



# TAXES IN EUROPE

**2022**

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# Germany




 **Capital city:**  
Berlin

 **Language:**  
German

 **GDP/capita**  
2019:  
USD 47,446

 **Telephone code:**  
+49

 **Area:**  
357,167 km<sup>2</sup>

 **Political system:**  
Federal republic

 **Currency:**  
Euro

 **National day:**  
3 October

 **Population:**  
83,954,852

 **ISO Code:**  
DEU



## 1. Corporate taxation

### 1.1 Taxes on entities

Legal entities are subject to corporate income tax on their profits.

### 1.2 Residence and non-residence

Resident entities include companies and other incorporated entities and these are liable to corporate income tax on their worldwide income. A company is resident when the seat of its head office is in Germany or its main management is within Germany.

Non-resident entities are liable to German corporate income tax on certain German source income. The most important sources are income from a permanent establishment in Germany and income from German real estate.

### 1.3 Tax year and filing

The tax year in Germany is the calendar year. However, a company may choose a different fiscal year with the approval of the German tax authorities.

As of fiscal year 2018, a corporate income tax return must be filed until 31 July for the previous year but extension for filing may be given up to 28 February of the second year following upon application. After filing the return a tax assessment notice is received and the final tax amount has to be paid. Provisional assessments are used which are payable in the course of the current year.

### 1.4 Types of income

The taxable profit is based on the accounting profit subject to certain adjustments for tax purposes only. Expenses relating to the business are generally deductible, although the deduction of certain expenses which may have a mixed character are limited (for ex. gifts, entertainment expenses, donates).

A provision can be made for bad and doubtful debts on a specific or general basis as well.

## 1.5 Group income and grouping arrangements

A German resident company can form a consolidation for tax purposes with its more than 50% owned subsidiaries. The grouping must be based on a profit and loss transfer agreement and to be maintained for at least 5 years. There are additional conditions attached.

## 1.6 Capital gains

Apart from participation exemptions capital gains are classified as ordinary income.

### National dividends

The dividends paid by a domestic corporation are tax-exempt for the corporation which receives them within the framework of corporate tax and business tax:

- independently of a particular ownership percentage of shareholding;
- independently of a particular minimum holding period.

Accordingly there is a significant tax advantage.

The tax exemption applies to the dividend in its entirety.

### Foreign dividends

The dividends of foreign subsidiary corporation are, in principle, tax-exempt, independently of:

- a particular ownership percentage of shareholding;
- a minimum holding period;
- and of the existence of a convention for the avoidance of double taxation.

### Deductible expenses

In the case of dividends, the operating costs related to the holding in the capital along with the actual costs incurred in relation to the holding are deductible for their full amount in the form of operating costs, but with the restriction that a flat-rate amount of 5% of dividends is considered as non-deductible expenses.

## 1.7 Losses

Losses may be carried back one year and carried forward for an indefinite period. Restrictions apply to annual losses in excess of EUR 1 million which only being offsetable against profits up to 60% per year. The remaining amount may be carried forward.

For the years 2020 and 2021, the maximum amount of the loss carryback is EUR 5,000,000 each. The increase is intended to mitigate the economic consequences of the Corona pandemic. For 2019, a provisional loss carryback for 2020 can already be claimed. This is intended to serve the liquidity of the taxpayer concerned. Thus, the expected loss amounts that can be carried back can already be taken into account in the advance payment procedure for 2019.

From the 2022 tax year, the maximum amount for loss carryback is again EUR 1,000,000.

Furthermore, in the event of a major change of the ultimate shareholder, losses that have been incurred before the moment of the change cannot be offset against future profits unless certain tests are met.

## 1.8 Exemptions

If, at the beginning of the calendar year, a German resident company holds 10% or more of the shares in a domestic and/or foreign company as well then the company will not be subject to tax on dividends received from its shareholding under the participation exemption, subject to certain conditions being met. However a flat-rate amount of 5% of the dividends will be classified as non-deductible expenses. As a result 95% of the dividends from German or foreign corporations are exempt from corporate tax and business tax as well.

## 1.9 Rates

Corporate income tax is levied at a national level. The tax rate currently is 15% plus a supplement of 5.5% (solidarity surcharge).

Germany levies a dividend withholding tax on profit distributions by resident companies. The German dividend withholding tax rate is 25% plus a supplement of 5.5% (solidarity surcharge). This rate may be reduced, often to 5% or to zero on the basis of German legislation, double tax treaties or the EU Parent-Subsidiary Directive.

## 1.10 Double tax relief

Germany has concluded agreements for the avoidance of double taxation with all important countries.

## 2. Personal income taxation

### 2.1 Taxes on income

The most important personal taxes are individual income tax and wage tax, the latter being withheld at source from wages and salaries. Wage tax is offsettable against individual income tax.

There are also social security contributions which are paid in general at half by the employee and at half by the employer.

### 2.2 Residence and non-residence

The major factors to determine the national residence are a home at one's disposal, the location of the family or physical presence (more than 6 months).

A person who is a resident in Germany is subject to income tax on his worldwide income.

Non-residents are subject to individual income tax on income from certain sources in Germany, in particular income from German real estate or from a German business.

### 2.3 Tax year and filing

The tax year is the calendar year.

As of fiscal year 2018, individual tax return should be filed not later than 31 July after the end of the previous tax year but extension for filing may be given up to 28 February of the second year following upon application.

After filing, a return on assessment is received. Provisional assessments are used which are payable in the course of the year.

### 2.4 Types of income

German tax law classes incomes in seven categories, those of the first three categories being considered as profits, those of the last four as surplus income. The different types of net income categories are the following:

#### **Income from agriculture and forestry**

Under the terms of Section 13, paragraph 1, EStG, considered as income from agriculture and forestry is the income derived from the systematic exploitation of the natural resources of the soil and the products thus obtained.

## Industrial and commercial income

A commercial or industrial activity means any non-agricultural, non-forestry or non-liberal activity, which is carried out:

- on an independent basis;
- on a permanent basis;
- with the intention of making profits;
- and falling within the framework of economic relations in the broad sense.

## Non-commercial income

Non-commercial income is, under the terms of Section 18, paragraph 1, EStG, mainly the income derived from the exercise of liberal professions and the remuneration of activities concerning asset management and the execution of wills, as well as the remuneration received by the members of supervisory boards.

## Wage income

This primarily concerns, under the terms of Section 19, paragraph 1, EStG, wages and salaries as well as retirement pensions, survivors' pensions to widows and orphans.

## Investment income

Investment income is the income from capital investment, i.e., under the terms of Section 20, paragraph 1, EStG, mainly:

- dividends and income from holdings in capital companies or cooperative companies;
- income from holdings as a "tacit" shareholder;
- the interest on capital claims: bank deposits and assets, income from bonds or other debt securities;
- annuities from life insurance policies;
- discount income.

Property and similar income under the terms of Section 21, paragraphs 1 and 2, EStG, considered as property and similar income is the income on rental and lease contracts concerning land, buildings, parts of buildings, as well as income from real estate companies.



## Other income

Under the terms of Section 22 EStG, this is mainly:

- periodic income such as annuities, grants etc.;
- maintenance payments;
- speculative gains;
- the fees of persons carrying out parliamentary activities.

## 2.5 Capital gains

Investment income is, in principle, subject to a flat rate withholding tax, set at 25% plus a supplement of 5.5% (solidarity surcharge). This rate may be reduced, often to 5% or to zero on the basis of German legislation, double tax treaties or the EU Parent-Subsidiary Directive.

## 2.6 Losses

A taxation based on the productive capacity is equivalent, in principle, to a taxation of the income earned on the total profit.

That is why, under the terms of Section 10d of the EStG, losses may also be taken into account in the calculation of total income.

Section 10d paragraph 1 of the EStG limits the carry-back of tax losses to one year.

The transfer of losses from previous financial years is limited, as of 2013, to EUR 1,000,000 (for couples to EUR 2,000,000).

The carry-forward of losses remains possible without any limitation in time.

Each year, the losses can be offset with positive income with no limit up to EUR 1,000,000 (EUR 2,000,000 for married couples). The balance of losses exceeding respectively EUR 1,000,000 and EUR 2,000,000 can only be charged by up to 60% per year.

The Second Corona Tax Assistance Act of 29 June 2020 (Federal Law Gazette 2020 I p. 1512) extends the tax loss carryback for the years 2020 and 2021 from the previous EUR 1,000,000 (or EUR 2,000,000 in the case of joint assessment) to a maximum of EUR 5,000,000 (or EUR 10,000,000). The carryback period remains limited to one year.

## 2.7 Exemptions

There are many exemptions in respect of personal income taxation.

## 2.8 Social security

In Germany, the mandatory social insurance includes:

- old age and disability insurance;
- unemployment insurance;
- sickness insurance;
- assistance insurance for care to persons in need or with disabilities;
- occupational accident insurance.

With the exception of the “occupational accident” insurance, which is entirely borne by the employer, the contributions to social insurance funds are borne in more or less equal shares by the employee and the employer.

The contributions rates are:

- 18.6% for the old age and disability insurance;
- 2.4% for the unemployment insurance;
- 14.6% for the sickness insurance;
- 3.05% (childless: 3.3%) for the nursing care insurance.

Gross annual income exceeding EUR 58,050 is not subject to the mandatory health and assistance insurance contributions. The ceiling for the calculation of contributions to the old age and unemployment insurance funds amounts to EUR 84,600 per year. In the new German states («Bundesländer»), the ceiling will decrease to EUR 81,000.

The contributions to the “occupational accidents” insurance fund are determined according to the risk of the company, as well as the gross wage bill.

## 2.9 Expatriates

There are no special conditions for expatriates.

## 2.10 Options

In the case of a stock option, the person who acquires the option (the holder) receives the right from the person granting the option (the assignor) either to buy (“call option”) or to sell (“put option”) the shares at the end of the option period or at any time during this period at an agreed price. In the case of a “call option”, if the value of the shares is higher than the fixed price agreed on the date of the exercise of the option, the holder makes a profit of the amount of the difference between the agreed price and the actual value of the shares. If the price of the share is lower than the agreed price, the holder can put an end to the option. The taxable financial benefit linked to a stock-option therefore includes both the value of the stock-option at the date on which it is granted by the employer and

any increase in its value between the date of acquisition and the date of exercise. This increase is determined solely by the trends of the market.

If the assignor approves the granting of a right and if the performance of this agreement only takes place later, the mere fact that the employer has ensured that the profits will benefit the employer at a later date does not normally constitute a financial advantage.

If a non-tradable stock-option is granted to an employee by his employer or by a third party in connection with his job, the employee does not gain a financial benefit when the option is obtained or when it is first exercised, but only at the time when the employee buys reduced-price shares following the option.

If the employee receives from his employer a stock-option which can be traded independently, for example in the stock market, and can be sold by the employee at any time, the employee gains a financial benefit at the time the option is obtained. On the basis of the most recent judgements, taking into account the law as it stands, the financial benefit resulting from stock-options is regarded as existing and is thus taxable on the exercise of the option.

According to the opinion expressed by the Bundesfinanzhof, a stock-option is not usually granted to reward past services but serves as an incentive bonus for the future. The tax reduction for the remuneration of several years of services according to the provisions of Section 34, paragraph 3, EStG (income tax Act) therefore must always be taken into account.

If the financial advantage has not been the subject of withholding at source by the employer on the exercise of the option, the employer's tax office can retroactively tax the employee on his income if the employer has notified the tax service, as provided for in Section 38, paragraph 4, EStG, that it has not performed the withholding at source, and that it therefore cannot pay it to the tax authorities (Court of Munich, judgement of 11 January 1999). However, on the appeal of this judgement, the Bundesfinanzhof expressed the opinion that, if the option had been granted by a foreign parent company to employees of a German subsidiary, the employee's liability to withholding tax was very questionable.

## Partnerships

Partnerships are treated as transparent entities and the income is therefore taxed directly in the partners' hands.

## 2.11 Pensions

Pension contributions are generally subject to tax.

### 3. Inheritance and gift tax

The property acquired by inheritance is subject to taxation if the heir or deceased are German residents. The same applies for gifts.

The scale is staggered according to the degrees of kinship between the heirs and the deceased. The law provides for three tax categories, with the tax rate increasing depending on the degree of kinship. Within the different categories, the scale is progressive (the minimum rate of inheritance and gift taxes amounts to 7%, the maximum rate reaches 50%) and amounts to, from 2009:

Transmission in EUR	Tax rate in%		
	Tranche 1	Tranche 2	Tranche 3
Up to 75,000	7	15	30
75,001 to 300,000	11	20	30
300,001 to 600,000	15	25	30
600,001 to 6,000,000	19	30	30
6,000,001 to 13,000,000	23	35	50
13,000,001 to 26,000,000	27	40	50
above 26,000,000	30	43	50

The new law which radically reformed the old regulations in force until 2008 not only completely revised the tax rates, but also systematically the evaluation of assets acquired by way of inheritance.

## 4. Value Added Tax (VAT)

### 4.1 Rates

- **Normal rate 19%**

All taxable operations not subject to the reduced rate are subject to the normal rate.

- **Reduced rate 7%**

Property subject to the reduced rate are listed exhaustively in annex to the law on value added tax (UStG). This concerns in particular:

- agricultural and similar products: vegetables, fruits, cereals and other plants, fish, meat and live animals, forest products including wood, animal feed, etc.;
- food products with the exception of luxury products, most drinks and eat-in sales;

- the distribution of water (but not the sales of bottled water);
- miscellaneous products: books, newspapers, artwork and collections, fertilizers, medical equipment or equipment for the disabled, etc.

With respect to services, this reduced rate concerns:

- certain passenger transports: public transports and short-distance transport;
- some cultural activities: theatres, concerts, cinemas, museums, circus etc.;
- the services provided by social, charitable or public-interest organisations;
- some dental care;
- certain digital products.

## **4.2 Distance selling to an individual located in Germany by a company located in the European Union**

The term Distance Selling describes supplies to customers who are not registered for VAT in another EU country. It does not apply for supplies to VAT-registered businesses in other EU-member states and does not apply to exports or imports to or from non-EU-member states as well.

The distance selling rules apply to contracts for goods or services to be supplied to a consumer where the contract is made exclusively by means of distance communication, that is any means used without the simultaneous physical presence of the consumer and the supplier including, for example, electronic mail. The distance selling regulations are only applicable if the company delivers the goods or arranges the transport by a transport company or by a mail delivery service. If customers collect goods or arrange for the transport abroad distance selling regulations are not applicable.

A foreign mail order supplier from another EU country becomes VAT-liable to Germany if the value of sales to customers who are not registered for VAT in Germany exceeds in a calendar year the annual German distance selling threshold of currently EUR 100,000 for the first time. If the distance sales to Germany include excise goods, such as tobacco or alcohol the supplier must register for VAT whatever their value. From then on the supplier must register for VAT in Germany and has to consider the following:

- it has to observe German VAT-procedures;
- the right tax rate has to be used (standard rate: 19%, reduced rate: 7%);
- invoices have to follow formal requirements of German law;
- VAT-returns have to be send to the respective German tax office;
- proper VAT-records have to be sent and other German VAT-rules have to be observed;
- in Germany foreign companies are not obliged to appoint a fiscal representative. However, it is advisable to appoint a tax representative to

deal with the company's German VAT affairs.

If mail order companies do not fulfil their obligations in Germany and German tax authorities discover this later, the company might not only be subject to German VAT but also to interests and penalties as well.

The mail order company can apply to cancel its registration if the annual value of its distance sales to Germany falls to EUR 100,000 or less and does not include excise goods or it expects that its distance sales will be less than EUR 100,000 in the current year.

Mail order companies may choose voluntarily to register for German VAT without exceeding the limit of EUR 100,000. This might be advisable if German tax rates are lower than the rate in the company's resident state.

## 5. Other taxes

### Real estate transfer tax

The transfer of developed and undeveloped land is generally subject to tax on the transfer of real property, the rate of which varies in the different German states («Bundesländer») between 3.5% and 6.5%.

The tax applies, in principle, to all real estate transfers, whether the right to transfer the ownership of the property results from a contract of sale or a legal act of another nature: company contribution, merger, division, expropriation, auction, etc.

However, the following are exempt:

- real estate transfers falling within the scope of application of inheritance and gift tax;
- transfers between spouses and parents or children in direct line;
- transfers for which the taxable base is less than EUR 2,500.;
- if certain conditions are met in case of restructuring of a group then an exemption on transfer tax will apply.

### Church tax

Church tax is calculated on the basis of the tax on the annual income. The tax rate varies depending on the German states («Bundesländer»); it represents 8% or 9% of the income tax.

In the case of a salaried activity, the church tax, in the same way as the wage tax,

is withheld at source by the employer and paid to the tax administration.

## **Solidarity Tax**

The solidarity tax stands at 5.5% of corporate tax and individual income tax respectively.

With effect from fiscal year 2021 the solidarity tax will be partially abolished for individual income tax. According to preliminary calculations, unmarried employees subject to social security contributions who earn no more than EUR 73,000 gross per year should no longer pay a solidarity surcharge from 2021. Up to an income of EUR 109,000, the full amount is gradually reached in the sliding zone.

For couples without children: Where exactly the exemption limit lies depends on whether both earn in the partnership or only one. With only one income, the exemption limit is around EUR 136,000. Up to about EUR 206,000, the solidarity surcharge must be paid in part, above that the full surcharge. If both contribute equally to the joint income, the solidarity surcharge is only added to the income tax from about EUR 147,000 gross income. From about EUR 219,000 gross, the full solidarity surcharge must be paid.

For families with children: Here it depends on the number of children and to what extent both partners contribute to the income. For example, for a family with one income and two children, no solidarity surcharge has to be paid if the annual gross income is below EUR 151,000. If the income is up to EUR 221,000, the solidarity surcharge must be paid in part; above that, the full surcharge is due.

## **Trade tax**

All industrial and commercial undertakings with an establishment in Germany are subject to trade tax (see v. ss § 11.13 on the definition of the undertaking). The “actual return” is subject to the tax. The actual return of an industrial and commercial activity means the profit, subject to certain positive and negative readjustments.

Partnerships receive a rebate on the taxable basis of EUR 24,500 on the “actual return” of the industrial and commercial activity exercised.

The trade tax is paid in its entirety to the municipality in which the registered office of the undertaking is located. If the undertaking has several establishments in different municipalities, the total trade tax is distributed among them according to a distribution quota. Each municipality may, within certain limits, set the

rate of the business tax itself. The average rate of the trade tax is between 8% and 22% of the profits of the industrial and commercial undertaking.

The trade tax is non-deductible.

Advance payments on trade tax are paid quarterly.

### **Other taxes and duties**

The wealth tax has been abolished since 1 January 1997.

Developed and undeveloped land is subject to property tax.

The acquisition of certain property is subject to various consumption taxes.

*Werner Schmid*



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