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Taxes

Direct Taxes

Taxes on Income and Profit

Scope

The term taxes on income and profit comprises

a) in the case of individuals
   1) Income Tax
   2) PAYE / Wage Tax
   3) Church Tax
b) in the case of legal entities
   Corporation Tax
c) in the case of business establishments
   Trade Tax
d) for all taxpayers, individual or corporate
   Solidarity Surcharge

There is no Capital Gains Tax as such; however, in some specific cases, the profit from the alienation of movable or immovable property may be taxed.

It is noteworthy that the wealth of private and business associations and partnerships provided by German law is not liable to income or corporation tax as such; however, the proportionate share of profit is directly attributed to the individual or corporate associate or partner, and increases its taxable profit.

International Taxation

On an international level, Germany follows the concept of limited and unlimited liability to direct taxes: individuals having (one of) their residence(-s) or their habitual abode in Germany are liable to German direct taxes without limitation: i.e. the world wide income irrespective of its sources is taken into account for taxation; the same is true for legal entities, e.g. GmbH and AG established in Germany.

To a very large extent, the resulting double taxation is grossly reduced or even totally avoided by unilateral and by bilateral methods. Germany has concluded ”conventions on the avoidance of double taxation and tax evasion” (tax treaty) with a large number of countries all over the world. Although all the tax treaties are heavily influenced by the OECD-model-agreement, they vary slightly in each particular case; however, some tax treaties show significant differences to the model-agreement, in particular the tax treaties with Switzerland and the United States. In most cases, double taxation is avoided by allocating the right to impose income tax on a particular kind of income to one or other of the contracting states; unfortunately, Germany has reserved the right to take such income into account for the calculation of the applicable tax rate on such income that is taxable in Germany: Thus, the progressive German tax rate can play its role on a comparatively lower amount of income taxable in Germany. Obviously, the effect of this rule is of mathematical interest only in cases where the income taxable in Germany is already taxed at the highest possible rate of 48,5 %, from 2002 onwards.

Very few tax treaties provide for the income tax paid abroad being credited against the proportionate part of German income tax due on the respective amount of income derived from that other state.

In the case of income deriving from states where no tax treaty exists, the foreign tax which corresponds to the German income tax is deducted from the proportionate part of the German income tax on such part of the income. Upon special application, such foreign income tax may be deducted from the income from that state.