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Corporate Tax

Law and Practice – Germany

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GERMANY

LAW AND PRACTICE: p.3

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

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Law and Practice

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P+P Pöllath + Partners ' team of 130 lawyers and tax advisers provide high-end legal advice in Berlin, Frankfurt and Munich. Its corporate tax services include: structuring of national and international company sales, acquisitions and the resulting reorganisations, including tax due diligence, international transaction advice and acquisition financing; corporate tax planning and structuring of German investments abroad and foreign investments in Germany, including holding company structures, joint ventures or similar arrangements and reorganisations; application and interpretation of double taxation treaties.

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1. Types of Business Entity, Residence and Tax Treatment

1.1 Corporate Structures and Tax Treatment

Businesses generally adopt the form of a limited liability company (GmbH) or a joint stock

company (AG). These corporations are taxed as separate legal entities. The key differences

between the two relate to the treatment each receives under commercial law:

- Under a GmbH the shareholders are authorised to give instructions to a managing director, there is a low degree of fungibility of shares and there is a wide range of possibilities for the design of the articles of association.
- Under an AG the supervisory board and the management board are mandatory, with both operating independently from the shareholders regarding the business decisions. There is personal liability for the management and supervisory board, and there is a high degree of fungibility of shares.

1.2 Transparent Entities

Businesses generally adopt the form of a limited liability company (GmbH) or a joint stock

company (AG). These corporations are taxed as separate legal entities. The key differences

between the two relate to the treatment each receives under commercial law:

- Under a GmbH the shareholders are authorised to give instructions to a managing director, there is a low degree of fungibility of shares and there is a wide range of possibilities for the design of the articles of association.
- Under an AG the supervisory board and the management board are mandatory, with both operating independently from the shareholders regarding the business decisions. There is personal liability for the management and supervisory board, and there is a high degree of fungibility of shares.

1.3 Determining Residence

According to German tax law the residence of incorporated businesses depends on the question where the (i) place of

management and (ii) the statutory/registered seat is situated. Usually, the double taxation treaties provide regulations that the place of effective management is decisive in case of a double residence of a corporation (tie-breaker-rule).

1.4 Tax Rates

Corporations with a registered seat or with place of management and control based in Germany are subject to unlimited tax liability in Germany. Non-resident corporations are only taxed on their German-sourced income. The income of a corporation is qualified as business income. Therefore, corporate tax and municipal trade tax are levied at an approximate total rate of 30%.

The corporate tax rate (plus a solidarity surcharge) stands at 15.825%. A special tax rate applies for shares held in other corporations. Dividends received (as of 1 March 2013, only where the shareholding exceeds 10%) and capital gains recognised from the disposal of shares are tax-exempt, although 5% of the proceeds are deemed non-deductible expenses, resulting in an effective tax rate of 1.5%.

Municipal trade tax ranges from 13% to 17%, depending upon the municipality the business operates in. For trade tax purposes, capital gains from the sale of shares are tax-exempt, whereas dividends received from a German-located corporation are tax-exempt if the shareholding amounts to at least 15% (10% if the shareholding is received from an EU company).

However, regarding capital gains it is discussed that the tax-exemption for capital gains for corporate income tax as well as trade tax purposes will only apply for shareholdings of at least 10% in future.

Partnerships such as a KG are transparent for income/corporate tax purposes so that profits and losses are taxed at the partners' level. Assets, liabilities and income of the partnership are generally allocated to the partners in proportion to their partnership interests.

The taxation of individuals' income (who own a business or are a partner in a transparent partnership carrying out a business) generated by themselves or through the partnership generally depends upon their personal tax rate (tax rates up to 47.5%, including solidarity surcharge of 5.5%; and also possibly a church tax). However, dividend payments, as well as capital gains from the sale of shares which are realized in the context of a business, are subject to so-called partial-income-procedures, so that only 60% of the income deriving from dividends or capital gains will be taxed.

2. Key Features of the Tax Regime

2.1 Calculation of Taxable Profits

As corporations are legally obliged to keep records, they have to determine their income through the comparison of business assets and annual financial statements. Generally, tax accounts depend on the financial accounts as according to the principle of decisiveness ("Maßgeblichkeitsgrundsatz"). However, there are some deviations of tax accounts from financial accounts, such as the restriction of the application of current value tax depreciation to cases of permanent depreciation, the prohibition of provisions for onerous contracts, and the discounting requirement for long-term interest-free liabilities respectively, with interest at below the market rate.

Where tax payers are obliged to balance (e.g. corporations), profits are taxed on an accruals basis (realization principle).

2.2 Special Incentives for Technology Investments

There is no specific, comprehensive R&D support by way of special tax treatment in Germany. But, on the initiative of the medium-sized companies, the German government has developed the idea to set up tax-wise R&D funding with broad and nationwide impact, especially for medium-sized companies, an idea that is still currently in development.

2.3 Other Special Incentives

Germany provides special investment incentives to small and medium-sized companies by way of an additional capital allowance of up to 20% of the original costs and investment, and a deduction of up to 40% of the prospective original costs.

2.4 Basic Rules on Loss Relief

Regarding income and corporate tax, loss relief is granted through the application of the following instruments:

- The positive and negative income of one year is added up.
- The taxpayers may choose to carry back the losses to the previous year, or they may choose to indefinitely carry forward the losses. In case of carry back, any losses may be offset against the profits of the preceding year up to EUR1 million. An offset by way of carry forward is possible up to EUR1 million annually without restriction. Regarding the income that exceeds the EUR1 million threshold, in each subsequent year only 60% of this income may be offset against losses carried forward. The transfer of the share percentage of 25% to 50% may result in a pro rata forfeiture of carry forward not yet offset. The transfer of the share percentage over 50% may result in a total forfeiture of carry forward not yet offset. These rule exceptionally do not apply if there are hidden reserves taxable in Germany reaching the amount of the carry forward not yet offset. With retroactive effect as of January 2016 a new regulation had become law offering an additional possibility to avoid

the forfeiture of the carry forward not yet offset under very strict requirements, e.g. the maintenance of the same business and no participation in a tax group or partnership.

- The regulation that tax losses carried forward could forfeit partially in case of a change of at least 25% of the shareholding (described above) has been declared unconstitutional by the Federal Constitutional Court. This judgment created legal incertainty that still remains because the legislator now has to pass a new law concerning this subject matter with retroactive effect to January 1st 2008.
- In the case of trade tax, trade earnings may be reduced by loss carry forward; carry back is not provided. An offset is possible without restriction against losses of up to EUR1 million; regarding losses exceeding EUR1 million annually, only 60% of losses may be offset against trade earnings.

2.5 Limits on Deduction of Interest

German tax law provides interest-barrier-regulations. Interest expenses may be deducted without restriction up to the amount of interest income obtained in the same business year; exceeding amounts are only deductible to the amount of 30% of the EBITDA. This restriction does not apply if interest income does not exceed EUR3 million each business year, or if the company is only partially part of the group of companies (“Stand-alone-Clause”), or if an equity comparison shows an equity equal or higher than the equity of the group of companies (“Escape-Clause”). The Stand-alone-Clause does not apply for corporations in the case of harmful debt-financing (interest payable to the shareholder exceeding 10% of such interest payable that exceeds interest income) by shareholders/persons related to shareholders/third parties with considerable influence on shareholders holding more than 25% of shares in the corporation. The Escape-Clause is not applicable in the case of harmful debt-financing within the whole group of companies. Interest exceeding the 30% threshold may be carried forward indefinitely, except in the case of the sale of more than 25% of the shares within five years.

2.6 Basic Rules on Consolidated Tax Grouping

Consolidated tax grouping (Organschaft) enables groups of companies to offset the losses and profit within the group of subsidiaries against the profits of their parent company (and profits transferred to the parent company from other subsidiaries). It requires that the parent company (i) holds the majority of voting rights in the subsidiary, (ii) has unlimited tax liability in Germany, and where (iii) a profit transfer agreement has been concluded and executed for at least five years prior. However, it should be noted that the parent company is also liable for the losses of its subsidiaries.

2.7 Capital Gains Taxation

Effectively, 95% of capital gains deriving from the sale of shares in other corporations are tax-exempt, resulting in an effective tax rate of 1,5%.

However, it is actually discussed that the tax-exemption for capital gains will only apply for shareholdings of at least 10% in future.

2.8 Other Taxes on Transactions

As far as immovable property is transferred, real estate transfer tax (RETT) becomes due. The applicable tax rate depends on the question where the immovable property is situated in Germany and varies between 3.5% and 6.5%. If at least 95% of the shares in a corporation or, similarly, at least 95% of the partnership interest in a partnership owning real estate situated in Germany are directly or indirectly transferred the transaction could trigger RETT. Presently, it is discussed (i) to lower the threshold and/or (ii) to counteract abusive structures.

2.9 Other Notable Taxes

Incorporated businesses are generally subject to VAT; however, they usually are able to claim input VAT as well.

3. Division of Tax Base Between Corporations and Non-Corporate Business

3.1 Closely Held Local Businesses

Closely held local businesses are mostly structured as limited liability companies (GmbH) or as limited partnerships with a limited company as general partner (GmbH & Co. KG).

3.2 Corporate Rates and Individual Rates

If an individual professional does not intend to retain the profits of the corporation, but instead pay out the profits, either by way of salary or dividends, then they face an overall tax burden of up to 50% (in case of dividends this is split in two levels, the corporate/trade tax on the level of the corporation as well as individual tax at a flat rate). Thus there is no benefit.

3.3 Accumulation Earnings for Investment Purposes

There are no measures in place to prevent closely held corporations from accumulating earnings for investment purposes. The retained earnings of corporations are taxed at a lower rate than distributed profits.

3.4 Sales of Shares in Closely Held Corporations

There are no special taxation rules for closely held corporations; the general rules apply (see below).

3.5 Sales of Shares in Publicly Traded Corporations

Where shares are part of the private assets of an individual, dividends are taxed with a flat tax rate of 25% with an additional 5.5% solidarity surcharge, resulting in a final valid tax rate of 26.375%. Capital gains on the sale of shares are

also taxed at this flat tax rate if the individual's stake is below 1%. The 'partial-income procedure' (taxation of only 60% of proceeds at the progressive tax rate) is applicable if the stake equals or exceeds 1%, resulting in a maximum tax rate of approximately 30%. For the determination of income from capital gains a lump sum of EUR 801 is deducted generally. If the stake is below 1%, regarding the off-set of losses from capital gains, there are several restrictions– for example, only gains of the same kind of income may be off-set.If the stake equals or exceeds 1%, there is no restriction regarding the off-set of losses from capital gains. If the shares are part of the individual's business assets, the flat tax rate of 26.375% is replaced by the personal tax rate for both dividends and capital gains. However, only 60% of dividends for capital gains are taxed and only 60% of operating costs are deductible.

4. Key Features of Taxation of Inbound Investments

4.1 Withholding Taxes

The withholding tax is principally levied on dividends at a rate of 26.375% (including a solidarity surcharge). Non-EU corporations with limited tax liability may request a reimbursement of 2/5 of withheld tax so that the tax burden effectively amounts to 15.825% (including a solidarity surcharge) and is therefore equal to the tax burden for German corporations. The application of this regulation requires that the non-EU corporation is active within Germany. EU corporations which are subject to a limited tax liability benefit from the Parent-Subsidiary Directive. Under this directive they may obtain a 100% tax exemption for dividends, provided that the parent company has held a direct stake of at least 10% in the subsidiary for a continuous period of 12 months or more. Certain activity requirements need to be met. Under current German law the EU corporation especially has to prove sufficient substance in form of an equipped business and that the income was generated by its own economic activities. However, it should be noted, that those requirements were recently presented to the European Court of Justice (ECJ) by a German local court because of doubts regarding the compatibility with European law.

Only specific interest is subject to withholding tax: this includes profit-related interest, interest collateralised by real estate in Germany and exceptions such as interest resulting from 'over-the-counter-transactions' and interest to be attributed to other types of income.

In all other cases interest income is not subject to limited tax liability and is therefore not subject to withholding tax. Interest paid from an EU corporation to an EU corporation may be tax-exempt if the Interest and Royalties Directive is applicable.

Royalty payments are subject to limited tax liability and withholding tax at an amount of 15.825% which is levied from the gross income.

4.2 Primary Tax Treaty Countries

Due to favourable taxation measures granted to EU corporations most foreign investors invest via EU member states. The most common tax treaty countries are the Netherlands and Luxembourg.

4.3 Use of Treaty Country Entities by Non-treaty Country Residents

German tax law has several anti-treaty-shopping clauses in order to prevent the abuse of tax treaties. German tax authorities thus check whether an entity claiming for tax relief with reference to a tax treaty generates its income through its own activities and whether there are considerable reasons to act via the tax-privileged entity in question.

Furthermore, there exist subject-to-tax clauses through which it shall be prevented that certain income is taxed in neither of two treaty countries.

4.4 Transfer Pricing Issues

The main issue in tax audits regarding transfer pricing is ensuring compliance with the arm's-length principle. Other issues found are the examination of the transfer pricing methodologies chosen, the assessment of the attribution of beneficial ownership in the companies' assets as declared, and ensuring the fulfillment of formal requirements for when issuing the obligatory reports.

4.5 Related Party Limited Risks Distribution Arrangements

All transactions within a group of companies have to meet the requirements of the arm's length principle.

4.6 Variation from OECD Standards

Germany makes explicit reference to OECD standards in the circulars issued by the Federal Ministry of Justice and case-law; legal provisions, such as Section 1 of the Foreign Tax Act, are based on the OECD standards.

5. Key Features of Taxation of Non-local Corporations

5.1 Taxation of Non-local Corporation Versus Local Subsidiaries

Generally, there are no differences, however in practice there usually are problems/discussions regarding the allocation of income/expenses and assets.

5.2 Capital Gains of Non-residents
Capital gains of non-residents on a sale of stock in local corporations are taxed in case the shareholding is a least 1%. However, usually the tax treaties eliminate such taxation.

5.3 Change of Control Provisions
The change of control might result in the (partial) forfeiture of tax losses carried forward in case of a change of at least 25% of the shareholding (see the explanations above under II.4).

Furthermore, the real estate transfer tax (RETT) could be triggered by certain transactions with corporations/partnerships owning real estate (see the explanations above under II.8).

5.4 Determining the Income of Foreign-owned Local Affiliates
There are no specific formulas used to determine the income of foreign-owned local affiliates selling goods or providing services, but it must be ensured that the determination follows the arm's-length principle.

5.5 Deductions for Payments by Local Affiliates
There are no specific rules regarding the deduction for payments by local affiliates for management and administrative expenses incurred by a non-local affiliate. However, generally, the arm's-length principle and the transfer pricing rules must be taken into consideration.

5.6 Constraints on Related Party Borrowing
Any borrowing between related parties must comply with the arm's-length principle. The granting of an interest-free loan by a local affiliate or a granting with an interest below market standards can result in a hidden profit distribution. In comparison, a loan granted with an interest that is above market standards may result in a hidden contribution.

6. Key Features of Taxation of Foreign Income of Local Corporations

6.1 Foreign Income of Local Corporations
In principle, the worldwide income of local corporations is taxed in Germany. The part of the income of a local corporation which originates from foreign sources which are taxed in the state of source with a tax comparable to German corporate tax is taxed in

Germany, taking into account the tax paid abroad. A 95% tax exemption applies for dividends and capital gains from foreign sources in case the shareholding is at least 10% (for corporate income tax) and 15% (for trade tax). If a double tax treaty applies, the regulations laid down there have priority.

For CFC taxation see below.

6.2 Non-deductible Local Expenses
The local expenses which are treated as non-deductible because of attribution to exempt foreign income are part of the costs of the disposal and other current expenses in the context of the exempt income.

6.3 Taxation on Dividends from Foreign Subsidiaries
Under German tax law, for income to qualify as dividend income the same rules apply regardless of the origin of the dividends from foreign or local sources. Thus, under income tax aspects, 95% of dividend income is tax-exempt, except dividend income deriving from free-float below 10%.

For trade tax, the tax exemption for proceeds resulting from foreign subsidiaries is granted if the local corporation holds at least 10% of the subsidiary. Under certain provisions (especially activity) even a sub-subsidiary may benefit from this privilege.

6.4 Use of Tangibles
Intangibles may be transferred or let (royalties) at arm's-length conditions resulting in taxable income (transfer price or royalties) at regular rates.

6.5 Taxation of Income of Non-local Subsidiaries Under CFC-type Rules
Generally, passive low taxed income of non-local subsidiaries (dominated by Germans) is taxed in Germany.

The income is added to that of the local corporation and is then subject to regular German tax rules. In the case of passive investment income, the income will be taxed in Germany where the German shareholding exceeds 1%.

6.6 Rules Related to the Substances of Non-local Affiliates
German tax law provides harsh substance requirements for the exemption from withholding tax with regard to dividends paid by a German corporation to its foreign holding entity.

6.7 Taxation on Gain on the Sale of Shares in Non-local Affiliates
The gains made by local corporations on the sale of shares in non-local affiliates enjoy the same 95% tax exemption as granted for the sale of shares in local subsidiaries. However, it is still under discussion to apply the tax-exemption for capital gains only for shareholdings of at least 10% in future. But no concrete steps have been planned yet.

7. Anti-Avoidance

7.1 Overarching Anti-Avoidance Provisions

Sec. 42 of the General Tax Code provides for a general anti-avoidance rule which applies in case of abusive tax structures. On the level of the EU the Anti-Tax-Avoidance-Directive (ATAD) establishes a common minimum level of anti-avoidance-rules that every member state has to ensure.

8. Other

8.1 Regular Routine Audit Cycle

There is no audit cycle prescribed by law. However, audits generally tend to take place once every three-four years.

9. BEPS

9.1 Recommended Changes

At year end 2016 the so called "BEPS 1-Implementation Act" passed the German legislation process. This was the first step to implement the recommendation of the BEPS process into domestic law.

The BEPS 1-Implementation Act leads to an extension of cooperation obligations in cross-border situations which is based on BEPS action point 13 "Transfer Pricing Documentation and Country-by-Country-Reporting". As a result the transfer pricing documentation will consist of a Master File, a country-specific and company-related Local File and a country-specific Country-by-Country-Report. Furthermore, the minimum standards and reporting obligations resulting from the changes to the EU Mutual Administrative Cooperation Directive were also implemented. All changes shall be applicable for the first time to fiscal years starting after 31 December 2016, except the Country-by-Country-Report which has to be prepared for fiscal years starting after 31 December 2015.

In addition, tax rulings (i.e. advanced cross-border rulings and advanced pricing arrangements) issued, reached, amended or renewed after 31 December 2016 have to be automatically exchanged. Further amendments were introduced for tax rulings issued, reached, amended or renewed in the year 2012 and subsequent years. This amendments are to take into account BEPS action point 5 "Measures to counter harmful tax practices".

Furthermore, the BEPS 1-Implementation Act introduced a new regulation into domestic law in order to prevent double taxation of business expenses (i.e. double deduction) for partnerships effective from 1 January 2017.

Germany will also introduce a so called license barrier with legal effect as of 1 Januar 2018. This introduction shall limit the tax deductibility of license fees or royalty payments to foreign related parties that benefit from preferential tax regimes (such as IP, License or Patent boxes) which are incompatible with the OECD nexus approach of BEPS action point 5 "Measures to counter harmful tax practices".

Germany also signed the OECD Multilateral Instrument in June 2017. In a first step Germany would like to amend 30 of its 100 double tax treaties, if the other countries agree. Ratification shall be made in the upcoming legislative period (elections will be in September 2017), first amendments of double tax treaties are expected for 2019.

9.2 Government Attitude

Base erosion and profit shifting was explicitly mentioned in the coalition agreement of the German governmental parties. Therefore, the German government took an early initiative to fully support the BEPS project. During the BEPS project, Germany played an outstanding role in accompanying the project both politically and professionally. As Germany already has comparably strict tax laws, the intention of the German government with regard to BEPS is especially to enforce stricter international taxation standards in the EU and other countries in order to achieve fair tax competition between countries.

Certain parliamentary opposition parties in Germany point out that Germany shall not agree to the Transatlantic Trade and Investment Partnership (TTIP) unless the United States implements the BEPS measures. Otherwise, there would be an unjustified advantage for US companies compared to German or European ones.

9.3 Profile of International Tax

The increasing technological developments and digitalization in all areas brought about by globalisation creates public concerns that the current applicable international tax law enables tax avoidance and allows base erosion and profit shifting advantages. This development in the European press reporting began in the UK with Starbucks in 2012, was then extended to other global IT firms and immediately swept over other EU countries.

Developments such as Luxembourg leaks or Panama papers particularly influenced public and political discussions on aggressive tax structures (such as IP boxes etc.) and underlying tax rulings, which lead to tax rates of less than 5%. As a result, not only business and political press but also sensational press frequently reported about such developments. However, less attention is paid on the implementation of BEPS recommendation.

9.4 Competitive Tax Policy Objective
As Germany is a strong export country, Germany does not pursue a competitive tax policy objective. In fact, Germany has already introduced anti-abuse and CFC rules in order to limit base erosion and profit shifting. As a result, Germany seeks to achieve international standards for fair and realistic tax competition.

9.5 Key Features of Competitive Tax System
Due to its strict tax laws, Germany does not have a competitive tax policy objective.

9.6 Proposals for Dealing with Hybrid Instruments
Hybrid instruments have mainly been used in Germany for cross-border financing. Meanwhile, Germany has implemented a domestic anti-abuse rule (correspondence principle) for interest income from hybrid instruments of foreign corporations that is applicable as of the 2014 assessment year. Furthermore, the very same correspondence principle has been considered in the EU parent subsidiary directive.

A separate regulation to prevent double deduction of business expenses for partnerships has been introduced into Germany domestic law effective from 1 January 2017.

9.7 Territorial Tax Regime
Germany generally taxes worldwide income, subject to tax treaties, based on which interest income of foreign shareholders usually are not taxed. Originally this was the reason for introducing thin cap rules. However, meanwhile the interest deduction limitation rules exceed by far this scope and cover as well national structures:

According to these regulations, interest payable may be immediately deducted in the amount of interest income obtained in the same business year; exceeding amounts are only deductible up to the 30% of the EBITDA. This restriction does not apply if interest income does not exceed EUR 3 million each business year, or if the company is not part of a group of companies ("stand-alone clause"), or if an equity comparison shows an equity equal or higher than the equity of the group of companies ("escape clause"). The stand-alone clause does not apply to corporations in the case of harmful debt financing (interest payable to the shareholders exceeding 10% of such interest payable that exceeds interest income) by shareholders/persons related to shareholders/third parties with considerable influence on shareholders holding more than 25% of shares in the corporation. The escape clause is not applicable in the case of harmful debt financing within the whole group of companies. Interest exceeding the 30% threshold may be carried forward indefinitely, except in the case of the sale of more than 25% of the shares within five years.

9.8 CFC Proposals
With respect to EU law, conflicts may be looming with the general drift of the CFC proposals, particularly with regard to the freedom of establishment. The ECJ has decided in the case of Cadbury Schweppes that CFC rules unjustifiably restrict the freedom of establishment, in case the specific objective of a CFC rule is not to prevent conduct involving the creation of wholly artificial arrangements, which do not reflect economic reality, with a view to escaping the tax normally due on the profits generated by activities carried out in national territory. Thus, the case law of the ECJ has limited the application of CFC rules. It is questionable whether the BEPS proposals consider this fact. Apart from that, German tax law already provides for strict CFC rules for offshore subsidiaries whose passive income is taxed at a "low rate" of less than 25%. However, it is expected that BEPS might result in selective changes of this regime.

9.9 Anti-avoidance Rules
To address the inappropriate granting of treaty benefits and other potential treaty abuse scenarios, Germany has already implemented domestic "anti treaty shopping rules" several years ago. According to these regulations, benefits resulting from DTC and/or EU directives (such as the EU-Parent Subsidiary Directive) will not be granted in case a company's main purpose is to gain access to advantageous conditions derived from DTC and/or EU directives. Furthermore, domestic subject to tax clauses to prevent under- and non-taxation due to DTC or EU directive benefits and CFC rules are in place. Thus German tax law already provides adequate regulations to address tax avoidance.

Germany signed the OECD Multilateral Instrument in June 2017. The German position will not include the option of the so called simplified limitation on benefits provision which foresees that holding companies are not eligible for treaty benefits.

9.10 Transfer Pricing Changes
Transfer pricing matters for intellectual property are always a big issue for companies and advisors in Germany, as the evaluation, benchmarking and documentation of IP are always challenged in German tax audits.

As a result of the recently introduced new transfer pricing documentation concept with Master File and Local File intellectual property has to be documented more extensive. Therefore, comments have to be made regarding the creation, beneficial ownership, chances and risks, etc. of intellectual property. The new concept does not radically change things, however, intellectual property will be more transparent for tax authorities in Germany and other countries. Consequently, there are certain concerns that this could lead to more challenging tax field audit procedures including income corrections in Germany and other countries.

9.11 Transparency and Country by Country Reporting

Due to German transfer pricing reporting and documentation requirements, certain transparency with regard to inter-company cross-border transactions already exists. Furthermore, there are disclosure obligations in case a German tax resident (an individual or a legal entity) establishes permanent enterprises or partnerships abroad or acquires shares in foreign corporations. We assume that the draft law for the introduction of country-by-country reporting will be issued by the German lawmakers at the beginning of 2016, with legal effect for business years starting from or after January 1, 2016. In this regard, concerns must be raised, as companies will face further significant administrative barriers in the future.

9.12 BEPs Process

The German lawmaker has codified many regulations to prevent profit shifting and to stabilize the German tax revenue during the last few years. Therefore, literature does not expect the introduction of substantial further domestic anti-avoidance rules due to the BEPS process; however, amendments of the currently applicable rules are being discussed, such as an adjusted interest barrier rule and the definition of and allocation of profits to permanent establishments.

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