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## Newsletter for foreign investors in Germany March 2019



## Dear Sutter,

Our last newsletter was sent out only two months ago, but in the meantime numerous new regulations and ordinances have arisen, which we have compiled for you below.

Please find below a tax and accounting update of interest to cross-border investors and especially foreign investors in Germany. If you have found a topic for which you need further information, do not hesitate to contact us or the respective author. We will be happy to support you.

In addition, we are very pleased to provide you with the latest news about Benefitax.

Latest update on a non-tax issue which might affect you: On 26 March 2019, the European Parliament adopted the reform of digital copyright protection. The directive should ensure that the long-standing rights and obligations of copyright law also apply to the Internet. Internet platforms such as YouTube, Facebook and Google News are directly affected. In order to avoid liability issues they may use uploadfilters in the future which may also prevent non-protected content to be displayed. It is expected that EU member states like Germany will transform the new EU rules into national law in the next two

years.



## Tax News from Germany for foreign Investors

### Incorrect tax statement: Be careful when issuing multiple invoices for the same service

Some entrepreneurs issue invoices on a part of the services that separately disclose sales tax and, in addition, a further invoice for the same turnover or a full invoice - issued later - with a separate sales tax disclosure. The problem: The entrepreneur owes the tax shown in the additional invoices in addition to the sales tax for the actually executed turnover, i.e. twice.



The issuing of individual and overall invoices concerns, for example, monthly invoices of courier services or interim and final invoices of construction companies. In this case, the invoicing procedure must be designed in such a way that only one invoice (either the individual invoice or the subsequent overall invoice) entitles the invoice recipient to deduct input tax or the separately shown value-added tax is deducted for an advance or down payment in the overall invoice.

### Disclosure of 2017 annual financial statements: Up to 185,000 companies face administrative fine proceedings

The Federal Office of Justice points out that annual accounts for the 2017 financial year must be submitted on time by the end of 2018. Otherwise there is a risk of administrative fine proceedings. With regard to the 2017 financial year, the Federal Office of Justice is preparing for the fact that up to 185,000 companies will have to be threatened with an



administrative fine at the beginning of 2019.



### Disclosure obligations and administrative fine proceedings

Companies subject to disclosure requirements (in particular AG, GmbH and GmbH & Co. KG) must submit their annual financial statements electronically to the Federal Gazette (Bundesanzeiger) no later than twelve months after the end of the relevant fiscal year.

**Please note:** Companies that are not currently engaged in any business activity as well as companies in insolvency or liquidation must also disclose their financial statements. If the company fails to comply with the disclosure obligation in good time or in full, the Federal Office of Justice will initiate administrative proceedings. The company is requested to comply with the statutory disclosure obligations within a six-week grace period. At the same time, the Federal Office is threatening to impose an administrative fine (regularly amounting to EUR 2,500). If the company does not comply with the request, the fine will be imposed.

**Note:** Threats and fixings of administrative fines may be repeated until they have been published. The fines will be increased step by step.

With the threat, the parties are also ordered to pay the procedural costs. These costs are not waived by the fact that the disclosure obligation is complied with within the set grace period.

### Status of double taxation agreements



On 17 January 2019, the Federal Central Tax Office published a list showing the status of the double taxation agreements (DTAs) and other agreements in the tax area as well as the agreement negotiations on 1 January 2019, in which Germany is involved on one side. You will find the list of all countries in alphabetical order [here](#).

### Allocation of Intragroup services

The previous letter of 1999 issued by the German ministry of Finance on the allocation of income through pay-as-you-go contracts is repealed. For financial years beginning after 31.12.2018, the principles of Chapter VIII of the OECD Transfer Pricing Guidelines 2017 will apply. According to them contributions to arm's length prices shall be valued and remunerated by undertakings on the basis of expected benefits if several companies of a multinational group work together in the common interest, assume common risks and make contributions to:





- to develop assets (development cost allocation) or
- to make use of services (service cost allocation)

We recommend that you document the allocation in your company well before the tax auditor asks for it.

## New mortality tables lead to step up of pension accruals



New mortality tables (RT 2018 G) have been published. These replace the previous RT 2005 G table and should be applied in the commercial balance sheet for financial years ending after 20th. July 2018.

In the commercial balance sheet, the difference must be recognised in full as personnel expenses. The mortality table on which the measurement of pension obligations is based must be

disclosed in the notes.

In the tax balance sheet, the difference must be distributed evenly over 3 financial years, i.e. in the first year two actuarial reports, one according to the old and one according to the new mortality table, are required to determine the difference. However there is an option for an equity rule: at the end of the changeover year: enter 2/3 of the difference and the remaining third in the following year.

It can be expected that the increase in life-expectancy will lead to 0.8% -1.5% higher pension accruals in the tax balance sheet and 1.5% to 2.5% higher pension accruals in the commercial balance sheet.

## Unconstitutionality of the tax interest rate

The tax arrears and refunds bear interest at 0.5% per month, i.e. 6% p.a. (after the waiting period of 15 months). The Superior Fiscal Court in Germany has serious doubts as to the constitutionality of such a high interest rate in view of permanently low market interest rates and this retroactively since 1 April 2012.



The Federal Constitutional Court is to be called upon to do this.

Until a decision is reached, all interest assessments should be kept open and suspension of the execution of the interest payments should be applied for, unless it is already ex officio waived.

## New attempts to fight illegal employment - all employees travelling abroad must have A1 certificate



An employee abroad can prove



that he is insured in the social insurance system of his home country by means of a so-called A1 certificate of his health insurance. This means that the accusation of illegal employment abroad cannot be made during checks. Until now, the A1 certificate was only required in paper form and only for

employees who were sent abroad for a longer period of time (expatriates).

Since 1 January 2019, it has been stipulated throughout Europe (EU, EEA and Switzerland) that applications must be submitted in electronic form and that social insurance institutions must exchange information electronically throughout Europe. As a result and although it is not yet technically possible to file applications in electronic form, all employees of a company based in the EU who travel abroad to other EU/EEA countries, must carry an A1 certificate for every activity carried out in another EU country (EU, EEA and Switzerland).

This may even affect a one-day business trip, e.g. to visit a trade fair, conference or a customer. Depending on the country, more or less checks are carried out and "high" fines may be imposed if the A1 certificate is not available. In addition, admission may be refused, e.g. at trade fairs. Since 2019, especially Austria and France have intensified their controls.

An A1 certificate for all Member States is not possible. According to information from the central association of health insurance carriers in Germany a longer-term A1 certificate can only be issued for the above-mentioned states, in which your employees (if they reside in Germany) are usually deployed, i.e. work regularly on at least one day a month or five days a quarter.

In the case of sporadic assignments in countries that do not meet the above regularity requirements, you will receive the A1 certificate from the employee's statutory health insurance fund, provided that a secondment in accordance with Article 12 of Regulation (EC) 883/04 exists for the assignment in question.

In the case of business trips abroad by employees who work frequently and only briefly and irregularly in other countries, such as sales representatives and truck drivers, the certificates cannot be applied for electronically, but must still be applied for in paper form. They are limited to 2 years and can be extended without any problems.

**Our tip:** If you want to be on the safe side, apply for the A1 certificate for all business trips, especially if you are going to Austria or France, or ask Benefitax to apply for you.

## Tax haven Germany for real estate companies

Under certain conditions, it is possible that real estate income from Germany is subject only to corporation tax (15.83%) and not to trade tax. This is made possible e.g. by the so-called extended trade tax reduction for property companies in accordance with § 9 No. 1 Sentence 2 GewStG, which is intended to avoid double taxation with property tax and trade tax.



The prerequisite is that the real estate company exclusively uses and administers its own

real estate or only carries out other permitted activities (such as administration and use of its own capital assets, management of residential buildings, construction and sale of detached and semi-detached houses and condominiums).

An application for the extended reduction must be made. The extended reduction does not apply if the 3-object limit for commercial real estate trading or other harmful activities carried out by the real estate company is exceeded. Harmful activities in this sense are unusual special services which require a certain entrepreneurial organisation and thus result in the commercial nature of the activity as a whole, such as guarding tasks, scheduled supply of electricity, assumption of cleaning tasks. The acquisition and management of real estate with the aim of developing and selling it later is also not favoured because of its commercial character.

Another way to achieve the same goal is to hold and manage real estate property in Germany via a foreign corporation that does not create a permanent establishment in Germany. A good location for such a holding company is e.g. Luxemburg. Please watch our video on YouTube on this topic which will be online in April 2019.



**Benefitax  
News**

## Special edition "Taxation of Income from Cryptocurrencies in Various Jurisdictions"

We are happy to present to you the first special edition of an GGI FYI International Taxation newsletter. The special editions will cover only one major topic and will look at its tax treatment in various countries. Authors will be tax experts in the respective jurisdictions who are members in my GGI Practice Group International Taxation.

The first edition covers the taxation of income from cryptocurrencies. You will be able to see that there is still a lot of uncertainty in the tax treatment of these in many countries. While some countries have come up with specific rules, others are using general guidelines which are applied on cryptocurrencies, although cryptocurrencies were sometimes not known at the time the guideline was written. The special edition provides a good overview on the current status in many countries and helps traders and miners to see in which countries their activities may be taxed more favourable than in others.

You can read the newsletter [here](#) or by clicking on the picture above.





## Benefitax Tax News Videos January and February launched on YouTube



**In the "January 2019" video the following topics are covered:**

- Possible VAT problems for traders selling in Germany via internet platforms
- Interviews with tax experts from China and Hungary
- Possible tax consequences if managing directors of foreign corporations take a German residence?

You get to the video by clicking on the photo above or [here](#).

**In the "February 2019" the following topics are covered:**

- Tax treatment of US LLC's and S-Corps in Germany
- Interview about tax benefits when investing in China via Hong Kong
- Interview about tax and other incentives when manufacturing in Thailand



You get to the video by clicking on the photo above or [here](#).

Please note that we realised that the "International Tax Videos" are hard to find on YouTube and Google and therefore decided to change the format in the future. Since March 2019 we have started to launch shorter explainer videos covering only one topic that can be easily found if you google the topic you are looking for.

## GGI ITPG Global Tax Summit in Tel Aviv/Israel



From 24 to 27 February 2019 another GGI ITPG Global Tax Summit took place in Tel Aviv in Israel.

The conference was attended by nearly 50 tax experts from around the world and we spent 2.5 days discussing the most important and current international tax issues.

Here is a brief overview of the presentations:

- Is the USA the new tax haven?
- Advantageous changes in US

business after the tax reform

- The Israeli economy and the Israeli tax regime
- Times change: Recent developments in Australia's international tax system
- Is the crypto currency tax cryptic?

- Intellectual property
- Role play court case: Can a wrong transfer price put you in prison?

The photo shows me in the role of the defendant and my colleagues as judges, defenders and police officers in the role play in which I was found "guilty" and was sentenced to continue as chairman of GGI's International Taxation Practice Group for another three years. During the conference Eva Sutter supported me in the performance of the role play, networking with the GGI experts and visiting some of our clients in the region.

## Benefitax becomes member of German-Israeli Chamber of Industry & Commerce.

After my extended stay in Israel in February and meeting with some of our clients in the region, we also visited Mr. Grisha Alroi-Arloser and Mr. Michel Weinberg from the German-Israeli Chamber



of Industry & Commerce, or short "AHK Israel" in Tel Aviv. Since we are very interested to serve more clients from the region, especially if they plan or already have a subsidiary or branch in Germany and need financial compliance and tax advice services, we thought it made sense to become a member of AHK Israel. We are looking forward to a long a good cooperation with them.

Our typical client from Israel is doing cross-border business and often listed at the US NASDAQ. They are often technology companies with fantastic products and grow very fast. They often use Benefitax as a one-stop-shop for their German entity. We provide all kinds of financial compliance work to them and answer also difficult tax related questions. Some of them also ask for help with transfer prices and documentation of those in Germany.

We are looking forward to your feedback, suggestions and inquiries and wish you a wonderful spring with blossoming business.

Best regards from Frankfurt

Oliver Biernat,  
Managing Director



- German Chartered Accountant
- German Certified Tax Advisor
- Specialist Advisor in International Taxation

You can count on us – from A as in application to Z as in free tax zone.

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The brand "Benefitax" has been registered as brandname with the registration number 30622634 at the German patent and brandoffice (Deutsches Patent- und Markenamt).

#### Notes to auditing services

Competent chamber:

Wirtschaftsprüferkammer (WPK = Chamber of Chartered Accountants), Corporation under Public Law,

Rauchstr. 26, 10787 Berlin

The following provisions of law apply to the auditing work:

Wirtschaftsprüferordnung (WPO),

Berufssatzung für Wirtschaftsprüfer/vereidigte Buchprüfer ([BS WP/vBP](#)),

[Satzung für Qualitätskontrolle](#),

Wirtschaftsprüfer-Berufshaftpflichtversicherung ([WPBHV](#)).

All these can be found on the homepage of the German Chamber of Public Accountants (Wirtschaftsprüferkammer) on [www.wpk.de](http://www.wpk.de).

The legal title "Wirtschaftsprüfungsgesellschaft" has been granted to Benefitax GmbH in the Federal Republic of Germany.

#### Notes to tax consultancy services

Competent chamber: Steuerberaterkammer Hessen (StBK = Chamber of Tax Consultants), Gutleutstr. 175, 60327 Frankfurt am Main.

The following provisions of law apply to the tax consultancy work:

Steuerberatergebührenverordnung,

Steuerberatungsgesetz,

Durchführungsverordnung,

Berufsordnung.

These regulations can be found on the homepage of the German Chamber of Certified Tax Advisors (Steuerberaterkammer) on [www.bstbk.de/de/steuerberater/berufsrecht/](http://www.bstbk.de/de/steuerberater/berufsrecht/)

The legal title "Steuerberatungsgesellschaft" has been granted to Benefitax GmbH in Germany in the federal state of Hesse.

#### Engagement Terms:

In case of an engagement the "General Engagement Terms for Wirtschaftsprüfer and Wirtschaftsprüfungsgesellschaften" in the latest version are applicable, unless other agreements have been taken in writing. "[General Engagement Terms](#)"

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#### Use and forwarding of personal data:

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You can express your objection at any time with an effect towards the future.

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