

Summary table of contents

Preface	V
Author	VII
List of important abbreviations	XV
English translations of German legislation and other resources	XIX
A. Overview of fully translated German tax provisions	XIX
B. Further translations of German tax provisions	XX
C. Online translations and other useful resources	XXI

PART I

INTRODUCTION AND FREQUENTLY ASKED QUESTIONS

Chapter 1. Introduction	1
A. Overview of the German tax system	3
B. Influence of European law on German tax law	9
C. Outlook	20
D. Additional information	21
Chapter 2. 150 Frequently Asked Questions	22
A. General	22
B. Personal income tax	25
C. Corporate income tax	27
D. Trade tax	31
E. Partnerships	33
F. Cross-border activities	34
G. Value added tax	35
H. Real estate transfer tax	36
I. Inheritance and gift tax	38
J. Limitation, deadlines, interests, penalties and other procedural aspects	39

PART II

TAXATION OF NATURAL PERSONS, CORPORATIONS AND PARTNERSHIPS WITH INCOME TAXES

Chapter 3. Taxation of natural persons with personal income tax	45
A. Introduction	48
B. Personal income tax liability	49
C. Assessment period	54
D. Determination of taxable income	55
E. Computation of personal income tax liability	110
F. Limited personal income tax liability in case of domestic source income	112
G. Tax collection	121

Chapter 4. Taxation of corporations with corporate income tax	124
A. Introduction	127
B. Taxable entity and separation principle	129
C. Commencement and end of corporate income tax liability	130
D. Formation and termination of a corporation	131
E. Unlimited and limited corporate income tax liability	135
F. Assessment period	140
G. Objective tax exemptions	140
H. Hidden profit distributions and hidden contributions	140
I. Tax base and computation scheme for taxable income	156
J. Corporate income tax rate	159
K. Assessment and tax collection	159
L. Taxation of the shareholders	159
Chapter 5. Taxation of commercial operations with trade tax	187
A. Introduction	189
B. Assessment base for trade tax	191
C. Taxpayer	194
D. Tax liability of the commercial operation	195
E. Commencement and end of trade tax liability	197
F. Trade tax additions and deductions	198
G. Trade tax on capital gains	227
H. Trade tax losses	228
I. Trade tax group	236
J. Forfeiture of trade tax loss carry-forward for corporations	236
K. Assessment procedure	237
L. Credit of trade tax against personal income tax	238
Chapter 6. Taxation of partnerships with income taxes	240
A. Introduction	243
B. Co-entrepreneurial risk and co-entrepreneurial initiative	249
C. Attribution of the co-entrepreneurial interest	251
D. Types of income for the partnership	252
E. Income from commercial operations	254
F. Limitation of loss deduction for the limited partner of a limited partnership	275
G. Possibility to retain profits in a partnership	277
H. Trade tax	278
I. Taxation of the partners	281
J. Formation and termination of partnerships	283
K. Partnerships in cross-border situations	289
L. Tax treatment of partnerships for other taxes than income taxes	302
Chapter 7. Selected aspects of personal income tax, corporate income tax and trade tax	303
A. Disposal and acquisition of individual assets, interests in partnerships and shares in corporations	308
B. Tax group for income tax purposes	352
C. Tax aspects of debt financing	380
D. Forfeiture of losses for corporations	408
E. Deduction of taxes at source	421
F. Germany as holding location	436
G. Minimum taxation based on the Minimum Tax Act	439

PART III

GERMAN TAX ASPECTS IN CROSS-BORDER ACTIVITIES AND M&A

Chapter 8. German tax aspects of cross-border activities of German and foreign enterprises	451
A. Overview of selected German tax regulations in a cross-border context	456
B. Double taxation and its avoidance through a double taxation treaty	459
C. Classification and recognition of foreign legal forms for German tax purposes	470
D. Investments of foreign enterprises in Germany (inbound investment)	476
E. Investments of a domestic enterprise abroad (outbound investment)	504
F. Selected aspects of inbound and outbound investments	535
Chapter 9. German tax aspects in M&A transactions	588
A. Introduction	593
B. Tax objectives of seller and purchaser	594
C. Sale of shares in corporations	597
D. Sale of individual assets	609
E. Sale of interests in commercial partnerships	617
F. Tax aspects for the purchaser	625
G. Value added tax	639
H. Transactions with real estate and real estate companies	643
I. Special topics	650

PART IV

REORGANISATIONS

Chapter 10. Reorganisations of enterprises in Germany	693
A. Introduction	694
B. Reorganisations under German corporate law	695
C. Reorganisations in the German commercial balance sheet	705
D. Reorganisations under German tax law	709
Chapter 11. Domestic reorganisations of enterprises under the Reorganisation Tax Act	743
A. Merger of a corporation into a commercial partnership	748
B. Conversion of a corporation into a commercial partnership	760
C. Merger of a corporation into a corporation	767
D. Split off of qualified business property from a corporation to a corporation ..	775
E. Split off of qualified business property from a corporation to a commercial partnership	786
F. Contribution of qualified business property to a corporation under the Reorganisation Tax Act	795
G. Reorganisations of commercial partnerships under the RT Act	813
H. Contribution of qualified business property to a commercial partnership under the Reorganisation Tax Act	818
I. Reorganisations outside the scope of the Reorganisation Tax Act	826
J. Implications of reorganisations on income tax groups	839
K. Legal text and translation of the Reorganisation Tax Act	844

Chapter 12. Reorganisations involving persons and/or business property in foreign countries	879
A. General	881
B. German reorganisation of German legal entities with a foreign connection	882
C. Cross-border reorganisations	892
D. Reorganisations of foreign legal entities with a German connection	909

PART V

TAXATION WITH VALUE ADDED TAX, REAL ESTATE TRANSFER TAX, AND INHERITANCE AND GIFT TAX

Chapter 13. Taxation of entrepreneurs with value added tax	915
A. Introduction	917
B. General principles	918
C. VAT group	937
D. VAT aspects of reorganisations of enterprises	944
E. VAT aspects of M&A transactions	951
Chapter 14. Taxation of transactions with real estate transfer tax	952
A. Introduction	954
B. Tightening of the Real Estate Transfer Tax Act in 2021	956
C. Taxpayer of real estate transfer tax	956
D. Real estate in Germany	957
E. Transactions triggering real estate transfer tax	957
F. Tax base for real estate transfer tax	989
G. Tax rate for real estate transfer tax	989
H. Taxation procedure for real estate transfer tax	990
I. Non-assessment of real estate transfer tax	992
J. Obligation to report the ultimate beneficial owner of real estate to the German Transparency Register	994
Chapter 15. Taxation of persons with inheritance tax and gift tax	996
A. Introduction	997
B. Unlimited and limited tax liability	998
C. Object of taxation with inheritance and gift tax	1000
D. Tax exemptions	1005
E. Taxable acquisition	1006
F. Tax classes and tax allowances	1018
G. Tax rates	1019
H. Accrual of inheritance tax	1020
I. Notification obligations and tax return	1020

PART VI

TAX PROCEDURAL ASPECTS, LEGAL FORMS AND COMPARISON OF TAX BURDENS

Chapter 16. Aspects of tax procedural law	1021
A. General aspects of tax procedural law	1024
B. Aspects of tax procedural law in an international context	1060
C. General anti-avoidance rule	1077

Chapter 17. Legal forms under German law 1081

A. Overview 1083

B. Sole proprietors 1084

C. Partnerships 1084

D. Corporations 1107

Chapter 18. Choice of legal form and comparison of tax burden 1136

A. Introduction 1137

B. Choice of legal form 1137

C. Comparison of the income tax burden of a GmbH and a GmbH & Co. KG ... 1139

Appendix 1: Glossary..... 1149

Appendix 2: Status of existing German double taxation treaties and other agreements in the tax area as of 1 January 2023..... 1179

Appendix 3: Withholding tax rates under German double taxation treaties..... 1195

Appendix 4: Legal forms of international enterprises and their classification in Germany 1209

Appendix 5: Overview on international corporate income taxation (2022) 1219

Appendix 6: Social security contributions and income/wage taxes as a percentage of gross salary for employees in 2022 1221

Index 1223