

Taxation of Enterprises in Germany

Bahns

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GERMAN LAW ACCESSIBLE

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Taxation of Enterprises in Germany


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Taxation of Enterprises in Germany

Cross-border Aspects · M&A · Reorganisations

by

Jochen Bahns

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Preface

As a partner in a leading German law firm, the author has been dealing with issues of **German tax law in a domestic and cross-border context** in his daily work for more than 20 years. The focus is on the taxation of domestic and foreign enterprises, including, for instance, tax aspects relating to M&A as well as reorganisations of companies.

Much of this work is done in cooperation with the experts in the tax departments of domestic and foreign enterprises as well as with external tax advisors in other domestic and foreign law and tax firms.

In this context, foreign tax experts who are neither familiar with the German language nor with German tax law face the challenge of accessing the often **complex provisions of German tax law** and developing an understanding of their regulatory content. Naturally, the more technical the language and the more complex the structure of the German regulations, the more difficult this exercise becomes. In particular, the respective foreign law often lacks regulations comparable to the German law (e.g. the German regulations on tax groups including the requirement of a profit and loss transfer agreement). Conversely, there are regulations in foreign tax law that have no comparable counterpart in German tax law (e.g. branch profit tax, stamp duty).

In practice, it is often essential for the foreign tax expert to understand the **prerequisites and legal consequences of the German regulations** to be able to analyse the tax implications in Germany and draw the right conclusions for the implications in the respective foreign state of residence or permanent establishment.

In these cases, **English translations** of the relevant **German tax regulations** can already assist foreign experts. In most cases, however, there is a need for further explanation and information, whereby experience has shown that illustrative examples facilitate access to the content of the regulations.

This is where this handbook comes in: it provides a **compact outline of the taxation of enterprises in Germany**, including M&A and the reorganisation of companies in national and cross-border situations from the perspective of German tax law. Personal income tax, corporate income tax and trade tax are dealt with, including the special income tax relevant provisions of the Reorganisation Tax Act (*Umwandlungssteuergesetz*). In addition, there are overviews of the German value added tax, real estate transfer tax and inheritance and gift tax systems. The presentation of the tax aspects of inbound and outbound investments (including special features of tax procedure law) rounds off the overview of German tax law.

A major objective of this handbook is to meet the **diverse need of tax experts** for explanations and information in an understandable manner. This is achieved, for example, through the following features:

- Questions frequently asked in daily practice are presented in a chapter of ‘150 Frequently Asked Questions’. The reader is guided to the more detailed explanations in the main section by appropriate references.
- Numerous examples with short solution notes facilitate the reader’s access to and understanding of the respective topic dealt with. In many cases, these examples are taken from the case law of the Federal Tax Court (*Bundesfinanzhof* – BFH), the highest German court in tax matters, or publications of the German tax administration such

as guidelines and circulars of the Federal Ministry of Finance (*Bundesministerium der Finanzen* – BMF).

- Important provisions of German tax law are translated into English (see the overview on pages XIX–XX). Full translations are usually found at the end of the relevant section. To ease the understanding of the cross-references within the legislation, the translation includes further information. In addition, the reader will find translations of extracts from the legal provisions in the text itself. If the respective provision reproduces at least approx. 95 % of the original German text, it is cited in brackets without the reference ‘cf.’.
- A detailed table of contents and a brief overview of the contents at the beginning of each chapter as well as an extensive subject index support targeted navigation in the book and enable the reader to quickly find important topics and terms of German tax law.

This book is intended as a **compact practical guide**. It is neither a commentary nor a textbook, nor is it intended to be. The judgments cited are almost exclusively cases of the Federal Tax Court that have been published (by the German tax authorities) in the Federal Tax Gazette (*Bundessteuerblatt* – BStBl.) Part II, and of the European Court of Justice (which can be researched online). Announcements of the German tax authorities are only decrees of the Federal Ministry of Finance and the supreme tax authorities of the federal states that have been published in the Federal Tax Gazette Part I. These references would enable readers to delve more deeply into the subject matter if needed. Further case law (e.g. tax courts) and announcements of the German tax authorities (e.g. by the ministries of finance of the respective federal state, regional tax offices) as well as in particular the extensive publications in the German and international tax literature (e.g. commentaries, articles) were not included in the interest of the intended practicability.

This handbook presents the **main features of the relevant areas**. In selecting the almost infinite number of current, practice-relevant and interesting topics, as well as in the scope and depth of their presentation, the author has been guided by the focal points of his professional activity. Against this background, this handbook cannot and does not claim to be complete.

As is common practice in German legislation and for easier readability, the masculine form is used in this book for personal pronouns and is to be understood as referring equally to all gender identities.

The author welcomes any proposals for additions, suggestions for improvement and hints that may help to make this manual even more useful to the reader.

I would like to thank all those who have made this book possible. My very special thanks go to Cedric Bals, LL.M. (University of Birmingham), for his great commitment and the valuable support he provided in the preparation of this book. A big thank you also goes to the FGS inhouse English team for the so important translation support. I am also grateful for the excellent cooperation with Dr. Jonathon Watson of Verlag C.H. Beck.

The greatest thanks, however, go to my beloved wife and children, without whose amazing support and constant belief in my work such a comprehensive book would be unthinkable. I dedicate this book to them.

The content of this book reflects the law as on 20 December 2023 and takes into consideration legislative proposals for 2024.

Bonn, December 2023

Dr. Jochen Bahns

Author

Dr. Jochen Bahns studied law at the University of Cologne and is admitted as a lawyer (*Rechtsanwalt*) and certified tax advisor (*Steuerberater*). He obtained the academic degree of Diplom-Finanzwirt (FH) from the tax authorities of the federal state of North Rhine-Westphalia. Jochen Bahns is a tax partner of Flick Gocke Schaumburg at the offices in Bonn and Düsseldorf and admitted to the Cologne Bar. Before joining Flick Gocke Schaumburg, he worked for a leading international law firm.

Flick Gocke Schaumburg is one of the leading law firms in Germany. The firm traditionally combines outstanding expertise in domestic, cross-border and international tax law with in-depth advice in business law, auditing, business valuation and transactions. It is a trusted partner for domestic and international corporate groups, SMEs and family-owned businesses, private clients, foundations and public institutions. Flick Gocke Schaumburg is a member of Taxand, the world's largest alliance of independent tax advisory firms with around 400 partners and more than 2,000 tax advisors and tax lawyers.



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