

## **GERMAN LAW**

### **GERMAN INHERITANCE TAXES**

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# GERMAN LAW

## GERMAN INHERITANCE TAXES

### 1. Introduction

The death of a person not only affects our personal and family lives but often also raises tax issues.

In Germany, all estates are taxed pursuant to the Erbschaftssteuer- und Schenkungssteuergesetz (ErbStG) (Inheritance and Gift Tax Act). Although this is a piece of federal legislation, the states (Länder) are entitled to the revenue generated by the tax.

This article gives an overview of German inheritance tax law. Any reference to German inheritance tax law refers to the law in Germany as at November 2004.

### 2. Tax Liability

A beneficiary of an estate is generally liable for inheritance tax.

German law divides tax liability into the following three categories:

- unlimited tax liability;
- limited tax liability; and
- extended limited tax liability.

#### 2.1. Unlimited Tax Liability

Pursuant to section 2 ErbStG, the whole estate is subject to German inheritance tax if the deceased was resident in, or the beneficiary is resident in Germany.

A “resident” is defined in section 2, paragraph 1 ErbStG to mean:

- 2.1.1. someone who has a permanent residence or normally resides in Germany. Even if the person’s principal place of residence is not in Germany, he or she may arguably be regarded as a resident in Germany if a so-called “small permanent residence” exists, i.e. a small furnished room which is used as accommodation for stays in Germany;
- 2.1.2. someone who does not have a permanent residence in Germany but is a German citizen and has not lived outside of Germany for more than five years before becoming a beneficiary of a taxable estate; and/or
- 2.1.3. an employee of the Foreign Office who has does not have a permanent residence in Germany and does not normally reside in Germany (e. g. consular personnel and their families).

2.2. Limited Tax Liability

Limited tax liability applies when none of the people involved in the taxable transaction is a “resident” as defined by section 2 ErbStG, but the estate or dealings of the estate can be shown to have a “special relationship” with Germany. Real property situated in Germany and business assets of companies in Germany fall under this category.

2.3. Extended Limited Tax Liability

Extended limited tax liability arises when neither the deceased nor the beneficiary are residents in Germany, but the deceased used to reside in Germany and still has substantial economic interests in Germany (e. g. if the deceased held a majority of the shares in a German company).

In order to fall under this tax category, the deceased:

- 2.3.1. must have had a permanent residence or resided outside of Germany in a country with lower tax rates for at least five but no more than ten years before his death;
- 2.3.2. must have been a German citizen; and
- 2.3.3. must have fallen into the unlimited tax liability category for at least five years before his or her emigration from Germany.

3. **Taxable Acquisition and Time When the Tax Liability Arises**

When someone inherits an asset from an estate, two questions arise; namely which inheritance is in fact taxable, and at what point of time does the liability arise.

Generally gifts made while the deceased was still alive and gifts made for particular purposes are also liable to inheritance tax. However, these are not dealt with in this article.

Inheritances of estate assets include:

- 3.1. inheritances which result from statutory succession or testamentary disposition;
- 3.2. inheritances which result from entitlement to a compulsory portion (in Germany, the testator’s relatives can claim a fixed statutory portion of the estate against a beneficiary. The compulsory portion is equivalent to one-half of the person’s entitlement under statutory succession);
- 3.3. direct bequests;
- 3.4. inheritances pursuant to an inheritance contract;
- 3.5. gifts upon death; and
- 3.6. compensation for a waiver or renunciation of an inheritance right.

Tax liability generally arises at the time of death of the deceased. In the case of an inheritance contract, tax liability arises once the contractual obligations have been

asserted. In the case of a waiver or renunciation of a right to inherit, tax liability arises on the execution or making of the waiver or renunciation.

#### 4. **Determination of the Value of the Taxable Acquisition**

Pursuant to section 10(1), para 1 ErbStG, the enrichment of the beneficiary is taxable. The basis for the valuation is the actual financial gain by the beneficiary from the inheritance. In order to calculate this, the gross value of the estate is determined and then the estate liabilities are deducted from that amount. Estate liabilities include any debts of the deceased, the value of any bequests, testamentary charges and claims for statutory portions as well as estate costs (e.g. funeral expenses, costs for the determination of the estate value etc.).

#### 5. **Tax Classes**

German inheritance tax law creates three tax classes of beneficiaries. The relationship between the beneficiary and the deceased determines the tax class to which the beneficiary belongs. A different tax exempt amount and tax rate applies to each tax class.

5.1. The following people are members of the first tax class:

- spouse;
- children and step-children;
- issue of the children and stepchildren (e. g. grandchildren, great-grandchildren and step-grandchildren);
- parents and grandparents if they inherit estate assets.

5.2. The following people are members of the second tax class:

- parents and grandparents, so far as they are not already members of the first tax class (e.g. in the case of gifts made while the deceased was still living);
- siblings;
- nieces and nephews;
- step-parents;
- parents-in-law, sons-in-law and daughters-in-law; and
- former spouses.

5.3. All other beneficiaries are members of the third tax class.

**6. General Tax Exempted Amounts**

**6.1. Residents**

Every beneficiary has a right to a personal tax exempt amount which varies according to which tax class the beneficiary is a member of (section 16 ErbStG). If the deceased at the time of death, or the beneficiary at the time of acquisition, is a resident as defined by section 2 ErbStG, the following tax exempt amounts currently apply:

<b>Relationship</b>	<b>Tax Free Amount</b>
Spouses	€307,000.00
children/step-children (or their issue if the children/step-children predecease)	€205,000.00
all other members of the first tax class	€1,200.00
members of the second tax class	€10,300.00
members of the third tax class	€5,200.00

**6.2. Non-residents**

If neither the deceased nor the beneficiary are residents, then a tax exempt amount of €1,100.00 applies, in so far as the assets are situated in Germany as defined in section 121 Bewertungsgesetz (BewG) (Assessment Act). This includes real property situated in Germany as well as mortgages, charges over land, mortgage loans etc. in so far as these are secured by real property situated in Germany.

**7. Maintenance Exemption**

Spouses and children of the deceased receive a special maintenance exemption in addition to the general tax exempt amount. The maintenance exemption for a spouse is currently €256,000.00. The maintenance exemption for children ranges according to age from €2,000.00 (for children up to 5 years of age) to €10,300.00 (for children from 20 to 27 years of age). The law allows for a reduction of the maintenance exemption amounts in certain circumstances.

**8. Tax Free Estate Assets**

No inheritance tax is payable on certain estate assets.

Members of the first tax class do not pay inheritance tax on household effects, personal effects and clothes up to a value of €40,000.00, and on other additional moveable assets up to a value of €10,000.00.

Members of the second and third tax class only receive an exemption of up to a total amount of €10,000.00 for the above mentioned effects and assets.

9. **Tax Rates**

Tax rates are determined by the following criteria:

- 9.1. which tax class applies to the beneficiary; and
- 9.2. the net value of the estate.

Currently the following tax rates apply to the acquisition of estate assets:

Taxable Amount in €	Tax Rate Percentage/Tax Class		
	First	Second	Third
€2,000.00	7%	12%	17%
€56,000.00	11%	17%	23%
€12,000.00	15%	22%	29%
€1,113,000.00	19%	27%	35%
€12,783,000.00	23%	32%	41%
€25,565,000.00	27%	37%	47%
over €25,565,000.00	30%	40%	50%

If the taxable amount is just €1.00 over the threshold amount, then the higher tax rate applies. This can lead to situations where the additional value is eaten up by the higher tax rate. In these circumstances, the hardship provision of section 19(3) ErbStG applies. This section limits the additional tax to the additional value of the estate.

10. **Zugewinnngemeinschaft – Entitlement to Value Increase in Joint Assets**

In Germany, there is a special form of ownership between spouses called “Zugewinnngemeinschaft”. Under this form of ownership, the husband’s and the wife’s assets at the time of marriage are not shared, but they have equal entitlement to any financial gain or increase in the value of these assets above the CPI rate. If the spouses had a Zugewinnngemeinschaft, then a claim to entitlement to the relevant financial gain arises on the death of one of the spouses. This claim is not considered an estate asset and is therefore tax free.

11. **Multiple Beneficiaries**

If there is more than one beneficiary, then the taxation rate applicable to each individual is determined by the share of the estate he or she receives.

12. **Taxation of Capital Gains**

If a beneficiary inherits real property or securities, stocks and bonds from the deceased and these are sold, then income tax may be payable on the capital gain in addition to the inheritance tax.

Capital gains on privately owned assets are generally tax free under German law. However, capital gain on inherited assets is only tax free once certain time limits from the date of acquisition of the assets have expired. If the real property or securities are sold before expiration of the relevant time limits, then the acquisition of the estate asset

is deemed to be a “speculative transaction” and any capital gain is subject to income tax.

In relation to real property, the time limit is 10 years, and in relation to securities, a time limit of one year from the date of acquisition of the estate assets, applies.

13. **Duty of Disclosure**

Upon receiving an inheritance, various obligations to disclose information to the taxation office apply. If someone acquires an estate asset, he or she has a duty to inform the taxation office of the acquisition within three months.

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