholding tax rates	On dividends paid to non-resident companies Generally 26.4 percent, i.e. 25 percent withholding tax ("WHT") plus 5.5 percent solidarity surcharge on WHT (exemptions available under the EU Parent-Subsidiary Directive, if applicable and certain requirements are fulfilled). Reduction of WHT under most German tax treaties for qualified dividends (ownership threshold). In addition, foreign corporations on the basis of domestic German tax law may claim a refund of two-fifths of the WHT (subject to certain substance requirements). On interest paid to non-resident companies Generally no WHT under domestic law (certain exceptions apply). On patent royalties and certain copyright royalties paid to non-resident companies Generally 15.825 percent (exemptions available under the EU Interest-Royalties Directive, if applicable and certain requirements are fulfilled). Reduction of WHT under most German tax treaties available. On fees for technical services No On other payments Unless modified by a tax treaty: Supervisory board fees are subject to withholding tax at a rate of 30 percent. The income from artistic, athletic, acrobatic or similar

performances performed in Germany and the income from utilization of such performances is subject to withholding tax at a rate of 15 percent.

Residents in the EU/EEA can choose to deduct business expenses directly related to payments mentioned above (net taxation). Where tax is withheld on the net amount, a standard tax rate of 30 percent applies for individuals and 15 percent for non-resident corporate entities. A solidarity surcharge of 5.5 percent of the tax rate applies.

Branch withholding taxes

No

Holding rules

Dividend received from resident/non-resident subsidiaries

Exemption method (effectively 95 percent), special rules for trade tax purposes, but participation exemption under a tax treaty may be available:

- Participation requirement: 10 percent for corporate income tax at the beginning of the tax assessment period (from resident/non-resident subsidiaries); 15 percent for trade tax as of the beginning of the tax assessment period (from non-resident subsidiaries) (10 percent for participations in EU/EEA corporations at the beginning of the tax assessment period); 15 percent for trade tax at the beginning of the tax assessment period (from resident subsidiaries);
- Minimum holding period: none for corporate income tax; as of the beginning of the calendar year for trade tax (none for participations in domestic and EU/EEA corporations);
- Taxation requirement: none for corporate income tax and trade tax;
- Active income requirement: none for corporate income tax; for trade tax purposes, active income requirement applies to dividends received from a non-EU subsidiary. However, an applicable tax treaty might overrule active income requirement under domestic law;
- In principle, anti-hybrid rule applies for German CIT purposes which implies that the effective 95 percent participation exemption for a dividend is no longer available at the level of the German company receiving the dividend if the dividend payment was treated as tax-deductible expense at the level of the foreign distributing entity ("corresponding principle"). The anti-hybrid rules also apply to recently concluded and future DTTs.

Capital gains obtained from resident/non-resident subsidiaries

Exemption (effectively 95 percent) applies for CIT as well as trade tax purposes.

Tax losses

Carry-forward: losses may be carried forward indefinitely.

Carry-back: As of fiscal year 2013 losses up to an amount of EUR 1,000,000 can be offset against the profits of the preceding year for CIT purposes. Losses for trade tax purposes cannot be carried back.

Minimum taxation: 40 percent of the income exceeding EUR 1,000,000 cannot be sheltered by tax loss carry-forwards, but is subject to taxation at regular rates.

Restrictions: a direct or indirect transfer of shares or voting rights in the loss making company may restrict the utilization of losses for corporate and trade tax purposes unless the group exemption applies (change-of-control-rules). Unused tax losses may not be forfeited upon a share transfer up to the amount of the loss company's built-in gains taxable in Germany.

Tax consolidation rules/Group relief rules

Yes, if certain requirements are fulfilled and a profit and loss pooling agreement is entered into for a minimum period of 5 years, profits/losses of a controlled company are attributed to the controlling company. However, a tax consolidation is only possible with subsidiaries (corporations for German tax purposes) having their place of management in Germany.

Registration duties

No

Transfer duties

On the transfer of shares

No

On the transfer of land and buildings

On the transfer of German real estate, the (direct or indirect) transfer of 95 percent or more of the interest in a partnership owning German real estate within 5 years to new partners, the (direct or indirect) aggregation at the level of the purchaser of 95 percent or more of the shares in a corporation/interest in a partnership owning German real estate, the (direct or indirect) economic transfer of 95 percent or more of the shares in a corporation/or interest in a partnership owning German real estate: real estate transfer tax is generally 3.5 percent of the purchase price or the applicable tax value; however, the tax rate can differ in each German federal state (Bavaria, Saxony: 3.5 percent; Hamburg: 4.5 percent; Baden-Württemberg, Mecklenburg-Weston Pomerania, Rhineland-Palatinate, Saxony-Anhalt, Thuringia, Bremen, Lower Saxony: 5 percent; Berlin, Hesse 6 percent; Brandenburg, North Rhine -Westphalia, Saarland, Schleswig-Holstein.: 6.5 percent). An exemption for intragroup business reorganizations is available provided certain conditions are met (The Federal Fiscal Court (BFH) is currently examining whether the intra-group exemption constitutes unlawful state aid within the meaning of Art. 107 TFEU. The designation as unlawful state aid could mean that formerly exempt reorganizations may retroactively become subject to taxation).

Stamp duties

No

Real estate taxes

Real estate tax is payable by the owner of the property irrespective of residence and is levied on the assessed value of the property using the basic rate of 0.35 percent for real estate and 0.6 percent for agricultural property. Municipalities apply their respective multipliers to the resulting base amount. The multipliers vary by municipality and may be different for industrial or agricultural property. Real estate tax rates for industrial property typically range from 0.5 to 2.1 percent.

Controlled Foreign Company rules

In general, if German resident taxpayers directly or indirectly own more than 50 percent of the shares in a foreign corporate subsidiary (vote or value), which is subject to a low rate of taxation (effective tax rate less than 25 percent), and earns income from passive activities not included in Section 8 (1) of the German Foreign Transactions Tax Act, such low-taxed passive income is subject to taxation in Germany. Exceptions to the 50 percent threshold apply for certain types of passive income (e.g., interest income), thus, a lower participation can be sufficient to trigger CFC taxation. EU/EEA subsidiaries carrying out a genuine economic activity may be exempted from CFC rules.

Transfer pricing rules

General transfer pricing rules

Yes ("arm's length principle").

Documentation requirement

By virtue of these rules, detailed documentation of transfer prices is required (generally within 60 days of the request by the tax authorities). If the documentation on the arm's length nature of cross-border transactions with related companies and PEs cannot be provided or is inadequate, the German tax authorities have the right to reassess the German taxable income (by making estimates) and penalties can be imposed.

Thin capitalization rules

Interest expense is fully deductible from the tax base only to the extent the taxpayer earns positive interest income in the same financial year. Interest expenses in excess of interest income (net interest expense) is deductible only up to 30 percent of tax Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA"). Tax EBITDA is defined as taxable profit before application of the interest deduction ceiling, increased by interest expenses and by fiscal depreciation and reduced by interest earnings. Unused tax EBITDA can be carried forward for a maximum period of 5 years.

Non-deductible interest expenses in a considered period may be carried forward, thereby increasing the interest expenses in the following year, but are not taken into account to determine the tax EBITDA.

The earnings stripping rules do not apply where one of the following exceptions is met:

- The interest expense exceeds positive interest income by less than EUR 3,000,000 (tax threshold); or
- The business in question is not part of a controlled group; or
- The business in question is a part of a controlled group and the equity ratio of the business is not more than 2 percentage points less than that of the group (escape clause).

The exemption for non-group businesses and the escape clause do not apply to companies where the "shareholder debt financing"- test is not met.

General Anti-Avoidance rules

According to the German GAAR, the tax laws may not be circumvented by abusing the structuring possibilities offered by the law. An abuse is present where

(GAAR)	an inappropriate legal structure has been chosen which, compared with an appropriate structure, results in a tax benefit for the taxpayer or a third party not contemplated by the law. This does not apply where the taxpayer is able to demonstrate valid non-tax reasons for the structure.
Specific Anti-Avoidance rules/Anti Treaty Shopping Provisions	■ Anti - Treaty/Directive Shopping rules: the reduced WHT rates according to a DTT or EU Directives do not apply to the extent persons holding ownership interests in this foreign company would not be entitled to the refund or exemption if they derived the income directly and the foreign company's gross earnings for the respective fiscal year are not derived from its own business activities and (i) with regard to these earnings (that are not derived from own business activities) there are no economic or other valid reasons for interposing the foreign company, or (ii) the foreign company does not participate in general commerce by means of a business organization with resources appropriate to its business purpose. ■ Switch-Over clause: in specific cases, the credit method is applied instead of the exemption method provided by the DTT.
Advance Ruling system	Yes, but generally for a fee payable to the tax authorities.
IP / R&D incentives	No
Other incentives	The German Investment Grant Act provides the possibility for companies to file for investment grants under certain conditions and only for certain regions in Germany (only for investments until December 31, 2013).
VAT	The standard rate is 19 percent, and the reduced rate is 7 percent.
Other relevant points of attention	No

Source: German tax law and local tax administration guidelines, updated 2016.

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