

Tax Implications of Beneficiaries of Foreign Trusts Moving to Germany

By Oliver Biernat

Germany is beautiful and there are many good reasons to move here. Tax advantages are usually not among them and before packing your suitcases you should take a minute or two and consider the tax implications that may have. This is especially true if you own a company abroad where there is no German equivalent (e.g., LLC) or if you are the beneficiary of a foreign trust. The problem is that German tax authorities are very suspicious if you own something they cannot easily understand or



rate and there are no clear rules how this is handed tax-wise. Let us take the example of an Australian who is a beneficiary of an Australian trust and moved to Germany. Trusts do

not exist in German law. Therefore, one needs to decide how to handle a trust tax-wise in Germany. The result is shocking as I will show you.

Depending on the rules in the trust deed, one has to decide how to classify the trust according to German civil and tax law. Assuming our foreign trust comes closest to a German family foundation, Sec. 15 AStG (Foreign Tax Act) says that,

“assets and income of a family foundation which has a business address and registered office outside Germany are attributed to the founder, if he is subject to unlimited tax liability in Germany, otherwise to the persons subject to unlimited tax liability in Germany who are entitled to draw or are entitled to claim, according to their share.”

That means that there is no doubt about it that all running profits of the trust as well as capital gains when the trust is terminated, are taxable according to Sec. 15 AStG in Germany, if the beneficiary has a residence in Germany. However, it is doubtful if there is double taxation. German tax authorities usually want to raise a) gift tax on donations made by a foreign trust to their German beneficiaries and b) income tax on investment income on all benefits the German resident receives from a foreign trust, **on top** of the tax already raised by Sec. 15 AStG. It is expected that the German federal fiscal court will decide on that and until then a lot of uncertainty remains.

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