Germany

By Oliver Biernat

Quick Overview of the International Tax Compliance Regulations in Germany

When foreigners want to do business in Germany, they have several possibilities. The basic form of doing business is to sell to German customers and meet the conditions to register for Value Added Tax purposes only. This may also apply to online sellers as operators of internet marketplaces have to provide information on companies whose turnover is subject to German turnover tax. Those affected need to apply for a VAT ID number and submit regular VAT declarations.

Foreigners that employ staff in Germany without creating a permanent establishment must register as employers in Germany. Monthly wage tax declarations must be submitted, and a part of the gross salary must be withheld and paid to the authorities directly.

Those who meet the conditions for creating a permanent establishment (e.g., by branch, place of management, office, factory, etc.) are liable to determine their "German" income and pay tax on their German profits. They must perform bookkeeping according to German tax rules and submit regular VAT, corporate income tax, and trade tax declarations.

Corporations with a legal seat or place of management must perform bookkeeping according to German GAAP and tax rules, prepare annual financial statements, submit regular VAT, corporate income tax, and trade tax declarations, and publish or deposit certain financial information. Foreigners who hold shares in German corporations are only liable to taxation if the corporation pays out dividends or liquidation profits. The normal tax rate on dividends is 25% + 1.38% = 26.38%, but may be reduced.

Foreign Tax and Financial Reporting Requirements for Germany

1. Main types of business and taxes for each entity

Foreign individuals pay income tax depending on their income from German sources. The top income tax rate of 45% + 5.5% solidarity surcharge on the income tax is only levied on income above EUR 530,000 p.a.

Tax rates for permanent establishments and corporations are generally the same. VAT is 19%. The reduced VAT rate is 7% and applies only to selected

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Benefitax GmbH Steuerberatungsgesellschaft Wirtschaftsprüfungsgesellschaft is a tax consultancy and public auditing company located in Frankfurt, which is widely recognised as the financial centre of Germany. Benefitax predominantly serves German entities of foreign multinational groups, mid-sized German companies with cross-border activities, and wealthy private individuals.

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turnover. Corporate income tax is 15%. A solidarity surcharge of 5.5% of corporate income tax will be added. In addition, there is trade tax of 3.5%, multiplied by a local level that may vary from 200% to 400%, to 500% in larger cities. The total tax on income is often around 30% in larger cities.

2. Types of trusts, foundations and tax rates for each structure

There are no trusts under German law. Income from foreign trusts often creates problems as it must be decided according to German rules how the trust is looked at tax-wise, or if Germany will look through the trust and tax the (beneficial) owners instead.

Foundations do exist in German law but are not common. If created as charitable foundation they may be relieved from corporate income tax (except for any economic business operations). Donations to a charitable foundation may be tax deductible for the donor under certain conditions.

In contrast, family foundations use the assets of the foundation as far as possible for private purposes. A family foundation is assumed if the founder, his relatives, and their descendants are entitled to more than 50% of the benefits and the right to have a seizure. The tax authorities will assume a family foundation if the relatives and their descendants are entitled to more than 25% of the benefits but have additional influence on the management of the foundation.

Profits in family foundations are subject to corporate income tax, trade tax, and VAT. Family foundations are subject to inheritance tax. When created, normal inheritance tax is due if family members are beneficiaries. Personal allowances are granted for the family member with the smallest personal allowance. Foreign foundations will always be taxed in the highest tax class.

In addition, a substitute inheritance tax is levied. That means that

every 30 years a fictitious transfer is taxed in the amount of 50% of the net assets less EUR 800,000 threshold. The applicable tax rate depends on the taxable amount and may vary between 7% and 30%. Foreign foundations are not subject to substitute inheritance tax.

3. Tax compliance requirements for owners of foreign assets such as bank accounts, insurance policies, shares, etc.

Private individuals with a residence in Germany or those who stay in Germany for longer than 183 days per year are subject to unlimited taxation in Germany, and they must report their worldwide income to the German tax authorities. Foreign individuals with income from "German sources" must report such income to the German tax authorities. This also applies to foreign bank accounts, insurance companies, and shares. Non-compliance may be treated as tax fraud.

4. Tax compliance requirements for estate and wealth planning matters

Currently there is no wealth tax in Germany. It should be noted that real estate transfer tax is levied if real estate properties or a major part of corporations holding real estate are transferred. Tax rates range from 3.5% to 6.5%, depending on in which federal state the property is located.

5. Tax compliance requirements on sale of real estate

Profits from the sale of real estate property is generally taxable for foreigners. Since the sale of all real estate properties in Germany must be handled by a notary public who must report the sale to the tax authorities, it is wise to declare any profits from such sales to the tax authorities.

Collaboration with Other GGI Members

We collaborate with many GGI members abroad, on many clients. Examples are the determination of profits in case of permanent establishments or private individuals, identifying which country has the right to tax which income in case of cross-border operations, the treatment of foreign entities in another country (such as trusts or US LLCs), expatriates, or self-disclosure of so-far-undisclosed income in order to avoid tax fraud.

Future Developments, Outlook, and Summary

German tax law changes every year. Major changes expected soon are the part abolishment of solidarity surcharge, the implementation of the EU-DAC 6 directive (tax planning models must be reported) in national law, and a reform of the Real Estate Tax Act.