



GLOBAL EXPANSION GUIDEBOOK

TAX

Germany



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INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that tax law is dynamic, and the legal regime in the countries surveyed could change.

GERMANY



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RESIDENCE AND BASIS FOR TAXATION

A corporation that has either its registered seat or its effective place of management in Germany will be treated as a resident corporation.

Domestic

A resident corporation is subject to German tax on its worldwide income. A resident corporation generally is not subject to German tax on the income of its foreign subsidiaries unless an anti-deferral provision applies (ie, the CFC rules).

Foreign

A non-resident corporation is taxed only on its German source income, as defined in German tax law and applicable double taxation treaties.

TAXABLE INCOME

Domestic

Taxable income of corporations is based on the annual financial statements prepared under German accounting principles pursuant to the German Commercial Code, subject to adjustments for tax purposes.

Foreign

A non-resident corporation is subject to corporate income tax only on income derived from German sources. Income from German sources includes, among other items, business income from operations in the country through a branch, office or other permanent establishment, including a permanent representative, and income derived from the leasing and disposal of real estate located in Germany.

TAX RATES

The corporate income tax rate is 15 percent plus a 5.50-percent solidarity surcharge levied on the corporate income tax (ie, 15.825 percent including the solidary surcharge).

The trade tax rate, which is levied by municipalities, varies, but in practice averages 14 percent to 17 percent of taxable income.

Trade tax is based on taxable income as calculated for corporate income tax purposes. However, several income adjustments apply.

TAX COMPLIANCE

Corporate income tax returns and trade tax returns generally must be filed within 7 months after the end of the fiscal year. Tax returns prepared by a consultant have to be filed 14 months after the end of the fiscal year. Certain Covid-19-related reliefs may apply and are expected to be extended for tax declarations for 2022 and 2023.

ALTERNATIVE MINIMUM TAX

Not applicable for this jurisdiction.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

Taxpayers can request a binding ruling from the tax authorities before executing a transaction. If the relevant tax authority issues a ruling, it is bound by it if the taxpayer has executed the transaction as described in its request.

Tax incentives

Various incentive programs exist for the promotion of modern energy generation and efficiency (eg, solar and wind energy), as well as programs for the promotion of domestic buildings, environmental protection, R&D, health care, infrastructure and agriculture. Promotion can either be granted as a tax benefit, allowance, guarantee, loan or participation.

CONSOLIDATION

Profits and losses of a controlled company are attributed to the controlling company if certain requirements are fulfilled and a profit and loss pooling agreement is entered into for a minimum period of 5 years. However, tax consolidation is only possible for subsidiaries with effective place of management in Germany.

PARTICIPATION EXEMPTION

Dividends received by a corporate shareholder are generally tax-free for corporate income tax purposes for shareholdings of at least 10 percent and for trade tax purposes for shareholdings of at least 15 percent. Capital gains received by a corporate shareholder are generally tax-free for corporate income tax purposes and for trade tax purposes regardless of the amount of participation. An amount equal to 5 percent of the dividends or capital gain is treated as a non-deductible business expense and added to taxable income. In turn, the actual business expenses are fully deductible.

CAPITAL GAIN

Capital gains of corporations, except those derived from sales of shares (ie, participation exemption) are treated as ordinary income.

In general, a capital loss of a corporation is deductible. However, a capital loss is not deductible if a gain resulting from the underlying transaction would have been exempt from tax. Consequently, a capital loss from sales of shares or write-downs on shares are not deductible.

DISTRIBUTIONS

Qualifying dividends may be eligible for preferential treatment for the recipient.

LOSS UTILIZATION

Carryforward: Losses may be carried forward indefinitely.

Carryback: Losses up to an amount of EUR1 million can be offset against the profits of the preceding year. Losses for trade tax purposes cannot be carried back.

The maximum amount limits for loss carrybacks have been increased from EUR1 million to EUR10 million for losses from the year 2020 onwards. From the tax assessment period 2024, the old limit of EUR1 million will apply again.

Minimum taxation: 40 percent of the income exceeding EUR1 million cannot be sheltered by tax loss carryforwards, but instead is subject to taxation at regular rates.

TAX-FREE REORGANIZATIONS

Qualifying corporate formations, combinations and divisions may be tax-free to a participating corporation and its shareholders.

ANTI-DEFERRAL RULES

Low-taxed passive income (ie, tax rate of less than 25 percent; from the year 2024 onwards: 15 percent) earned by a foreign corporation in which at least 1 German shareholder holds qualifying ownership interests (ie, an intermediary company) is imputed pro-rata to the German shareholders and is fully subject to German taxation unless the foreign corporation is based in the EU or EEA and carries out an economic activity with regards to the respective low-taxed passive income therein, in which case a limitation may apply.

FOREIGN TAX CREDITS

Under German domestic tax law, income from foreign sources is usually taxable, with a credit for the paid foreign income taxes, up to the amount of German tax payable on the foreign-source income, subject to per-country limitations. Excess foreign tax credits cannot be carried back or carried forward. In general, German tax treaties provide for an exemption from German taxation of income from foreign sources except for dividends from direct shareholdings of less than 10 percent and interest. In some cases, the exemption under German tax treaties are subject to substance or activity requirements.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

After long political discussions, the new regulations for real property tax have been agreed on. Real property tax is levied by the municipality of real estate where it is located. The new rate applied is the property value multiplied by the real estate tax coefficient (0.34 per thousand for vacant properties) multiplied by the municipality coefficient. However, it is optional for each state to adopt its own real property tax calculation model. This reform should apply as of January 1, 2025; the old law will apply until then.

Real property tax needs to be paid by the owner of the property. It can also be allocated to the tenants as part of the operating costs.

TRANSFER PRICING

Transactions between affiliated parties will give rise to income adjustments to the extent that such transactions are not conducted at arm's-length. Additionally, transactions with a foreign affiliated party are subject to extensive documentation requirements.

WITHHOLDING TAX

Dividends, royalties, interest, rents, etc.

Dividends paid to non-resident companies: Generally, a rate of 26.375 percent applies (ie, 25 percent withholding tax, or WHT, plus 5.50 percent solidarity surcharge on WHT, although exemptions may be available under the EU Parent-Subsidiary Directive, if applicable). There is a reduction of WHT under most German tax treaties for qualified dividends. In addition, on the basis of domestic law, foreign corporations may claim a refund of 40 percent of the WHT, subject to certain substance requirements.

Interest paid to non-resident companies: Generally, there is no WHT, although certain exceptions apply.

Patent royalties and certain copyright royalties paid to non-resident companies: Generally, 15.825 percent WHT applies. Exemptions may be available under the EU Interest-Royalties Directive, if applicable. There is a reduction of WHT under most German tax treaties.

Service fees

Not applicable for this jurisdiction.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

According to the RETT Act, RETT should be levied on (i) the transfer of German real estate, or (ii) the direct or indirect transfer of 90 percent or more of the interest in a partnership owning German real estate to new partners within 10 years, or (iii) the direct or indirect transfer of 90 percent or more of the shares in a corporation owning German real estate to new shareholders within 10 years, or (iv) the direct or indirect aggregation at the level of 1 shareholder or interest holder of 90 percent or more of the shares in a corporation or interest in a partnership owning German real estate. Furthermore, a transaction which has the effect that a taxpayer (directly or indirectly, or partly directly and partly indirectly) holds an economic participation of at least 90 percent in a company or partnership owning real property also triggers RETT. The tax rate ranges between 3.50 percent and 6.50 percent among the German federal states. Before the RETT reform effective from July 1, 2021, RETT was triggered upon the transfer of at least 95 percent of shares or interests in a partnership within 5 years.

There are no other transfer taxes, capital duties or stamp duties.

EMPLOYMENT TAXES

Employers must withhold wage taxes (ie, withholding tax on income from employment) and 50 percent of the wage-related social security contributions for pension, health, nursing care and unemployment insurance.

OTHER TAX CONSIDERATIONS

Not applicable for this jurisdiction.

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