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International Tax

Germany Highlights 2023

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Recent developments

For the latest tax developments relating to Germany, see Deloitte tax@hand.

Investment basics

Currency: Euro (EUR)

Foreign exchange control: No restrictions are imposed on the import or export of capital; however, a declaration must be filed with customs for cash transfers of more than EUR 10,000 into or out of the EU.

Accounting principles/financial statements: German commercial GAAP/IFRS applies. Financial statements must be prepared annually. Taxpayers are required to maintain their books in Germany, although electronic bookkeeping may be transferred abroad with the prior approval of the tax authorities.

Principal business entities: These are the joint stock company (AG), limited liability company (GmbH), general and limited partnership, sole proprietorship, and branch of a foreign corporation.

Corporate taxation

Rates	
Corporate income tax rate	15% (15.825% including solidarity surcharge), plus municipal trade tax of 7%-17%
Branch tax rate	15% (15.825% including solidarity surcharge), plus municipal trade tax of 7%-17%
Capital gains tax rate	15% (15.825% including solidarity surcharge), plus municipal trade tax of 7%-17%; 95% exempt under certain conditions

Residence: A corporation is resident if it maintains its registered office (as determined by its articles of incorporation) or effective place of management in Germany.

Basis: Residents are taxed on worldwide income; nonresidents are taxed only on German-source income. Branches are taxed in the same way as subsidiaries.

Taxable income: Corporate income tax is imposed on a company's profits, which consist of business/trading income, passive income, and capital gains. Business expenses may be deducted in computing taxable income.

Rate: The corporate income tax rate is 15% (15.825%, including the solidarity surcharge). The municipal trade tax typically ranges between 14% and 17%, and the minimum rate is 7%. The effective corporate income tax rate (including the solidarity surcharge and trade tax) typically ranges between 30% and 33%.

Surtax: A 5.5% solidarity surcharge is levied on the corporate income tax.

Alternative minimum tax: There is no alternative minimum tax.

Taxation of dividends: Dividends received by a resident corporation (from both resident and nonresident corporations) generally are 95% tax exempt; however, the exemption is not applicable if the dividends are treated as tax deductible expenses for the payer. Minimum shareholding requirements apply.

Capital gains: Capital gains generally are included in taxable income. Capital gains derived from the sale of a domestic or foreign corporate subsidiary generally are 95% tax exempt.

Losses: Losses may be carried back two years (prior to 2022, one year) and carried forward indefinitely. The maximum amount for a loss carryback is increased from EUR 1 million to EUR 10 million for losses incurred in 2020 through 2023. Losses may be offset against profits up to EUR 1 million without restriction, but only 60% of income exceeding EUR 1 million may be offset against loss carryforwards. According to the change-in-ownership rules, a direct or indirect change in ownership of more than 50% to one purchaser/related party within a five-year period results in a complete forfeiture of all tax losses (both current year losses and loss carryforwards). Loss forfeiture may be avoided in certain intragroup restructurings. In addition, losses continue to be available to the extent built-in gains in the loss company are subject to tax in Germany, or in certain cases where the historic business of the loss company is continued on an unchanged basis.

Foreign tax relief: Foreign tax paid may be credited against German tax that relates to the foreign income or deducted as a business expense. Germany typically applies the exemption system.

Participation exemption: See “Taxation of dividends” and “Capital gains,” above.

Holding company regime: There is no holding company regime.

Incentives: Incentive programs are available, such as investment allowances for certain start-ups and for small and medium-sized businesses. A research and development (R&D) tax incentive of up to EUR 1 million per year, per entity/group has been introduced (reduced to EUR 500,000 for periods after 30 June 2026). In addition, attractive nonrepayable cash grants are offered, e.g., for R&D in the energy sector.

Compliance for corporations

Tax year: The tax year is 12 months or the period for which accounts are prepared, if shorter. The tax accounting period may not exceed 12 months in total.

Consolidated returns: Although companies may be taxed on a consolidated basis, each company must file a separate tax return (except for VAT purposes). Tax consolidation for corporate income tax and municipal trade tax purposes (Organschaft) requires the parent in the consolidation to hold the majority of the voting rights in the subsidiary from the beginning of the subsidiary's fiscal year. The parties must conclude a profit and loss transfer agreement (PLTA), which must be in effect and carried out for at least five consecutive years, unless an important reason exists for termination of the agreement (e.g., sale of the subsidiary to a third party) before the end of the five-year period. Strict formal requirements for a PLTA apply. Tax consolidation for VAT purposes does not require a PLTA, but the subsidiary in the consolidation must be financially, organizationally, and economically integrated with the parent company.

Filing and payment: The tax return generally must be filed electronically by 31 July of the year following the tax year (for 2022 tax returns, the filing deadline has been extended to 30 September 2023; for 2023 tax returns, the filing deadline has been extended to 31 August 2024). Extension of the filing deadline to the last day of February of the second year following the tax year typically is granted if a tax advisor is involved (for 2022 tax returns, the extended filing deadline is 31 July 2024; for 2023 tax returns, the extended deadline is 31 May 2025. Quarterly advance payments of corporate income tax are due in March, June, September, and December. Quarterly advance payments of municipal trade tax are due in February, May, August, and November. Certain COVID-19 measures allow for a deferral under specific circumstances.

There also are country-by-country (CbC) reporting filing requirements and filing requirements in connection with mandatory disclosure rules based on the EU administrative cooperation directive (DAC 6), see “Transfer pricing” and “Disclosure requirements” under “Anti-avoidance rules.”

Penalties: Penalties may be imposed for late filing (up to 0.25% of the tax due, at a minimum of EUR 25 for each commenced month of delay and a maximum of EUR 25,000), as well as for late payment of assessed taxes (1% on the outstanding rounded-down tax amount per month or part thereof). Findings in tax audits generally do not result in penalties. However, taxes assessed as a result of an audit are subject to interest of 0.15% per full month (1.8% per year). The interest calculation begins 15 months after the calendar year for which the tax is assessed (for fiscal years in which the filing deadline has been extended, the interest calculation begins based on such later date).

Penalties also can be imposed if the taxpayer does not comply with the transfer pricing documentation requirements. If the taxpayer fails to submit documentation, or submits inadequate documentation, an additional charge between 5% and 10% of any transfer pricing adjustment (a minimum of EUR 5,000) can be assessed. An additional charge for the late submission of documentation can be assessed of at least EUR 100 per day, up to EUR 1 million. For failure to comply with CbC reporting requirements, penalties up to EUR 10,000 may be imposed.

For failure to comply with mandatory disclosure rules under DAC 6, penalties up to EUR 25,000 may be imposed.

Rulings: A taxpayer may apply for an advance ruling on the tax consequences of a proposed transaction. Administrative fees may apply.

Individual taxation

Rates (not considering solidarity surcharge or church tax that may apply)		
Individual income tax rate	**Taxable income (EUR)**	**Rate**
	10,909-15,999	Progressive tax rates from 14%-24%
	16,000-62,809	Progressive tax rates over 24% and below 42%
	62,810-277,825	42%
	Over 277,825	45%
Capital gains tax rate		Varies

Residence: Individuals are resident if they are domiciled or have a habitual abode in Germany. A habitual abode is deemed to exist if the individual spends more than six months in Germany. Domicile can be presumed where individuals have permanent accommodation at their disposal in Germany; it is not necessary that the individual actually uses the accommodation.

Basis: Resident individuals are taxed on their worldwide income; nonresidents are taxed only on German-source income.

Taxable income: Taxable income is the sum of income from employment, the exercise of a trade or profession, agriculture and forestry, capital, rent and leasing, and other income.

Rates: Rates are progressive up to 45%. A solidarity surcharge of 5.5% (resulting in a top rate of about 47.5%) and a church tax of 9% (8% in Bavaria and Baden-Württemberg) are levied on the income tax. Private investment income, including capital gains, generally is subject to a 25% (26.375%, including the solidarity surcharge) final withholding tax. Taxpayers may opt for taxation at their individual tax rate, if lower. The solidarity surcharge does not apply to taxpayers earning annual taxable income of up to EUR 62,603 (for single filers) and EUR 125,206 (for joint filers). For taxpayers earning annual taxable income above these thresholds, a solidarity surcharge of 5.5% is applied progressively depending on annual taxable income; for annual taxable income over approximately EUR 97,000 (for single filers) and approximately EUR 194,000 (for joint filers), the full 5.5% solidarity surcharge applies.

Capital gains: Sales of real estate and rights to private property (not business property) generally are subject to tax if the taxpayer owned the property for less than 10 years. The sale of other private assets generally is taxable if the taxpayer held the assets for less than one year. Normal tax rates apply.

Sixty percent of the capital gain from the sale of shares is taxable at the normal rates if the taxpayer has held a direct or indirect interest of 1% or more in the domestic or foreign corporation within the last five years.

If the taxpayer has held less than 1%, the entire capital gain from the sale of privately held shares is subject to a flat 25% tax rate (26.375%, including the solidarity surcharge), regardless of how long the shareholding has been held. Taxpayers may opt for taxation at their individual tax rate, if lower.

Deductions and allowances: Personal allowances are available for taxpayers and their children. Other deductions, which are subject to restrictions, are available (e.g., social security contributions, insurance, medical expenses, etc.). Expenses may be deducted from the tax base, provided they were necessary to generate the income.

Foreign tax relief: Foreign tax paid may be credited against German tax that relates to the foreign income. Germany typically applies the exemption system (the exemption with progression method, i.e., tax-exempt income is taken into account to determine the applicable tax rate).

Compliance for individuals

Tax year: The tax year is the calendar year.

Filing status: Married couples and members of civil partnerships living together may opt for joint or separate assessment.

Filing and payment: An individual can file a tax return to declare additional expenses and receive a refund. Mandatory tax returns generally are due by 31 July of the year following the tax year (for 2022 tax returns, the filing deadline has been extended to 30 September 2023; for 2023 tax returns, the filing deadline has been extended to 31 August 2024). An extension until the last day of February of the second year following the tax year typically is granted if a tax advisor is involved (for 2021 tax returns, the extended filing deadline is 31 August 2023; for 2022 tax returns, the extended filing deadline is 31 July 2024; for 2023 tax returns, the extended filing deadline is 31 May 2025. The final tax is assessed after filing of the tax return. If an individual receives income other than employment income, quarterly advance payments of income tax are due in March, June, September, and December. Certain COVID-19 measures allow for a deferral under specific circumstances.

Penalties: Penalties may be imposed for late filing (up to 0.25% of the tax due, at a minimum of EUR 25 for each commenced month of delay and a maximum of EUR 25,000), as well as for late payment of assessed taxes (1% on the outstanding rounded-down tax amount per month or part thereof). Findings in tax audits generally do not result in penalties. However, taxes assessed as a result of an audit are subject to interest of 0.15% per full month (1.8% per year). The interest calculation begins 15 months after the calendar year for which the tax is assessed (for fiscal years in which the filing deadline has been extended, the interest calculation begins based on such later date).

Rulings: A taxpayer may apply for an advance ruling on the tax consequences of a proposed transaction. Administrative fees may apply.

Withholding tax

Rates

Type of payment	Residents		Nonresidents	
	Company	**Individual**	**Company**	**Individual**
Dividends	25% (26.375% including surcharge)	25% (26.375% including surcharge)	25% (26.375% including surcharge), with possible 40% refund	25% (26.375% including surcharge)
Interest	0%/25% (26.375% including surcharge)	0%/25% (26.375% including surcharge)	0%/25% (26.375% including surcharge)	0%/25% (26.375% including surcharge)
Royalties	0%	0%	15% (15.825% including surcharge)	15% (15.825% including surcharge)
Fees for technical services	0%	0%	0%	0%

Dividends: A statutory rate of 25% (26.375%, including the solidarity surcharge) applies to dividends paid to residents; the withholding tax typically is creditable or refundable for residents.

A statutory rate of 25% (26.375%, including the solidarity surcharge) applies to dividends paid to nonresidents, with a possible 40% refund for nonresident companies, giving rise to an effective rate of 15.825%, unless the rate is reduced under a tax treaty. No tax is levied on dividends qualifying under the EU parent-subsidiary directive (PSD). The distributing company may apply the exemption under the directive or a reduced withholding tax rate under a treaty only if the recipient obtains a clearance certificate from the tax authorities in advance and presents the certificate before the payment is made; otherwise, a refund may be possible.

Interest: Withholding tax generally is not levied on interest paid to residents or nonresidents, except for interest on publicly traded debt, interest received through a German payment agent (usually a bank), convertible bonds, and certain profit participating loans. The statutory rate is 25% (26.375%, including the solidarity surcharge). Where interest is paid to nonresidents, the rate may be reduced under a tax treaty or an exemption may be available if the EU interest and royalties directive (IRD) applies.

Royalties: Withholding tax is not levied on royalties paid to residents. The withholding tax on royalties paid to a nonresident company or an individual is 15% (15.825%, including the solidarity surcharge), unless the EU IRD applies or the rate is reduced under a tax treaty. The payer may apply the exemption under the directive or a reduced withholding tax rate under a treaty only if the recipient obtains a clearance certificate from the tax authorities in advance and presents the certificate before the payment is made; otherwise, a refund may be possible.

Fees for technical services: There is no withholding tax on fees for technical services.

Branch remittance tax: There is no branch remittance tax.

Anti-avoidance rules

Transfer pricing: Business dealings between related persons must be in accordance with transactions that would have been agreed upon by independent third parties dealing at arm's length, under which the underlying principle is the normal degree of commercial prudence shown by a sound and conscientious business manager. Taxpayers are required to document all facts and evidence that support their positions. Specific transfer pricing rules apply to cross-border intragroup transfers of functions. An exit tax will be imposed on the "profit potential" that is deemed to be transferred, based on the discounted cash flow value of the subsidiary/branch before and after the restructuring. Germany generally applies the authorized OECD approach.

CbC reporting, in line with the OECD's BEPS action 13, is required.

Interest deduction limitations: A taxpayer may immediately deduct (net) interest expense up to 30% of taxable earnings before net interest expense, tax, regular depreciation, and amortization (tax EBITDA). An EBITDA carryforward is generated if the taxpayer has net interest expense lower than 30% of the EBITDA for tax purposes, unless an exception to the interest expense limitation (see below) applies. The difference between 30% of the EBITDA and the net interest expense (excess EBITDA) may be carried forward and used in the following five years when the net interest expense exceeds 30% of current EBITDA. The limitation does not apply where: (i) the annual (net) interest burden is less than EUR 3 million; (ii) the taxpayer is not part of a group of companies; or (iii) the taxpayer can demonstrate that the equity ratio of the German borrower does not fall short by more than two percentage points of the worldwide group's equity ratio. Excess interest may be carried forward indefinitely (although change-in-ownership rules apply). Disallowed interest expense will not trigger withholding tax.

Controlled foreign companies: Passive income of subsidiaries in low or no tax jurisdictions will be attributed to a German shareholder if such shareholder and its related parties hold, directly or indirectly, more than 50% of the subsidiary. Typical passive income is income from the rental of real estate, income from licensing, or income from the lending of capital. A jurisdiction is regarded as a low tax jurisdiction if the income of the subsidiary is subject to an effective tax rate of less than 25%. Credits and refunds at the shareholder level are taken into account when determining whether the effective tax rate falls below the 25% threshold. Credit for tax paid on attributed income can be granted upon the application of the taxpayer.

Hybrids: General anti-hybrid rules are in place, which are based on the EU anti-tax avoidance directive (ATAD 2). Additional anti-hybrid rules exist in connection with dividends received (linking rules) and certain "double-dip" structures involving German Organschaft entities (dual consolidated loss rules) and German partnerships.

Economic substance requirements: Based on the amended anti-treaty shopping rule, relief from withholding tax under a treaty or the EU PSD or IRD is not available to a foreign company if, and to the extent that:

- Its shareholders or persons that are beneficiaries under the applicable statute would not be entitled to the same relief under the same treaty or the relevant EU directive had they been direct recipients of the income ("shareholder test"); and
- There is no material link or connection between the income generating source and the economic activity of the receiving corporation, partnership, or other taxable entity; the mere realization of the income, the distribution to shareholders or persons that are beneficiaries under the applicable statute, and activities that lack adequate physical substance do not qualify as economic activity ("activity test").

If the conditions of both tests are fulfilled, treaty abuse is presumed, and the presumption of treaty abuse can only be rebutted if and to the extent that the conditions of the "main purpose exception" or the "listed entity exception" are fulfilled. The rule applies in addition to limitation on benefits clauses and general anti-avoidance rules, and the burden of proof for meeting the conditions lies with the foreign shareholder.

Disclosure requirements: A taxpayer generally must disclose all facts relevant for taxation, especially regarding transactions with foreign related parties.

Mandatory disclosure rules for certain types of restructurings are in place, which are based on DAC 6.

Exit tax: The tax law allows the taxation of unrealized capital gains when Germany's right to tax the gains on the sale or use of assets is restricted or excluded as a result of a transaction (e.g., if a taxpayer transfers its tax residence to a foreign jurisdiction or if an asset is transferred out of Germany). The exit tax is imposed on the "profit potential" that is deemed to be transferred out of Germany, usually measured by performing a hypothetical arm's length analysis. Valuation can be based on the capitalized earnings approach or the discounted cash flow method; comprehensive valuation of the respective "business function" instead of an asset-by-asset valuation may be required.

General anti-avoidance rule: Germany has a long-standing general anti-avoidance rule (GAAR), under which taxpayers are not allowed to circumvent the tax law by abusing legal tax planning opportunities. Abuse is presumed when the taxpayer chooses an inappropriate legal structure that, in comparison with an appropriate structure, leads to a tax advantage not intended by the law. The presumption may be rebutted by demonstrating that the particular structure has been chosen for nontax reasons, provided such reasons are relevant considering all the facts and circumstances. Specific anti-avoidance rules apply for payments to recipients that are resident in a jurisdiction that is on the EU "black list."

Other: The deductibility of royalties and similar payments made to foreign related parties is restricted if such payments are subject to a non-OECD compliant preferential tax regime (i.e., an intellectual property regime not based on the "nexus approach" as described in OECD BEPS action 5) and taxed at an effective tax rate of less than 25%.

Value added tax

Rates	
Standard rate	19%
Reduced rate	0%/7%

Taxable transactions: VAT is levied on the sale of goods and the provision of services.

Rates: The standard rate is 19%, with a reduced rate of 7% applying to specified transactions. Certain transactions are exempt.

Registration: Resident businesses generally must register for VAT purposes. However, if turnover did not exceed EUR 22,000 in the previous calendar year and is estimated not to exceed EUR 50,000 in the current calendar year, the business can opt for the special scheme for small businesses, so that no VAT is imposed by the tax authorities. Nonresidents that make taxable supplies of goods or services in Germany must register regardless of turnover.

Filing and payment: The tax year is the calendar year. A business must file an electronic quarterly preliminary VAT return by the 10th day of the following month and pay the VAT due. A refund will be paid if the input tax exceeds the VAT. If the tax for the previous calendar year was more than EUR 7,500, monthly preliminary returns must be filed.

Other taxes on corporations and individuals

Unless otherwise stated, the taxes in this section apply to both companies and individuals and are imposed at the federal level.

Social security contributions: Employed individuals are required to make a contribution for pension, health, nursing care, and unemployment insurance. The employer generally is required to bear 50% of the total contribution. Additional charges (e.g., statutory accident insurance, insolvency fund levy, etc.) may apply.

Payroll tax: There is no payroll tax, but the employer is required to withhold wage tax on a monthly basis from an employee's income and remit it to the tax authorities. Wage tax certificates must be transmitted electronically and be authenticated by the employer.

Capital duty: There is no capital duty.

Real property tax: Tax is levied by the municipality in which real estate is located. The rate consists of two elements: a fixed rate depending on how the real estate is used and a rate depending on the municipality. The tax basis is the tax value of the property, calculated based on specified valuation principles.

Transfer tax: A real estate transfer tax (RETT) of 3.5% to 6.5% of the sales price/value of transferred German real estate applies. RETT also applies:

- If 90% or more of the shares in a real estate-owning corporation are directly or indirectly transferred to one or more new owners within a period of 10 years or if 90% or more of the shares are combined for the first time at the level of a (new) shareholder; or
- If 90% or more of the interests in a real estate-owning partnership are directly or indirectly transferred to one or more new partners within a period of 10 years or if 90% or more of the partnership interests are combined for the first time at the level of a (new) partner.

The rate depends on the state in which the real estate is located. Exceptions may apply for certain intragroup restructurings.

Stamp duty: There is no stamp duty.

Net wealth/worth tax: There is no net wealth tax or net worth tax.

Inheritance/estate tax: Inheritance and gift tax rates for individuals range from 7% to 50%, with various exemptions available. Business property and assets are valued at fair market value. Under certain conditions, the inheritance of business property can be 85% or 100% tax free.

Other: Municipal trade tax is an income tax levied by municipalities at a minimum rate of 7%. All businesses with commercial activities carried out through a subsidiary or a nonresident’s commercial permanent establishment in Germany are liable for trade tax. Corporations are deemed to carry on commercial enterprises (trade or business), regardless of their actual activities. Individuals, alone or in partnerships, are not liable for trade tax on professional or other independent services unless the activities are deemed to be commercial under the income tax law. The municipal trade tax rate varies, but averages between 14% and 17% of income. The trade tax is based on taxable income as calculated for corporate income tax purposes, with several income adjustments.

Shipping companies may apply for lump sum tonnage taxation in certain cases.

Tax treaties: Germany has an extensive tax treaty network (approximately 100 tax treaties). The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI) entered into force for Germany on 1 April 2021.

For information on Germany's tax treaty network, visit Deloitte International Tax Source.

Tax authorities: Federal Ministry of Finance, Federal Central Tax Office, Ministry of Finance of the German states

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