



Germany
Tax Guide **2009**



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GERMANY

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A. TAXES PAYABLE

FEDERAL TAXES AND LEVIES

COMPANY TAX: German-resident companies are subject to tax on their worldwide income. Non-resident companies are required to pay tax in various forms on income derived from German sources.

Resident companies are those that are incorporated in Germany or have their place of management and control in Germany.

The corporation tax rate is 15%. In addition, a surcharge is levied at the rate of 5.5% of the corporation tax.

The tax year in Germany is the calendar year. Companies are required to make quarterly prepayments of tax based on the previous year's income. Corporation tax returns should be submitted by 31 May of the following year. An automatic extension of seven months (31 December) is granted for returns prepared by a tax consultant.

TRADE TAX: Trade tax is applied only to business income. (Trade Capital Tax was abolished with effect from 1 January 1998.) All business enterprises operating in Germany are subject to this tax. The trade tax rate is assessed independently by each municipality. The effective tax rates range from 7% to 17.15%.

From 1 January 2008 individuals may deduct trade tax as a block credit against individual income tax. No tax relief by deduction or credit will be available to companies.

CAPITAL GAINS TAX: There is no special or separate capital gains tax (for details see below under 'Capital gains and losses').

BRANCH PROFITS TAX: There is no separate branch profits tax in Germany. Trading profits and capital gains of a German branch of a foreign company are calculated and taxed on the same basis as those of a German resident company.

SALES TAX/VALUE ADDED TAX (VAT): This is a tax on the supply of goods and services, other than exempt supplies and services, rendered in Germany by a taxable person.

The tax rates are as follows:

Standard rate:	19%
Reduced rate:	7%

FRINGE BENEFITS TAX: For some services provided to its employees (e.g. food offered in a canteen, office outings, transportation of employees, accident insurances and payments to retirement funds), the company has the option to pay the income tax on account for the employee. The tax is paid at a flat tax rate which varies depending on the service provided from 15% to 25% of the given value.

OTHER TAXES: Other taxes include real estate transfer tax at a rate of 3.5% (Berlin: 4.5%) and insurance tax (excluding life insurance and private medical insurance) at 19%.

B. DETERMINATION OF TAXABLE INCOME

The taxable income of a company is determined by ascertaining assessable income and then subtracting all allowable deductions. Business expenses are generally deductible for tax purposes, although there are some exceptions such as entertainment expenses which are only 70% deductible. Special rules apply in respect of the categories listed below.

DEPRECIATION: Tangible fixed assets, other than land, are written off over their estimated useful lives at rates prescribed by the tax law or an administrative regulation. For goods bought after 31 December 2007, only the straight-line method of depreciation can be used. The declining-balance method applies for tangible assets bought before 31 December 2007. In the case of a long-term devaluation of assets, an extraordinary depreciation is allowed. This write-down has to be reversed if the value of the asset goes up again. From 2008 onwards, assets with purchase costs from EUR 150 to EUR 1,000 exclusive of VAT have to be pooled every year. The pool for each year has to be written off in five years. Here the straight-line method applies.

STOCK/INVENTORY: Inventory includes raw materials, work-in-progress, finished goods and payments on account. Each item of inventory must be valued at acquisition cost or cost of production. Accepted valuation methods include 'last in, first out' (LIFO) and average cost.

CAPITAL GAINS AND LOSSES: In principle, capital gains from business assets are taxed at the ordinary tax rate. Profits on the sale of land and buildings may be reinvested tax-free (roll-over relief).

Where the shareholder is a company, capital gains relating to the sale of shares held in an enterprise (German or foreign) are tax-free with effect from 2002. Correspondingly, a write-down of a participation does not have any tax consequences. Neither will losses arising from the sale of such a subsidiary be recognised for tax purposes. A flat rate of 5% is deemed to be a non-deductible business expense irrespective of the actual expenses the company incurred.

Where the shareholder is an individual or a partnership, capital gains arising from the sale of shares held as business assets are taxable, but only 60% of the capital gain is added to the individual's/partner's annual gross income. The remainder is tax-free (40% participation exemption). Correspondingly, only 60% of the losses are deductible. Capital gains realised by partnerships are tax-free if reinvested in shares within two years (roll-over relief).

Where the shareholder is an individual, capital gains arising from the sale of privately held shares bought after 31 December 2008 are subject to a 25% flat withholding tax if the participation is below 1%. If the participation is 1% or more, the rules for shares held as business assets apply. Losses from the sale of privately held shares may be deducted only from gains arising on privately held shares. Non-deductible losses may be carried forward.

Capital gains arising on the sale of privately held shares bought before 31 December 2008 are not taxed unless the assets are sold within one year. In this case, only 50% of the capital gain is added to the individual's annual gross income. The remainder is tax-free (50% participation exemption). Correspondingly, only 50% of the losses are deductible.

Capital gains arising from the sale of other privately held movable assets are not taxed unless the assets are sold within one year. Capital gains

arising from the sale of privately held land and buildings are not taxed unless the assets are sold within ten years.

DIVIDENDS: Dividend income is subject to 25% withholding tax. The withholding tax rate may be reduced in accordance with tax treaties or EU regulations.

Where the shareholder is a corporation, the dividend income is tax-free (100% participation exemption). However, a lump sum of 5% of the gross dividends is added back to taxable income representing non-deductible business expenses, irrespective of the actual expenses the company incurred. This applies to dividends received from both German and foreign enterprises. There is no minimum shareholding and no minimum holding period.

Where the shareholder is a partnership, only 60% of the dividend income is added to the partner's annual gross income. The remainder is tax-free (40% participation exemption). Correspondingly, only 60% of the expenses directly connected to the dividend are deductible. A resident taxpayer may credit the withholding tax which has been deducted by the corporation against his own individual tax liability. Corporation tax can no longer be credited against the individual tax. The imputation system has been abolished.

Where the shareholder is an individual, dividends are subject to a 25% flat withholding tax. However, if the withholding tax rate exceeds the marginal income tax rate of the shareholder, the shareholder may opt to report the dividend in his income tax return instead. Economically connected expenses such as financing fees will no longer be deductible.

INTEREST DEDUCTIONS: Interest is deductible to the extent that it is payable on loans taken out to generate taxable income. Where interest is paid in order to finance a participation in another company, the above-mentioned special provisions concerning business expenses which are directly related to tax-free dividends apply.

In order to combat abusive transfers of profits outside the German tax jurisdiction, an "interest barrier" limiting the deductibility of interest payments as business expenses has been introduced. Interest payments to group companies exceeding 30% of EBIT are not deductible. However, if interest expenses do not exceed interest income, they remain deductible. An additional safe haven of EUR 1,000,000 is granted for excess interest expenses before the 30% barrier applies.

The interest barrier is only applicable for companies belonging to a group. Such a group is deemed to exist if a German company may be consolidated with other companies. The interest barrier does not apply to companies that are part of a group if, under IFRS, the ratio of equity to total assets of the company is equal or higher than the same ratio for the group (escape clause). The escape clause will not be applicable for corporations if more than 10% of the interest expenses are on related-party debt, i.e. to shareholders with participations of 25% or more.

LOSSES: In the year in which they are incurred, losses may, in principle, be deducted without restrictions. Remaining losses may be carried back to the preceding accounting period up to an amount of EUR 511,500 and, if there are still losses, they may be carried forward indefinitely to future years. However, in each future year, the deduction must not be more than EUR 1m plus 60% of any remaining profit.

FOREIGN SOURCED INCOME: Foreign sourced income is generally taxable. In addition, Germany has a controlled foreign company (CFC) regime. Its objective is to ensure that profits of German controlled companies are not transferred to, or generated in, low tax jurisdictions. A low tax jurisdiction is deemed to be any country which taxes income at a rate of less than 25%. Where German residents hold more than 50% of the shares or the voting rights of an intermediate corporation with passive income, that income is deemed to be distributed to the German shareholders and taxed at their level if the intermediate corporation is situated in a low tax jurisdiction. Under certain conditions, a participation of 1% in the foreign intermediate corporation is sufficient to trigger the CFC taxation.

From 2002, profit distributions by corporations and capital gains arising from the sale of these participations are deemed to be active income. Income derived by foreign holding companies is thus effectively exempt from CFC tax.

INVESTMENT ALLOWANCE/INCENTIVES: Investment aids are available in selected areas from local authorities for the improvement of the regional economic structure. Investment grants are provided by the tax authorities for the acquisition of new buildings or depreciable, movable assets in the new Länder.

C. FOREIGN TAX RELIEF

Even in the absence of a tax treaty, foreign tax on income derived by a German resident may be credited against his income or corporation tax liability. The tax relief must not exceed the German tax charged on the same profits. Alternatively, the foreign tax may be deducted from the income of the German resident.

D. CORPORATE GROUPS

Profits and losses of German group companies may be pooled for corporate tax purposes, if the requirements of the so-called 'Organschaft' are met. The controlling company must hold – directly or indirectly – the majority of the shares of the controlled company and there must be a profit and loss pooling agreement between the two companies.

With effect from 1 January 2002, these requirements also apply for trade tax purposes.

E. RELATED PARTY TRANSACTIONS

Inter-company pricing between affiliated companies must be carried out on an arm's length basis. If this is not the case, the income of both companies is adjusted.

With effect from 30 June 2003, the duty to document the way in which a taxpayer arrives at the transfer prices he charges on transactions with foreign closely related persons/enterprises was adopted. The documentation must encompass the nature and contents of the business relationship and the economic and legal basis underlying the arm's length prices.

F. WITHHOLDING TAX

Under domestic law, all dividends, regardless of whether they are paid to a resident or a non-resident, are subject to a 25% withholding tax as a flat tax. This is reduced to nil in the case where the shareholder satisfies the conditions of the EC Parent/Subsidiary Directive (broadly that the shareholder is an EC resident company with a 15% or more interest in the company paying the dividend). Interest is subject to a 25% withholding tax if it is paid to a resident. Interest paid to a non-resident is not liable to withholding tax. Royalties paid to a non-resident are subject to a 20% withholding tax. If paid to a non-resident corporation they are 15%. Certain German tax treaties provide for an exemption or a reduced rate.

G. EXCHANGE CONTROL

There are no exchange control requirements.

H. PERSONAL TAX

Income tax is payable by German resident individuals on their worldwide income. Non-resident individuals are only required to pay tax on German-sourced income. Individuals are deemed resident if they have a residence or their customary place of abode in Germany. The latter is the case if the individual has spent more than 180 consecutive days of the relevant year in Germany.

Income tax is payable on assessable income less allowable deductions. Assessable income includes business income, income from agriculture and forestry, income from self-employment, income from employment, certain capital gains, capital investment income, and rental and royalty income. Allowable deductions include personal allowances, deductions for business/professional expenses and contributions to specified (insurance) bodies.

Individual taxpayers suffer instalment payments which are withheld from their salaries by their employers. Self-employed individuals and those with non-salary income pay instalments on a quarterly basis with reference to the income realised in the previous year.

The tax rates effective for single taxpayers are as follows:

Taxable Income (EUR)	Tax Payable (EUR)
Less than 7,665	Nil
7,665 to 52,151	Progressive rates of between 15% and 42%
52,151 to 250,000	42%
More than 250,000	45%

The highest tax rate is 45% for taxable income of individuals that exceeds EUR 250,000 (EUR 500,000 for married couples).

Retained profits from a trade or business, agriculture or self-employment generated in business years ending after 31 December 2007 by individually-owned firms or partnerships are taxable upon application at a reduced tax rate of 28.25%. When profits are withdrawn, the amount withdrawn is subject to a further tax charge but is reduced by taxes already paid on the profits distributed, including trade tax.

Interest income is subject to a 25% flat withholding tax only. Economically connected expenses are not deductible. The shareholder may opt to report the interest in his income tax return if the withholding tax rate exceeds his marginal income tax rate.

Where the taxpayer is married, the income of the taxpayer is combined with the income of the spouse. Then the tax on 50% of the combined income is doubled correspondingly.

In addition to the personal income tax, a surcharge is levied at the rate of 5.5% of the personal income tax.

Social security contributions are withheld from employees' salaries and wages. The employer and employee each contribute 50% of the total social security contributions.

Members of the Roman Catholic, German Protestant, Lutheran and Jewish churches have to pay church tax. The tax rate amounts to about 8% or 9% of the annual income tax liability and varies according to the district of residence. It is a deductible expense for income tax purposes.

Assets transferred by gift or inheritance are subject to tax. If either the transferor or the recipient is resident in Germany, all transferred assets are taxed wherever situated. If neither party is a German resident, the tax is limited to property located in Germany.

The tax rates and exemptions vary according to the relationship between the transferor and the recipient and the value of the assets. Where children or the spouse are the beneficiaries, the rates range between 7% (where the assets have a value of EUR 52,000 or less) and 30% (where the assets have a value of more than EUR 25,565,000). If the transferor and the beneficiary are unrelated, the rates vary between 17% and 50% respectively. The spouse of the transferor is granted a personal allowance of EUR 307,000 and the children of the transferor are granted an allowance of EUR 205,000. The gift and inheritance tax is subject to revision. If a proposed new law does not pass the German Parliament prior to 31 December 2008, the gift and inheritance tax might be abolished entirely. Otherwise, tax rates and personal allowances are likely to be raised.

I. TREATY AND NON-TREATY WITHHOLDING TAX RATES

	Dividends (%)	Interest (%)	Royalties (%)
<i>Non-treaty countries:</i>	25	0	20/15 (11)
<i>Treaty countries:</i>			
Argentina	15	0	15
Armenia	15	0	0
Australia	15	0	10
Austria	15/5/0 (3) (6)	0	0
Azerbaijan	15/5 (1)	0	10/5 (5)
Bangladesh	15	0	10
Belarus	15/5 (2)	0	5/3 (9)
Belgium	15/0 (6)	0	0
Bolivia	10	0	15

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	Dividends (%)	Interest (%)	Royalties (%)
Bosnia-Herzegovina	15	0	10
Bulgaria	15	0	5
Canada	15/5 (3)	0	10/0 (5)
China	10	0	10/7 (5)
Croatia	15/5 (3)	0	0
Cyprus	15/10/0 (1) (6)	0	0/5 (5)
Czech Republic	15/5/0 (1) (6)	0	5
Denmark	15/5/0 (3) (6)	0	0
Ecuador	15	0	15
Egypt	15	0	25/15 (5)
Estonia	15/5/0 (1) (6)	0	10/5 (5)
Finland	15/10/0 (1) (6)	0	0/5 (8)
France	15/5/0 (3) (6)	0	0
Georgia	0/5/10	0	0
Ghana (13)	15/5 (3)	0	8
Greece	20/0 (6)	0	0
Hungary	15/5/0 (16)	0	0
Iceland	15/5 (1)	0	0
India	10	0	0/10 (5)
Indonesia	15/10 (1)	0	15/10/7.5 (5)
Iran	20/15 (1)	0	10
Ireland	10/0 (6)	0	0
Israel	25	0	5/0 (5)
Italy	15/0 (1) (6)	0	5/0 (5)
Ivory Coast	15/18 (5)	0	10
Jamaica	15/10 (1)	0	10
Japan	15/10 (1)	0	10
Kazakhstan	15/5 (1)	0	10
Kenya	15	0	15
Korea	15/5 (1)	0	10/2 (5)
Kuwait	15/5 (3)	0	10
Kyrgyzstan	15/5 (1)	0	10
Latvia	15/5/0 (1) (6)	0	10/5 (5)
Liberia	15/10 (1)	0	10/20 (5)
Lithuania	15/5/0 (1) (6)	0	10/5 (5)
Luxembourg	15/10/0 (1) (6)	0	5
Macedonia	15	0	10
Malaysia	15/5 (1)	0	10
Malta	15/5/0 (3) (6)	0	0
Mauritius	15/5 (1)	0	15
Mexico	15/5 (3)	0	10
Moldova	15	0	0
Mongolia	10/5 (3)	0	10
Montenegro (10)	15	0	10
Morocco	15/5 (1)	0	10
Namibia	15/10 (3)	0	10
Netherlands	15/10/0 (1) (6)	0	0
New Zealand	15	0	10
Norway	15/0 (1)	0	0
Pakistan	15/10 (2)	0	10
Philippines	15/10 (1)	0	15/10 (5)
Poland	15/5/0 (3) (6)	0	5
Portugal	15/0 (6)	0	10
Romania	15/5 (3)	0	3
Russia	15/5 (3)	0	0

	Dividends (%)	Interest (%)	Royalties (%)
Serbia	15 (1)	0	10
Singapore	15/5 (3)	0	8
Slovak Republic	15/5/0 (1) (6)	0	5
Slovenia	15/5/0 (1) (6)	0	5
South Africa	15/7.5 (1)	0	0
Spain	15/10/0 (1) (6)	0	5
Sri Lanka	15	0	10
Sweden	15/0 (6)	0	0
Switzerland	15/0 (2)	0	0
Tajikistan	15/5 (3)	0	5
Thailand	20/15 (1)	0	15/5 (5)
Trinidad and Tobago	20/10 (1)	0	10/0 (5)
Tunisia	15/10 (1)	0	15/10 (5)
Turkey	20/15 (3)	0	10
Turkmenistan	15	0	0
Ukraine	10/5 (2)	0	5/0 (5)
United Arab Emirates (12)	15/5 (3)	0	0
United Kingdom	15/0 (6)	0	0
United States	15/5 (3)	0	0
Uruguay	15	0	15/10 (5)
Uzbekistan	15/5 (1)	0	5/3 (5)
Venezuela	15/5 (4)	0	5
Vietnam	15/10/5 (4)	0	10/7.5 (5)
Zambia	15/5 (1)	0	10
Zimbabwe	20/10 (1)	0	7.5

- 1 Lower rate applicable where recipient holds an interest of at least 25%.
- 2 Lower rate applicable where recipient holds an interest of at least 20%.
- 3 Lower rate applicable where recipient holds an interest of at least 10%.
- 4 Lower rates applicable where recipient holds an interest of at least:
 - (a) 25% or 70% (Vietnam); or
 - (b) 15% (Venezuela).
- 5 The tax rates vary with the nature of the royalty/dividend.
- 6 The dividend is tax free within the EC where the recipient holds an interest of at least 15% (Parent/Subsidiary EC Directive and domestic law; with effect from 1 January 2007).
- 7 DBA Brazil was cancelled by Germany on 7 April 2005 with effect from 1 January 2006.
- 8 The lower rate applies to copyright royalties for literary, artistic and scientific works, including films etc.
- 9 The higher rate applies to copyright royalties for literary, artistic and scientific works, including films etc
- 10 It is unclear if the Treaty between Germany and ex-Yugoslavia is still applicable.
- 11 Lower rate applicable where paid to a non-resident corporation.
- 12 Applicable until 31 December 2008, new treaty pending.
- 13 Although the treaty has been signed it is not yet in force.



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