

# Germany Country Profile

EU Tax Centre

July 2015

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

**EU Member State** Yes

**Double Tax Treaties** With:

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

Notes: (a) Application of the Treaty concluded between Germany and former USSR.

(b) Application of the Treaty concluded between Germany and former Yugoslavia.

(c) Treaty with China is not applicable to Hong Kong and Macau.

(d) Treaty signed, but not yet in force.

**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)
<b>Legal entity capital requirements</b>	AG: EUR 50,000 GmbH: EUR 25,000 SE: EUR 120,000
<b>Residence and tax system</b>	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.
<b>Compliance requirements for CIT purposes</b>	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 accrues at the end of the fiscal year. There are four advance payments due (March 10, June 10, September 10, December 10). Electronic filing of the CIT return required.
<b>Tax rate</b>	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).
<b>Withholding tax rates</b>	<p><a href="#">On dividends paid to non-resident companies</a></p> <p>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).</p> <p><a href="#">On interest paid to non-resident companies</a></p> <p>Generally no WHT under domestic law (certain exceptions apply).</p> <p><a href="#">On patent royalties and certain copyright royalties paid to non-resident companies</a></p> <p>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.</p> <p><a href="#">On fees for technical services</a></p> <p>No</p> <p><a href="#">On other payments</a></p> <p>Unless modified by a tax treaty: Supervisory board fees are subject to withholding</p>



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; 15 percent for trade tax as of the beginning of the tax assessment period (10 percent for participations in EU/EEA corporations at the beginning of the tax assessment period);
- 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 corporate income tax 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. 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 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; Brandenburg, Baden-Württemberg, Mecklenburg-Western Pomerania, Rhineland-Palatinate, Saxony-Anhalt, Thuringia, Bremen, Lower Saxony: 5 percent; Berlin, Hesse 6 percent; North Rhine -Westphalia, Saarland, Schleswig-Holstein.: 6.5 percent). An exemption for intragroup business reorganizations is available provided certain conditions are met.

##### **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 lower level 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 subsidiaries carrying out a genuine economic activity may be exempted from Controlled Foreign Company ("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. If the documentation on the arm's length nature of cross-border transactions with related companies 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 (GAAR)

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 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.

**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 2015.



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