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International Tax and Business Guide

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Practice Group International Taxation

Preface

The idea for this International Business Guide was born in December 2009 in Frankfurt/Germany during a meeting of the Practice Group International Taxation of Geneva Group International. As the lectures held and discussions led had become more and more sophisticated over the years and the number of regular and visiting members in the practice group reached 150 people, we strongly felt that we needed to create a vehicle showing our clients, potential clients, network and cooperation partners the potential of the members of this practice group to assist them with national and cross-border tax issues all over the world. The result is this book which I am proud to introduce to you now.

As global business keeps growing, the need for information about other countries becomes more and more important. We, as tax experts, are convinced that this book will be a useful and professional guide in tax and business matters for those decision makers who are doing business abroad or intending to do so. We have tried to provide you with up-to-date key information you should know when engaging abroad. All articles are limited to a readable volume. Details and updates can be obtained from the authors themselves (contact data: see articles or profiles).

Part 1 provides you with interesting general tax aspects when doing business abroad. In Part 2 country profiles of 42 countries are introduced in a clearly structured form, providing you with basic and insider knowledge for doing business in these countries. In case you need more details, please feel free to contact the authors directly.

In the Annex a Double Taxation Treaty Matrix provides you with an overview of double taxation treaties between all countries presented in this guide. Another table provides you with an update of recent tax information exchange agreements. Last but not least the tax matrix and the holding company matrix allow to detect major tax differences between various countries at a glance.

I would like to give special thanks to Dr. Robert D'Alessandro, whose task force within our practice group developed the structure and the first template for the "doing business in" part. Thanks as well to Astrid Rechel-Götz for her commitment to the whole project and to Annika Marina Mentel for the great job done in coordinating the many authors. Furthermore, thanks to Graham Busch, vice-chairman of our practice group, who was a fantastic sparring partner in all technical tax and linguistic questions, and last but not least to the sponsors Cornér Bank and Bank Alpinum, who helped to finance this book.

Many thanks also to all experts who have contributed to this Business Guide. I have a strong belief that this group of committed tax experts is ready to help multinational clients with tax matters all over the world. Not all mid-sized multinational groups like to employ their own top-class tax department or engage the very large law or audit firms. With local presence in more than 80 countries we are an alternative to be reckoned with.

September 2010
Frankfurt am Main/Germany

Oliver Biernat, Chairman
Practice Group International Taxation
Geneva Group International

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Germany

Facts about Germany

Area: 357,093 km²
Population: 82,000,000
Currency: Euro
Business Hours: 8 am - 5 pm

Official Languages: German

Public/National Holidays:
Jan. 1: New Year´s Day • Jan. 6: Epiphany • Flexible: Good Friday • Flexible: Easter-Monday
May 1: Labour Day • Flexible: Ascension Day • Flexible: Whit Monday
Flexible: Corpus Christi • Oct. 3: German Unity Day • Oct. 31: Reformation Day or
Nov. 1: All Saints • Dec. 25: Christmas Day • Dec. 26: St Stephen's Day

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1 Why Germany

Of Europe's economies Germany is the largest and has a political and economical key position. Worldwide Germany is ranked 4th of 180 countries analyzed by the IWF in 2009 for 2008 with the criteria BIP in US-Dollars. Germany is member of the EU, G8, UN, OECD and OSZE. Germany has a highly valued influence in the worldwide economic and monetary policies. In Europe Germany is positioned quite in the centre with a top infrastructure, especially regarding the good and densely road and railway systems and the various airports. The airport Frankfurt am Main is the leading European cargo airport and the third largest passenger airport. Germany is famous for its industrial production with international important companies as VW, Daimler, Siemens, BASF, Thyssen-Krupp. The Slogan "Made in Germany" still is of great importance. The last time that Germany became "Export World Champion" was in 2008. Another important economic criteria is the great variety of branches. Apart from industry the service branch is a continuously growing sector. Mainly the German population is well-educated and therefore there exists a great stock of highly qualified employees. Politically and socially Germany is extraordinarily secure.

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2 Legal Framework

The legal system in Germany divides in private law, public law, criminal law and litigation. Characteristic for the German legislation is the principle of concurrent legislation between the Federation, the States and Municipalities which means that the following hierarchy only has the power to enact a law if the preceding has not done so. The court decisions in the above mentioned four fields of law are based only on the established law and not on precedents. The judgements are basically done by the courts of the federal states. So the German jurisdiction is completely different to the Angloamerican Common Law which also is called the "case law". Important to mention for international tax matters is that Germany has signed about 88 double tax treaties.

3 Banking

Characteristic for the German banking system is the great variety, consisting of Trustee Savings Banks (Sparkassen), cooperative banks, the German big banks and in comparision with the foreign countries quite few private banks. The banking business underlies the rules of the German Banking Law (Kreditwesengesetz). The banks are controlled by the Federal Supervisory Office for Financial Services (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin) to prevent for example money laundering and corruption etc. The largest German bank is the Deutsche Bank.

Financial Regulatory Authority 4

The German banking supervisory authority is the Federal Supervisory Office for Financial Services (Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin). The BaFin supervises commercial banks (about 2.080 banks), financial service companies (about 730 companies), insurance companies (about 630 companies) and the securities trading. The BaFin is an institution under public law with about 1.700 employees. It funds itself completely out of charges and contributions which the supervised companies have to pay. Therefore the BaFin is independent from the federal budget. The BaFin also controls the ability to pay of the supervised institutions and is looking after fair and transparent market conditions. Consumer protection, certification of old age benefits contracts and avoidance of money laundering and financing of terrorism are also tasks of the BaFin.

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Taxation 5

5.a. Corporate Tax

Since corporate income tax was reduced from 25 to 15% in 2008 Germany is no longer a high tax-country. Depending on their location corporations pay overall taxes of 23%-32%. Taxes consist of corporate income tax, solidarity surcharge and local trade tax. A corporation is to be taxed in Germany if its seat or place of management is in Germany or if it has income from Germany.

5.b Personal Tax Rates

Individuals pay income tax, 5.5% of that solidarity surcharge and if they are a member of church 8-9% church tax. Married couples may apply for joint assessment. Per person a personal exemption of 8.004 € and tax free allowances are granted. Income tax rates go from 14% to 45%, reaching the top rate at a taxable income of 250.371 € per person.

5.c Social Security

Employers and employees each pay a maximum of 19-20% of wages for contributions to the social security carriers. Thereof, contributions to health insurance are about 16% of wage income with a ceiling of 45,000 € annually and contributions to statutory pensions and unemployment insurance are 22.7% of wage income with a ceiling of 66,000 € (55,800 € in Eastern Germany). Exemptions are possible for foreigners working in Germany for a limited period of time, managing directors who hold a majority of the share capital and employees whose wages exceed the above limits.

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5.d Customs & Excise Duties

Transfer of goods to and from Non-EU Countries is surveilled by the customs authorities. Customs or importation VAT might have to be paid. Excise duties are imputed on energy carriers, alcohol, alcoholic drinks and tobacco products.

5.e V.A.T.

The normal VAT rate is 19%, the reduced VAT rate is 7%. Input VAT can be refunded if applied for and original invoices can be presented and either fiscal registration was made in Germany or if foreigners qualify for the conditions for refund of VAT. Depending on the amount of revenues taxpayers have to hand in monthly, quarterly or annual tax declarations. Small enterprises with estimated turnover of less than 50.000 Euros and less than 17.500 Euros in the previous year may be exempted from VAT (and from refund of input VAT).

5.e Tax Incentives

Corporations usually pay only 1.5% tax on profits from dividends and on capital gains from the sale of shares. Several corporations belonging to the same group within Germany may form a tax group and thus net profits and losses. In order to avoid inheritance or gift tax high tax allowances for husbands or spouses and children are granted and 85% or 100% tax exemption is granted to successors of entrepreneurial assets under certain conditions. Income tax: many costs are tax deductible.

Notes: Cash over 10.000 Euros per person has to be declared at the border when entering or leaving the EU.

Main Types of Corporate Forms 6

The most common used corporate forms are the limited liability company (GmbH) and the limited liability partnership with a forementioned corporation as unlimited partner (KG). In addition publically held companies use the form of a public corporation issuing shares (AG) and obligations to finance their activities. Besides the limited partnership the typical partnership includes jointly and severally liable partners only. Shareholders and partners with limited liability are liable to the extent capital contributions are not paid in or deemed to be paid back. Corporations or partnerships with limited liability practically have no minimum capital requirement. However ordinary limited liability companies and public companies have a minimum paid in capital of EUR 12.500, 25.000 or 50.000 respectively. Major Banks and insurance companies are organised as public corporations unless using special vehicles for certain branches of investments including investment funds. Investment funds include open-ended forms investing in real estate, portfolios and other funds. Private equity investments are mainly constructed in corporate or partnership form. Trusts may be used to coordinate a family business or as holding for corporate investments. Trusts also act as non-profit organisation or in similar functions.

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Company Incorporation 7

All companies running a business are registered in a local register. This registration includes the names of the companies' founders, partners and managing directors. The records of the register are deemed to be correct. This also applies to the list of shareholders to be filed with the register upon any change of shareholders.

Setting up a company can be done in one to two weeks, but will usually take longer if foreign shareholders are involved. Forming a corporation needs notary form including fixing the articles of association and any changes thereof. Partnerships are not formed in notary form but applied for to the commercial register. In contrary to a corporation's files the records of a partnership in the register do not show the articles of associations or similar items.

Under EU law foreign companies being registered in an EU country have the right to apply for registration with the local register in the area of its seat of management. Currently a German company moving its seat to another country is deemed to be in liquidation and may loose its status as registered company in Germany.

8 Reporting & Auditing

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The fiscal year is equal to the calendar year unless a company has a different year end for statutory purposes. Any company has to file monthly and yearly tax returns on the basis of its financial statements for the previous year. Taxable income is computed on the basis of the statutory profit and loss statement amended by certain deviations for tax purposes. Usually companies pay monthly advances on VAT and quarterly advances on income taxes.

Yearly returns are to be filed until the end of May of the following year. However this date may be normally extended until the end of that year. Tax payments are automatically subject to interest if the assessment is made after a skipping time of 15 months after the end of the fiscal year assessed. Medium sized and big companies are subject to tax audits on a regular basis.

Audit requirements exist only for statutory purposes. Basically all companies which meet two of three tests in regard to turnover, balance sheet total and number of workforce have to undergo an official audit. Such audit requirement covers medium sized companies, big companies as well as limited liability partnerships. Additional requirements refer to the audit of publically held companies listed on a stock exchange.

Any corporation and limited liability partnership have to disclose its financial statements in a special register. This also applies to non-audited firms. The extent of disclosure varies due to special rules exempting minor companies from overall disclosure.

9 Special Notes / Country Update

Germany has a very sophisticated legal and tax system. Due to the implications of EU law and the ongoing globalisation permanent changes are made to adopt new laws and make Germany attractive to foreign investors. However high individual taxes and a lack of planning safety are still a handicap as well as the high labour cost caused by social security premiums to be absorbed by the employer.

On the other hand, Germany has a relatively effective burocracy and very clear rules for investments and developing businesses. Foreign investors are treated equal to all other investors and have public guarantees in regard to permits, intellectual property and jurisdiction.

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