Profit Taxation in Germany

A brief introduction for corporate investors as of April 2013
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1. Tax rates

1.1. German-based corporations

German-based corporations are subject to federal corporate income tax (CIT, Körperschaftsteuer) and – basically – also to trade tax, a profit tax levied by the municipalities (TT, Gewerbesteuer).

The same rates apply to both current income and capital gains. A 95% participation exemption applies to dividends and capital gains from the sale of shares (see section 4.).

Average tax rates are shown in the following table:

<table>
<thead>
<tr>
<th>Tax Type</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate income tax (Körperschaftsteuer)</td>
<td>15%</td>
</tr>
<tr>
<td>Solidarity surcharge (Solidaritätzuschlag)</td>
<td>0.825%</td>
</tr>
<tr>
<td>Combined profit tax rate</td>
<td>approx.</td>
</tr>
<tr>
<td></td>
<td>between 23% and 33%</td>
</tr>
</tbody>
</table>

CIT and TT are not deductible for tax purposes.

1.2. Partnerships

Partnerships themselves are subject to trade tax but not subject to CIT. For CIT purposes a partnership is to a large extent tax transparent. CIT is levied from the partners on their profit share. The CIT rate for corporate partners is shown in section 1.1.

1.3. Branches

German branches of foreign corporations are subject to CIT and trade tax like German-based corporations are. Tax rates are those shown in section 1.1.

German double tax treaties assign the taxation right to Germany if a permanent establishment (PE) is constituted.

2. Taxable income

Taxable income of corporations for CIT purposes is calculated based on the commercial balance sheet under German GAAP with numerous adjustments.

Taxable income for purposes of trade tax is derived from taxable income for CIT purposes with further add-backs and deductions.

A simplified scheme of the calculation of taxable income for a corporation is shown below.

Simplified scheme of calculation of the taxable profit for CIT:

s

Profit according to German GAAP

+ adjustments for certain write-downs, various kinds of provisions etc.

+ interest expenses being non-deductible under deduction limitation rules ("interest barrier")

+ various non-deductible expenses amongst others: income taxes including trade tax; gifts, guest houses, yachts; 30% of entertainment expenses; 50% of remuneration to members of the supervisory board

- 95% of dividend income (see section 4 below)

- 95% of capital gains from the disposal of shares in corporations (see section 4 below)

+ transfer pricing adjustments

= Taxable income for CIT purposes
Determination of taxable income of a partnership is subject to a complex set of specific rules as a consequence of the tax transparency concept. In a first step, the taxable income is assessed at the level of the partnership. In a second step, the income is allocated to the partners in accordance with their participation in the partnership and subject to CIT at partners level. Trade tax, on the other hand, is paid by the partnership itself. As partnerships are tax transparent, their overall balance sheet not only comprehends the commercial balance sheet and the additional tax balance sheet adaptations (as a tax balance sheet for a corporation would).

Instead, there are special purpose balance sheets and supplementary balance sheets which are part of the overall tax balance sheet of the partnership.

Supplementary balance sheets and special purpose balance sheets are prepared for each partner, however, they belong to the sphere of the partnership. Supplementary balance sheets result from the acquisition of a partnership or the entry of a new partner into a partnership. In case the acquisition price was higher than the acquired (portion of the) equity of the partnership, acquired hidden reserves are stepped up in the supplementary balance sheet of the new partner. Reason for this is that the direct acquisition of a partnership share is treated like an asset deal. The supplementary balance sheet only belongs to this partner.

Special purpose balance sheets are generated in case special purpose assets or liabilities exist. Special purpose assets/liabilities are those which belong to a partner, however, which serve the purpose of the partnership or strengthen the interest of the partner in the partnership. Examples are assets which are let by the partner to the partnership or a debt which is used by the partner in order to finance his participation in the partnership. Special purpose balance sheets only belong to the respective partner. Income/expense with relation to such special purpose assets/liabilities are considered in the income calculation at the level of the partnership and affect the partnership's income for trade tax purposes. For corporate income tax purposes, such income and expense is allocated to the partner to whom the special purpose balance sheet belongs.

Income calculation of branches is subject to specific rules on the allocation of profits between PE and the headquarter.

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### Simplified scheme of calculation of the taxable profit for trade tax purposes

#### Taxable income for CIT purposes

1. **+ 25% of all interest expenses**
   (as far as deductible under interest barrier)

2. **+ add-back of the deemed interest component comprised in (amongst others):**
   - lease payments for movable assets (add-back: 5%)
   - lease payments for immovable assets (add-back: 12.5%)
   - royalties (add-back: 6.25%)

3. **- (allowance up to EUR 25k)**

4. **- 1.2% of a special tax value of real property**

5. **+ dividends from foreign passive corporations**

6. **+ dividends from all corporations with a shareholding of <15%**

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**= Taxable income for TT purposes**

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Determination of taxable income of a partnership is subject to a complex set of specific rules as a consequence of the tax transparency concept. In a first step, the taxable income is assessed at the level of the partnership. In a second step, the income is allocated to the partners in accordance with their participation in the partnership and subject to CIT at partners level. Trade tax, on the other hand, is paid by the partnership itself. As partnerships are tax transparent, their overall balance sheet not only comprehends the commercial balance sheet and the additional tax balance sheet adaptations (as a tax balance sheet for a corporation would).

Instead, there are special purpose balance sheets and supplementary balance sheets which are part of the overall tax balance sheet of the partnership.
3. Tax group for CIT and TT purposes

A tax group allows profit and loss pooling for CIT and TT purposes.

Prerequisite for implementing a CIT and TT group is that the head of the tax group owns the majority of the voting rights in the members of the tax group.

Only corporations can be members of a tax group. Head of a tax group can be corporations and also partnerships (however, in case of partnerships only if they have an operating business).

A profit & loss absorption agreement needs to be concluded and entered into the commercial register at the latest during the year in which the agreement shall become valid for the first time. All profits made as well as all losses suffered have to be transferred to or need to be compensated by the head of the tax group. The amount of these profits/losses is based on the local GAAP balance sheets.

In order to be valid for tax purposes, the profit & loss absorption agreement needs to be maintained for at least 5 calendar years unless an extraordinary reason for termination is given, e.g. the sale of a group company which is a subsidiary in the tax group.

Taxes or tax loss carry-forwards are not assessed at the level of the group companies but only at the level of the head of the tax group. Tax loss carry-forwards of the group companies resulting from losses of years prior to joining the tax group cannot be used during the existence of the tax group. Tax loss carry-forwards of the head of the tax group from years prior to the tax group can be utilized during the existence of the tax group.
4. Participation exemption

4.1. Dividends

Dividends received by a corporation are exempt from CIT, if a 10% minimum participation is fulfilled, but 5% of the dividends are deemed non-deductible business expenses. Consequently, dividends are 95% tax exempt. Effective tax rate on dividends (including trade tax) is therefore approximately 1.5%.

This participation exemption applies regardless of

- a minimum holding period
- the residence of the subsidiary (German or foreign).

The participation exemption does not apply if the shares are held as a trading stock of banks and financial institutions.

Expenses actually incurred in connection to the dividends are deductible (subject to general deductibility limitation).

The 95% exemption applies to trade tax under the additional requirement of a shareholding of at least 15% at the beginning of the year. Dividends from foreign corporations only benefit from the participation exemption for trade tax purposes if activity requirements are fulfilled.

4.2. Capital gains

The 95% participation exemption applicable to dividends also applies to capital gains from the disposal of shares in corporations.

Exceptions apply in case of certain tax neutral restructurings made in the past and in case of past tax effective write-downs.

The 95% participation exemption applies to CIT and to trade tax.
5. Interest deduction limitation ("interest barrier")

5.1. Interest rate limitations

From a German point of view, there is no specific interest rate limitation. However, in case of intragroup loans, the interest rate must be at arm’s length.

For intragroup loans written agreements have to be set up prior to the actual execution. Further, in case of crossborder intragroup loans, documentation regarding how the interest rate has been determined needs to be set up.

5.2. Overview interest barrier

Until the end of 2007 interest deduction for corporations was restricted by thin capitalization rules. Effective 2008, these rules are no longer in place; they were replaced by the "interest barrier" (Zinsschranke), also referred to as earnings stripping rules.

The interest barrier rule applies to all interest expenses:

- regardless of the legal forms of the business
- regardless of the lender’s and borrower’s residency
- irrespective of whether the lender is a third party, a shareholder or an affiliate
- to long-term as well as to short-term loans
- in case of fixed interest rates as well as in case of profit or turnover participating loans
- regardless of securities

5.3. Basic rule: Deduction up to 30% of the tax EBITDA

The basic rule is:

- Unlimited deduction of interest expense up to the amount of interest income
- Interest expenses exceeding interest income (net interest expense) is deductible up to 30% of the tax EBITDA

The tax EBITDA is calculated based on the taxable income (see section 2 above) with the following additional adjustments (simplified):

\[ \text{tax EBITDA} = \text{interest expenses} - \text{interest income} + \text{depreciation and amortisation} \]

5.4. Interest carry-forward

Interest expenses not deductible under the interest barrier can be carried forward into future tax years without time and amount restraints. In future years the utilization of the interest carry-forward is again subject to the interest barrier.

Interest carry-forwards are subject to change-of-ownership rules (see section 6.2 below).

5.5. Exemption 1: EUR 3m-threshold

The interest barrier does not apply if the net interest expense of an entity is less than EUR 3m in a tax year. If the threshold is exceeded even by a minor amount, the 30% EBITDA rule applies to the full (net) interest expense. There is no general allowance of EUR 3m.
5.6. Exemption 2: Entity does not belong to a group (“group clause”)

The interest barrier does not apply, i.e. interest expenses are fully deductible,

- if the entity is not part of a group and
- if the entity is not harmfully shareholder debt financed.

An entity is not harmfully shareholder debt financed

- if less than 10% of the overall interest expense is paid
- to shareholders holding more than 25% in the entity or
- to lenders that are related to such shareholders or
- to a third party lender with recourse to the aforementioned persons.

Whether or not an entity is part of a group, is basically determined under IFRS consolidation rules. Consolidation rules of the GAAP of an EU member state or US-GAAP consolidation rules can be recognized under certain circumstances.

The exemption for non-group entities can be an opportunity for joint venture vehicles.

5.7. Exemption 3: Equity test (“escape clause”)

The interest barrier also does not apply, i.e. interest expenses are fully deductible,

- although the entity is part of a group, but
- its equity ratio is not lower than the equity ratio of the whole consolidation group (a 2% deviation is accepted), and
- if neither the entity nor any other member of the worldwide group is harmfully shareholder debt financed and this can be proven.

An entity is not harmfully shareholder debt financed,

- if less than 10% of the overall interest expense is paid
- to shareholders outside the consolidation group holding more than 25% in the entity or
- to lenders that are related to such shareholders or
- to a third party having recourse to any of the above persons.

Interest paid within the consolidated group do not count for this “shareholder financing test”.

If either the entity itself or any member of the worldwide group (!) fails this test, the escape clause is not applicable. The worldwide proof that no harmful shareholder debt financing exists is usually very burdensome.

5.8. EBITDA Carry-forward

The actual net interest in a year may be less than the amount deductible under the “30% of EBITDA” – rule. In such years “unused” EBITDA is created. This unused EBITDA can be carried forward. It can be used in future years and enable tax deduction of interest expenses that would otherwise be denied in that year under the basic 30% EBITDA rule.

The EBITDA carry-forward expires after 5 years.

No EBITDA carry-forward can be created in years in which one of the above-mentioned exemptions (group clause, escape clause) is available.

Utilization of the EBITDA carry-forward follows certain rules. Unlike loss and interest carry-forwards, an EBITDA carry-forward will not forfeit in case of a share transfer.
6. Loss utilization

6.1. Minimum Taxation

During a tax year, profits from one source can be offset with losses from other sources within the same entity (or from other companies of a fiscal group).

A corporate income tax loss can be carried back up to an amount of EUR 1m into the last tax year. No loss carry-back is available for trade tax purposes.

Remaining losses can be carried forward without limitations as to time and amount.

However, utilizing losses by way of carry-forward is restricted by minimum taxation rules. Assuming sufficient loss carry-forwards,

- profits up to EUR 1m can be offset without restriction
- but out of exceeding profits only 60% can be offset, so that
- in effect 40% of profits exceeding EUR 1m are taxed regardless of existing loss carry-forwards.

Losses not utilized are continued to be carried forward.

6.2. Anti-loss trafficking rules

(“change-of-ownership rules”)

Although loss carry-forwards are basically not subject to a restriction of time or amount, they may be forfeited upon shareholder changes as a consequence of (anti-) loss trafficking rules (change-of-ownership rules).

As a rule, loss carry-forwards may be forfeited depending on the percentage of shares transferred within a 5-year period. Even indirect changes count.

The relevant figure to consider is to which extent shares are transferred within this period to one purchaser. Consequences are as follows:

<table>
<thead>
<tr>
<th>Percentage of Shares Transferred</th>
<th>Loss Carry-Forwards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 25%</td>
<td>Survive fully</td>
</tr>
<tr>
<td>More than 25% up to 50%</td>
<td>Proportionally forfeited</td>
</tr>
<tr>
<td>More than 50%</td>
<td>Fully forfeited</td>
</tr>
</tbody>
</table>

The rules cannot be circumvent by implementing several related purchasers or a group of purchasers with aligned interest.

The shareholder change may take place in the course of the year. If the company incurs losses for that year, current losses allocable to the period until the shareholder change are also forfeited.

A capital increase is treated as a shareholder change.

The rules are applicable not only to loss carry-forwards but also to interest carry-forwards (see section 5.4 above).

Special exemptions may apply in case of wholly owned companies (see section 6.4).
6.3. No Restructuring Escape

Mid 2009, the government put in place a restructuring escape. Loss carry-forwards were supposed to survive share transfers if the share transfer was part of a restructuring measure for the loss company.

The restructuring escape was challenged by the EU Commission for being an inappropriate privilege for companies in an insolvency situation compared to “sound” companies (so-called illegal state aid). Companies who relied on this escape will have to repay any saved taxes, depending on their tax position.

6.4. Intra-Group Escape

In pure intra-group restructurings, tax losses can survive share transfers. This requires that the share transfer occurs within a consolidated group which is 100% headed by one single individual or one single company (“Consolidated Group Clause”). Any outstanding minority shareholder impedes the benefit.

Transactions in which tax losses would be transferred to a third party will, therefore, not benefit from this exemption.

6.5. Hidden Reserve-Escape

Another exemption from the change-of-ownership rules is referred to as hidden reserve escape. Unused tax losses survive a share transfer to the extent they are compensated by domestic hidden reserves (inherent capital gains). These hidden reserves must lie in business assets of the loss corporation being subject to German taxation. Hidden reserves lying in assets not taxable under German tax law (e.g. shares in subsidiaries) are disregarded. This escape can even apply to transactions with third parties.

“Hidden reserves” are the difference between the fair market value of the transferred shares and the respective portion of the company’s tax equity to the extent allocable to German business assets. On share transfers of more than 50%, the total tax equity is compared with the fair market value of all shares.

As a general rule, the fair market value will correspond to the consideration paid. However, if the value cannot be derived from the consideration (e.g. in cases of restructuring or if one purchase price is agreed for the acquisition of a whole group), a valuation of the company may be required.

The hidden reserves clause can also save interest carry-forwards. Interest carry-forwards can be preserved by hidden reserves as described above as far as the hidden reserves are not already utilized for the preservation of loss carry-forwards.
7. Tax neutral reorganisations

Reorganisation measures, as a rule, result in a transfer of assets from one taxpayer to another, and the consequence of such transfer is taxation of inherent capital gains – even though the assets were not actually sold on the market.

German Reorganisation Tax Act, however, provides for quite a couple of opportunities to achieve reorganisations without triggering profit taxes. Steps that are beneficial from a commercial perspective are, thus, not constrained by taxation. Among these measures are mergers, spin-offs, splits, conversions, and contributions to subsidiaries if they are governed by the Reorganisation Act.

Germany has implemented the EU Cross-Border Merger Directive into domestic law. Therefore, even cross-border reorganisations are possible without triggering profit taxation.

Tax neutrality is linked to a number of critical requirements and formalities, in domestic scenarios and even more in cross-border scenarios. In many cases, tax neutral reorganisations can be successfully achieved, while in some cases taxpayers face crucial hurdles. Therefore, reorganisations should be carefully planned.

On 11 November 2011, German tax authorities published a detailed guidance on the application of the Reorganisation Tax Act. This guidance deals for the first time with specific cross-border reorganisations within the EU/EEA in order to comply with recent German court decisions concerning this matter.

8. Step-up and goodwill amortisation

The transfer of shares in corporations does not result in a step-up of the assets in the company. No goodwill depreciation is allowed as a consequence of share acquisitions, either.

This is different in case of the acquisition of partnership interests: Tax book values of the assets of the partnership are stepped up proportionately as far as the assets are allocable to the acquiring partner. Any step-up that cannot be allocated to single assets will be allocated to goodwill. Goodwill can tax wise be amortized over 15 years.

The reason for this different treatment between corporations and partnerships is due to the tax transparency of partnerships, the sale of partnership is seen tax-wise more as an asset deal rather than a share deal. It should be noted that therefore, the participation exemption that is available for the sale of a corporation by another corporation (see section 4 above) is not available for the sale of partnership interest. Their hidden reserves will be fully uncovered and lead to an exit taxation at the time of their sale.
9. Withholding taxes

9.1. Dividends to foreign shareholders

Dividends of corporations are subject to withholding tax (WHT). WHT on domestic corporate shareholders can be reclaimed. This is not elaborated further in this overview. Dividend distributions made by resident corporations to nonresident shareholders are subject to a WHT at the rates shown below. By contrast, profit distributions paid by partnerships or by German branches of foreign companies are not subject to WHT.

| Domestic rate for foreign individual shareholders | 26.375% |
| Domestic rate for foreign corporate shareholders (*strict substance requirements must be met) | 15.825% |
| Typical treaty rates for corporate shareholders with a certain minimum shareholding (selected treaty rates are shown in the Annex) | 5%/15% |
| Rate under EU Parent-Subsidiary Directive (PSD) for EU shareholdings of more than 10% | 0% |

9.2. Interest

Interest payments made by entities other than banks and financial institutions are generally not subject to WHT. Exception: interest paid on profit participating loans generally trigger dividend WHT.

Lenders may be subject to a limited tax liability with their German sourced interest income if the loan principal is secured in German real estate. However, even in such cases many German treaties assign the exclusive taxation right to the lender’s country.

9.3. Royalties

Royalty payments made to non-resident recipients are subject to WHT. The rates are as follows:

| Domestic rate | 15.825% |
| Typical treaty rates (selected treaty rates are shown in the Annex) | 0%, 5%, 10%, 15% |
| Rate under EU Savings Directive in case of affiliated companies | 0% |

9.4. Strict substance requirements

a) Overview

Reduced WHT rates on dividends and royalties under a treaty or under the EU Parent Subsidiary Directive are disallowed if the recipient does not meet strict substance requirements (anti treaty shopping).

Substance requirements are applicable where the shareholder of the foreign recipient would not be entitled to the same benefits if he derived the income directly rather than through the interposed company.

b) Substance requirements modified in response to EU Infringement Procedure

Since January 2012, substance requirements have been tightened (again). With this amendment, German government responds to the infringement procedure initiated by the European Commission against Germany. The revised anti treaty shopping rule no longer requires that a non-German resident company generates more than 10% of its gross revenues through its own business activities. On 24 January 2012, German tax authorities issued a guidance explaining the amendment of the substance requirements.

According to the newly changed anti treaty shopping provision, a withholding tax reduction is available if:

- the company is owned by shareholders that would be entitled to a corresponding benefit under a tax treaty or an EU directive if they had received the income directly (shareholder test); or
- the gross receipts generated by the foreign company in the relevant year derive from the company’s genuine own business activities (business income test).
Otherwise, withholding tax relief is only available if the foreign company meets both of the following additional tests:

- Business purpose test: There are economic or other relevant (i.e. nontax) reasons for the interposition of the foreign company in relation to the relevant income; and
- Substance test: The foreign company has adequate business substance to engage in its trade or business and it participates in general commerce.

Besides, a withholding tax reduction is also available if the condition of a so-called stipulation for stock markets is met.

c) Shareholder test
Under this test, e.g. a stock listed company that is entitled under the EU parent subsidiary directive would be entitled to a resolution of WHT. The tax authorities allow looking through interposed companies which are personally entitled to the same relief.

d) Business income, business purpose and substance tests
In case the shareholder test is not met, the tax authorities will test the factual entitlement to withholding tax relief. The tax authorities now interpret these tests as an “apportionment rule” (full or partial tax relief), under which a company’s gross receipts will be separated into “good” income/receipts and “bad” income/receipts.

Business income test
Withholding tax relief should be granted to the extent the foreign company can be deemed to engage in own genuine business activities (e.g. trade in its host country or services rendered to subsidiaries for arm’s length consideration). Under certain circumstances, the business of a management company will qualify.

Business purpose test
As far as the income of the company is not achieved from its own business activities, the income must come from a business for which the interposition of the company is justified under economic or other relevant reasons.

Substance test
The tax authorities provide some examples of what could be considered an indication for sufficient business substance:

- Existence of sufficient management and other staff personnel; and
- The personnel has sufficient qualifications to engage in the business of the company in a competent and independent manner;

The guidance also clarifies that substance that exists at the level of other group companies cannot be taken into account when determining substance at the level of the direct shareholder, even in the case of a tax group or other form of tax consolidation.

e) Consequences of not meeting the substance requirements
The following consequences arise from non-compliance with the substance requirements:

- Substance test to be applied to next higher level in shareholder chain.
- If the shareholder with sufficient substance at this level is another EU company eligible to the EU Parent Subsidiary Directive, the 0 % rate applies.
- If the (qualifying) shareholder at this level is a non-EU company eligible to a German treaty, the respective Treaty rate applies (e.g. 5 % or 10 %).
- If the shareholder at this level is a company in a non-treaty country or in Germany, the full domestic rate applies (15.825 % in case of a corporation, 26.375 % otherwise).
- If the structure requirements are only partially fulfilled, WHT reduction will only be partially granted.
10. Intercompany Transactions

Transactions between related parties must be at arm’s length. Otherwise, a reassessment is possible.

In recent years, transfer pricing has become the main focus in tax audits of German companies or groups of German companies carrying out transactions with related foreign entities. Especially the decree-law regarding the determination and documentation of profits from the year 2003 and the related procedural principles from the year 2005 confront taxpayers with a remarkable burden with respect to transfer pricing.

Since 2003, German companies with internationally related entities have been obliged to provide German tax authorities on request with documentation in the form of statements of facts and further documentation regarding the proper valuation of transactions for transfer pricing purposes. Following such a request, which is normally made in the course of a tax audit, the taxpayer must submit a statement of facts for all transactions with internationally related entities and must additionally show for each transaction separately that the arm’s length principle has been observed.

Deadline for submission of both types of documentation is 60 days from the date of the request for normal business transactions and 30 days for extraordinary transactions. Such wide-ranging documentations are normally prepared for several years.

In the absence of such documentation, tax authorities can recalculate or estimate German taxable income and in addition assess penalties of at least EUR 5,000 or between 5 (minimum) and 10 (maximum) percent of the additional income. For estimation purposes, an average margin or an interest rate for capital employed has to be calculated in the absence of other appropriate indications. In such situations, German tax authorities can use figures at the end of the range unfavorable for the German taxpayer. The same procedures are applied in cases where taxpayers submit insufficient documentation.

Germany has adopted the arm’s length principle for transfer pricing purposes. There are basically three methods for determining the arm’s length price: the Comparable Uncontrolled Price Method, the Resale Price or Resale Minus Method and the Cost Plus Method. These methods are in general equal in rank, with a preference for the Comparable Uncontrolled Price Method, especially if transactions with unrelated parties are also involved. Profit-based methods are not preferred and are mainly accepted for a reconciliation of transfer prices.

Since 2008 also a range of possible arm’s length prices has to be determined in the course of the transfer pricing documentation. To the extent the tax authorities should determine a different range and the transfer price chosen does not lie within this range, the price will be adjusted to the median of the tax authorities’ range.

For companies whose turnovers/received delivery of goods with related parties do not exceed certain easements, there is no need to have a detailed transfer pricing documentation.

Easements exist if the respective company meets the following conditions:

- Annual amounts paid to or received for the delivery of goods resulting from sales of goods with related parties are below EUR 5 m.
- Annual amounts paid to or received from related parties for other services than delivery of goods are below EUR 500 k.
11. Transfer taxes

11.1. VAT

The VAT rate is 19% (reduced rate 7%).

A VAT group is given as long as the following conditions are fulfilled:

- Financial integration: majority of shares or voting rights are directly or indirectly held by the parent company.
- Economic integration: economic relationship and activity between tax group member and head of tax group.
- Organisational integration: possibility of the head of the tax group to have direct influence on the management on the tax group members (can be achieved by having the same managing directors at the parent and the subsidiary).

11.2. Stamp taxes

Germany does not levy stamp taxes.

11.3. Real estate transfer tax

The transfer of real property located in Germany is subject to real estate transfer tax (RETT, Grunderwerbsteuer) at a rate varying from federal state to federal state from 3.5% to 5%.

RETT can also be triggered in share deals, if the company or the partnership being transferred directly or indirectly owns German real property. This is relevant in real estate transactions as well as in M&A transactions where real property is not in the focus. RETT can also be triggered in intra-group reorganisations.

As a rule of thumb, however, RETT can be avoided if less than 95% of the shares or partnership interests are transferred: Depending on whether the real property is owned by a partnership or a corporation, RETT can be avoided if the seller keeps at least 5.1% for more than five years or if a second investor acquires at least 5.1%.

So-called RETT blocker structures are available. Based on intermediate companies, such structures can avoid RETT, although more than 95% are transferred economically. However, more and more the German legislator has his sight on these RETT blocker structures. A draft law change was already published in 2012 but has not yet passed the parliament. It is likely that RETT law will be tightened soon so that these structures would no longer work.

Since 2010 there is a relief from RETT for group reorganisations. Conditions are strict. The privilege is limited to intra-group transactions, and the reorganisation must be one ruled by the German Reorganisation Act. In addition, a five-year minimum holding must be met prior to the reorganisation and afterwards.

The reorganisation privilege provides for the opportunity of tax neutral restructuring in many cases, but is, on the other hand, complex and unclear in many details.
# 12. Annex: Withholding tax rates for selected countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Dividends General WHT rate</th>
<th>Dividends WHT rate for participation privilege (minimum shareholding)</th>
<th>EU PSD rate (≥ 10%)</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>15%</td>
<td>15%</td>
<td></td>
<td>15%</td>
</tr>
<tr>
<td>Australia</td>
<td>15%</td>
<td>15%</td>
<td>0%, 10%</td>
<td>0%</td>
</tr>
<tr>
<td>Austria</td>
<td>15%</td>
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</tr>
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</tr>
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</table>
Luther Rechtsanwaltsgesellschaft mbH advises in all areas of business law. Our clients include medium-sized companies and large corporations, as well as the public sector. Luther is the German member of Taxand, a worldwide organisation of independent tax advisory firms.


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