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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

German law does not recognise the concept of domicile. In Germany, tax liability is determined by the concept of residence. An individual has German residence for tax purposes if he or she has either a permanent home or a habitual abode in Germany. The worldwide income and assets of individuals whose permanent home or habitual abode is located in Germany (hereinafter referred to as: "residents") are subject to:

- income tax; and
- inheritance and gift tax ("IGT").

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

An individual's habitual abode is at the place where he or she stays under circumstances that allow the assumption that the stay is not only temporary. Generally, a person is deemed to have a habitual abode in Germany if he or she spends more than six months in Germany without any significant interruptions.

An individual has his or her permanent home in Germany if he or she maintains a dwelling in Germany under circumstances indicating that he or she will maintain and use such dwelling.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Please see question 1.1.

1.4 If residence is relevant, how is it defined for taxation purposes?

Please see question 1.1.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Generally, German nationality does not trigger any tax liability in Germany. However, German citizens may be subject to extended tax liability after emigration from Germany (please see question 11.4).

1.6 If nationality is relevant, how is it defined for taxation purposes?

Please see question 1.5.

1.7 What other connecting factors (if any) are relevant in determining a person's liability to tax in your jurisdiction?

Besides permanent home and habitual abode, there are no other connecting factors for an individual's tax liability with his or her worldwide income in Germany. However, even if an individual has no permanent home or habitual abode in Germany, income tax is generally levied on his or her German-sourced income.

1.8 Have the definitions or requirements in relation to any connecting factors been amended to take account of involuntary presence in (or absence from) your jurisdiction as a result of the coronavirus pandemic?

The relevant legal definitions have not been amended. However, Germany has concluded bilateral consultation agreements with some of its neighbouring countries relating to the provisions of double taxation agreements for cross-border commuters. These agreements shall ensure that the increase in days working from home due to the pandemic does not affect the division of taxation rights between the contracting states.

Furthermore, the German Federal Ministry of Finance confirmed that the stay of fitters in Germany in the event of border closures does not constitute a permanent establishment for a foreign entrepreneur.

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

Individuals becoming established in Germany may be liable to taxes if they take up a permanent home or habitual abode in Germany. IGT applies if either the transferor or the transferee is a resident in Germany.

IGT rates range from 7 to 50 per cent depending on the relationship between the transferor and the transferee and the value of the assets transferred. Spouses and descendants pay IGT at a rate of 7 to 30 per cent. Transfers between most other relatives are taxed at a rate of 15 to 43 per cent. Between unrelated persons,

the applicable tax rate is 30 or 50 per cent (for more than EUR 6 million).

The following tax-free allowances apply:

- spouses receive a personal allowance of up to a maximum of EUR 500,000 and a maintenance allowance of up to a maximum of EUR 256,000; and
- descendants receive a personal allowance of up to a maximum of EUR 400,000 and an age-dependent maintenance allowance of up to EUR 52,000.

Wealth tax has not been levied in Germany since 1997. Since then, there have already been numerous impulses in the political landscape for either reintroducing the tax or introducing a one-time wealth fee. This demand could even be found in some of the parties' election programmes for the 2021 federal election. Given the current coalition in the federal government, the introduction of a wealth tax is unlikely.

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

Persons becoming established in Germany are treated as residents if they have a permanent home or habitual abode in Germany. Income tax is imposed on the worldwide income of individuals whose tax residence is located in Germany.

There are seven types of income:

- income from agriculture and forestry;
- income from trade or business;
- income from self-employment;
- income from employment (salaries and wages);
- income from capital and capital gains;
- income from letting property, especially real property and groups of assets; and
- other income (e.g., income from a pension or leases of movable assets).

The tax rate ranges from 14 to 45 per cent progressively. In addition, a solidarity surcharge of 5.5 per cent of the tax due is levied. On 1 January 2021, the solidarity surcharge was completely abolished for 90 per cent of income taxpayers. Currently, only high earners, and investors who have exhausted their savings allowance, as well as limited liability companies and other corporations, are still subject to the surcharge. A basic personal allowance of the taxable income is not subject to taxation (EUR 10,347 for single taxpayers and EUR 20,694 for married taxpayers for the tax assessment period 2022). For the taxation of capital gains, please see question 4.1.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Any business is liable to trade tax, as far as it is operated through a permanent establishment in Germany, except for freelance professions or any other independent personal services. The tax rate is determined by the local authorities of the relevant municipality. However, trade tax may generally be credited against the individual's personal income tax.

At the discretion of the relevant local authority, an annual property tax may be due on the value of real estate (a standardised value that does not reflect the property's fair market value). The German Federal Constitutional Court held that the property values that were last assessed in 1964 or 1935 are inconsistent with the constitutional principle of equality of taxation. In June 2019, the federal government therefore sent a draft to the German Parliament to change, from 1 January 2022 onwards, how the assessment of property values is conducted by local authorities. Due to the new tax law, more than 30 million properties must be reassessed. Therefore, property owners recently had to submit tax returns. For this, each federal state requested different information from taxpayers, which further complicated the matter. The process is ongoing, but this can lead to very different tax burdens, including significant increases in the real estate tax burden, in different parts of the country.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

Generally, all goods and services provided by an entrepreneur in Germany are subject to VAT, unless they are tax-free. The general VAT rate is 19 per cent. There is a reduced VAT rate of 7 per cent, which applies, in particular, to the supply of nearly all food – except beverages and restaurant dishes.

In addition, excise duties are levied on certain goods. For example, energy tax, electricity tax and taxes on alcohol, tobacco and coffee exist.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

For persons who have become established in Germany by tax residency (see question 1.1), controlled foreign company ("CFC") rules may apply for offshore corporations controlled by them.

For shareholders of foreign corporations claiming a relief from withholding tax, the Income Tax Act provides for a substance test in order not to grant the relief to shareholders of corporations established solely to allow such a relief.

Income of an offshore family foundation or trust may be allocated to the settlor or the beneficiaries if they become residents in Germany.

In addition, the Defence Against Tax Havens Act came into force on 30 June 2021. In particular, this act prohibits the deduction of business expenses and work-related expenses arising from business transactions with individuals, corporations, partnerships or assets domiciled in a non-cooperative tax jurisdiction. Moreover, the CFC rules are tightened where intermediate companies are resident in tax havens. Furthermore, stricter withholding tax measures will also apply; for example, in cases where interest payments are made to persons who are resident in tax havens. For the purposes of the Defence Against Tax Havens Act, "non-cooperative tax jurisdictions" are all countries on the EU's blacklist.

Individuals who have been subject to unlimited income tax liability in Germany for a total of seven years during a 12-year period may be subject to a drastically tightened exit taxation with regard to their privately held company shares in the event of departure from Germany (and other substitute circumstances). In particular, the interest-free, indefinite deferral in the case of a relocation of EU/EEA citizens within the EU/EEA area is abolished and replaced by the possibility of a seven-year instalment payment.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

If no specific anti-avoidance rule applies, a general provision in the Fiscal Code of Germany may apply in order to prevent the avoidance of taxes. According to this general provision, legal

constructions are invalid if they are not intended by law and are therefore legally inappropriate, and if they lead to a tax advantage for the taxpayer or a third party.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

The German Anti-Money Laundering Act contains provisions that require certain corporations, registered partnerships and other legal entities such as trusts and foundations to disclose information about their beneficial owners in a so-called "transparency register" ("*Transparenzregister*"). Certain exemptions apply, for example, to stock corporations and to companies that are already listed on other registers, such as the register of companies (see question 12.3). The obligation generally only arises concerning beneficiaries with an interest exceeding 25 per cent of the shares or of the voting rights or who exercise similar control. The information must include the name, date of birth and home address of the beneficiary and the nature and value of the beneficial interest. Non-compliance may result in administrative fines of up to EUR 1 million.

Furthermore, on 21 December 2019, the German Parliament transposed Council Directive (EU) 2018/822 into national law with effect from 1 January 2020. The new provisions oblige intermediaries to notify the tax authorities of cross-border tax arrangements first implemented after 24 June 2018.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

Since IGT applies if either the transferor or the transferee is a resident in Germany (please see question 2.1), any gifts should be made before any of the individuals involved take up a permanent home or establish their habitual abode in Germany. Moreover, as the transfer of assets to an irrevocable and discretionary trust (or private foundation) is treated as a taxable gift (please see question 9.2), such transfers should also become effective before the settlor becomes a resident in Germany.

Please see question 2.1 regarding wealth tax.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Due to the fact that an individual becomes subject to German income tax with his or her worldwide income, any income (in particular capital gains) should be realised before entering Germany in cases where the individual finds himself or herself in a more advantageous tax situation before his or her relocation. However, with regard to business assets or real estate, gains from the sale of these assets will, in many cases, not become taxable in Germany, where a tax treaty with the state in which such property is situated is applicable. Due care should be taken where trusts or private foundations are set up before a relocation to Germany, as German tax law provides for special rules that allow the allocation of such trust's or foundation's income to the settlor or the beneficiaries if these individuals are resident in Germany. However, certain "escape rules" apply where the relevant entity is situated in another Member State of the EU or EEC.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

There are no other taxes for which pre-entry planning is necessary at the moment.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

There is a withholding tax on income from capital and capital gains at a flat rate of 25 per cent. For high-income earners, the rate is 26.375 per cent (including the solidarity surcharge); also, non-residents may claim EUR 801 (EUR 1,602 for married taxpayers) tax-free. However, the taxpayer may choose for his or her capital gains to be taxed at his or her individual income tax rate if this is lower than the flat rate tax.

With regard to capital gains, this basically applies to all privately held shares or bonds acquired on or after 1 January 2009. For privately held shares or bonds acquired before 1 January 2009, capital gains are only taxable if the shares form a substantial shareholding of at least 1 per cent. In this case, 60 per cent of the capital gains are taxed at a rate ranging from 14 to 45 per cent, depending on the taxpayer's individual tax bracket.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Generally, there is no tax on the import of private assets. However, the importation of goods into Germany from non-EU Member States for commercial reasons, or the importation of goods (in excess of certain amounts) that have just been acquired in non-EU Member States, may give rise to German VAT (so-called "import turnover tax").

4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

Residential properties are subject to a real estate transfer tax with differing regional rates ranging from 3.5 to 6.5 per cent. There are no differences between residents and non-residents in this regard.

The transfer tax generally applies to:

- the acquisition of real property; and
- the acquisition of a substantial shareholding (at least 90 per cent) in a company holding real property.

In 2021, the legislature passed a real estate transfer tax reform that toughens some of the major rules of the Real Estate Transfer Tax Act. On 1 July 2021, the rules with regard to transfers of real property in the event of a change of ownership of a partnership were extended to corporations. In addition, the relevant shareholding threshold in the case of share deals and changes of ownership was lowered from 95 to 90 per cent and the holding period was extended to 10 years.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

A corporation is subject to German corporate tax with its worldwide income if its effective place of management or its statutory seat is located in Germany.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

As mentioned in question 5.1, a corporation in Germany is subject to German corporate tax with its worldwide income. The current tax rate amounts to 15.825 per cent (including the solidarity surcharge). The additional trade tax of about 15 per cent is due for all corporations (see question 2.3).

5.3 How are branches of foreign corporations taxed in your jurisdiction?

If a corporation has a branch in Germany, this branch generally constitutes a permanent establishment of the corporation. The corporation will be subject to German corporate and trade tax with all income effectively connected with this permanent establishment.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

With regard to income tax and capital gains tax, Germany has entered into tax treaties with more than 90 countries, including the UK and the USA. Generally, the aim of the tax treaties is to prevent double taxation by the two contracting states. However, where the treaty's application may lead to the result that none of the states may tax the relevant income, special rules in German domestic law may apply, allowing Germany to levy tax without regard of the treaty.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

German income tax and capital gains tax treaties generally follow the OECD Model. However, some treaties include special provisions differing from the model convention. Furthermore, Germany also signed the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS ("Multilateral Instrument" or "MLI") and identified more than 30 of its existing tax treaties as Covered Tax Agreements to be amended through the MLI in the future.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

With regard to IGT, Germany has entered into double taxation treaties with the following states:

- Denmark;
- France;
- Greece (inheritance tax for movable assets only);
- Sweden (IGT has been abolished);
- Switzerland (inheritance tax only); and
- the USA.

These treaties seek to prevent a double taxation of any estate or gift by the contracting states. Where the transferor or transferee is a German resident, Germany generally gives a tax credit for foreign IGT.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

The German tax treaties in the area of IGT are largely based on the OECD Model Tax Convention on Successions, Estates and Gifts (1966/1982). However, the individual tax treaties provide specific variations or amendments of the OECD Model to adapt to the specific tax environments and requirements of the contracting states.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

For successions, the conflict of laws rules of the EU Succession Regulation have applied since 17 August 2015. They are valid in all EU Member States except Denmark and Ireland. According to the Regulation, the deceased's habitual residence at the time of his or her death instead of his or her nationality is relevant for the question of which succession law is applicable. If it is obvious that the deceased had a closer relationship to another state, that state's law applies under certain circumstances. There is, however, the opportunity to opt for the succession law of an individual's nationality by a will, a joint will or by an agreement as to succession.

Even if the EU Succession Regulation does not apply directly *vis-à-vis* third states, from the German point of view its provisions with regard to the determination of the applicable law apply accordingly.

Germany recognises the HCCH Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention). A will is valid if it complies with the law of any of the following:

- The state of the testator's nationality.
- The state where the testator made the will.
- The state of the testator's residence.
- The state where the assets are situated (in the case of real estate).

According to Art. 75 of the EU Succession Regulation, the HCCH Convention prevails over the provisions of the Regulation with regard to the formal validity of a will.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

The EU Succession Regulation is determined by the concept of the entity of successions. Therefore, the applicable law generally covers the worldwide estate, irrespective of whether the estate contains movable or immovable property.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

As a general rule, testamentary freedom cannot be restricted under German law. This means that the testator is free to choose his or her heirs and legatees and to determine how his or her estate shall be distributed. However, a will must fulfil certain formal requirements, either be a notarised or a holographic will. Furthermore, German inheritance law does provide for forced heirship, but the compulsory portion is only a monetary claim against the heir appointed by the testator. If a testator is not bound by a testamentary contract or mutual will, he or she is free to revoke his or her will prior to death.

8 Powers of Attorney

8.1 In your jurisdiction, can an individual create a power of attorney which continues to be effective after the individual has lost capacity?

Yes, an individual can create a power of attorney which continues to be effective after the individual has lost capacity.

The power of attorney is, in principle, freely revocable at any time, unless the principal has waived this right. However, since the power of attorney does not expire, in case of doubt, upon the death of the principal, the principal may even grant a power of attorney – which is irrevocable and also effective *vis-à-vis* the heir – for the period after his or her death.

8.2 To what extent would such a power of attorney made by an individual in their home jurisdiction be effective to allow the attorney to deal with assets belonging to the individual which are located in your jurisdiction?

Depending on the form of the power of attorney, the authorised attorney may perform all acts which the principal is also permitted to perform. There are no general limitations to a power of attorney (e.g., the principal can grant the power to handle all and any matters related to managing the assets of the individual granting the rights).

9 Trusts and Foundations

9.1 Are trusts recognised/permitted in your jurisdiction?

Trusts are generally not recognised in Germany as Germany did not ratify the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985. Therefore, German property law does not recognise the transfer of assets located in Germany to a trust.

9.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

Although trusts are generally not recognised in Germany, in particular, the following can trigger IGT:

- Setting up a foreign trust by a German resident.
- Transferring assets situated in Germany to a foreign trust.
- Distributions to beneficiaries during the trust period or upon the trust's dissolution if the beneficiary is a German resident. Distributions may also cause an income tax burden for the beneficiaries if they are liable to German tax.

German corporation tax may apply to:

- Income received by a foreign trust from German sources.
- The worldwide income of a foreign trust if its place of management is in Germany and if certain other conditions are met.

Income received by a foreign trust may be attributed to the settlor or the beneficiaries if they are German residents.

Recent decisions by the German Federal Fiscal Court on matters of IGT with regard to foreign trusts resolved some previous ambiguities about the gift tax treatment of trusts in Germany. The Court clarified and confirmed criteria under which a trust qualifies as opaque or transparent for IGT purposes. The crucial factor is how much power over the transferred assets still lies with the settlor. Generally speaking, a trust is transparent if the settlor can access its funds or assets like his or her bank account. Transparent trusts are effectively considered non-existent by German tax law. Therefore, the trust's assets are attributed to either the settlor or the beneficiaries (depending on the specific circumstances). Consequently, upon their death, IGT is levied on the trust's assets. Opaque trusts, on the other hand, are treated similar to foreign foundations.

9.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

As trusts are generally not recognised in Germany, a German citizen cannot form a testamentary trust. However, the creation of an irrevocable *inter vivos* trust may effectively hinder a claim under the German forced heirship rules after several years, where assets have been effectively transferred to the trust under the applicable foreign property law.

Generally, the person entitled to a compulsory share portion is entitled to an augmentation of his or her claim if assets have been transferred to a trust during a period of 10 years prior to the event of succession (so-called "Claim for Augmentation of the Compulsory Portion"). However, the value of the transferred asset is taken into account completely only within one year before the succession. The claim for augmentation decreases by 10 per cent for each year between the transfer and the succession that has passed. After 10 years, the asset transferred to the trust is not taken into account when calculating the compulsory share.

9.4 Are private foundations recognised/permitted in your jurisdiction?

German law recognises two types of civil foundations:

- charitable foundations; and
- family foundations.

Recognition as a charitable foundation requires that the foundation's activity is dedicated to the altruistic advancement of the general public in material, spiritual or moral respects. These purposes shall be pursued altruistically, exclusively and directly. However, a charitable foundation may use ⅓ of its income for the maintenance of the founder and his or her family.

Family foundations are conducive to the maintenance and the advancement of one or more families.

9.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

The formation of a charitable foundation does not trigger any IGT or real estate transfer tax if real property is transferred gratuitously to the foundation. A charitable foundation is released from almost every current form of taxation, especially corporate tax and trade tax. If certain requirements are met, the VAT for activities of a charitable foundation only amounts to 7 per cent instead of the regular tax rate of 19 per cent. The liquidation of a charitable foundation leads to an acquisition of assets on the level of the beneficiaries. This acquisition is treated as a lifetime gift. However, as the beneficiaries must be charitable organisations themselves, IGT will not be levied.

The formation of a family foundation and later donations generally trigger IGT. The current taxation of a family foundation complies with the taxation of other legal persons. Thus, it is subject to corporation tax at a tax rate of 15.825 per cent (including the solidarity surcharge). If the foundation is engaged in trade or business, it is also subject to trade tax at a tax rate of approximately another 15 per cent on its business income.

In addition, a family foundation is liable to a "substitute inheritance tax". This special tax accrues every 30 years. The liquidation of a family foundation can trigger IGT.

Distributions to the beneficiaries may cause an income tax burden and may also trigger IGT for the beneficiaries if they are liable to German tax.

In contrast to German family foundations, foreign family foundations are not liable to the "substitute inheritance tax". However, the income of a foreign family foundation may be added to the personal income of the founder or the beneficiaries if they are liable to German tax. This does not apply to family foundations that are resident in a Member State of the EU or the EEA if the following is assured:

- the foundation's property is separated legally and actually from the founder and the beneficiaries; and
- a treaty regarding mutual administrative assistance exists between Germany and the state in which the foundation has its residence.

These conditions must be satisfied cumulatively.

Comprehensive changes will be implemented in the law on foundations in the near future. At the end of June 2021, the German Parliament and the Federal Council passed the reform of the law on foundations. The two main objectives of the reform are to bundle the hitherto federally fragmented foundation law in a uniform and conclusive manner in the German Civil Code and to establish a centrally managed foundation register. The new regulations came into force on 1 January 2023. The public foundation register will be introduced on 1 January 2026.

9.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Please see question 9.3.

10 Matrimonial Issues

10.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

Civil partnerships have been recognised in Germany since 1 August 2001. So far, same-sex couples could enter into a civil partnership at the age of 18 by declaration to a registrar if none of them had entered into another existing civil partnership or marriage. Apart from the rules concerning the adoption of children, civil partnerships were governed by the same rules that apply to married couples, in particular with regard to inheritance and tax law. On 20 July 2017, a law was passed allowing same-sex marriage. The law, which entered into force on 1 October 2017, established full equality for same-sex couples. No new civil partnerships can be entered into; civil partners may opt for a conversion to a marriage, and same-sex couples not yet in a civil partnership may enter into marriage. However, the law might be challenged on constitutional grounds. The recognition of same-sex marriages will not have any new tax consequences.

10.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

In German family law, there are three types of matrimonial property regimes:

- the statutory property regime of community of accrued gains;
- the contractual property regime of separation of assets; and
- the contractual property regime of community of property.

Under German family law, spouses and partners of a civil partnership are subject to the statutory property regime of the community of accrued gains if they have not entered into a marital agreement providing differently. In a community of accrued gains, the assets of each partner remain under his or her individual control during the marriage or civil partnership. Only at the end of the marriage or partnership should the gains of each partner, accrued in his or her estate during the marriage or civil partnership, be balanced. If the marriage or civil partnership ends by divorce or dissolution respectively, the partner whose accrued gains exceed the gains of the other partner must share the difference between both with his or her former partner. If the marriage or civil partnership ends by death, the equalisation of accrued gains is made by adding an additional quarter of the estate to the intestate share of the surviving partner.

Furthermore, there are the contractual property regimes of separation of assets and community of property in which the partners' assets, in general, are either completely divided or completely collective.

If a marriage or a civil partnership governed by the contractual property regime of separation of assets ends by divorce, no equalisation or other balance of property will be exercised. If it ends by death, the surviving partner's statutory share of the estate depends on the number of children the deceased had. In case of one child, the surviving partner inherits ½, in case of two children, ⅓, and where there are more than two children, he or she always inherits ¼.

10.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Pre- and post-marital contracts are generally permitted under German family law. By these contracts, the partners may choose to change their matrimonial property regime or agree on individual rules for post-marital maintenance or pension rights adjustment. In Germany, marriage contracts must be notarised.

10.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

German family law recognises three main principles in relation to financial provision on divorce:

- equalisation of the partner's gains accrued during the marriage or civil partnership;
- post-marital maintenance/alimony payments; and
- pension rights adjustment.

For the principle of equalisation of gains, please see question 10.2.

After a divorce, each spouse is responsible for his or her own maintenance. However, there are many exceptions to this rule, e.g., if one of the spouses is unable to work due to health issues or because he or she has to take care of a very young child.

In cases of divorce, the law provides for a pension rights adjustment, irrespective of the applicable matrimonial property regime. The pension rights adjustment aims at balancing disparities on the level of pension rights between the spouses that result from a family model where one spouse goes to work while the other one takes care of the children.

The spouses may adjust these principles by marriage contracts within narrow limits set by case-law.

11 Immigration Issues

11.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

In general, EU citizens do not require any settlement title to work or settle in Germany.

For non-EU citizens, Germany distinguishes between different kinds of residence titles for specific purposes, subject to the length of stay and intended business activity. A visa allows the holder entry and short stays in Germany of up to 90 days for each period of 180 days. In the case of longer stays, a (temporary) residence or (permanent) settlement permit is required. Temporary residence permits are issued for specified purposes (e.g., education or training, gainful employment, humanitarian, political or family reasons). Permanent settlement permits are issued if a foreigner has held a residence permit for five years and meets additional requirements (e.g., secure income, no criminal record, adequate command of the German language, etc.).

11.2 Does your jurisdiction have any investor and/or other special categories for entry?

The relevant residence title depends on the specific area of business activity intended in Germany.

Non-EU citizens managing a company in Germany in a self-employed capacity or taking up gainful employment in Germany require a temporary residence permit. As a rule, a residence permit may be granted to self-employed persons if an economic interest or a regional need exists, the activity is expected to have positive effects on the economy, and financing has been secured. The fulfilment of these requirements is assessed by the local authorities.

Employees from non-EU Member States require a residence permit for the purpose of taking up employment in a company in Germany. As with a residence permit for self-employment, a residence permit is issued to employees for up to three years. Principally, a residence permit is only awarded to certain occupational groups (e.g., academics or IT professionals, see question 11.5) and, additionally, only if it is possible to demonstrate a specific offer of employment. However, persons considered to be "highly qualified foreigners" can be granted a settlement residence from the outset. For EU citizens, please see question 11.1.

11.3 What are the requirements in your jurisdiction in order to qualify for nationality?

Foreigners may generally be naturalised after eight years of habitual abode in Germany, provided they meet the relevant conditions. For this, it is necessary to prove an adequate knowledge of the German language, a clean criminal record and a commitment to the tenets of the German Federal Constitution. Moreover, the person to be naturalised must be able to financially support himself or herself. The eight-year period is shortened to seven years if the applicant participates in a certain integration course. The period can be shortened to six years if specific integration achievements are proved.

Spouses and children can also be naturalised even if they have not been living in Germany for eight years. In general, those applying for German citizenship must give up their former nationality (exceptions provided).

11.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

Generally, tax liability in Germany is determined by the concept of residence, not by the concept of nationality (see question 1.1). However, only a German national is subject to extended tax liabilities after giving up his or her German tax residence. He or she remains subject to German inheritance tax for five years after relocation (or 10 years in certain cases of relocation to the USA). Where a German national relocates to a tax haven, he or she may, under certain conditions, remain subject to German income tax with all income from German sources (including interest) for 10 years after relocation, and his or her assets located in Germany may be subject to German inheritance tax to a wider extent.

11.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

The "EU Blue Card" is a residence title for specific purposes that was introduced in Germany in 2012. The Blue Card is aimed at university graduates or other highly qualified foreigners. It grants the right to work and live in Germany. Such highly qualified foreigners are generally also entitled to bring their families to Germany.

12 Reporting Requirements/Privacy

12.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

Germany has entered into a multiplicity of agreements concerning the automatic exchange of information. Particularly concerning questions of taxation, an automatic exchange of information is exercised, e.g., on the basis of double-tax treaties, the EU-Council Directive on Administrative Cooperation in the Field of Taxation from 2011, the EU-Council Directive on Taxation of Savings Income in the Form of Interest Payments from 2003 or the bilateral international agreement concerning the US Foreign Account Tax Compliance Act ("FATCA") from 2013.

Moreover, Germany takes part in the Common Reporting Standards by the OECD's Global Forum of Transparency and Exchange of Information from 2014, which include the Automatic Exchange of Information ("AEOI") for tax purposes. This agreement is accepted by more than 60 countries and enables the respective financial authorities to obligate foreign credit institutions to provide certain financial information automatically at certain dates (e.g., names and accounts of individuals as well as paid interest or dividends). Germany has exchanged information with other signatory states since September 2017, with retroactive effect for the 2016 tax year.

12.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

For taxation purposes, persons having their residence or habitual abode in Germany, as well as any corporation with their effective place of management or statutory seat in Germany, are required to submit certain information to the competent financial authorities with regard to the following circumstances:

- the establishment or the acquisition of a foreign business or permanent establishment;
- the participation in or the retirement from a foreign partnership or the change of their interest;
- the acquisition of a participation in a corporation, association of individuals or legal estate if the person subject to

unlimited taxation reaches a share or interest in the foreign structure of at least 10 per cent, or if the acquisition costs of a person's total acquisitions of foreign shares or interests exceed the amount of EUR 150,000;

- the fact that they, alone or together with related parties, within the meaning of Section 1 (2) of the Foreign Tax Act can, for the first time, directly or indirectly exercise a controlling or determining influence over the corporate, financial or business affairs of a third-country company; and
- the nature of the commercial activity of the establishment, permanent establishment, partnership, corporation, association of persons, legal estate or third-country company.

12.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

Shareholders in corporations and partners of partnerships that are established in Germany generally must be registered in the (public) register of companies ("*Handelsregister*"). The same applies to the board members of corporations. The new "transparency register" is not accessible to the general public (see question 2.7). However, businesses and individuals will be allowed access to the extent necessary to comply with their "know your customer" ("KYC") obligations or if they can show another legitimate interest.

Some of the federal states ("*Bundesländer*") also have registers for foundations that contain the name, registered office, purpose and address, sometimes also the representatives, of a foundation.

Since German law does not recognise trusts (see question 9.1), there is no obligation to register trusts or any persons related to them. However, trust structures can constitute significant income tax and IGT liability in Germany (also under the Foreign Tax Act, see question 2.5), so a settlor or beneficiary who is a resident in Germany can be obliged to disclose the trust structure to the tax authorities for taxation purposes.

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