GERMANY

1. INTRODUCTION

a. Forms of Legal Entity

The corporate entity most frequently involved in private acquisitions is the limited liability company ("Gesellschaft mit beschränkter Haftung") ("GmbH"). Other entities involved in private acquisitions are limited partnerships ("Kommanditgesellschaft") ("KG"), often in a mixed form where the general partner is a GmbH ("GmbH & Co. KG"), or stock corporations ("Aktiengesellschaft") ("AG").

Partnerships are transparent for (corporate) income tax purposes with their income being apportioned to their partners on a pro-rata basis. For Trade Tax ("TT") purposes the partnership itself is liable to tax if it is either trading (that is, actually operating a trade or business) or deemed trading (due to its partner and management structure). The partnership's liability for TT also comprises a taxable capital gain from the sale of an interest in that partnership realised by one of its partners.

b. Taxes, Tax Rates

Corporations are subject to corporate income tax ("CIT") and trade tax ("TT") on their taxable income. The CIT rate is 15% with a solidarity surcharge of 5.5% on the CIT, resulting in an effective CIT rate of 15.825%. The TT rate varies locally, in major cities between approximately 8% and 18%.

The taxable income is determined on the basis of the financial statements prepared under German GAAP, subject to several tax-specific adjustments both within and off the balance sheet. In determining the tax base for TT purposes, the taxable income for CIT purposes serves as starting point which is adapted for certain add backs (e.g. a portion of the interest expenses) and deductions (e.g. income from a trading or deemed trading partnership already subject to TT at the level of the partnership).

2. RECENT DEVELOPMENTS

a. General developments

Germany has recently seen some legislative developments of relevance for M&A deals and private equity.

Formerly, there had been a proportional forfeiture of losses (loss carry forwards and current losses) of a corporate entity if, within a five year period, more than 25% up to 50% of its shares are transferred to a single shareholder or a group of shareholders with aligned interest. After the German Federal Constitutional Court ("Bundesverfassungsgericht") had declared such proportional loss forfeiture unconstitutional unless the legislature creates a constitutional and retroactively applicable new regulation, the loss forfeiture rules for the transfer of more than 25% up to 50% were retroactively abolished through a change of German tax law.

In the past, financial restructurings were facilitated by the tax authorities' restructuring decree ("Sanierungserlass") dated 27 March 2013 declaring that subject to certain conditions a debt waiver gain is not taxed. In its resolution of 28 November 2016, the Grand Senate of the German Federal Tax Court abolished this restructuring decree because it had no statutory basis. The German legislature then basically converted the restructuring decree into statutory law. Following the issuance of a "comfort letter" by the European Commission stating that it does not consider the restructuring decree and the newly adopted law to be contrary to EU state aid law, the German legislator adjusted the newly adopted rule to reflect the "comfort letter" and to expand its retroactive applicability also to waivers effected prior to 9 February 2017.

M&A deals are affected by recent amendments of the real estate transfer tax ("RETT") rules for share deals. Firstly, from 1 July 2021 on, the harmful threshold of direct and indirect share transfers in real estate holding companies has been lowered from 95% to 90%. Secondly, an additional RETT event for corporations holding real estate has been implemented, where (similarly to the existing rules for partnerships) the transfer of at least 90% of the shares in a corporation within a period of ten years is subject to RETT (i.e. the transfer of at least 90% of the shares to two or more unrelated investors would also trigger RETT). Thirdly, the holding periods, for example, for the seller regarding its minority interest in a partnership holding real estate as well as for certain RETT exemptions, have been extended from five to ten or, respectively, fifteen years.

With its Council Directive 2018/822/EU dated 25 May 2018 ("DAC 6") the European Commission amended Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (Mutual Assistance Directive) by introducing special disclosure obligations for potentially aggressive tax planning arrangements with a cross border element. This Council Directive became effective on 25 June 2018 and was implemented by Germany into its domestic law on 21 December 2019. In terms of timing the reporting obligations shall be applied as of 1 July 2020 with a filing period of 30 days for reportable tax planning arrangements where the first step was implemented after 1 July 2020.

On 20 January 2021, the German Federal Cabinet adopted a law on the modernisation of the relief from withholding taxes. The proposed changes concern, in particular, an amendment of the existing specific anti-abuse rule against treaty shopping.

On 25 June 2021, Germany passed the law implementing the Anti-Tax Avoidance Directive (Directive (EU) 2016/1164 and Directive (EU) 2017/952 (ATAD I and II)). Under the new rules, within a cross border context and applicable as of 1 January 2020, the tax deductibility of business expenses is denied due to the tax treatment at the foreign recipient level (none or low taxation) caused by a hybrid mismatch. Another amendment relates to the revision of German CFC rules for assessment periods from 2022 onwards.

On 25 June 2021, Germany passed a law on the modernisation of corporate income tax law. One proposed key element is an „option model" for partnerships to opt for the corporate income tax regime. Another important element is the internationalization of the German reorganisation tax act to the effect that, for certain reorganisations (so far, however, not for contributions) the preferential tax treatment shall also be applicable in non-EU/EEA cases. Both changes of law are applicable for assessment periods resp. reorganisation dates from 2022 onwards.

On 25 June 2021, the Tax Haven Defence Act was passed to implement defensive measures for business relationships or shareholdings with links to certain states on the EU list of non-co-operative tax jurisdictions, in particular, restrictions on the deduction of business expenses, stricter CFC rules, extension of withholding tax obligations and suspension of the participation exemption.

b. Potential future developments

German law has not abolished or limited yet the (non-resident) taxation of income from IP where the only German nexus is the registration in a domestic register. It is possible that this might happen in 2022. With respect to these cases of limited taxation, the German Federal Ministry of Finance issued a decree regarding a simplified tax procedure rule (no tax withholding required) for payments received by 30 September 2021.

It has been proposed to introduce a minimum shareholding requirement of 10% for the 95% exemption of capital gains from CIT and TT (similar to the existing requirement for dividends). However, there is currently no specific reform proposal for this.

c. COVID-19 related developments

As an immediate response on the COVID-19 pandemic, the German Federal Ministry of Finance and state ministries of finance had adopted certain tax reliefs (including deferral of tax debts and reduction of advance tax payments) to strengthen the affected businesses' liquidity. On 19 March 2020, two decrees with coordinated and generally applicable rules to support taxpayers affected by COVID-19 were issued for income tax and trade tax purposes.

On 19 June 2020 and, respectively, 29 June 2020, the First and Second Corona Tax Assistance Act were passed. The first act included an extension of the tax retroactive periods regarding corporate reorganisations from eight to twelve months for a temporary period which was extended until 31 December 2021 (with decrees of 20 October 2020 and 5 November 2020). Under the second act, for a six month period from 1 July to 31 December 2020, the standard VAT rate was reduced from 19% to 16%, and the reduced VAT rate was reduced from 7% to 5%.

The Second Coronavirus Tax Assistance Act implemented the first key elements of the government's stimulus package of 3 June 2020. Further key tax measures of this stimulus package included the extension of the tax loss carryback possibilities for the years 2020 and 2021 to EUR5 million (already usable for the year 2019 by creating a tax 'corona provision', to be released by 31 December 2022) as well as the introduction of the so called "option model" for partnerships.

The Annual Tax Act 2020 contained certain tax reliefs such as a tax lump sum of EUR5 euros per day (limited to a tax deductible amount of EUR600 per annum) for employees and self-employed persons.

Whilst many of the enacted Covid-19 provisions may no longer be in place, it will be important to be aware of them and consider compliance with relevant provisions in the course of tax due diligence processes.

3. SHARE ACQUISITION

a. General Comments

While shares in a corporation (e.g. GmbH, AG) are recognised as a separate asset with the share acquisition costs being reflected in the book value of the acquired shares, the acquisition of a partnership interest (e.g. GmbH & Co. KG) is treated as a proportional acquisition of the partnership's assets for income tax purposes. This implies different CIT and TT implications for both purchasers and sellers depending on the legal form of the respective target entity.

b. Tax Attributes

The direct or indirect transfer (or a similar transaction, such as a capital increase or an internal group restructuring) of more than 50% of the shares in a loss corporation to any shareholder or a group of shareholders with similar objectives within a five year period leads in principle to a complete forfeiture of current tax losses and tax loss carried forward. The law provides for several options to avoid the forfeiture of losses and losses carried forward:

- Intragroup escape

The acquisition of shares in principle no longer results in the loss (or partial loss) of losses and losses carried forward if the same taxpayer indirectly or directly holds 100% of the shares in both the transferring and the acquiring entity, the acquiror indirectly or directly holds 100% in the shares of the transferring entity, or the seller indirectly or directly holds 100% in the acquiring entity. Intragroup reorganisations that fulfil these (strict) requirements can therefore be carried out without the forfeiture of losses and losses carried forward.

- Hidden reserve escape

In addition, a corporation's unused tax losses are preserved to the extent they are compensated for by hidden reserves in the target entity, i.e. there is a positive difference between the purchase price and the tax book value of the target entity's equity; given that only taxable hidden reserves are considered, such positive differences attributable to shareholdings in another corporation or to foreign assets are disregarded (whether hidden reserves in a tax group subsidiary can be accounted for has not been finally clarified yet).

- Continued business escape

The continued business escape rule allows for losses to be carried forward if the relevant corporation carried on its business for the three fiscal years prior to the year of the harmful transaction. However, certain transactions during those three years (e.g. being a partner in a partnership or a controlled company in a tax group) will prevent the application of the escape. In practice, this provision is often difficult to manage.

c. Tax Grouping

German tax law provides for tax groups (fiscal unity, "Organschaft") for CIT and TT purposes as well as for VAT purposes.

- CIT and TT group

The main benefit of a tax group is that all profits and losses of the tax group members are pooled at the level of the controlling parent company. In principle, only the parent company has to pay CIT and TT. Nevertheless, the subsidiary (controlled entity) still qualifies as a taxable entity and has to file tax returns. One further tax benefit is that profit transfers of the subsidiary to the parent company are only taxed at the level of the parent company whereas, without a tax group, 5% of a dividend distribution would be subject to CIT and TT at the level of the parent company although the underlying profits were already taxed at the level of the subsidiary. Moreover, the tax group allows for a debt pushdown (see Section 6.c.). Further benefits might be available (e.g. regarding the interest barrier rules, no trade tax addition for interest expenses, royalties or rental expenses).

In order to be effective, the tax group requires that the parent company owns the majority of the voting rights in the subsidiary from the beginning of the subsidiary's fiscal year and that a profit and loss transfer agreement is concluded (for a minimum period of at least five entire years) and registered in the commercial register of the subsidiary. The subsidiary must be a corporation, while the parent of the tax group can be a corporation, but also a trading partnership or sole trader.

In particular in M&A deals with controlled entities, a clear termination of the profit and loss transfer agreement has to be ensured. The SPA should provide for a reasonable allocation of tax risks before the transfer date. An acquisition can be structured in a way that the tax group with the selling controlling entity exists until the transfer date (closing) and a new tax group with the buyer starts as of the transfer date (e.g. by implementing short fiscal years). Specific issues may arise if a tax sharing agreement between the controlling and controlled entity exists in addition to the profit and loss transfer agreement.

- VAT group

A VAT group is also possible under German tax law. Deviating from the CIT and TT group, the VAT group requires that the subsidiary is financially, economically and organisationally integrated into the parent company. Only the parent company is liable for VAT for transactions of the group. Unlike for a CIT and TT group, no profit and loss transfer agreement is required and the subsidiary does not have to file a tax return. However, the parent company itself has to be considered an entrepreneur (i.e. a taxable person) for VAT purposes; otherwise the VAT group is invalid.

d. Tax Free Reorganisations

In particular the Reorganisation Tax Act provides for tax-neutral reorganisations such as mergers, spin-offs, hive-downs, conversions, contributions of shares or specific business assets. The full or partial tax neutrality for the transferring entity in principle requires that (i) Germany retains the right to tax a capital gain regarding the assets transferred, (ii) the transferring entity receives only new shares in the receiving entity (or limited other consideration), and (iii) the relevant entity files an application for tax neutrality with the competent tax office. If these requirements are met, the transferring entity may recognise the assets at tax book value, thereby avoiding a capital gain. These rules also apply to cross border reorganisation measures.

German tax law also provides for structuring options outside the Reorganisation Tax Act. For instance, the assets of a partnership can be transferred to its sole remaining partner in a tax neutral way.

e. Purchase Agreement

Share purchase agreements typically comprise warranties and an indemnity to cover taxes and connected expenses relating to periods ending on the effective date or in relation to events which occurred on or before closing (as a counterpart to the indemnity, the purchaser must often reimburse the seller for any tax refunds or tax allowances relating to these periods).

In recent years, insurance covering damages resulting from breaches of warranties and indemnities and therefore shifting risks to the insurer (W&I insurance) has become more common in the German M&A market, especially where financial investors are involved.

f. Transfer taxes on share transfers (including mechanisms for disclosure and collection)

The main issue to consider when acquiring companies whose main assets consist of German real estate is that Germany levies RETT on the direct or indirect transfer of such real estate (based on a specially assessed property value). The tax rates vary between 3.5% and 6.5% depending on the federal state in which the real estate is located.

In a transfer of interests in a partnership or in a corporation, RETT is basically levied if at least 90% of the partnership interests are transferred within a period of ten years. A transfer of interests in a partnership or shares in corporations will also trigger RETT if a buyer (or a RETT group) acquires at least 90% of the shares. The tax base is in principle the fair value of the real estate.

RETT could be avoided by, for example, selling only 89.9% to a single purchaser and having the shareholder or a third party retain the remaining 10.1% shareholding for at least ten years.

RETT relief might be available for certain reorganisation measures (e.g. mergers, spin offs, hive downs or contributions and share for share exchanges). This requires, among other things, that the controlling company directly or indirectly holds at least 95% of the shares in the controlled company involved in the reorganisation within the five years prior to the relevant transaction and for at least five years after it.

The transfer of shares and partnership interests is in principle exempt from VAT. However, the supplier can opt to waive this VAT exemption (which in practice is usually not done).

There is no stamp tax or similar levy on a transfer of shares in Germany.

g. "Purchase accounting" applicable to share acquisitions

Acquisition costs are generally not deductible but have to be capitalised and depreciated over the average useful life of the respective asset (if applicable). Shares in corporations are not subject to regular depreciation.

Incidental acquisition costs usually have to be allocated to the acquired assets and are, in principle, not immediately deductible but have to be capitalised. An immediate deduction of such costs is possible if it can be proven that there is no economic connection between the acquired assets/shares and the corresponding costs. Financing related costs (e.g. commitment fees or advisory costs in connection with the financing) or costs for a W&I insurance (insurance premium, insurance tax) are only indirectly connected with the acquisition and, thus, immediately deductible. From a timing perspective, costs can only be classified as incidental acquisition costs if they are incurred after the purchase decision is basically made. In this respect, particularly the treatment of due diligence costs is controversial. Costs in regard to failed acquisitions are in principle immediately deductible. RETT paid in an asset deal has to be capitalised, whereas RETT triggered in a share deal transaction is in principle immediately deductible.

h. Share Purchase Advantages

From a seller's perspective, the main advantage of a share deal is that the capital gain deriving from the disposal of shares is in principle (i) 95% tax exempt in the case of a corporate seller, and (ii) 40% tax exempt in the case of an individual person as seller. Correspondingly, capital losses from share deals are (i) not tax deductible at all in case of a corporate seller, and (ii) 60% tax deductible in case of an individual person as seller. At the level of the target corporation (and its subsidiaries), losses carried forward and current losses up to the transfer date might be forfeited under the loss forfeiture rules (unless certain exceptions are fulfilled). Share transfers are generally VAT exempt. Depending on the VAT situation of the seller and the purchaser, the seller can opt for regular VAT in order to improve the deductibility of input VAT on transaction costs.

German tax law in principle does not provide for a tax-neutral step-up of the value of tangible or intangible assets in a share deal. Various options (e.g. sale, merger) are available to achieve a taxable step up of the assets after the share deal. In this context a tax benefit could be achieved only if existing losses or losses carried forward can neutralise the taxable capital gain. However, the minimum taxation rules have to be considered in cases where the taxable profit from the contribution exceeds EUR1 million and there are not sufficient losses available in the current year (see Section 4.c.).

i. Share Purchase Disadvantages

In a share deal, no step up of the book value of the assets in the target company is possible for the purchaser. Instead, the (high) acquisition costs are only reflected in the book value of the acquired shares and will thereby only reduce a potential future capital gain (which is 95% tax exempt in the case of a corporate seller and 40% tax exempt in the case of an individual person as a seller. Further, the buyer acquires all tax risks from prior years associated with the company's shares and therefore should request tax guarantees/indemnity from the seller. If the target company owns German real estate with considerable value, a share deal might enable the buyer to mitigate or even avoid RETT (e.g. in an acquisition of at most 89.9%). Various options are available for the buyer to achieve a debt pushdown (e.g. downstream merger, implementation of fiscal unity, debt financed dividend). Whether arm's length interest expense is deductible for tax purposes depends on the requirements of the interest barrier rule (see Section 6.c.).

4. ASSET ACQUISITION

a. General Comments

For the seller, the asset deal is in principle a taxable event, except for a potential tax neutral rollover regarding land, buildings or vessels if the corresponding proceeds are reinvested (see Section 7.a.).

The acquisition of a partnership interest is treated like an asset deal (and not like a share deal) for German tax purposes. Therefore, there is a step up of the value of the assets for the buyer when acquiring partnership interests. For income tax purposes, depreciation of the stepped up assets (shown in a supplementary tax balance sheet) is allocated directly to the acquiring partner. For trade tax purposes, an allocation of the stepped up assets would need to be contractually agreed as in this case, not the respective partner but the partnership itself is the taxpayer.

b. Purchase Price Allocation

The overall purchase price is to be allocated to the acquired assets (including any self-created intangible assets not shown in the seller's tax balance sheet) up to their respective fair values and any exceeding amount is to be capitalised as goodwill.

c. Tax Attributes

Capital gains could be offset against existing losses and losses carried forward of the seller. In this context the seller has to take into account Germany's minimum taxation rules. These rules limit the deduction of losses carried forward in a fiscal year to the amount of EUR1 million plus 60% of the income exceeding EUR1million. The seller usually retains all tax risks from prior years associated with the business assets. Capital losses from an asset deal are in principle tax deductible.

d. Tax Free Reorganisations

German law provides for various forms of tax neutral reorganisations, including mergers and spin offs. For commercial law purposes many of these reorganisation forms are dealt with in the Reorganisation Act. The Reorganisation Tax Act, which provides for specific taxation rules to enable tax neutral reorganisations, basically refers to the reorganisation forms of the Reorganisation Act. In general, mergers and spin-offs are considered as taxable events. However, under certain circumstances (see Section 3.d.) mergers/spin offs can be structured in a tax neutral manner.

e. Purchase Agreement

In an asset deal, the purchaser directly acquires certain assets from the company running the business through an asset purchase agreement. Its main advantage is that there is generally no automatic transfer of liabilities, apart from certain exceptions.

f. Depreciation and Amortisation

Goodwill or other intangibles acquired within an asset deal are subject to depreciation. Goodwill is depreciated over 15 years for income tax purposes. Acquired intangible fixed assets are depreciated straight line over their estimated useful lives.

g. Transfer Taxes, VAT

If the acquired assets comprise German real estate, RETT is always triggered with the purchase price being the assessment base (no avoidance strategies are available).

The transfer of assets is subject to German VAT unless it qualifies as transfer of an entire business as a going concern ("Geschäftsveräußerung im Ganzen").

h. Asset Purchase Advantages

An asset deal gives the buyer the possibility to step up the book values of the acquired assets, including goodwill, up to the acquisition price. The subsequent depreciation results in a lower tax burden for the buyer in the future.

A debt pushdown is not required as financing can be easily provided to the acquiring company. The deductibility of interest expense depends on the requirements of the interest barrier rule (see Section 6.c.).

In an asset deal, most of the tax risks from former years remain with the seller (one exception being a secondary liability for certain business taxes where the asset transfer comprises an enterprise or a separately managed unit of the enterprise as a whole).

i. Asset Purchase Disadvantages

The acquisition of assets is generally not exempt from VAT (unless the assets qualify as a going concern). This has to be carefully considered if the input VAT is not

fully deductible for the buyer (e.g. in the event of any VAT exempt turnover).

Where the asset transfer comprises an enterprise or a separately managed unit of the enterprise as a whole the purchaser has a secondary liability for certain business taxes (TT, VAT, wage tax as well as excise duties for the production of goods) arising within a specific period of time and limited to the acquired assets. This secondary liability does not apply to acquisitions from companies in insolvency or enforcement proceedings.

5. ACQUISITION VEHICLES

a. General Comments

The selection of the proper acquisition vehicle depends on various factors. For tax reasons and in order to limit liability exposure special purpose vehicles are frequently used for acquisitions.

b. Domestic Acquisition Vehicle

Domestic acquisition vehicles are often tax efficient where the acquisition of a German target corporation shall be financed with a substantial amount of debt. In such cases the domestic acquisition vehicle enables the pooling of the target corporation's operating profits with the interest expenses of the acquisition vehicle via implementation of an income tax group (see Section 6.d.).

c. Foreign Acquisition Vehicle

A direct purchase of shares in a German corporation by a foreign acquisition vehicle has the potential disadvantage that no income tax group can be implemented rto enable the pooling of any interest expenses from the acquisition financing with the target corporation's profits (see Section 5.b.).

In the case of non-German investors, the acquisition vehicle is regularly held through a foreign holding entity. If in a future exit the foreign entity sells the shares in the German corporation, German CIT and TT can be avoided in most cases (see Section 7.). Frequently, European holding entities are located in Luxembourg or the Netherlands which, among others, offer a 100% tax exemption of capital gains and a strong network of double tax treaties.

In real estate transactions, foreign acquisition vehicles without permanent establishment in Germany are used (as direct purchasers) to avoid TT on operating income.

d. Partnerships and joint ventures

A contribution of assets, upon establishment of a joint venture, may trigger income tax, RETT, and VAT implications. As a general rule, the transfer of German real estate or a 90% participation in a real estate holding company is a RETT event, the contribution of other assets than cash results in a realisation of hidden reserves to the extent the fair value exceeds the book value, and the contribution of assets other than cash is subject to VAT. In each case, certain exceptions may be applicable.

e. Strategic vs Private Equity Buyers

The acquisition vehicle is held either directly by the strategic investor or private equity funds or, as is more commonly the case with private equity sponsors, through structure of multiple intermediate entities. Where the investment is not carried out via existing structures (but through specifically set-up acquisition vehicles) this may, among others, have implications on the recovery of input VAT on transaction costs. A VAT recovery requires that the person that wants to claim input VAT has to qualify as an entrepreneur for VAT purposes. For that purpose, acquisition vehicles in private transactions typically assume management and administrative functions.

6. ACQUISITION FINANCING

a. General Comments

In the past, acquisition financing was typically arranged by banks. In recent years, especially in the case of private equity investors, acquisitions in the German market have increasingly been financed by debt funds (which are more flexible and open to higher risk levels than banks or are chosen for confidentiality reasons as fewer people have to be involved). Sometimes vendor loans (as a form of deferred consideration) are granted, which are contractually subordinated to third party debt.

The capital provided by the sponsor is often structured to a large amount as subordinated (shareholder) loans and only the remainder as actual equity.

b. Equity

When a foreign company holds shares in a German corporation, profit distributions by the German entity are subject to withholding tax ("WHT") of 25% (26.375% including solidarity surcharge of 5.5%), unless the distribution qualifies as a repayment from the tax contributions account (see Section 14.a.). The German WHT burden on the profit distribution may be fully or partially reduced under an applicable double tax treaty ("DTT") or the EU Parent Subsidiary Directive. However, the German entity may abstain from WHT deduction only if an exemption certificate is issued by the German Federal Central Tax Office prior to the relevant payment. A reduction or refund (without a prior exemption certificate) of German WHT is subject to the fulfilment of certain requirements concerning the activity and substance of the direct or indirect foreign shareholder of the German entity (see Section 14.b.).

Under most double tax treaties concluded by Germany, the taxation right for capital gains from the sale of shares in a corporation is allocated exclusively to the seller's state of residence (with the exception of shares in a German real estate company if more than 50% or 75% of that company's value consists of real estate located in Germany, for example, under the treaties with Luxembourg, the Netherlands, Poland or the UK), unless the shares are held through a German permanent establishment. In a case where Germany's taxation right was not excluded, the German Federal Tax Court ruled that capital gains from the sale of shares in a corporation realised by a non-domestic corporate seller without a permanent establishment or permanent representative in Germany shall be 100% tax exempt.

c. Debt

The general limitations on the deductibility of interest expenses (described below) apply to share and asset acquisitions.

i Arm's length principle

The interest rate on borrowings from shareholders or related persons must comply with arm's length principles. This also requires that financing agreements are concluded beforehand and preferably in writing in order to prevent the tax authorities from denying the interest deductibility.

ii Interest barrier rules

According to the German interest barrier rules, a taxpayer is able to immediately deduct net interest expenses (interest expenses minus interest income) only up to 30% of the taxable earnings before interest, taxes, depreciation and amortisation (tax EBITDA). The tax EBITDA only includes taxable income and thus does not necessarily match with the GAAP EBITDA. The interest barrier rules apply to all interest and not only to interest on intragroup loans. The interest barrier rules allow EBITDA carry forwards (broadly speaking, unused EBITDA in one year can be used to achieve an interest deduction in future years) and interest carried forward (non- deductible interest might be deductible in future years if there is sufficient EBITDA in such a year). Interest carried forward is subject to the change of ownership rules (see Section 3.b.); EBITDA carry forwards lapse after five years.

The interest barrier rules do not apply if one of the following conditions are met:

- The net interest expenses of the respective fiscal year to the extent that it exceeds the amount of the interest income (based on the tax authorities' view including any interest carried forward) are less than EUR3 million (exemption limit, no allowance);
- The taxpayer is not part of a group of companies and the interest expense paid to a material shareholder or a related party or a back to back lender does not exceed 10% of the company's total net interest expense; or
- The taxpayer proves that the borrower's equity ratio is at least as high as the worldwide group's equity ratio. It is acceptable if the German entity's equity ratio is 2 percentage points below the group's ratio. This escape clause applies only if the taxpayer or any other group company is not shareholder financed to a harmful extent; that is, if the taxpayer or any group company pays no more than 10% of its interest expense to a material shareholder or related party outside the group or to a third party secured by the material shareholder or related party.

iii Anti-hybrid rules

Within a cross border context and applicable as of 1 January 2020, the tax deductibility of business expenses may also be denied due to the tax treatment at the foreign recipient level (none or low taxation) caused by a hybrid mismatch (see Section 2.a.).

iv Add-back for TT purposes

25% of the interest expense must be added back for TT purposes (to the extent an allowance for interest and certain other expenses in the overall amount of EUR200,000 is exceeded).

v Debt Pushdown

Various options are available to achieve a debt pushdown. One is to implement a tax group (fiscal unity, "Organschaft") between the debt financed German acquisition vehicle and the target company. Such a tax group, which requires (i) that the acquisition vehicle holds the majority in the voting rights of the target company and (ii) the conclusion of a profit and loss transfer agreement, allows for a consolidation of the interest expense of the acquisition vehicle, resulting from the financing, with the profits of the target company. Alternatively, the acquisition vehicle and the target company can be merged. Leveraged distributions or repayments of (free) capital reserves of the target company are other potential options. When determining the level of debt financing, the German interest barrier rules have to be considered (see Section 6.c.). The German capital maintenance rules also have to be kept in mind (e.g. in the case of a merger loss).

d. Other Instruments

German law does not provide for special instruments like preferred equity certificates ("PECs") or different share classes (alphabet shares) which, in the case of private equity funds (especially with non-EU investors), are commonly used at the level of Luxembourg intermediate holding entities to allow the distribution of exit proceeds free of dividend withholding tax.

e. Earn-outs

Earn-outs may be a useful instrument for allowing the seller and the purchaser to share in risks and rewards of the future performance. However, due to disappointed expectations and the frequent use of ambiguous contractual language they often result in legal disputes. In particular, in larger transactions earn-out provisions are seldom seen.

For tax purposes earn-out payments are generally treated as subsequent purchase price (with retroactive increase of the capital gain and purchase price as at the transfer date).

7. DIVESTITURES

a. Taxable

In principle, capital gains from the disposal of assets (including partnership interests, but excluding shares in a corporation) by a corporation are subject to German CIT and TT. A capital gain derived by an individual person from the sale of a business, a separate business unit or a partnership interest is only subject to German income tax (TT only applies if the individual person is not a direct shareholder or, in the case of a partnership interest, if only a portion of the interest is sold).

Under certain conditions, there is an exception for the capital gain resulting from the divestiture of land, buildings or vessels if the proceeds deriving from the disposal are reinvested and new assets of such categories are (intended to be) acquired. In this case, the capital gain from the disposal of those assets is not immediately subject to income taxation but can be deducted from the acquisition costs of newly acquired assets. As a result, the depreciation base of the newly acquired assets is reduced. If no new assets are immediately acquired, the taxation of the capital gain can be postponed by forming a tax free reserve and deducted from new acquisitions within the next four or, or in the case of new buildings, six years. However, if no new acquisitions follow in the relevant period of time, the reserve has to be dissolved, leading to a retroactive taxation of the release amount (increased by 6% interest per annum). Individuals selling shares in corporations can benefit from rules similar to those described for real estate (applicable to capital gains of up to EUR500,000). They may transfer the reserve to (i) shares in corporations or depreciable movable assets acquired or manufactured in the fiscal year of the sale or in the following two fiscal years or (ii) to buildings acquired or manufactured in the fiscal year of the sale or in the following four fiscal years.

Capital gains from the disposal of shares in a corporation are also subject to German income taxation at standard tax rates; however, a tax exemption can apply (see Section 7.b.).

b. Tax Free

Capital gains of a corporation from the disposal of shares in a corporation are 100% exempt from CIT and TT, irrespective of any minimum shareholding or holding period. However, 5% of the capital gain qualifies as non-deductible business expense, which is subject to CIT and TT, so that effectively 95% of such a capital gain is tax exempt. Assuming a combined CIT and TT rate of approx. 30% the tax burden on the capital gain amounts to approx. 1.5% (i.e 30% on 5%). Specifically excluded from this tax exemption are banks and financial service institutions.

In the case of an individual person, the taxation of the capital gain from the disposal of shares depends on (i) the shareholding percentage, and (ii) whether the shares are held as private assets or as business assets. For shareholdings of 1% or more, 40% of the capital gain is tax exempt and 60% is taxable, at the individual income rate (this ratio also applies to expenses in connection with the transaction). The same treatment applies (irrespective of the holding percentage) if the shares belong to a business or trade of the individual. In those cases, 60% of the costs incurred in connection with the disposal are deductible. In all other cases, a capital gain is taxed at a flat tax rate of 26.375% whereby costs are not tax-deductible at all. If a partnership generates a capital gain from the disposal of shares, the applicable tax rule basically depends on the tax status of the partner being a corporation or an individual person.

c. Cross border

For non-domestic sellers, capital gain realised by a foreign shareholder is only subject to German (corporate) income tax if the foreign shareholder holds at least 1% of the company's share capital at any time in the five years before the sale. An additional taxation right was introduced for capital gains realised after 31 December 2018 by a non-German shareholder from the sale of shares in a corporation that, at the transfer date or sometime during the 365 days before the transfer date, derived more than 50% of its value directly or indirectly from German real estate (see Section 9.a.). In each case, German taxation only applies if the foreign shareholder has no protection under a double tax treaty (see Section 4.b.). TT generally does not apply to capital gains realised by a non-German shareholder.

With respect to tax free transactions for non-domestic sellers, the same rules as referenced above may also apply. However, if the corporate seller of shares in a corporation is subject to non-resident taxation (limited tax liability); a 100% tax exemption may be available provided that the shares are not attributed to a German permanent establishment.

8. FOREIGN OPERATIONS OF A DOMESTIC TARGET

a. Worldwide or Territorial Tax System

Individual persons with domicile or habitual abode as well as (German or foreign) corporations with registered seat and/or place of management in Germany are subject to resident taxation (unlimited tax liability) in Germany. In this case, the taxpayer is subject to German taxation on their worldwide income. Non-residents are subject to taxation only with income which has a nexus to the German tax net, i.e. where the tax law stipulates that a German source of income exists (e.g. a German permanent establishment, real estate located in Germany, shares in a company with registered seat and/or place of management in Germany).

b. CFC Regime

German tax law provides for CFC rules applicable to individual persons and corporations subject to German resident taxation. German CFC rules basically apply to investments in foreign corporations generating passive and low taxed income if a German resident shareholder and its related parties hold the majority in the voting rights. This revised German ownership criterion in the form of a shareholder related group view was introduced through the transposition of ATAD I and II and replaces the former 'concept of control' by (unrelated) tax nationals. For certain capital income such as dividends with free float character, the ownership requirement does not apply. The catalogue of passive income is extensive and may include certain income from trade, services, lease or financing. Profit distributions and capital gains deriving from the sale of shares in corporations basically qualify as active income, while, due to the implementation of ATAD I and II, profit distributions

may be qualified as "passive" under certain conditions (e.g. free float). Also foreign reorganisations which would be tax neutral if they were within the German tax net are outside the scope of the German CFC rules. Corporations with registered seat and/or place of management in a country within the EU or EEA are not subject to the CFC rules if they actually pursue an active economic activity in this country and an information exchange procedure based on Directive 2011/16/EU is implemented between Germany and the EU/EEA country. The German CFC rules result in an automatic attribution of the CFC income of the foreign corporation to the German resident shareholder in proportion of the respective direct or indirect shareholding.

c. Foreign branches and partnerships

Based on the worldwide income tax system, the income of foreign branches is in principle subject to income taxation in Germany. However, if the foreign branch qualifies as a permanent establishment for the purposes of domestic law and an applicable double taxation treaty the right of taxation of this income may attributed to the foreign country. If the exemption method (with tax rate progression) applies Germany would exempt the income in Germany. Otherwise, Germany credits foreign taxes under certain conditions. Whether the exemption method or the credit method applies depends on the double taxation treaty applicable in the respective case. Double taxation treaties with industrialised countries tend to provide for the exemption method, whereas in other cases the credit method is usual.

The same principles apply to partnerships with a foreign permanent establishment if the partnership qualifies as a transparent vehicle for German income tax purposes. The classification of a partnership as transparent or an opaque vehicle merely depends on German law whereby Germany compares the foreign legal form with standard legal forms in Germany. In case of tax transparency of the partnership, the German resident partner is treated as if he is invested in a foreign permanent establishment. The exemption method basically requires that the income of the foreign permanent establishment (of the partnership) is actually taxed in the foreign country.

d. Cash Repatriation

The tax consequences of cash repatriations depend on the type of investment of the German resident taxpayer. If the taxpayer is invested in a foreign permanent establishment (of a partnership) the cash repatriation does not trigger German tax consequences since the income is already taxed or exempted (as the case may be).

In the case of an investment of a German tax resident taxpayer in a foreign corporation the dividends received by the German taxpayer are subject to German income taxation (unless the shares are attributed to a foreign permanent establishment). For an individual person the dividends are either subject to flat rate taxation of 26.375% or to the partial income tax system where 60% of the dividend is taxable at the personal income tax rate (40% of the dividend is tax exempt). For a corporation as investor with a shareholding of at least 10% the dividend is 100% exempt for CIT purposes whereby 5% of the dividend qualifies as a non-deductible business expense (effectively, 95% of the dividend is tax exempt). For TT purposes, a minimum shareholding of 15% at the beginning of the relevant tax year of the shareholder is required to benefit from a TT exemption. Otherwise, the dividend is fully subject to TT.

9. OTHER GENERAL INTERNATIONAL TAX CONSIDERATIONS

a. Special Rules for Real Property, including Shares of "Real Property-Rich" Corporations

Germany introduced new rules for capital gains realised by non-resident shareholders from disposing of shares in a non-resident corporation that directly or indirectly holds real property located in Germany. The new rule applies to the disposal of shares after 31 December 2018. The corporation has to be rich in immovable property which is the case if at least 50% of the gross asset value (without debt or other liabilities) of the shares is derived directly or indirectly from German real estate. The threshold may be reached at any time during a period of 365 days prior to the disposal. Capital gains are taxable only if the non-resident seller holds a stake of at least 1% or has held at least 1% at any time in the five years preceding the disposal. The provision covers only capital gains realised after 31 December 2018.

The entire capital gain from the disposal of shares in a corporation is subject to taxation, (i.e. no limitation to capital gains attributable to the real property in Germany). Corporate shareholders may benefit from a 100% exemption of capital gains derived from the disposal of shares. The rules are also triggered at the time of a restriction or exclusion of Germany's right to tax gains from future disposals of shares.

b. CbC and Other Reporting Regimes

Germany implemented the CbC reporting under which a domestic company required to prepare consolidated financial statements is required to prepare and submit a country by country report of the group for a financial year following the end of that year, if (i) the consolidated financial statements include at least one foreign entity or a foreign permanent establishment, and (ii) the consolidated revenue recognised in the consolidated financial statements for the preceding financial year is at least EUR750 million. However, this obligation does not exist if the domestic company is included in the consolidated financial statements of another company. This is intended to avoid the transmission of several country specific reports for an internationally active group. The CbC report must be prepared no later than one year after the end of the financial year and transmitted to the German Federal Central Tax Office by remote data transmission.

10. TRANSFER PRICING

The importance of transfer pricing has increased during recent years due to the incorporation of the principles set out by OECD including many aspects of the OECD Action Plan on Base Erosion and Profit Shifting ("BEPS"). As a result several amendments of German international tax law occurred including, for instance, the introduction of higher standards of transfer pricing documentation and the arm's length principle in relation to permanent establishments. The dealing at arm's length principle applicable to cross border transactions is the core element of the German transfer pricing legislation. Germany basically follows the principles outlined in Article 9 of the OECD Model Tax Convention whereby it has to be assumed for German tax purposes that unrelated parties have complete knowledge of all relevant facts and circumstances of the business transaction and act like prudent and conscientious business managers. The arm's length principle applies to a single or multiple business transactions between the taxpayer and a related party or a taxpayer's enterprise and its foreign permanent establishment (which are deemed to be contractual relationships). Germany maintains a large network of double taxation treaties. Regarding the transfer pricing methods, Germany preferably applies transaction based methods, (i.e. comparison method, resale price method and cost plus method). Depending on the facts, also the transactional net margin method and the profit split method can be used.

There is no obligation for taxpayers to file transfer pricing documentation on a regular basis (e.g. with the annual tax return). However, tax authorities can request in a tax audit transfer pricing documentation which must be prepared and provided within 60 days after the respective request has been received. This means that documentation does not need to be contemporaneous. In case of exceptional business transactions, the transfer pricing documentation must be provided to the tax authorities already within 30 days after the respective request. In practice, it is often possible to extend the relevant deadlines. German tax law requires a master file and a local file (including a risk and functional analysis). The tax authorities can levy a penalty of EUR5,000 if a taxpayer does not provide transfer pricing documentation as requested by law or if the provided transfer pricing documentation is essentially of no use. The penalty must be at least 5% and at most 10% of the additional income arising from required corrections, including estimates by the tax authorities due to the failure by the taxpayer to comply with cooperation obligations. Moreover, if appropriate transfer pricing documentation is submitted too late, a fine of at least EUR100 applies for each full day of delay and may amount up to EUR1 million.

In addition to the penalties, if a taxpayer fails to comply with cooperation obligations the tax authorities can assume that the German income of the taxpayer to which the respective transfer pricing documentation relates is higher than the income declared. If the tax authorities have to conduct an estimate and the relevant income can only be determined within a certain range (in particular a price range), the authorities may use the upper end of the relevant range to the detriment of the taxpayer.

11. POST-ACQUISITION INTEGRATION CONSIDERATIONS

a. General

The best way to effect a post-acquisition integration depends on the facts and circumstances of the individual case and in particular on what the taxpayer wants to achieve from a tax perspective (e.g. mitigation of capital gains taxation or forfeiture of losses, implementation of a tax consolidation group, debt pushdown). Deviating from other countries, structures of hybrid entities or instruments are not in the focus, mainly because German tax law provides for numerous regimes aiming at the avoidance of non-taxed income, double dip structures etc.

b. Principal/Limited Risk Distribution or Similar Structures

Principal/limited risk distribution structures or similar structures can be implemented after an acquisition. If the transaction is carried out between related parties, the purchase price must comply with the arm's length price to be recognised for tax purposes. The implementation of those structures therefore usually gives rise to capital gains taxation. In particular if business functions and risks in conjunction with tangible and intangible assets are transferred to a foreign group entity or permanent establishment, the transfer generally qualifies as a taxable relocation of functions. As a consequence, the value of the "transfer package" as a whole has to be determined instead of the value of the individual assets. To that effect, not only the hidden reserves in the assets but also the earning potentials that are not substantiated in a manner concrete enough to qualify as an asset are subject to (corporate) income and trade tax based on a sound business valuation. As an exception from the overall valuation of the transfer package, an individual valuation is allowed if, for example, the taxpayer demonstrates that either no material assets and other advantages are included in the transfer package or at least one material and precisely defined, asset is included in the transfer package. A taxable relocation of functions is not applicable in cases where a function is only duplicated across borders and the duplication does not lead to a limitation of the function performed locally. In practice, the triggering of immediate exit taxation can be avoided by licensing the transfer package. In this respect the legal and beneficial ownership must be retained by the licensor.

c. Intellectual property

The disposal of the legal and/or beneficial ownership of an intangible asset triggers an immediate taxation of the capital gain for (corporate) income tax and trade tax purposes. If the transaction is carried out between related parties, the purchase price must comply with the arm's length price to be recognised for tax purposes. In practice, German tax authorities accept a purchase price/valuation of intangible assets which is in line with principles contained in the German Standard for Chartered Accountants S5 (IDW S 5). Based on these principles, a valuation of intangible assets (e.g. brands) should consider the future benefit that a potential purchaser will derive from using the asset in question. For instance, the income approach is preferred for the valuation of brands. It is based on future economic benefits derived from the use of a brand. Accordingly, the value of brands is determined by totalling the discounted future financial surpluses.

Where an intangible asset is allocated to a foreign permanent establishment of the same company with the result that the German right to tax that asset is excluded or limited, the allocation is deemed to occur at fair market value for (corporate) income tax and trade tax purposes. To that effect, any capital gain embedded in such asset is immediately taxed even though it has not been realised in the market. Under certain conditions the taxation of such deemed profit can effectively be spread over a period of five years through setting up a tax adjustment item that subsequently is released by one fifth in the fiscal year in which it was formed and the following four fiscal years. The formation of the tax adjustment item requires that the asset is transferred to a permanent establishment in another EU member state and that the transferor is subject to unlimited tax liability in Germany (i.e. a company with German tax residency that transfers the asset to its foreign permanent establishment but not vice versa).

In practice, the triggering of immediate exit taxation can be avoided by licensing the transfer package. In this respect the legal and beneficial ownership must be retained by the licensor.

d. Special tax regimes

Germany does not have a patent box or similar special tax status for companies that hold intangible assets. However, following the German coalition agreement published on 7 February 2018, the three governing parties (CDU, CSU and SPD) introduced an R&D tax incentive which became effective as of 1 January 2020. Under this regime, companies and entrepreneurs subject to income tax or corporate income tax in Germany, may apply for subsidies of up to 25% of their R&D expenses to a total maximum of EUR500,000. Eligible for subsidies are research and development projects which fall into a category of fundamental research, industrial research or experimental research. Those subsidies are available after the business year in which the development has been conducted and will be credited against the tax payment liability.

12. OECD BEPS CONSIDERATIONS

Germany generally supports the BEPS actions. German tax law already covers many aspects of the BEPS action plan (e.g. interest barrier rules, CFC rules). With regard to BEPS Action 5, Germany introduced a limitation rule for license fees and royalties. Furthermore, regarding BEPS Action 13, Germany implemented the requirement to submit master and local files as well as country by country reporting. In addition, several existing tax rules have been changed in order to challenge treaty shopping. Also, Germany implemented ATAD I and II comprising a new CFC regime and provisions regarding hybrid mismatches (BEPS Action 2).

13. ACCOUNTING CONSIDERATIONS

The accounting of business combinations and the divestitures follows IFRS 3.

a. Combinations

A business combination in this sense is given if not only single assets and liabilities, but the aggregate of assets and liabilities is acquired. It is independent of whether it is a share deal or an asset deal. In the context of business combinations the purchase method is to be applied. The acquired assets and liabilities are recognised at fair value at the time of acquisition. This is the date on which the acquiror obtains control of the assets. As part of the purchase price allocation, the purchase price paid must be allocated to the acquired assets and liabilities as well as goodwill according to fair value criteria at the time of acquisition.

b. Divestitures

A divestiture by a sale of all shares leads to a deconsolidation. Such sale does not constitute a share deal, but rather the transfer of individual assets and liabilities (including goodwill) for consideration (i.e. an asset deal). The gain or loss from the divestiture is generally the difference between the proceeds and the consolidated book values of the assets including hidden reserves and goodwill (direct method).

14. OTHER TAX CONSIDERATIONS

a. Distributable Reserves

Profit distributions by a subsidiary are subject to dividend taxation at the level of a German shareholder. If the distributing entity is German resident, it has to withhold withholding taxes of 26.375% (25% plus solidarity surcharge). An exception from these principles is applicable if and to the extent the profit distribution is sourced from a specific tax contribution account which reflects previous contributions (in cash or in kind) by (also former) shareholders to the distributing entity for tax purposes. In this case the amount of profit distribution reduces the tax book value of the participation in the distributing company at the level of the shareholder. Such tax contribution account can also be maintained by subsidiaries resident in the EU/EEA whereby the German tax law recognises it only if certain formal and material requirements are fulfilled.

b. Application of Regional Rules

With respect to profit distributions the distribution company has to withhold German WHT of 26.375%. The EU Parent Subsidiary Directive (or an applicable double taxation treaty) may reduce the withholding tax rate to 0%. This means that the shareholder may apply for a refund of WHT withheld if the requirements are fulfilled. German domestic law, however, provides for an anti-treaty/directive-shopping provision which requires that the foreign shareholder of the German distributing company has sufficient substance and activities.

In light of the European Court of Justice's decisions in Deister Holding and Juhler Holding (Cases C-504/16 and C-613/16) and its resolution of 14 June 2018 (Case C-440/17, GS), that the previous German provision on substance requirements did not comply with EU law (namely the Parent Subsidiary Directive and the freedom of establishment), the German parliament approved a law on the modernisation of relief from withholding tax, which came into force on 9 June 2021.

The new law makes substantial changes to the German anti-treaty/directive shopping rules. It creates higher obstacles for obtaining treaty relief, especially in relation to multi-tier holding structures.

There are only a few special cases where the withholding obligation does not apply, for example:

- An exemption certificate is issued by the Federal Central Tax Office upfront.
- The distribution is treated as a tax neutral repayment of capital contributions.
- The recipient is a resident corporation (or German permanent establishment) and a certificate is issued by the competent tax office stating that, due to the nature of its business, the withholding tax would continuously exceed the recipient's overall CIT amount (including in the case of a holding company). For domestic shares (in a stock corporation) kept in collective safe custody, this potential exception was abolished as of 9 June 2021.

Due to Brexit, the Parent Subsidiary Directive no longer applies in relation to the UK implying that dividends paid to recipients in the UK are not eligible for an exemption but subject to German taxation at a rate of at least 5% (under the double tax treaty).

c. Tax Rulings and Clearances

Under German tax law, it is possible to apply for a binding tax ruling from the competent tax office. Such binding tax ruling may grant legal certainty regarding the tax treatment of certain transactions. The ruling process may take at least 10 to 12 weeks. This timing aspect has to be taken into account when considering going for a binding tax ruling. The tax office charges a fee for a (positive or negative) binding tax ruling which depends on the tax benefits of the ruling for the taxpayer (maximum EUR109,736). A specific form for a binding tax ruling in the transfer pricing area is an advanced pricing agreement ("APA") which, however, has no relevance in a M&A transaction since it takes too long to obtain.

15. MAJOR NON-TAX CONSIDERATIONS

Taxes are only one important aspect in an M&A transaction. In particular the legal and financial aspects of the transaction may have a higher relevance than taxes. It is therefore crucial that the (asset and/or share) purchase agreements deals with all relevant aspects in a way that it satisfactory to the seller and purchaser.

16. APPENDIX I - TAX TREATY RATES

Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Argentina	15	0 / 10 / 15	15	[3]
Australia	0 / 5 / 15	0 / 10	5	[4] [5] [7]
Austria	[0] / 5 /15	0	0	[1] [6] [7] [2]
Belgium	[0] / 15	0 / 15	0	[1] [7] [2]
Brazil	-	-	-	[9]
Canada	5 / 15	0 / 10	0 / 10	[6] [7] [10] [11]
Chile	-	-	-	[9]
China	5 / 10 / 15	0 / 10	6 / 10	[12] [13] [14]
Colombia	-	-	-	[15]
Croatia	[0] / 5 / 15	0	0	[1] [6] [7] [2]
Cyprus	[0] / 5 / 15	0	0	[1] [6] [7] [2]
Czech Republic	[0] / 5 / 15	0	[0] / 5	[1] [16] [7] [2]
Denmark	[0] / 5 / 15	0	0	[1] [17] [7] [2]
Finland	[0] / 5 / 15	0	0	[1] [18] [7] [2]
France	0 / 5 / 15	0	0	[1] [19] [7] [2]
Greece	[0] / 25	0 / 10	0	[1] [20] [2]
Hungary	[0] / 5 / 15	0	0	[1] [6] [2]
India	10	0 / 10	10	[21]
Indonesia	10 / 15	0 / 10	7.5 / 10 / 15	[22] [7] [23] [24]
Ireland	[0] / 5 / 15	0	0	[1] [45] [7] [2]
Italy	[0] / 10 / 15	0 / 10	0 / 5	[1] [7] [25] [2] [26] [27]
Japan	0 / 5 / 15	0	0	[28]
Luxembourg	[0] / 5 / 15	0	[0] / 5	[1] [2] [29]
Malaysia	5 / 15	0 / 10	7	[6] [7] [30] [31]
Malta	[0] / 5 / 15	0	0	[1] [2] [32]
Mauritius	5 / 15	0	10	[6] [7]
Mexico	5 / 15	0 / 5 / 10	10	[6] [7] [33]
Netherlands	[0] / 5 / 10 / 15	0	0	[1] [34] [2]

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Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Jurisdiction	Dividends %	Interest %	Royalties %	Footnote Reference
Norway	0 / 15	0	0	[35]
Philippines	5 / 10 / 15	0 / 10	10	[36] [37]
Poland	[0] / 5 / 15	0 / 5	[0] / 5	[1] [6] [7] [38] [2]
Portugal	[0] / 15	0 / 10 / 15	[0] / 10	[1] [39] [2]
Puerto Rico	-	-	-	[40]
Romania	[0] / 5 / 15	0 / 3	[0] / 3	[1] [6] [7] [41] [2]
Russia	5 / 15	0	0	[42]
Serbia	15	0	10	[43]
Singapore	5 / 10 / 15	0	5	[44]
Slovakia	[0] / 5 / 15	0	[0] / 5	[1] [46] [2]
Slovenia	[0] / 5 / 15	0 / 5	[0] / 5	[1] [46] [47] [2]
South Africa	7.5 / 15	10	0	[48] [49]
South Korea	5 / 15 / 25	0 / 10	2 / 10	[50] [51] [52]
Spain	[0] / 5 / 15	0	0	[1] [53] [2]
Sweden	0 / 15	0	0	[1] [54] [2]
Switzerland	0 / 5 / 15 / 30	0	0	[55]
Turkey	5 / 15	0 / 10	10	[56] [57]
UK	5 / 10 / 15	0	0	[58] [59]
USA	0 / 5 / 15	0	0	[60]
Venezuela	5 / 15	0 / 5	5	[61] [62]

Maximum rates according to German tax law:

- Dividends: 26.375% (25% plus 5.5% solidarity surcharge)
- Interest: 26.375% (25% plus 5.5% solidarity surcharge (WHT only in limited situations, i.e. loans secured by real estate in Germany, profit participating loans and silent partnerships))
- Royalties: 15.825% (15% plus 5.5% solidarity surcharge)

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German anti-treaty-shopping provision (§ 50d(3) Income Tax Act): Any reduction from the maximum rates according to German tax law cannot be claimed by a foreign company if and to the extent that it is owned by persons who would not be entitled to reimbursement or exemption if they directly generated the income and the income generated by the foreign company in the fiscal year in question did not derive from its own economic activity, and (i) there are no economic or other substantial reasons for involving the foreign company in respect of these earnings, or (ii) the foreign company does not participate in general economic transactions with a business operation suitably established for its business purposes.

Footnotes:	
1	Dividends – Parent Subsidiary Directive: Reduction of the WHT rate to 0% for dividends paid by company to corporation resident in a Member State of the European Union which holds at least 10% of the capital in the distributing company at the time of the dividend distribution.
2	Interest and Royalties - Interest and Royalties Directive: Reduction of the WHT rate to 0% if paid by an enterprise of the Federal Republic of Germany or a permanent establishment located in Germany of an enterprise of another Member State of the European Union as debtor to an enterprise of another Member state of the European Union or to a permanent establishment located in another Member State of the European Union of an enterprise of a Member State of the European Union as creditor. Requirement is that creditor and debtor are connected enterprises (i.e. the debtor holds at least 25% of the capital of the creditor or vice versa or a third enterprise holds at least 25% of the capital of the debtor and the creditor).
3	Interest - The 10% rate applies to interest paid in connection with the sale of industrial, commercial or scientific equipment on credit, for a bank loan and in connection with the financing of public works. The 15% rate applies to all other cases. A special rate of 0% is applied if interest is paid to the Argentinian government, the Argentinian central bank, the German government, the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Corporation for Economic Cooperation ("Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit").
4	Dividends - Reduced rate of 5% applies to dividends paid to a company (other than a partnership) that holds at least 10% of the shares of the distributing company for a period of 6 months prior to the date of dividend payment (including the day of dividend payment). Reduction to 0% if the dividends are paid to a corporation that holds at least 80% of the voting rights in the distributing company for a period of 12 months prior to the profit appropriation resolution and if the receiving corporation (i) is listed on a recognized stock exchange, (ii) is directly or indirectly owned by companies which are listed on a recognised stock exchange or would be entitled to the same treaty benefits under a double taxation treaty or (iii) does not qualify for (i) or (ii) but the competent tax authority that the anti-abuse provision of the double taxation treaty is not applicable.
5	Interest - A special rate of 0% is applied if the interest is derived by a Contracting State or by a political or administrative subdivision or local authority thereof, or by any other body exercising governmental functions in a Contracting State, or by a bank performing central banking functions in a Contracting State, or the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer.
6	Dividends - Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
7	Dividends - Maximum rate of 15% in other cases.
8	Interest - The 0% rate applies to interest which is paid to an enterprise in the other Contracting State. However, the reduced rate is not applicable if the interest is paid on bonds and other debt instruments with the exception of bills of exchange on commercial claims. The reduced rate is also not applicable if interest is paid by a company to a company resident in the other Contracting State which directly or indirectly holds at least 25% of the voting rights in the paying company.
9	Currently no tax treaty.

Footnotes:	
10	Interest - The 0% rate applies to interest which is paid (i) in connection with the sale on credit of any equipment or merchandise by the purchaser to the seller (with the exceptions of a sale between associated persons), (ii) in respect of indebtedness of the government of a Contracting State or of a "Land" or political subdivision or local authority thereof, (iii) to the Canadian Export Development Corporation or the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Corporation for Economic Cooperation ("Deutsche Gesellschaft für wirtschaftliche Zusammenarbeit"), (iv) to the government of a Contracting State or of a "Land", or political subdivision thereof, or to the central bank of a Contracting State or (v) to a resident of the other State which was constituted and is operated exclusively to administer or provide benefits under one or more pension, retirement or other employee benefits plans provided that the resident is generally exempt from income tax in the other State and the interest is not derived from carrying on a trade or a business or from an associated person.
11	Royalties - The 0% rate applies to (i) copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films nor royalties in respect of works on films or videotape or other means of reproduction for use in connection with television broadcasting) and (ii) royalties for the use of, or the right to use, computer software or any patent or for information concerning industrial or scientific experience (but not including any such royalty provided in connection with a rental or franchise agreement).
12	Dividends - The rate of 5% applies to dividends paid to a company (other than a partnership) which directly owns at least 25% of the capital of the distributing company. A rate of 15% applies if the dividends are paid out of income or gains derived directly or indirectly from immovable property by an investment vehicle which distributes most of this income or gains annually and whose income or gains from such immovable property is exempted from tax. In all other cases a rate of 10% applies.
13	Interest - The reduced rate of 0% applies to (i) interest arising in a Contracting State and paid to the Government of the other Contracting State, (ii) interest arising in a Contracting State and paid in consideration of a loan guaranteed or insured by the other Contracting State or any financial institution wholly owned by it, (iii) interest arising in China and paid to the German Federal Bank ("Deutsche Bundesbank"), the Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and any public credit institution of the Federal Republic of Germany, if the competent authorities of both States have agreed thereto and (iv) interest arising in the Federal Republic of Germany and paid to (a) the People's Bank of China, (b) the China Development Bank Corporation, (c) the Agricultural Development Bank of China, (d) the Export-Import Bank of China, (e) the National Council for Social Security Fund, (e) the China Investment Corporation or (f) any other public credit institution of the Government of China, if the competent authorities of both States have agreed thereto.
14	Royalties - The rate of 10% applies to payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience. A rate of 10% is applied to 60% of payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment resulting in an effective rate of 6%.
15	Double taxation treaty only for shipping and air carriers.
16	Dividends - The rate of 5% applies to dividends paid to a company which directly holds at least 25% of the capital of the distributing company.
17	Dividends - The rate of 5% applies to dividends paid to a company which directly holds at least 10% of the capital of the distributing company.
18	Dividends - The rate of 5% applies if the beneficiary of the dividends is a company (other than a partnership or a German REIT stock corporation) which directly holds at least 10% of the capital in the distributing company.

Footnotes:	
19	Dividends - The rate of 5% applies to dividends paid by a corporation resident in Germany to a corporation resident in France which owns at least 10% of the capital of the German corporation. In case of a dividend paid by a corporation resident in France to a corporation resident in Germany a rate of 0% is applicable if the German corporation owns at least 10% of the capital in the French corporation.
20	Interest - The rate of 0% is applicable to (i) interest arising in Greece and paid to the German Federal Bank ("Deutsche Bundesbank") or to the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") and to (ii) interest arising in Germany and paid to the Bank of Greece. The rate of 10% applies to all other cases.
21	Interest - Interest arising in (i) the Federal Republic of Germany and paid to the Government of the Republic of India, the Reserve Bank of India, the Industrial Finance Corporation of India, the Industrial Development Bank of India, the Export-Import Bank of India, National Housing Bank and Small Industries Bank of India or (ii) in the Republic of India and paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and interest paid in consideration of a loan guaranteed by HERMES-Deckung is subject to a rate of 0%. The rate of 10% applies to all other cases.
22	Dividends - The rate of 10% applies if the recipient of the dividends is a company (excluding partnerships) which owns at least 25% of the capital of the company paying the dividends.
23	Interest - Interest arising (i) in the Federal Republic of Germany and paid to the Government or the Central Bank of Indonesia or (ii) in the Republic of Indonesia and paid in consideration of a loan guaranteed by Hermes-Deckung or paid to the Government of the Federal Republic of Germany, the Deutsche Bundesbank, the Kreditanstalt für Wiederaufbau or the Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern is subject to a rate of 0%. In all other cases a rate of 10% applies.
24	Royalties - The rate of 7.5% applies to fees for technical services. The rate of 10% applies to royalties for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience. The rate of 15% applies to royalties for the use of, or the right to use, any copyright of literary artistic or scientific work (including cinematographic films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process.
25	Dividends - The rate of 10% applies to dividends paid by a corporation resident in Italy to a company in Germany which directly owns at least 25% of the capital in the Italian corporation.
26	Interest - The rate of 0% is applicable to interest paid (i) in connection with the sale of goods or merchandise supplied by one enterprise to another enterprise on credit, (ii) in connection with the sale of industrial, commercial or scientific equipment on credit, (iii) for debt securities or similar obligations of the Government of a Contracting State, of one of its "Länder" or political subdivisions, or (iv) to the Government of a Contracting State or one of its "Länder" or political subdivisions or to the central bank of one of the Contracting States.
27	Royalties - A reduced rate of 0% is applied to royalties for copyright and other similar payments for the creation or reproduction of literary, dramatic, musical or artistic works, including cinematographic films or radio or television recording.
28	Dividends - Reduced rate of 5% applies to dividends paid to a company (other than a partnership) that holds at least 10% of the shares of the distributing company for a period of 6 months prior to the date of the dividend entitlement. Reduction to 0% if the beneficiary of the dividends is a company (other than a partnership) that owns directly at least 25% of the voting rights in the distributing company for a period of 18 months prior to the profit appropriation resolution.

Footnotes:	
29	Dividends - Reduced rate of 5% applies to dividends paid to a company (other than a partnership or an investment company) that holds at least directly 10% of the shares of the distributing company. In case of dividends paid by a real estate investment company which is partly or fully exempted from tax or which can deduct dividends from its profit and in all other cases, the rate of 15% applies.
30	Interest - Maximum rate of 10%. Reduced rate of 0% for interest derived by a Government of a contracting state from the Government of the other contracting state. For the purposes of the 0% rate, the term "Government": a) in the case of Malaysia means the Government of Malaysia and shall include: (i) the governments of the states; (ii) the Bank Negara Malaysia; (iii) the local authorities; (iv) the statutory bodies; and (v) the Export-Import Bank of Malaysia Berhad (EXIM Bank); b) in the case of the Federal Republic of Germany means the Government of the Federal Republic of Germany and shall include: (i) the Federal States; (ii) the political subdivisions or the local authorities; and (iii) the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau"), and the "Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern".
31	Royalties - Including Fees for Technical Services.
32	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends. In the case of Malta, the reduced rates shall not apply as long as according to the Maltese tax law the tax chargeable on the profits of a company may be offset against the shareholder's income tax. In such case the Maltese tax on the gross amount of the dividends paid by a company which is a resident of Malta to a resident of the Federal Republic of Germany who is the beneficial owner thereof shall not exceed: (i) that tax which is chargeable on the profits out of which the dividends are paid; or (ii) 15% on the profits out of which the dividends are paid, if the dividends are paid out of gains or profits earned in any year in respect of which the company is in receipt of any benefit under the provisions regulating aids to industries in Malta, and the shareholder submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Maltese tax for the relative year of assessment.
33	Interest - Maximum rate of 10%. Reduced rate of 5% applies on interest from loans granted by a bank. Reduced rate of 0% applies if (i) the beneficial owner is a Contracting State, the Banco de México or the Deutsche Bundesbank, (ii) the interest is paid by any of the entities mentioned in subparagraph (i), (iii) the interest arises in the Federal Republic of Germany and is paid in respect of a loan granted, guaranteed or insured by Banco de México, Banco Nacional de Comercio Exterior, S.N.C., Nacional Financiera, S.N.C., or Banco Nacional de Obras y Servicios Públicos, S.N.C., or by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States, (iv) the interest arises in the United Mexican States and is paid in respect of a loan granted, guaranteed or insured by the Federal Republic of Germany or is paid to the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH"), or by any other institution, as may be agreed from time to time between the competent authorities of the Contracting States.
34	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a pension scheme resident in the Netherlands. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
35	Dividends - Maximum rate of 15%. Reduced rate of 0% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
36	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 70% of the capital of the company paying the dividends.

Footnotes:	
37	Interest - Maximum rate of 10%. Reduced rate of 0% applies on interest (i) arising in the Federal Republic of Germany and paid to the Philippine Government and the Bangko Sentral Ng Pilipinas, (ii) arising in the Philippines and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment or paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and (iii) paid (a) in connection with the sale of commercial or scientific equipment on credit or (b) in connection with the sale of goods by an enterprise to another enterprise on credit.
38	Interest - Maximum rate of 5%. Reduced rate of 0% applies if the interest is paid (i) to the government of the Republic of Germany, (ii) on a loan of any kind granted, guaranteed or guaranteed by a public body to promote exports, (iii) in connection with the sale (on credit) of industrial, commercial or scientific equipment, (iv) in connection with the sale (on credit) of goods by one enterprise to another enterprise, and (v) on a loan of any kind granted by a bank.
39	Interest - Maximum rate of 15%. Reduced rate of 10% applies if the interest is paid on a loan of whatever kind granted by a bank. In the case of interest arising in Portugal, the provision of this subparagraph shall only apply if the operation for which loan is given, is considered to be of an economic or social interest for the country of the Portuguese government, which condition is always considered to be fulfilled if it is comprised in development plans approved by this government. Reduced rate of 0% applies on interest arising in (i) the Federal Republic of Germany and paid to the Banco de Portugal and (ii) Portugal and paid to the Deutsche Bundesbank.
40	No own treaty and not covered by tax treaty between Germany and the US.
41	Interest - Maximum rate of 3%. Reduced rate of 0% applies on interest arising in (i) Romania and paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and interest paid in consideration of a loan guaranteed by HERMES-Deckung and (ii) the Federal Republic of Germany and paid to the Government of Romania if it is derived and beneficially owned by the Government of Romania, an administrative-territorial unit or a local authority thereof or any agency or bank unit or institution of the Government of Romania, an administrative-territorial unit or a local authority or if the debt-claims of a resident of Romania are warranted, insured or financed by a financial institution wholly owned by the Government of Romania.
42	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which directly holds at least 10% of the share capital or nominal capital of the company paying the dividends and this share/nominal capital amounts to at least EUR80,000 or its equivalent in rubles.
43	Dividends - Rate of 15% only applies to dividends paid by a German resident corporation.
44	Dividends - Maximum rate of 15% if the company paying the dividend is a real estate investment company or trust. Reduced rate of 5% applies if the beneficial owner (other than an individual or a partnership) holds directly at least 10% of the capital of the company paying the dividends. In the Federal Republic of Germany, income of a sleeping partner ("stiller Gesellschafter") from his participation as such or from a "partiarisches Darlehen" or a "Gewinnobligation" that is deductible in determining the profits of the debtor may be taxed in the Federal Republic of Germany according to its laws. A rate of 10% applies in all other cases.
45	Dividends - The rate of 5% applies if the beneficiary of the dividends is a company (other than a partnership or a German REIT stock corporation) which directly holds at least 10% of the capital in the distributing company for a period of 365 days, including the day on which the dividends are paid. In calculating this period, any changes in ownership or ownership structure that would result directly from a reorganisation, such as a merger or division, of the company holding the shares or paying the dividends shall be disregarded.

Footnotes:	
46	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company which holds directly at least 25% of the capital of the company paying the dividends.
47	Interest - Maximum rate of 5%. Reduced rate of 0% applies on interest arising in (i) the Federal Republic of Germany and paid to the Government of the Republic of Slovenia, the Bank of Slovenia or the Slovenian Export Corporation and interest paid in consideration of a loan guaranteed by the Slovenian Export Corporation and interest paid in consideration of a loan guaranteed by the Republic of Slovenia in respect of export or foreign direct investment, and (ii) the Republic of Slovenia and paid to the Government of the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau"), the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH") and interest paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment.
48	Dividends - Maximum rate of 15% (subject to tax clause). Reduced rate of 7.5% applies if the recipient is a company (excluding partnerships) which owns directly at least 25% of the voting shares of the company paying the dividends.
49	Interest / Royalties - Subject to tax clause.
50	Dividends - Maximum rate of 25% in case of income derived from rights or debt-claims participating in profits (including in the Federal Republic of Germany income derived by a silent partner ("stiller Gesellschafter") from his participation as such, from a "partiarisches Darlehen" and from "Gewinnobligationen") that is deductible in determining the profits of the debtor. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends; otherwise a rate of 15% applies.
51	Interest - Maximum rate of 10%. Reduced rate of 0% applies on interest (i) arising in the Federal Republic of Germany, a Land, a political subdivision or a local authority thereof and paid to the Republic of Korea, the Bank of Korea, the Korea Export-Import Bank, the Korea Development Bank and similar financial institutions as may be specified by mutual agreement between the competent authorities of the Contracting States as well as interest paid in consideration of a loan guaranteed by the Korea Export Insurance Corporation, (ii) arising in the Republic of Korea and paid to the Federal Republic of Germany, the German Federal Bank ("Deutsche Bundesbank"), the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the "Deutsche Finanzierungsgesellschaft für Beteiligungen in Entwicklungsländern" and similar financial institutions as may be specified by mutual agreement between the competent authorities of the Contracting States as well as interest paid in consideration of a loan guaranteed by HERMES-Deckung and (iii) paid (a) in connection with the sale of commercial or scientific equipment on credit, or (b) in connection with the sale of goods by an enterprise to another enterprise on credit.
52	Royalties - Maximum rate of 10%. Reduced rate of 2% applies on royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment.
53	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the recipient company (other than a partnership or real estate investment company) owns, shares representing 10% or more of the share capital of the company paying the dividends.
54	Dividends - Maximum rate of 15%. Reduced rate of 0% applies if the recipient company has owned, shares representing 10% or more of the share capital of the company paying the dividends, for a 12 month period. In the case of income resulting from profit participating rights (incl. silent partnerships, profit participating bonds (Gewinnobligationen) or from profit participating loans) and if these amounts are deductible at the level of the debtor, the domestic rate is applicable (26.375%).

Footnotes:	
55	Dividends - Maximum rate of 30% (only in the case of income resulting from silent partnerships, profit participation rights ("Genussrechte"), profit participating bonds ("Gewinnobligationen") or from profit participating loans and if these amounts are deductible at the level of the debtor). Reduced rate of 15% applies in all cases not specifically mentioned. Reduced rate of 5% applies if paying company is a power plant to exploit the hydropower of the Rhine river between Lake Constance and Basel (border power plant on the Rhine). Reduced rate of 0% applies if the recipient company has owned, shares representing 10% or more of the share capital of the company paying the dividends, for a 12 month period (does not in case of dividends paid by a German real estate stock corporation with listed shares (REIT-AG), a German investment fund or a German investment stock corporation). A rate of 0% does also apply, according to a treaty between the European Union and Switzerland, if the receiving company owns at least 25% of the capital in the distributing company for a period of two years.
56	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividends.
57	Interest - Maximum rate of 10%. Reduced rate of 0% applies to interest arising in (i) the Federal Republic of Germany and paid to the Government of the Republic of Turkey or to the Central Bank of the Republic of Turkey ("Türkiye Cumhuriyet Merkez Bankası") (ii) Turkey and paid to the Government of Germany or to the German Federal Bank ("Deutsche Bundesbank"), (iii) Turkey and paid in consideration of a loan guaranteed by the Federal Republic of Germany in respect of export or foreign direct investment or paid to the German Development Loan Corporation ("Kreditanstalt für Wiederaufbau") or the German Investment and Development Company ("DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH"), (iv) Germany and paid to the Turkish Eximbank ("Türkiye İhracat Kredi Bankası A.Ş").
58	Dividends - Maximum rate of 15%. Reduced rate of 10% applies if the beneficial owner is a pension scheme. Reduced rate of 5% applies if the beneficial owner is a company (other than a partnership) which holds directly at least 10% of the capital of the company paying the dividends.
59	Due to Brexit, the Parent Subsidiary Directive [1] and the Interest and Royalties Directive [2] will not be applicable anymore.
60	Dividends - Maximum rate of 15%. Reduced rate of 5% applies if the recipient company owns directly at least 10% of the voting power in the company paying the dividends. Reduced rate of 0% applies if (i) the recipient company has owned, shares representing 80% or more of the voting power of the company paying the dividends, for a 12-month period ending on the date entitlement to the dividend is determined and satisfies certain clauses set forth in Article 28 of the treaty (Limitation on Benefits of the Convention) or (ii) the recipient is a pension fund and the dividends are not derived from the carrying on of a business, directly or indirectly, by such pension fund. Further exceptions apply to certain investment funds as payer.
61	Dividends - Maximum rate of 15%. Reduced rate of 5% applies to dividends paid to a company (other than a partnership) that owns directly at least 15% of the share capital of the payer company.
62	Interest - Maximum rate of 5%. Reduced rate of 0% applies to interest paid to the Venezuelan government, the Fondo de Inversiones de Venezuela, the Fondo de Financiamento de las Exportaciones and the Banco Central de Venezuela.

17. APPENDIX II - GENERAL CORPORATE ENTITY TAX DUE DILIGENCE REQUESTS

The statute of limitations for taxes in Germany is generally four years (unless special circumstances like e.g. tax evasion incur) starting from 1 January of the year following the year in which the tax return was filed. The statute of limitations is suspended if, for example, a tax audit is announced before the expiry of the statutes of limitations.

Nº.	Category	Sub-Category	Description of Request
1	Tax Due Diligence	General	Please provide a structure chart of the target group including ownership ratios, legal forms and permanent establishments/representatives.
2	Tax Due Diligence	General	Please describe how the target group controls and manages the tax functions (including a list of the target groups internal tax representatives and external advisors).
3	Tax Due Diligence	General	Please provide (i) tax returns (i.e. corporate income tax including tax balance sheets, trade tax, VAT, transfer tax, WHT) and (ii) tax assessment notices for the target companies for all FYs open to tax audit.
4	Tax Due Diligence	General	Please provide financial statements ("GAAP") for FYs open to tax audit.
5	Tax Due Diligence	Income tax	Please provide (i) a breakdown of deferred tax assets/liabilities and details (including calculation) of reserves/provisions/liabilities for taxes and (ii) an overview on write-offs/ impairments of assets and potential recapture exposure.
6	Tax Due Diligence	Income tax	Please provide an overview of tax losses, tax loss carry forwards and interest/EBITDA carry forwards as of 31 December 2020 and 2021 and describe transactions which could have had an impact on these tax attributes (e.g. due to loss forfeiture rules).
7	Tax Due Diligence	Income tax	Please provide a list of main intangible assets (incl. non-accounted assets) and an overview (calculation) of hidden reserves embedded in these assets.
8	Tax Due Diligence	Income tax	Please provide (i) a list of existing and former tax groups (tax consolidation schemes, fiscal unities) and the respective members for CIT and trade tax purposes and (ii) the corresponding profit and loss transfer agreements.
9	Tax Due Diligence	Income tax	Please provide an overview of taxable income, financial expenses and interest income for interest barrier rule purposes for all FYs open to tax audit (including FY20 and estimate for FY21) and explain any limitations on the deductibility of interest.
10	Tax Due Diligence	General	Please (i) provide tax and social security audit reports for the past and explain main findings and adjustments of taxable income, turnover etc., (ii) quantify the additional tax payments, (iii) explain status of payment of additional taxes from audit and (iv) provide information on tax audits announced or in progress.

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Nº.	Category	Sub-Category	Description of Request
11	Tax Due Diligence	General	Please provide relevant agreements, arrangements and correspondence with the tax authorities (e.g. binding tax rulings, APAs, mutual agreements) and a list of finished, pending and threatening tax appeals, litigations, investigations and major tax proceedings (e.g. criminal proceedings).
12	Tax Due Diligence	General	Please provide an overview of reorganization measures (e.g. mergers, spin offs, hive downs, contributions) and disinvestments/acquisitions within the last seven years including the tax consequences as well as the status of tainted shares/holding periods for tax purposes.
13	Tax Due Diligence	General	Please provide (i) SPAs entered into by the target companies and explain and quantify existing or potential claims or liabilities under the tax guarantee and indemnification clauses and (ii) tax due diligence reports for relevant acquisitions for FYs open to tax audit.
14	Tax Due Diligence	Transfer tax	Please provide a list of real estate owned by target companies (including their fair market values and tax book values as well as the respective German federal states in which they are located).
15	Tax Due Diligence	Transfer tax	Please provide an overview on any open transfer tax transaction not notified or assessed by the tax authorities.
16	Tax Due Diligence	Income tax	Please (i) provide an overview on intercompany agreements/transactions and provide volumes on an entity by entity basis for each FY open to tax audit, (ii) explain TP methods applied and (iii) provide TP documentation.
17	Tax Due Diligence	Income tax	Please provide (i) employment agreements with directors (including shareholding directors) and (ii) an overview on compensations paid on an entity by entity basis for each FY open to tax audit.
18	Tax Due Diligence	VAT	Please provide an overview on (i) the VAT situation including list of non-VATable, VATable and VAT exempt transactions, (ii) the input VAT deductibility of the target companies and (iii) any former and existing VAT groups (including members, commencement, termination) for FYs open to tax audit.
19	Tax Due Diligence	VAT	Have the entities of the target group (i) adjusted any monthly or annual VAT returns during fiscal years open to tax audit or (ii) undergone internal reviews of the VAT position? If so, please explain the reasons and quantify relevant VAT payments/refunds.
20	Tax Due Diligence	WHT	Please provide an overview on withholding tax relevant transactions (e.g. dividends, interests, royalties) and explain whether the requirements for reduced or 0% rates have been fulfilled (e.g. valid exemption certificates, substance and activity requirements).

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Nº.	Category	Sub-Category	Description of Request
21	Tax Due Diligence	Income tax/WHT	Please provide an overview of cross border (open or hidden) profit distributions and contributions and explain potential tax implications for the parties involved.
22	Tax Due Diligence	Wage tax/social security	Does the target group engage independent contractors/freelancers? If so, please provide an overview of such freelancers/other individuals including information on (i) the amounts paid to/for the person, (ii) the monthly working hours, (iii) the period of time for which the person worked for the group entity, and (iv) where applicable, if the person is a temporary worker deployed by a temporary employment agency.
23	Tax Due Diligence	Income tax	Please provide an overview of potential foreign permanent establishments/ representatives and information on the allocation of income between permanent establishment and head office.
24	Tax Due Diligence	General	Please provide (i) an overview on business specific tax issues/risks of the target group and (ii) a list of transactions outside the ordinary course of business (e.g. impairments, disputes regarding receivables, disposals of shares, transactions (partly) free of charge) with a volume greater than EUR150,000 per transaction including extraordinary transactions (cf. Sec. 90 para. 3 German Tax Code).

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