- Five-year corporate income tax exemption for high-technology activities that are important to Thailand's development, with few investments already existing here.
- Three-year corporate income tax exemption for activities with lower technology than above, but add value to domestic resources and supply chain.

Non-Tax Incentives

- Permits to bring in foreign skilled workers and experts and those looking for opportunities.
- Permit to own land.
- Permit to remit money abroad in foreign currency.

GGI member firm
MBMG Group
Auditing & Accounting, Tax, Law Firm Services, Advisory, Corporate Finance
Bangkok, Thailand
T: +66 2 665 2536
W: mbmg-group.com
James Fraser
E: james@mbmg-investment.com

MBMG Group was founded in Asia in 1996 and has since grown steadily. It offers services in investment advisory, corporate advisory, tax advisory, family office, accounting and audit, legal, insurance, estate planning, and property solutions.

James Fraser has lived in Thailand for more than 25 years. He has gained vast experience in several areas of the Thai stock brokerage industry, as an analyst, in the field of corporate advisory and proprietary investment. Since 2015, Mr Fraser has worked for MBMG, specialised in corporate entity advice, tax, and wealth management services.

James Fraser

Considerations of Financing Inbound Investments into Germany

By Oliver Biernat

When foreign investors set up a German subsidiary, they often neglect the possibility of financing the company with a higher equity than the minimum nominal share capital, which is usually EUR 25,000 for a GmbH (German limited company). Building up trust and making a company profitable may take a couple of years and, looking at the relatively high costs in Germany, this may require much more funding. Liquidity is normally provided by shareholder loans, as it is intended to deduct the interest from (future) profits of the subsidiary and thus save taxes. This is generally fine, but here are a few reasons why investors should consider injecting more equity.

1. There are limitations of the tax deductibility of interest, such as:

a. Dealing at arm's length.

i. The German fiscal authorities demand a signed contract with terms and conditions that meet the arm's length principle, which was signed before the liquidity was provided.

ii. The Federal Fiscal Court ruled that interests on a loan that is not seriously expected to be repaid are qualified as hidden contribution and therefore equity for tax purposes. The same applies in certain cases of hybrids.

iii. In case no interest is agreed on the loan, it must be

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discounted by law at 5.5%, until the planned payback with the receiving party, which will raise fictitious taxable profits there.

b. The interest barrier, which is the German thin capitalisation rules, with a threshold of EUR 3 million of net interest, per annum.

c. For trade tax purposes, 25% of interest is not considered tax deductible if the threshold of all additions of EUR 200,000 is exceeded.

2. German withholding taxes of up to 26.4% may have to be withheld, esp. in case of constructive dividends or profit-related loans. It needs to be checked beforehand if they can be reduced or eliminated by an applicable DTT. Germany usually treats payments from profit-related loans as dividends and not as interest in the DTT.

3. The draft Act to transform the ATAD rules in Germany includes a general anti-hybrid clause to be introduced in order to (a) eliminate tax deductions that do not lead to corresponding taxable profits at the other party, or (b) avoid double deductions with imported hybrid mismatches. It includes two major action points:

a. Cross-border loans will only be accepted if they meet cumulatively these three conditions:
   i. The ability to pay interest and repayments for the total duration from the beginning.

   ii. The loan must be necessary from an economic viewpoint and is used for the business purpose of the subsidiary.

   iii. The interest rate used is in compliance with the rate at which the total group could get loans from third parties.

b. It is presumed to be refutable that treasury centres and cash pools are low-function and low-risk services with routine character that only justify a mark-up of 5%–10%.

4. If forecasts do not work out as planned, subsidiaries may soon be over-indebted and immediate measures must be taken in order to prevent personal liability of the managing directors for filing for insolvency too late. In order to avoid insolvency and to be able to apply the going concern principle, substantial legal and consulting costs may arise for preparing a positive continuation forecast and a detailed liquidity plan or for drafting a step back in ranking declaration or a letter of comfort.

GGI member firm
Benefitax GmbH
Steuerberatungsgesellschaft
Wirtschaftsprüfungsgesellschaft
Advisory, Auditing & Accounting, Corporate Finance, Fiduciary & Estate Planning, Tax
Frankfurt am Main, Germany
T: +49 69 256 227 60
W: benefitax.de
Oliver Biernat
E: o.biernat@benefitax.de

Benefitax GmbH 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.

Oliver Biernat

Oliver Biernat is Founder and Managing Partner of Benefitax. He is a German Chartered Accountant, Certified Tax Advisor and Specialist Advisor for International Taxation with more than 20 years of experience. Since 2008, he has chaired GGI's International Taxation Practice Group (ITPG), increasing its size to more than 570 experts from 90 countries in the process.