



Thinking Beyond Borders: Management of Extended Business Travelers - Germany



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Key message

A person's liability to German individual income tax is determined by residence status for taxation purposes and the source of income derived by the individual. Income tax is levied at progressive rates on an individual's taxable income for the calendar year. It is calculated by subtracting allowable deductions from the total assessable income.

1 Key message

It is essential that transfer pricing rules be observed, which means that appropriate cost sharing between the home and the host country/jurisdiction should be upfront agreed upon and properly documented.

Extended business travelers are likely to be taxed on employment income relating to their German workdays.

In this respect, withholding obligations may arise for the host company. It should be noted that the tax withholding for non-resident employees follows special rules, which differ from those for resident employees. It is important that the home and host country/jurisdiction establish a reporting system that allows them to exchange all the relevant information in a timely manner.

Individuals working in Germany are subject to German social security regulations unless exempted under the applicable European Regulation (EC) 883/2004, a totalization agreement or domestic German law. The home and the host company should carefully review whether there is a social security withholding obligation for inbound business travelers or, if an exemption applies, whether a certificate of coverage has been obtained.

Germany applies a strict regime of immigration laws for non-European Union (EU) citizens, European Economic Area (EEA) and non-Swiss citizens. Despite all immigration privileges they have to comply with labor law requirements, especially the new statutory minimum wage.

A review of the immigration status of your business travelers well in advance of the business trip or assignment is strongly recommended.

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Income tax

2 Income Tax

2.1 Liability for income tax

A person's liability to German individual income tax is determined by residence status. A person can be a resident or a non-resident for German tax purposes. A resident of Germany generally refers to an individual who has a domicile in Germany or spends more than 6 consecutive months in Germany (habitual place of abode). A domicile is a home or dwelling owned by, or rented to, the taxpayer who has full control over the property. Domicile is determined by fact, not by the intention of the taxpayer.

A non-resident of Germany is generally someone who spends less than 6 consecutive months in Germany. The general rule is that a person who is a resident of Germany is assessable on the individual's worldwide income. Non-residents are generally assessable on income derived from German sources. Extended business travelers are likely to be considered non-residents of Germany for tax purposes, unless they stay in Germany for more than 6 months in a row (brief interruptions such as home trips over the weekend or vacations are disregarded).

2.2 Definition of source

Employment income is generally treated as German-sourced compensation where the individual performs the services while physically present in Germany. Additionally, specific rules apply for salary received as a board member, managing director, or other authorized representative (Prokurist) of a German company. Double tax treaty provisions may prevent Germany from taxing employment income if certain conditions are met.

2.3 Tax trigger points for employment income

Technically, there is no minimum threshold/number of days that exempts the employee from the requirements to file and pay tax in Germany. To the extent that the individual qualifies for relief in terms of the dependent personal services article of an applicable double tax treaty, there will be no tax liability. In some cases, treaty relief can be obtained only by submitting a formal upfront application to the German tax authorities. The treaty exemption will not apply if the German entity is the individual's economic employer or if the salary is paid by a direct branch of a foreign employer who has created a permanent establishment (PE) for treaty purposes in Germany.

2.4 Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income and German-sourced income, as well as gains from taxable German assets (such as real estate located in Germany); fringe benefits (broadly non-cash employment income) also fall into this category.

2.5 Tax rates

Taxable income is taxed at graduated income tax rates ranging from 14 percent to 45 percent. In addition to income tax, a solidarity surcharge amounting to 5.5 percent of the assessed income tax is charged (This surtax is levied only if the income tax exceeds EUR 16,956 in the tax years 2021 and 2022 and EUR 17,543 in the tax year 2023. Further increases in the income tax threshold are to be expected). If the taxpayer is a member of a church that is recognized for tax purposes, church tax at 8 or 9 percent of the income tax is levied. Non-resident employees are also subject to income tax at graduated rates as well as a solidarity surcharge. Non-residents are not subject to church tax.

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Social Security

3 Social Security

3.1 Liability for social security

In Germany the principle of territoriality applies to social security law. That means, employees working in Germany are generally subject to German social security system. For business travelers and multi-state-workers from other EU or EEA member states or Switzerland the Regulation (EC) 883/04 determines the applicable social security legislation. The guiding principle is that persons to whom the Regulation (EC) 883/2004 applies are subject to the legislation on social security of a single Member State only. The A1 certificate documents the applicable law (certificate of coverage). Extended business travelers from other countries/jurisdictions may be exempted from German social security legislation under a bilaterally social security agreement or under Germany's domestic law. Contributions to pension insurance and unemployment insurance, as well as health insurance and long-term nursing care insurance, are capped for both the employer and the employee (contribution assessment ceiling). Employers are obliged to comply with the contribution and reporting obligations.

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Compliance obligations

4 Compliance obligations

4.1 Employees' compliance obligations

Tax returns are due by 31 July following the tax year-end, which is 31 December. Where an authorized tax agent is used, there is an automatic extension until 28 February of the subsequent year. Note: Due to the Covid-19 pandemic, filing extensions are currently in effect (Status: March 16, 2023). The following deadlines apply to tax returns prepared by tax consultants:

- Tax year 2022, filing deadline 31 July 2024
- Tax year 2023, filing deadline 02 June 2025
- Tax year 2024, filing deadline 30 April 2026

Non-residents who derive German-sourced employment income and no other income from German sources are required to file an income tax return only if the employment income was not subject to German wage tax withholdings or if the received income includes inter alia termination payments or LTI/stock options remuneration. If the host company is obliged to withhold German wage tax on a non-resident's wages, the non-resident taxpayer generally cannot file a German income tax return (exceptions may exist for EU/EEA citizens in specific situations). As a consequence, the German wage tax withholding needs to be accurate and precise, since it very often represents the taxpayer's final tax liability.

4.2 Employers reporting and withholding requirements

If an individual is taxable on employment income, the German employer has a withholding requirement. A company that economically bears an individual's wages is also deemed to be a German employer, even if no employment contract exists between the German company and the individual (this is the so-called economic employer concept). Further, due to a most recent amendment in German tax law, the economic employer concept is also applied and will hence trigger a German withholding obligation in scenarios where – based on arm's length considerations – a salary recharge should have occurred but was deliberately "ignored".

A PE of a foreign employer in Germany is also obliged to withhold German wage tax. It is important to note that a PE as defined by German domestic law is sufficient to trigger a withholding obligation. It does not necessarily have to qualify as a PE under an applicable tax treaty.

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Immigration

5 Immigration

5.1 Work permit/visa requirements

Performing an activity in Germany, which an individual is required to perform according to their employment obligations, is considered as working. In first instance, the duration and the location of the employer (abroad or Germany) do not matter. Working in Germany is, in the first instance, always subject to work authorization requirement.

Individuals from Member States of the EU or the EEA or Switzerland are always exempt from the obligation to obtain a work authorization as they enjoy the rights from the EU Freedom of movement. This includes travels to Germany as well as business travelers.

For nationals of other countries/jurisdictions work authorization exemptions may exist depending on the type of activities and the duration of these. The German law specifies certain activities which are considered as "business activities". However, the requirements of the law are very strict so that it should be checked before each trip - regardless of the length of the stay - if such an exemption applies. If not, a work visa is required and additionally, if the stay exceeds 1 year, a work permit. On occasion of obtaining a work visa/work permit the German immigration law is closely linked to the labor law. When deciding on a work visa the German authorities will especially assess whether the working conditions of the individual are comparable to those of local workforce. Working conditions are, for example, salary, working hours and entitlement to annual leave.

On 1 January 2015, Germany's law on a statutory minimum wage became effective. Even foreign companies located abroad and assigning employees to Germany are required to pay the statutory minimum wage during an employee's deployment in Germany – even if this is very short. The minimum salary requirement is only a "bottom line" requirement. Additionally, the salary must be comparable to local workforces' salary working in a comparable position with a comparable educational and professional background. If at least one of these requirements is not attained, the requirement work visa/permit will not be issued. Not complying with other mandatory provisions like working time, holidays etc., will lead to a rejection of the work visa/permit application as well.

There is also a certain risk that an agreement between the home and host company might be classified as a staff loan agreement if certain conditions are met, such staff loan agreement can potentially lead to a violation of German labor and civil laws as well as a rejection of a work visa/permit application.

Germany applies as of August 2017 several regulations deriving from the so-called ICT Directive, whereas "ICT" stands for intra-corporate transfers within a company or company group. Based on the ICT Directive a specific type of permit can be issued. This shall be indicated by the acronym "ICT" (ICT permit). Based on an ICT permit of another Member State of the EU, working in Germany in the intra-corporate setting can be possible mainly conditional to a notification process for up to 90 days within a rolling period of 180 days. For working in Germany as well, an additional German permit needs to be applied for called "mobile ICT" card.

The Skilled Worker Immigration Act (FEG), a new law that modified the existing immigration regulations and expanded the possibilities for qualified non-EU professionals on employment in Germany, came into force on 1 March 2020.

The new law expands the framework under which qualified professionals can come to work in Germany by distinguishing between skilled workers who have completed professional training and skilled workers who have an academic education.

By classifying qualified professionals, the law makes it easier for skilled workers with vocational, non-academic training from non-EU countries/jurisdictions to migrate to Germany in order to work.

With the implementation of the FEG, stricter obligations for employers who hire Non-EU workers came into force, in particular the obligation to notify the responsible immigration authority within a period of 4 weeks after employment has been terminated prematurely. Furthermore, employers are able to initiate an accelerated residence permit application on behalf of the qualified worker (for local hires only), pending power of attorney, with the responsible immigration authority, helping to significantly shorten the duration of the administrative procedure before the visa is issued, as a visa application appointment needs to be granted within a three-weeks-period.

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Other issues

6 Other issues

6.1 Double taxation treaties

In addition to Germany's domestic arrangements that provide relief from international double taxation, Germany has entered into double tax treaties with approximately 100 countries/jurisdictions to prevent double taxation and allow cooperation between Germany and other tax authorities in enforcing their respective tax laws. Each year new treaties are to be signed and numerous existing ones are subjected to re-negotiations and amendments.

6.2 Permanent establishment implications

There is the potential that a PE could be created as a result of extended business travel, but this would be dependent on the type of services performed, the duration, and the level of authority the employee has. Further, home office scenarios should also thoroughly be checked with respect to a potential PE exposure.

The definition of a PE under Germany's domestic laws differs from the definition of a PE for treaty purposes. A PE, as defined by German domestic law, is sufficient to trigger a wage tax withholding obligation.

6.3 Indirect taxes

Value-added tax (VAT) is applicable at 19 percent (standard rate) for taxable supplies. A reduced rate of 7 percent is applied to exceptional transactions, only.

6.4 Transfer pricing

Germany has a tough transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed. There is a strict legal requirement to have comprehensive documentation on cross-border activities (cost and benefit analysis) at hand for a future tax audit.

6.5 Local data privacy requirements

Germany has – often resulting from the implementation of EU directives - rather strict data privacy laws. This topic has got more and more attention and subsequently gained greater importance recently.

6.6 Exchange control

Germany does not restrict the flow of German or foreign currency into or out of the country/jurisdiction. Certain reporting obligations are imposed, however, to control tax evasion and money laundering.

6.7 Non-deductible costs for assignees

The deduction of assignee-related costs may be limited where the salary level of an inbound assignee significantly exceeds the cost of a local individual in the same role. Hence, proper documentation should be kept available.

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