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EVALUATION OF TAX SYSTEM IN GERMANY

Summary. People in Germany are subject to different taxes, the most important of which are income tax and fund share. These taxes are settled by the Income Tax Act (Einkommensteuergesetz, EStG) and the Soliderity Swcherge Law (Solidaritätszuschlaggesetz, SolzG). If a person is engaged in a commercial activity at the same time, it is subject to commercial income tax. There is no local income tax. There is a limited and unlimited liability according to ESTG. Unlimited liability means the taxation of all income from the domestic and foreign taxpayer. Limited liability applies only to non-resident persons and includes taxation of income and assets only from Germany. Residents in Germany are responsible for income, transfer, inheritance, VAT and church taxation under certain conditions. People residing in Germany pay income tax on their income from domestic and foreign countries. However, it includes a mechanism aimed at preventing double taxation in the form of tax treaties with other countries and international agreements, exemption of income from abroad, or discounting of the tax paid abroad. The reduction of the tax paid abroad is limited to the tax payable if the same source is taxed in Germany. Non-residents can not benefit from the tax deduction if the corresponding income is not taxed in Germany and there is no international agreement in this regard.

Key words: income tax, domestic taxpayers, foreign taxpayers, transfer limit, double taxation, tax deduction, commercial activity.

If the place of residence or residence of a person is located in Germany, the person is considered to be resident in Germany and is full-fledged. A place for a person to use as a place of residence, as a place or house where the house is located

(Section 8 of the Fiscal Code, Abgabenordnung, AO). Here the real factors are essential, the will of the taxpayer is not important.

The place where the living habits of the individual are gathered is where the person is constantly located. If a person is in Germany for more than 6 months in a calendar year, it is assumed that living habits are in Germany (Section 9AO). Short breaks do not interrupt this seating period. If the intention to stay in Germany is not temporary, it is considered that living habits are collected in Germany even if it lasts less than 6 months in Germany. If a person is in Germany only for visits, treatment and other special reasons, it is accepted that the habit of living in Germany does not exist in Germany even if it lasts for more than a year.

A German resident is a "non-resident taxpayer" for a period of 10 years from the date of departure, if one of the following conditions exists (Section 2: Foreign Tax Law (Außensteuergesetz, EStG));

- At least 5 years of 10 years before departure is an unlimited tax liability in Almaya;
- If the country in which you are located does not impose tax on income or if it is very low;
- If it keeps its basic economic ties in Germany, it is assumed that if one of the following conditions exists, the person maintains economic ties with Germany;
- If a company located in Germany owns significant shares;
- If the income from Germany exceeds 30% of the total income of the person or exceeds 62.000 Euro;
- If the person is resident in Germany; If assets and profits to be subject to unlimited tax in Germany exceeds 30% of total assets or EUR 154.000.

In the event of such circumstances, even if a person leaves Germany, he or she will be deemed to be a full-fledged real person in terms of German Tax Code.

B- Non-resident Persons (Non-resident Persons)

If a person's place of residence or his habits of living are not in Germany, he or she is considered a limited-liable person (Section: 1 (4) EStG).

C- Embedded Resident

Regardless of nationality, if 90% of the income earned by a person worldwide is taxed in Germany, or if the income not subject to taxation in Germany does not exceed 6,136 Euros, that person may choose to be an "accepted resident". According to the tax treaty, income derived from Germany (such as interest, dividends, royalties etc) which is not taxed or limited in Germany is not considered to be taxed in Germany when determining the limit of 90% or 6.136 Euro. Resident persons who are considered as a Principle are treated as full-fledged (Section: 1 (3) EStG).

According to the German tax laws, full-fledged real persons are taxed on their income from domestic and foreign sources. For this reason, Germany considers either unilateral tax reductions or tax treaties to avoid double taxation on the same income component.

It is subject to the fact that the real persons who earn income from the countries where Germany has not signed the double taxation agreement have income in Germany at the same time on the income they have obtained. However, the tax paid abroad can be deducted from the tax payable in Germany provided that the paid tax is the same as the tax paid in Germany. This amount is limited to the tax payable in Germany for the same income component.

If requested, the German Revenue Tax Law (ESTG) regulates that the tax paid abroad can be considered as an expense, rather than a deduction from the tax payable in Germany. The consideration of the tax paid abroad is taken as an expense only if the total taxable income of the full taxpayer is not the total taxable income; Because in such a case the German tax burden on this income element will be zero. Therefore, it will be beneficial for the taxpayer to consider the tax paid abroad as expense.

For this reason, the German Income Tax Law (ESTG) recognizes that the tax paid abroad can be considered as a damaging factor. The resulting loss can be used as a means to reduce the tax burden in Germany, moving backwards and forwards. If the tax paid abroad is not equal to the tax paid in Germany or is not the same as the German tax, the tax paid abroad may be considered as an expense. If foreign

countries each provide a tax reduction in this way, double taxation can be avoided (Section 34: cEStG).

According to the Interest Information Regulation for the implementation of the European Commission Savings Directive (2003/48 / EC), effective from 1 July 2005; In the European Union countries, all taxable persons who are paid withholding tax may be entitled to tax deductions to be paid in Germany. The said Directive has only granted the right to withholding from interest to Belgium, Luxembourg and Austria. However, the countries of the European Union may apply additional withholding on interest incomes through bilateral agreements or their national legislation.

Germany has made a number of tax treaties with many countries. These agreements provide some possibilities for real taxpayers of real estate taxation. According to the agreements made, Germany has the right to tax interest and profit shares. However, the country that provides these gains is able to receive taxes on these earnings by means of withholding. In this case, such taxes paid abroad can be deducted from the tax payable in Germany.

Real persons who are not resident in Germany are subject to the taxation only in Germany over the income they have gained in Germany (Secs. 1 (1) and 49-50aEStG). This rule has a limited scope of application if there is a bilateral agreement on the prevention of double taxation between the country where the income derived from Germany and the country where the taxpayer is resident. If the withholding is not made over the income element, the real person with limited liability must file a full taxpayer declaration. However, many real estate taxpayers who are full-fledged real persons can not benefit from real persons with limited liability. For example, the costs incurred to obtain commercial income and income can only be deducted if it is economically related to income derived from Germany. The same applies to the deduction of losses. In this case the records must be kept in Germany. Many of the personal discounts do not apply to the narrowly qualified real person. These deductions can not benefit real persons with limited liability. True taxpayer real people have to give a statement each year. Tax discounts paid

abroad are not allowed. However, it is permitted to deduct the taxes paid abroad on agricultural, forestry, commercial and self-employment activities obtained through a workplace in Germany. To be able to make this discount, the tax paid abroad must be the same as the tax paid in Germany.

Withholding tax on interest and dividends means final taxation for non-resident real persons. Real persons with taxpayer status must also pay a 5,5% share of the tax on the income tax they will pay. Applied (European Community Savings Directive) (2003/48 / EC) According to the Interest Information Regulation; Germany has to give information on interest income from Germany to countries where European Union citizens with interest income from this country are established.

Final Evaluation and conclusion

It is also a fact that the German financial authorities are very receptive to the examination and that they act in accordance with the facts of life. This is an indication that the frequency of inspections of enterprises is to be classified according to size classification and the requirement of large enterprises to be subject to continuous testing. Although this point is criticized in the literature for the principle of equality, it is clear that it is quite suitable for the practical facts of economic life. It is possible to say that the scarce resources of the financial sector will be used most efficiently because the audit of the largest enterprises will provide the highest tax revenue (both in the prevention of catastrophes and in the tax base differences). As a matter of fact, the figures related to the official audit results given above, this argument is valid.

All supervisory staff members were assigned to a single institution under the name of tax inspector in terms of coordination and effectiveness. It is also a fact known that this regulation is not favorably welcomed by the former central supervisory staff, and even leads to serious dissatisfaction. However, it is inevitable that some troubles and sufferings are experienced during major changes. Significant new rules related to the new changes and tax examination have been introduced. It is possible to say that innovations are mostly tax-protective. It is a positive step for the

commission to consider the regulation of the start-up period, the limitations on the terms, the compliance of the examination reports with the commission in terms of the legality of the complaints, Thus, progress has been made on the basic security that should be in a state of law.

In addition to recent developments, it can be argued that the use of business classification in the German system may be very effective. However, it is essential that this step be extended to cover the entire country. In addition to this, it would be more effective to divide the businesses into lower classes, make the examinations accordingly, and even more emphasis on sectoral expertise among the inspectors. Moving from the example of the German system, it is of utmost importance that the frequency of examination is further increased in the period before the desired tax consciousness and morality begin to emerge. In this respect, it is one of the first effective steps to be taken in order to determine the sectors that are most lost and escaped so that they can bring high additional tax revenue, and to implement intermittent audits so that there is no taxation period.

The first thing that draws attention in the German system in the context of the tax examination institution is the sensitivity shown in the case of the passing of the rule of law principle. According to the principle of the rule of law, the principle of equality principle and the principle of providing legal security to taxpayers, which are the weak side of the tax relation to the public power, is striking. It is worth noting that the extra sensitivity shown in the practice of tax examination, which has the power and quality to intervene in many areas of taxpayers' rights and violate their rights. It is possible to see clearly in the judicial decisions which are tried to be placed with sensitivity in the rule of law state, both in the legislation and when it takes place during the work.

It is clear that the obligation of taxpayer protection, which is a weak side in the face of public power, is one of the most important objectives of the rule of law. While the legislation detailing the tax examination is examined, it is immediately noticed that special importance has been attached to ensuring the legal security of

the taxpayer. More striking is the fact that the balance of public power-taxpayer rights and security has been successfully established.

On the one hand, the government has been given the necessary public power to conduct the examination, equipped with the necessary tools and extensive examination facilities. But the other side has not neglected the regulations of the taxpayer. In this context, when deemed necessary, the authorities are bounded / bounded and the taxpayer is presented with a broad list of claims. The fact that the decision to review before a certain period of time before being examined has to be communicated is thus a clue to the surprise / sudden examination, the right to refuse the taxpayers' examination officers, the right to make binding decisions at the end of the examination, and some noteworthy examples of taxpayer rights. It can be said that the granting of these broad legal safeguards and rights does not have a negative effect on the effectiveness of the examiner.

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