Germany Country Profile

EU Tax Centre

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

EU Member State Yes.

Double Tax Treaties With the following countries, territories and jurisdictions:

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

(a) Treaty signed but not yet in force.

Most important 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 should not however exceed 12 months. Changing from a fiscal year which coincides with the calendar year to a fiscal year which deviates from the calendar year is subject to approval by the tax authorities. In general, CIT returns for tax years beginning 2018 have to be filed within seven months of the end of the calendar year, i.e. generally by July 31 of the following year. An extension to the last day of February is available for tax returns prepared by tax advisors. CIT returns for tax years prior to 2018 have to be filed within five months of the end of the calendar year, i.e. generally by May 31 of the following year. An extension to December 31 is available for tax returns prepared by tax advisors; further extensions may be available under certain circumstances and upon approval by the tax authorities. 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 is required.
Corporate income tax rate	23-37 percent. This is a combined rate consisting of 15 percent CIT, a solidarity surcharge that applies as a percentage of the CIT (5.5 percent of 15 percent = 0.825 percent) plus 7-21 percent trade tax depending on local trade tax multiplier.
Withholding tax rates	On dividends paid to non-resident companies Generally 26.375 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 is available under most German tax treaties for qualified dividends (e.g. ownership threshold). In addition, foreign corporations may claim a refund of two-fifths of the WHT on the basis of domestic German tax law (subject to certain substance requirements). On interest paid to non-resident companies

Generally no WHT on straight-forward loans under domestic law (certain exceptions apply).

On patent royalties and certain copyright royalties paid to non-resident companies

Generally 15.825 percent, i.e. 15 percent withholding tax ("WHT") plus 5.5 percent solidarity surcharge on WHT (exemptions available under domestic law implementing 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 (plus 5.5 percent solidarity surcharge on WHT). Income from artistic, athletic, acrobatic or similar performances performed in Germany and income from the utilization of such performances is subject to withholding tax at a rate of 15 percent (plus 5.5 percent solidarity surcharge on WHT).

Residents in the EU/EEA can choose to deduct business expenses directly related to the payments mentioned above (net taxation). In such cases, 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 a 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 at the beginning of the tax assessment period (from resident and (since 2020: all) non-resident subsidiaries) (up to and including 2019: 10 percent for participations in EU/EEA corporations at the beginning of the tax assessment period).
- Minimum holding period: none for corporate income tax and trade tax;
- Taxation requirement: none for corporate income tax and trade tax;
- Active income requirement: none for corporate income tax and trade tax;
- In principle, an anti-hybrid rule applies for German CIT purposes (currently not for trade tax purposes) which implies that the effective 95 percent participation

exemption for a dividend is not available at the level of the German company receiving the dividend if the payment was treated as a tax-deductible expense at the level of the foreign distributing entity ("corresponding principle"). The anti-hybrid rules also apply to recently concluded and future Double Tax Treaties (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: There is an additional restriction on loss deductions for corporations. Direct or indirect acquisitions of more than 50 percent of a corporation´s shares or voting rights within a five-year period by a person or related party triggers a total forfeiture of losses for corporate and trade tax purposes (the change-of-control rule). The rule also applies when shares are transferred to a group of purchasers with convergent interests.

There are exceptions to loss forfeiture provisions:

- Built-in gain clause: Unused tax losses are not forfeited upon a share transfer up to the amount of the loss company's built-in gains that are taxable in Germany;
- Group exemption provision: There is no detrimental change in ownership if 100 percent of the shares in the transferee and transferor are held directly or indirectly by the same person (top management of the group). The group exemption provision also applies to group internal acquisitions which involve the group´s parent company (top management);
- Restructuring clause: provides for an exception if a (detrimental) change in ownership occurs for the purposes of restructuring the business operations of the loss-making corporation;
- An exception also applies for share transfers outside a group scenario, if the transfer is performed after December 31, 2015, and the transferred entity has maintained the same business operations since its formation or for a period of at least 3 years prior to the transfer.

The Lower Tax Court of Hamburg has referred the full forfeiture of losses provision to the Federal Constitutional Court for review. The outcome of these proceedings will be monitored.

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

For tax purposes, a taxpayer must generally register with the competent tax authorities (in principle within one month of the relevant reportable event).

Transfer duties

On the transfer of shares

No.

On the transfer of land and buildings

Real estate transfer tax (RETT) applies, for example, to:

- 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 to new partners within a period of five years;
- 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.

RETT is generally levied at 3.5 percent of the purchase price or the applicable tax value. The tax rate can, however, differ in each German federal state (Bavaria, Saxony: 3.5 percent; Hamburg: 4.5 percent; Baden-Württemberg, Rhineland-Palatinate, Saxony-Anhalt, Bremen, Lower Saxony: 5 percent; Berlin, Hesse, Mecklenburg-Weston Pomerania: 6 percent; Brandenburg, North Rhine - Westphalia, Saarland, Schleswig-Holstein, Thuringia: 6.5 percent).

An exemption for intragroup business reorganizations is available if certain conditions are met.

The discussion about the tightening of the RETT in the area of share deals continues. The legislative process, which was pushed forward in 2019, is currently on hold.

Stamp duties

No.

Real estate taxes

Real estate tax (RET) 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 3 percent.

On April 10, 2018, the German Constitutional Court decided the provisions on the evaluation of property for reason of German RET as unconstitutional. The German legislator has therefore revised the respective regulations for determining the tax base (assessed value of the property) in 2019. Accordingly, new assessed values of the properties will apply from January 1, 2022 which will constitute the new tax base from January 1, 2025. In principle, the new assessed value of the property is based on a value-based model, whereby the federal states have the option of deviating from the federal regulation and introducing their own models.

Controlled Foreign Company rules

In general, when German resident taxpayers, directly or indirectly, own more than 50 percent of the shares in a foreign corporate subsidiary (vote or value) that (i) is subject to a low rate of taxation (effective tax rate less than 25 percent), and (ii) earns income from passive activities not included in Section 8 (1) of the German Foreign Transactions Tax Act, any qualifying passive income is subject to taxation in Germany. Exceptions to the 50 percent threshold apply for certain types of passive income (investment character, 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.

In its judgment of February 26, 2019 in Case X (C-135/17) the Court of Justice of the European Union (CJEU) ruled as follows on the question whether the German CFC rules applying to passive income with an investment character in cases involving non-EU-EEA countries are compatible with the freedom of capital:

1. Whether the German CFC rules regarding third countries fall under the standstill clause for old regulations is open and must be decided by the German Federal Tax Court (BFH) in further proceedings.
2. If the standstill clause is not fulfilled, the rules are
   a. **In line with European Law**, if no administrative assistance or information exchange or similar exchange has been agreed with the third country and Germany therefore would not be able to verify the actual measurements.
   b. **Not in line with European Law**, if such assistance or exchange with the third country exists, because the motive test does not apply to subsidiaries in a third country.

In its judgement of May 22, 2020 (I R 11/19), the BFH ruled that at least in the years under dispute (2005 to 2007), the adding back of passive income with an investment character is not in violation of the free movement of capital.

The standstill clause is not applicable because the CFC rules had been fundamentally changed by virtue of the German Tax Reduction Act as at 1 January 2001. But in the Federal Tax Court's opinion there was no agreement on exchange of information with Switzerland in the years under dispute because all agreements of a sufficient nature did not take effect until thereafter and explicitly do not provide for administrative assistance in relation to past matters.

A ministerial draft bill for an Act on the implementation of the ATAD (published in December 2019) intends to amend German CFC rules and will also consider the principles of the BFH judgement I R 11/19.

Transfer pricing rules

General transfer pricing rules

Yes ("arm’s length principle").

Documentation requirement

New documentation requirements in line with OECD BEPS Action 13 have been in place since December 27, 2016:

- Country-by-Country Report: compulsory for MNE groups provided that total consolidated group revenue equals or exceeds EUR 750 million. The reporting requirement applies for fiscal years commencing after December 31, 2015 if the obligation to report falls with the ultimate parent entity or surrogate parent entity and for fiscal years commencing after December 31, 2016 if another local entity is required to report. The report must be filed within one year of the end of the reporting fiscal year. Notification requirements applicable to fiscal years commencing after December 31, 2016. Penalties of up to EUR 10,000 apply.
- Master File (MF)/Local File (LF): taxpayers belonging to multinational enterprise groups are required to prepare a MF for fiscal years commencing after December 31, 2016, if their revenue equals or exceeds EUR 100 million. In general, the MF is due within 60 days of receiving a request from the tax authorities intending to perform a tax audit (shorter deadline for extraordinary business transactions). Taxes and penalties apply for non-compliance.

Thin capitalization rules/Interest Limitation rules

Interest expenses are fully deductible from the tax base only to the extent that the taxpayer earns positive interest income in the same financial year. Interest expenses in excess of interest income, i.e. 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 five years.

Non-deductible interest expenses 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 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.

The German Federal Tax Court has asked the German Federal Constitutional Court to rule on whether the German thin capitalization rules breach the principles of equality before the law and are thus unconstitutional. It remains to be seen how the Federal Constitutional Court will rule.

General Anti-Avoidance rules (GAAR)	According to German GAAR, tax laws may not be circumvented by abusing structuring options available within the bounds of the law. An abuse is present where an inappropriate legal structure has been chosen which, compared to 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-Hybrid rules	Anti-Treaty/Directive Shopping rules: reduced WHT rates under a DTT or EU Directive do not apply if the shareholders of a foreign company would not be entitled to the refund or exemption if they derive the income directly and the foreign company's gross earnings for the fiscal year in question are not derived from its own business activities and, as regards these earnings, (i) 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 (substance test). In its judgement of June 14, 2018, the CJEU ruled that the German anti-treaty/anti-directive shopping rule is contrary to both the EU Parent-Subsidiary Directive and the freedom of establishment. On April 4, 2018, prior to the publication of the CJEU's ruling, the German Federal Ministry of Finance published a circular on the application of the German anti-treaty/anti-directive shopping rule in line with EU law. As a result, the strict requirements of the current version of the Act regarding the substance test and the reasons for the interposition of a foreign company (possibility of rebuttal) will be relaxed in those cases where the foreign company does not, or not solely, derive income from its own business activity. The Ministry of Finance guidance, however, restricts the relaxation to situations where the creditor who receives the income from capital claims tax relief. According to the Ministry of Finance, the stricter requirements of the German anti-treaty/anti-directive shopping rule should, continue to apply to third countries and to interest and royalties not falling within the scope of the EU Parent-Subsidiary Directive. It remains to be seen whether a corresponding legislative change will follow. 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	Yes, on January 1, 2020, the Act on tax incentives for research and development entered into force. The Purpose of the Act is to introduce tax incentives for research and development (R&D) by way of a so-called “research allowance” that shall be equally available to all enterprises irrespective of their size, their respective profit situation and the purpose of the enterprise, provided that they are subject to tax in Germany. The grant is linked to personnel expenditure for R&D activities and amounts to 25% of the expenditure, maximally EUR 500,000. The Act will be applied initially for only six months. The period of application shall be extended by the period of time for which the European Commission declares the period of validity of the General Block Exemption Regulation (GBER) applicable to the research allowance.
Other incentives	Generally no direct tax incentives; tax incentives are however offered in very limited circumstances (e.g. special depreciations and investment deductions).
VAT	The standard rate is 19 percent, and the reduced rate is 7 percent.
Other relevant points of attention	Provisions of the EU-ATAD will continue to be implemented into German tax law (e.g. extension of already existing anti-hybrid rules, amendments / revisions to German CFC, transfer pricing and exit taxation rules). A ministerial draft bill for an Act on the implementation of the ATAD was published in December 2019.
Mandatory Disclosure Rules Updates	For country specific information and updates on the EU Mandatory Disclosure Rules please visit KPMG’s EU Tax Centre’s MDR Updates page.
COVID-19 Resources	An overview of tax developments being reported globally by KPMG member firms in response to the Novel Coronavirus (COVID-19) is available here. For further insight into the potential tax, legal and mobility implications of COVID-19, please refer to the dedicated KPMG page.

Source: German tax law and local tax administration guidelines, updated 2020.

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