IN-DEPTH

Private Wealth And Private Client

GERMANY

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In-Depth: Private Wealth and Private Client (formerly The Private Wealth & Private Client Review) provides an incisive global overview of the key legal and practical issues affecting the management of private client wealth. With a focus on recent developments, it examines the most consequential features of the regimes governing tax, succession and wealth structuring across major jurisdictions worldwide.

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Summary

Introduction

Private wealth and private client law in Germany is characterised by a high number of tax and legal regulations on the one hand and a high level of judicial review on the other. Not only the civil and finance courts, but also the state and federal constitutional courts, ensure the consistent and proportionate application of German civil and tax law.

In recent decades, private wealth and family owned enterprises have been growing. At the same time, increasing mobility among high-net-worth individuals, coupled with a rising number of relocations to and from Germany, can be observed. Accordingly, private wealth and private client law in Germany no longer concerns only individuals resident in Germany and German family owned companies structuring assets domestically and abroad, but increasingly also encompasses international mandates with a German nexus.

Such cross-border matters give rise to a wide range of legal issues. In particular, inbound and outbound relocation scenarios create specific tax challenges, such as German exit taxation. This development is attracting growing attention in both legal practice and tax policy.

Year in review

The year 2025 marked a turning point for the German attribution taxation regime under section 15 of the Foreign Tax Act (Außensteuergesetz (AStG)), which applies in particular to foreign family foundations and trust structures. While the provision itself is not new, it has come under increased scrutiny following recent case law of the Federal Fiscal Court (Bundesfinanzhof), which has raised questions regarding its compatibility with EU law, particularly the free movement of capital. At the same time, a discussion draft published by the Federal Ministry of Finance in late 2025 proposes a comprehensive reform of the provision. The proposed changes aim to align the regulations more closely with the taxation of controlled foreign corporations (CFCs) and to achieve general simplification. For example, the attribution taxation should be limited exclusively to income of foreign family foundations subject to low taxation (ie, less than 15%), while to date, all income of foreign foundations has been subject to attribution taxation. At the same time, the revised version provides for expanding the group of persons to be taken into account to include persons associated with the founder, including relatives and descendants, who – as before – are directly or indirectly entitled to more than half of the benefits or income.

As a result, the regime has become a key focus in the review and potential restructuring of existing cross-border asset structures involving Germany.

Tax

Introduction

Unlimited tax liability in Germany is determined by the concept of residence for both income tax and inheritance and gift tax purposes. Residence is assessed using objective criteria. An individual is a German resident if he or she has either a permanent home or a habitual abode in Germany. The resident individual's worldwide income or assets are subject to income tax, as well as inheritance and gift tax. The concept of domicile, however, is not recognised by German law.

With regard to income tax, there is a progressive tax rate ranging from 14% to 45 %. An additional solidarity surcharge of 5.5 % of the tax liability was generally levied until the end of 2020. This surcharge was intended to finance German reunification in 1990. As of 1 January 2021, the solidarity surcharge was completely abolished for 90% of income tax payers. Currently, only high earners, investors who have exhausted their savings allowance, as well as limited liability companies and other corporations, are still subject to the solidarity surcharge.

As previously mentioned, income tax is levied on the worldwide income of residents. Non-residents pay tax on income from German sources (eg, income effectively connected with a permanent establishment in Germany, income from employment in Germany (including self-employment), income from German real estate or dividends and capital gains from German companies in cases of a substantial shareholding). Non-residents do not pay income tax on non-business interest income. Income from capital investments (eg, dividends) is subject to withholding tax at a flat rate of 25% plus the solidarity surcharge. A tax treaty may allow a partial refund.

Concerning inheritance and gift tax, each successor or donee (hereinafter both referred to as transferee) is liable for the tax on the value of the assets received, regardless of his or her personal wealth. The inheritance and gift tax rates range from 7% to 50%, depending on the relationship between the deceased or donor (hereinafter both referred to as transferor) and the transferee, and on the value of the assets received. Spouses and descendants pay inheritance and gift tax at a rate of 7% to 30%. Spouses receive a personal allowance of €500,000 and a maintenance allowance of up to a maximum of €256,000. Children receive a personal allowance of €400,000 and an age-dependent maintenance allowance of up to €52,000; grandchildren receive a personal allowance of €200,000. Transfers between most other relatives are taxed at a rate of 15% to 43%. Between unrelated persons, the applicable tax rate is 30 or 50 per cent (for a transfer of more than €6 million).

Unlimited tax liability is triggered if either the transferor or the transferee is resident in Germany, regardless of whether the assets received are effectively connected to Germany. If neither the transferor nor the transferee is resident, inheritance and gift tax is only due on certain assets situated in Germany (eg, real estate and business property). The transfer of a German bank account between non-residents generally does not trigger inheritance or gift tax. Furthermore, the extended unlimited inheritance tax liability may apply in certain situations. A German citizen is a deemed German resident for inheritance and gift tax purposes for five more years (when moving to the United States, even 10 more years) after having left Germany. The German Federal Fiscal Court recently confirmed that this extended unlimited inheritance and gift tax liability is constitutional. If the new country of residence does not have a double taxation treaty in the field of inheritance and gift tax, it may lead to double taxation of inheritances and gifts in the mentioned period.

Besides income tax and inheritance and gift tax, only a few other taxes are relevant for private clients. A real estate transfer tax with different regional rates ranging from 3.5%

to 6.5% applies to the acquisition of real estate or a substantial shareholding (at least 90%) in a company holding real estate. Furthermore, real estate tax is levied annually and is calculated on the basis of rates determined by the local authorities, and property values, which had last been assessed in 1964 or 1935. However, the German Federal Constitutional Court found that these obsolete valuation methods are inconsistent with the constitutional principle of equality of taxation. As a result, in November 2019, the German parliament introduced a reform law that includes new valuation rules for the period from 1 January 2022 onwards. Due to the new tax law, more than 30 million properties had to be reassessed. In future, property values must be assessed every seven years. The real estate tax calculated on the basis of the new property values is levied since 1 January 2025. In addition, the reform allows local authorities to determine a higher tax rate on undeveloped property that is ready for development since 2025. However, the constitutionality of the reform and the new assessment methods is already being questioned and legal actions against the new provisions have already been initiated. The standardised valuation of properties is viewed as problematic. So far, however, the Federal Fiscal Court has ruled that the reform is generally constitutional because property owners still have the option of proving a lower actual value.

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. Based on the current composition of the federal government, the introduction of a wealth tax is considered unlikely.

To implement the EU Directive on Administrative Co-operation (DAC) DAC 7, digital platform operators have been legally required since 2023 to report information about their registered sellers’ transactions to the relevant tax authorities.

Taxation of business assets under the Inheritance and Gift Tax Act

The inheritance tax law has been reformed several times, most recently in 2016. Exemptions of the Inheritance and Gift Tax Act for business assets are still widely available. The transferee may choose between a basic relief and an optional relief. According to the basic relief, 85% of the business assets are excluded from the tax base and only the remaining 15% are taxed. If the taxpayer chooses the optional relief, 100% of the business assets are excluded from the tax base. The relief is, however, conditional upon the continuing operation of the business for a certain amount of time (retention period) and the preservation of jobs. The retention period amounts to five years for the basic relief and seven years for the optional relief. Regarding the preservation of jobs, depending on the relief model chosen and the number of employees, after the retention period, the total payroll has to amount to at least 250% to 700% of the payroll before the transfer.

Furthermore, business assets can only benefit from the relief insofar as they do not constitute passive non-operating assets. Passive non-operating assets are, generally speaking, leased real estate, minority shareholdings of 25% or less, securities, certain movables like artwork, antique cars and yachts, and liquid funds if they exceed, after deduction of debt, 15% of the business' total value.

The passive non-operating assets are fully taxable at the regular rate if their value exceeds 10% of the total business assets (the contamination clause). In extreme cases, if the passive non-operating assets equal 90 per cent or more of the value of the whole business, the remaining potentially tax-privileged assets of up to 10% are excluded from all relief, too, to avoid any misuse. New passive non-operating assets (ie, those assets that were contributed to the business assets within a period of two years before the relevant transfer) are completely excluded from any form of relief.

If the value of the assets exceeds €26 million, the transferee may choose between two relief models: an ablation model or an economic needs test. According to the ablation model, the extent of relief is reduced by 1% for each €750,000 in company value exceeding €26 million. The result is that there is no longer any relief for acquisitions of approximately €90 million. The economic needs test, on the other hand, focuses on the transferee as a person and examines his or her assets. Out of his or her entire non-exempt assets after the transfer, the transferee is required to spend up to 50% for the taxes due on the transferred business assets. Only if the 50% of assets are not sufficient, an exemption from inheritance tax will be considered upon request.

In the case of gifting shares of a family business, it is worth noting that early tax deduction may be available if the articles of association contain clauses typical of such family owned companies. However, this is only applicable if the clauses were already incorporated at least two years before the relevant transfer and are not revoked in the following 20 years. Therefore, it is highly recommended that family owned companies examine their articles of association and incorporate the appropriate clauses, if they are not already included.

All the above-mentioned exemptions from gift and inheritance tax are the subject of ongoing political criticism. There are calls to restrict or completely abolish these exemptions and even to introduce a flat tax. Furthermore, two rulings by the German Federal Constitutional Court are expected in 2026, concerning the amount of personal allowances and the constitutionality of tax exemptions for business assets, which could lead to fundamental changes.

Tax treatment of trusts

Trusts are generally not recognised in Germany. Trusts can, however, trigger inheritance and gift tax in several ways. The establishment of a trust by residents or of a trust comprising assets located in Germany is regarded as a transfer of assets that is subject to tax under the Inheritance and Gift Tax Act. Distributions to beneficiaries during the trust period or on the trust's dissolution may trigger income tax and gift tax as well, if the beneficiary is a German resident or if German situs assets are distributed. The relationship between gift tax on the one hand and income tax on the other regarding trust distributions remains partly unresolved. In a 2021 decision,[1] the Federal Fiscal Court held that concurrent taxation under both regimes may generally be constitutionally permissible, which the tax authorities agreed with in 2023.[2]

In addition, corporate tax can be triggered if income is received by a foreign trust from German sources. The worldwide income of a foreign trust may be subject to corporate tax if the trust's management is in Germany and if certain other conditions are met; for example, if the effective management of a trust is vested with a trustee resident in Germany.

Undistributed income received by a foreign trust can be attributed to the settlor or the beneficiaries if they are German residents. In this case, it can be subject to the settlor's or the beneficiary's personal income tax.

Controlled foreign company rules in Germany: sections 7 to 13 of the Foreign Tax Act

Taxation in Germany generally cannot be avoided by establishing a foreign entity in a low-tax country. The German rules for the taxation of controlled foreign companies (CFCs) meanwhile have an extensive scope of application. The CFC rules are settled in sections 7 to 13 of the Foreign Tax Act (AStG) and are still subject to comprehensive changes. The European Union's Anti-Tax Avoidance Directive has obliged all member states to implement a minimum standard for additional taxation in national tax law. In Germany, the new foreign tax law has applied since 1 January 2022. The CFC rules extend the unlimited tax liability of residents to certain undistributed income of foreign corporations. The income may be attributed to domestic shareholders. The additional taxation under the CFC rules generally requires a substantial shareholding of German residents of more than 50% of the corporation's shares. This control concept was abolished and replaced by a shareholder-based control concept. Natural persons or legal entities may now control the intermediate company alone or jointly with other "related parties". The foreign corporation has to be an intermediate company that receives passive or tainted income instead of income from its own business activities. Passive income is defined negatively by a list of active income in section 8 of the AStG. Cumulatively, this passive income has to be subject to low tax rates of less than 25%. In exceptional cases, a specific burden calculation has to be made to determine low taxation. Passive income is harmless if it does not exceed 10% of the gross income of the intermediate company or €80,000. Income that meets the criteria is added to a resident individual's income, to the extent to which the individual holds shares in the corporation. The taxable person can choose whether the taxes paid on income received from an intermediate company in a foreign country will be deducted from the amount subject to the additional taxation in Germany or whether the foreign taxes shall be credited against the additional taxes levied in Germany. In most cases, the second option is more advantageous for the taxable person. A foreign corporation is not, however, regarded as an intermediate company if, inter alia, its effective place of management or its statutory seat is located in a member state of the European Union or the European Economic Area and if the corporation carries out substantial economic activities. A substantial economic activity exists if the necessary equipment and personnel are available. In addition, the economic activity must be carried out independently by qualified personnel. Furthermore, the taxpayer is obliged to provide evidence and there must be an exchange of information between Germany and the member state of the European Union or the European Economic Area.

Succession

Wills

According to sections 2231, 2247, 2231(1) and 2232 of the German Civil Code, there are two valid forms of wills: the holographic will and the public will. The holographic will has to be handwritten, dated and signed by the testator. The public will must be signed before and certified by a notary. Neither form of will requires a witness.

A testator can also enter a contract of succession with another person or set up a joint will with his or her spouse or civil partner. A contract of succession must be signed before and certified by a notary; a handwritten contract does not meet the formal requirements.

By making a will, an individual can choose their heirs and state what share each heir receives, taking into account the statutory share provisions. Additionally, an individual can grant a legacy to someone; that is, a person may be granted the right to make a claim against the heirs, without being an heir themselves. This claim can relate to an amount of money, a share of the deceased's estate, an item of property or anything else.

Wills made in a foreign jurisdiction can be valid in Germany. Germany recognises the HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961. Additionally, formal requirements for a will are laid down in article 27 of the EU Succession Regulation. A will is valid if it complies with the law of the state where the testator made the will, the state of the testator's nationality or residence or, in the case of real estate, the state of the location of the assets. Foreign certificates of inheritance are not automatically equivalent to a German certificate of inheritance, although they may be accepted as evidence. Depending on the circumstances, heirs may need to obtain a German certificate of inheritance from the competent probate court, especially for asset transfers in Germany.

Intestacy and forced heirship regime

If an individual dies without leaving a will, the rules of intestate succession apply. Under these rules, the deceased's estate is distributed among their relatives and spouse or civil partner in accordance with a strict order of succession. Children and their descendants constitute the first category, followed by parents and their descendants, grandparents and their descendants, and great-grandparents and their descendants. Relatives within a particular category inherit equal shares (succession per stirpes). Where German law applies, the surviving spouse or civil partner also has a right of inheritance, determined by the matrimonial regime. Within a community of accrued gains, the surviving spouse or civil partner gets at least 50% of the estate. If the deceased and the spouse or civil partner chose separation of property or community of property as their matrimonial regime, the surviving spouse or civil partner receives at least 25% of the inheritance.

There is a forced heirship regime under which the descendants, the spouse or civil partner and the parents of the deceased may be entitled to claim a compulsory share of the estate if they are excluded from the will or if receive less than their statutory share. A compulsory share generally amounts to 50% of statutory share on intestacy. It is a monetary claim and not a claim to a portion of the estate itself. The compulsory share is not limited to assets in Germany. Foreign assets are included, if German succession law applies. Therefore, the rules on the compulsory share cannot be avoided by holding assets abroad. However, the compulsory share may be waived by the entitled heir during the testator's lifetime by signing a notarised agreement with the testator. After the testator’s death, the compulsory share must be actively claimed by the entitled heir within three years. Otherwise, it may become time barred.

Conflict of laws rules

Under old conflict of laws rules in Germany, the applicable succession law was that of the deceased's nationality. If the deceased was a foreign national, German succession law applied only if the law of the deceased's nationality provided for a reference back to Germany (*renvoi*). This could be the case if the deceased was domiciled in Germany, if the deceased's habitual abode was in Germany or if the deceased held property or assets in Germany on the date of his or her death.

For successions as of 17 August 2015, new conflict of laws rules apply because of the EU Succession Regulation. They are valid in all EU member states except Denmark and Ireland. The Regulation is not only applicable to cross-border inheritances within the European Union, but also to cases with links to third countries (eg, US citizens with their habitual abode in a member state). According to the Regulation, the deceased's habitual abode 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 will apply under certain circumstances. There is, however, the opportunity to opt for the succession law of an individual's nationality through a will or a joint will, or by conclusion of an agreement regarding succession.

In addition, provisions on legal jurisdiction, recognition and enforcement of decisions and authentic instruments and on the European Certificate of Succession are part of the Regulation. Generally, the jurisdiction will be determined by the habitual abode at the time of the individual's death.

The EU Succession Regulation is not applicable to trusts; hence, the respective national conflict of law regime applies.

Wealth structuring and regulation

Commonly used structures

Two structures are commonly used in Germany to hold assets: corporations and partnerships.

A corporation is subject to German corporate tax on its worldwide income if its effective place of management or statutory seat is located in Germany. The corporate tax amounts to 15% plus the solidarity surcharge. In addition to corporate tax, a trade tax is also levied. The trade tax due depends on the rates determined by the local authorities. Participation exemption may apply, however, to dividends and capital gains. Profits distributed to shareholders of the corporation are subject to withholding tax at a flat rate of 25% plus the solidarity surcharge.

A foreign corporation with income from German sources might be subject to German corporate tax. If a foreign corporation has a branch in Germany that constitutes a permanent establishment, the corporation will be subject to German corporate tax and trade tax on all income effectively connected to this permanent establishment.

Partnerships are fiscally transparent in Germany for income tax purposes. The partners are subject to income tax at their individual tax rates (plus the solidarity surcharge, if applicable). If the partnership is engaged in trade or business, the partnership itself is subject to trade tax. Trade tax levied from the partnership is (to a large extent) credited against the income tax of the partners if they are individuals.

Foundations

Foundations in Germany can be established either as charitable foundations or as family foundations. Charitable foundations are tax-privileged. Recognition as a charitable foundation requires that the foundation's activities are dedicated to the altruistic advancement of the general public in material, spiritual or moral respects. These purposes must be pursued altruistically, exclusively and directly. A charitable foundation may, however, use a third of its income for the maintenance of the founder and his or her family. The formation of a charitable foundation triggers neither any inheritance or gift tax, nor real estate transfer tax, if real estate is transferred gratuitously to the foundation. A charitable foundation is released from almost every current form of taxation, especially corporate tax and trade tax.

In contrast, a family foundation is not tax-privileged. It is conducted for the personal benefit and the advancement of one or more families. The formation of a family foundation and later donations to the foundation generally trigger inheritance and gift tax. The current taxation of a family foundation generally complies with the taxation of other legal persons. A family foundation can, however, receive income not only from trade or business but any type of income. In addition, only family foundations are liable for a substitute inheritance tax. This special tax accrues every 30 years. Moreover, distributions to beneficiaries are subject to income tax. The liquidation of a family foundation leads to an acquisition of assets on the level of the beneficiaries. This acquisition is treated as a lifetime gift. Therefore, it is subject to gift tax. Income tax may be triggered as well. The tax rate depends on the relationship between the founder and the beneficiary.

Unlike German family foundations, foreign family foundations are not subject to substitute inheritance tax. Furthermore, according to a ruling of the Federal Fiscal Court,[3] distributions from foreign family foundations to German resident beneficiaries are only subject to gift tax if they do not comply with the statutory purposes of the foundation or if the beneficiaries have an enforceable entitlement to distributions. However, the undistributed income of a foreign family foundation may be attributed to the personal income of the founder or the beneficiaries if they are resident for tax purposes in Germany (section 15 of the Foreign Tax Act (Außensteuergesetz (AStG)). This attribution taxation does not apply to family foundations that have their seat in a member state of the European Union or the European Economic Area if the foundation's assets are legally and effectively separated from the beneficiaries' property and a treaty regarding mutual administrative assistance exists between Germany and the state in which the foundation has its seat. These conditions have to be satisfied cumulatively.

At the end of June 2021, the German parliament and the Federal Council passed the reform of the law on foundations. The new regulations came into force on 1 July 2023. The reform has bundled the hitherto federally fragmented foundation law in a uniform and conclusive manner in the German Civil Code and established a centrally managed public foundation register, which will be introduced on 1 January 2028. All existing and newly established foundations must be entered in the register.

Trusts

Neither domestic nor foreign trusts are recognised in Germany. Germany does not have its own trust law. 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. In these circumstances, the terms of a trust are interpreted in accordance with German law for civil law and tax purposes.

In a decision by the Federal Fiscal Court from 2021 on matters of inheritance and gift tax with regard to foreign trusts resolved some previous ambiguities about the gift tax treatment of trusts in Germany. [4]

The Court has clarified and confirmed criteria under which a trust qualifies as opaque or transparent for inheritance and gift tax 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). If the assets are attributed to the settlor, the establishment of the trust is not taxable, but inheritance and gift tax is levied on the trust's assets upon their death. Distributions to the beneficiaries are treated as a taxable gift by the settlor and also as capital income for beneficiary's income tax purposes. In contrast, the establishment of a trust, which assets are attributed to the beneficiaries, is subject to gift and inheritance tax. In return, distributions of such trust are free of tax.

Opaque trusts, on the other hand, are treated similarly to foreign foundations. The establishment is generally equivalent to the establishment of a foundation and therefore subject to gift and inheritance tax, while the decease of the settlor is irrelevant for tax purposes. For income tax purposes, distributions made by an opaque trust are treated as capital income (similar to dividends). An additional gift tax may only be levied if distributions are made in violation of the provisions of the trust deed or if the recipient is legally entitled in any way to receive the distributed funds (ie, has a claim to receive distributions as a beneficiary or remainderman). In such cases, trust distributions may trigger both inheritance and gift tax and income tax.

The rules of section 15 of the AStG apply to foreign opaque trusts as well as to foreign family foundations. As a result, undistributed income may be attributed to German tax residents who are settlors or beneficiaries, unless the attribution is not excluded (same requirements as for foundations). Currently, there is a certain easing of the situation, as in December 2024 the Federal Fiscal Court has issued that, in order not to infringe upon the free movement of capital within the European Union, beneficiaries of non-EU/EEA family foundations and trusts must also have the option to exclude the attribution if the assets of the foundation or trust are legally and factually withdrawn from the German beneficiary's control.

Outlook and conclusions

The German legal and tax system offers some flexibility for private wealth and estate planning. If structured appropriately, the taxpayer can take advantage of certain relief mechanisms for the succession in family-owned businesses. In particular, flexibility was gained when the EU Succession Regulation came into effect.

Usually, corporations and partnerships are used to structure assets and transfer them to the next generation. Family foundations and charitable foundations may be considered an alternative instrument in estate planning from time to time. Trusts, however, are not recognised in Germany. In comparison with corporations and foundations, they are disadvantaged if beneficiaries of a foreign trust have their permanent home or their habitual abode in Germany. Due to their numerous structuring options, they are still attractive for wealth structuring and succession. However, the highly complex civil law and tax issues require expert advice in order to realise an appropriate structure.

Especially for internationally mobile persons, German income tax law as well as inheritance and gift tax law give rise to a number of "traps", sometimes with drastic consequences.

In the near future, there could be major changes in German tax law, especially with regard to the preferential treatment of business assets in inheritance and gift tax and the compatibility of the German attribution taxation with EU law. Important decisions by the Federal Constitutional Court are expected and awaited in 2026. It also remains to be seen which of the government's current plans – presented following the 2025 elections and aimed at tax relief, investment incentives and combating tax avoidance – will actually be passed by parliament. In particular, it remains to be seen whether and to what extent the political parties' widely differing proposals for reforming inheritance and gift tax will actually lead to reform. Regarding foundations, a centrally managed public foundation register will be established on 1 January 2028.

Endnotes

1 II R 31/19. ^ Back to section

2 BMF IV B 5 – S 1340/23/1001. ^ Back to section

3 II R 6/16. ^ Back to section

4 II R 31/19. ^ Back to section

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