Germany

Michael Graf
michael.graf@dentons.com

Philipp Scharenberg
philipp.scharenberg@dentons.com

1.0 OVERVIEW

Germany is one of the largest countries in Europe with a population of more than 80 million. The constitutional form is the Federal Republic of Germany, comprising 16 federal states and a large number of municipalities.

The German tax system is generally considered to be quite complex. Taxes are levied by the federal government, states and municipalities. Corporations having their registered seat or actual place of management in Germany are subject to corporate income tax (CIT), and individuals having their domicile or habitual abode in Germany are subject to income tax, in both cases on their worldwide income (unlimited tax liability). Non-residents are only taxed on German-source income (limited tax liability).

The statutory CIT rate is 15%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall CIT rate of 15.825%. In addition, corporations are subject to trade tax (TT) levied by the municipalities at a rate depending on a local multiplier. It typically ranges between 7% and 17%. The combined CIT and TT rate therefore ranges from about 23% to about 33%, depending on where in Germany the corporation maintains its permanent establishment(s).

The income tax rate for individuals is progressive based on annual income. A taxpayer's first €9,168 of income is tax-free; thereafter, the income tax rate starts at 14%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall IT rate of 14.77%. It progressively increases to 42% plus a solidarity surcharge of 5.5% thereon, resulting in a maximum overall rate of 44.31% for annual income above €55,961. For annual income above €265,327, the income tax rate is 45% plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 47.475%. All of the effective rates are for the 2019 taxation year. Trade income earned directly or through trading partnerships by individuals are also subject to TT as described for corporations. However, individuals can credit the TT against their income tax liability up to a TT rate of 13.3%.

Dividends distributed by a German-resident corporation are generally subject to 25% withholding tax (WHT), plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 26.375%. Depending on the circumstances, German-residents receiving dividends either pay WHT as a lump sum tax so that the dividend income does not form part of their income tax base, or as a prepayment on their individual or corporate income tax liability, meaning they can credit the WHT against their individual or corporate income tax liability. For non-residents who receive dividends, the WHT is in general a lump sum tax, which can only be reduced or refunded under applicable double taxation treaties or EU directives, in each case subject to the German anti-treaty shopping provisions.

Value-added tax (VAT) is payable on most services rendered and supplies effected within Germany at a general rate of 19% and at a reduced rate of 7% for certain goods and services. Real estate transfer tax (RETT) is imposed on a number of transactions involving real estate located in Germany. The RETT rate ranges from 3.5% to 6.5% depending on the state in which the real estate is located.

2.0 LEGAL SYSTEM

Germany has a civil law system. The highest source of all law is the Grundgesetz (GG), Germany's constitution, which also lays out the principles governing the German tax system. German taxation is mostly based on federal law contained in the various tax codes. The General Tax Act (GTA) contains a number of general definitions, establishes the basic rights and duties of taxpayers and regulates the basic administrative procedures for all types of taxes. The Income Tax Act (ITA) and the Corporate Income Tax Act (CITA) contain specific provisions for their respective taxes. These codes are supplemented by a multitude of guidelines and circulars issued by the Federal Ministry of Finance and state tax authorities. These guidelines and circulars are binding for the respective tax authorities, but not binding for taxpayers or courts.

The German court system is independent and fully available for German and foreign companies and individuals. The judiciary consists of three types of courts:

i. Constitutional courts

ii. Ordinary courts responsible for all civil and criminal matters

iii. Specialized courts such as labor courts, administrative courts, tax courts and social courts.

There are two levels of tax courts, which only hear tax-related cases: the lower tax courts and the Federal Tax Court (FTC). The FTC is Germany's highest tax court and serves as a court of appeal. Germany's legal system does not have a doctrine of binding precedent that is present in common law systems.

Taxpayers can only submit a case to tax courts once they have (wholly or partially) unsuccessfully filed an administrative appeal with the competent tax authority. The administrative appeal procedure is meant to give tax authorities the possibility to rethink and, where necessary, correct their own decisions.

3.0 TAXATION AUTHORITIES

Germany's tax administration is divided into federal tax authorities, state tax authorities and municipal tax authorities.

The federal tax administration encompasses the Federal Ministry of Finance (Bundesfinanzministerium, BMF) as the highest federal tax authority, as well as subordinate federal tax authorities such as the Federal Central Tax Office (Bundeszentralamt für Steuern, BZSt). Its responsibilities include WHT refunds and reductions as well as VAT refunds for non-residents.

Local tax offices form part of the state tax administration. They administer most federal and state taxes and process most tax returns and tax assessments. Municipal tax authorities are mainly responsible for collecting municipal taxes such as the TT.

4.0 BUSINESS VEHICLES

A non-resident may either establish a German business vehicle to carry on business in Germany or operate directly through a foreign entity (with or without a German permanent establishment). Germany has a variety of business vehicles. In general, German business vehicles can be divided in partnerships, corporations and others (such as hybrids).

There are significant legal and tax differences between corporations and partnerships. Corporations generally provide for limited liability of their shareholder(s), while partnerships generally require unlimited liability of at least one of their partners. Further, corporations are required to have a certain minimum share capital due to their limited liability. This does not apply for partnerships since at least one partner is subject to unlimited personal liability and is required to use its personal property to satisfy creditors. A corporation can have one or more shareholders. A partnership requires a minimum of two partners and ceases to exist if only one partner remains.

The main difference between corporations and partnerships for tax purposes is that corporations are non-transparent, and taxed at the corporate level. Partnerships are transparent for individual and corporate income tax purposes, meaning any taxable profits or losses are directly attributed to the partners personally, with those taxes levied at the partner level. For TT purposes, so called non-trading partnerships are transparent with TT (if applicable in such case) levied at the partner level, whereas for trading partnerships (and deemed trading partnerships), TT is levied at the partnership level. For VAT purposes, most partnerships are not transparent, meaning VAT is levied at the partnership level and not at the level of the partners personally.

4.1 Partnerships

German law offers several types of partnerships. The most common ones are the simple partnership (GbR, in its German acronym), the general partnership (OHG) the limited partnership (KG) and the so-called GmbH & Co. KG.

A GbR is the simplest form of a partnership. It is based on a written or oral partnership agreement between the partners in order to support a purpose jointly pursued by the partners. All partners are fully personally liable for the partnership's liabilities. No minimum capital or registration in the commercial register is required. Nevertheless, it is recognized that the GbR can establish legal relations and is able to acquire rights and incur obligations of its own.

An OHG is a commercial partnership established by the partners for the purpose of operating a commercial business. The OHG has to be registered in the commercial register and all partners are fully personally liable for the partnership's liabilities. The partnership may, under its firm name, acquire rights, incur obligations and sue or be sued in court.

The KG is a special form of commercial partnership insofar as it has two different kinds of partners. One or more general partner(s) manage and represent the KG and are fully personally liable for the partnership's liabilities. In addition, there are one or more limited partners, whose personal liability is essentially limited to the amount of their fixed capital contribution to the partnership. The legal nature of the KG is identical to that of an OHG.

The GmbH & Co. KG is used often for foreign investments in Germany because it combines the advantages of a corporation with those of a partnership. It is not a distinct legal form, but a combination of a KG and

a GmbH (a corporation, see below). The only general partner of the KG is a GmbH, which very often (but not necessarily) has a 0% interest in the KG. The GmbH itself does often not have any assets besides the minimum capital in cash and does not conduct any business besides being fully personally liable for the KG's debt and managing and representing the KG. The actual investor(s) often hold 100% of the interest in the KG as limited partner(s) as well as 100% in the GmbH. This method allows investor(s) to invest through a fully or partially transparent entity, while at the same time enjoying limited personal liability. The GmbH & Co. KG can be better understood as an alternative to limited liability partnerships (LLPs) or limited liability corporations (LLCs) found in other jurisdictions.

4.2 Corporations

The majority of German corporations are incorporated as a private limited company (GmbH), whereas a stock corporation (AG) is a corporation traditionally (but not necessarily) used for large publicly held enterprises.

A GmbH may be established by one or more shareholders who may be individuals, partnerships or other corporations. The minimum share capital of a GmbH is €25,000. The liability of its shareholders is limited to the amount of their subscription to the share capital. It comes into legal existence in general upon registration with the commercial register. GmbHs must have one or more managing directors who manage and represent the company. Only individuals can be managing directors. The establishment and the subsequent transfer of the shares in a GmbH require the involvement of a German notary, giving rise to notarial fees.

An AG may be established by one or more shareholders and requires a minimum share capital of €50,000. The major distinction between a GmbH and an AG is that the shares of an AG may be publicly traded on a stock exchange. The establishment of an AG requires the involvement of a German notary, whereby the shares can later be transferred by a simple written or oral contract. Unlike the GmbH, the AG has a mandatory two-tier system, consisting of a management board and a supervisory board, which makes this legal form more cumbersome than a GmbH from a day-to-day operations standpoint.

In addition, there is the European Stock Corporation, or Societas Europaea (SE). The SE is an EU-based form of stock corporation that may be used in Germany as well as in all other European countries.

4.3 Foreign business vehicles

To determine whether a foreign business vehicle is treated as a partnership or corporation for German tax purposes, it is necessary to compare the legal features of the foreign business vehicles with German corporations on the one hand, and German partnerships on the other hand. Some foreign business vehicles are always treated as corporations for German tax purposes, because their legal framework makes them very similar to a GmbH or AG. Others are always treated as partnerships for German tax purposes, because their legal framework makes them very similar to an OHG or KG. However, for some foreign business vehicles, notably LLCs from various jurisdictions, it is necessary to conduct an in-depth analysis of the respective corporate and shareholder agreements to determine whether the entity should be treated as a partnership or corporation for German tax purposes. Factors to consider include the transferability of the shares and the capital contribution obligations.

5.0 FINANCING A CORPORATE SUBSIDIARY

5.1 Equity financing

5.1.1 Contributions for shares

Where an equity investment is made into a German corporation in exchange for shares, either when establishing the corporation or by way of a so-called "capital increase," the amount of the investment is either added to the corporation's share capital or partially to the share capital and partially to the capital reserves.

5.1.2 Contributions without taking additional shares

Where an equity contribution is made by a shareholder to a German corporation without the issuance of additional shares, the amount is added to the capital reserves.

5.1.3 Distributions of paid-up capital

Share capital can be returned to shareholders without incurring WHT. A return of share capital will require a corresponding "capital reduction" that involves a Germany notary.

For any other payment to the shareholders, the shareholders cannot choose whether a payment is a return of paid-in capital or a dividend. German tax law provides for a complex mechanism to calculate whether a payment to the shareholders is treated as return of capital or dividend distribution. This mechanism effectively ensures that retained earnings, which are treated as dividend distributions, are always distributed before capital reserves. This mechanism may even lead to a situation where an effective return of paid-in capital, without having incurred any profits, is treated as a dividend distribution. Only payments that are treated a return of capital under these rules do not trigger WHT, whereas dividend distributions are in general subject to a 26.375% WHT.

5.2 Debt financing

5.2.1 Withholding tax implications

Germany does generally not levy WHT on intra-group loans with a fixed interest rate. However, a WHT of 26.375% applies to profit participating loans of any kind. If the loan is secured by German real estate, the lender is subject to German limited tax liability with respect to the interest income, even if the interest rate is fixed and there is no WHT, which requires the lender to file German tax returns. In both cases, Germany's right to tax may be reduced or excluded under applicable double taxation treaties.

If the German borrowing corporation pays interest above the arm's length interest rate to its parent or related companies, the non–arm's length portion of such payment is typically requalified as hidden profit distribution, which is subject to WHT of 26.375%.

5.2.2 Thin capitalization

Although Germany does not have "thin capitalization rules" in the strict sense, Germany has been applying the so-called interest ceiling rules (ICR) since 2008. The ICR applies to all interest expenses of a business, irrespective of the debt-to-equity ratio, whether or not the recipient of the interest payment is a related party.

Under the ICR, the deduction of net interest expenses (i.e., interest expenses less interest income) is generally limited to 30% of the taxable earnings before interest, taxes, regular depreciation and amortization (EBITDA for tax purposes) of a given business. A tax group is treated as one combined business.

However, there are three exemptions from this general rule:

1. **De *minimis* exemption**

The ICR does not apply if the net interest expenses of a given business are below €3 million in a given fiscal year. The €3 million threshold follows an all-or-nothing approach. If a given business has, in a given fiscal year, net interest expenses of €2,999,999.99, these interest expenses are fully deductible. If the same business incurred one more cent in interest expenses, the whole amount of the interest expenses would be subject to ICR, which may lead to the non-deductibility of the whole interest expense, depending on the available EBITDA for tax purposes.

2. **Non-group exemption**

The ICR does not apply if the respective business does not form part of a consolidated group for German generally accepted accounting principles (GAAP), international financial reporting standards (IFRS) or US GAAP purposes.

3. **Escape clause**

The ICR does also not apply if the net indebtedness of the business in question is either lower or not more than two percentage points higher than the net indebtedness of the whole consolidated group.

For the latter two exemptions, counter-exemptions may apply. In particular, based on the amount of interest paid by the respective business or potentially any other debtor in the consolidated group to (direct or indirect) material shareholders (more than 25% shareholding), related parties to those material shareholders or third parties having recourse to either material shareholders or related parties to material shareholders. If a counter-exemption applies, the ICR is applicable although the requirements of the respective exemption are met.

EBITDA for tax purposes from fiscal years in which no exemption applies, and which is unused under the ICR, may be carried forward for up to five years. Interest expenses, which cannot be deducted for tax purposes under the ICR, may be carried forward indefinitely. The interest carry-forward may be forfeited in the case of a direct or indirect change of ownership (more than 50% of the given business) within five years.

5.3 Stamp tax

Germany does not impose a stamp tax in respect of debt or equity financing.

6.0 CORPORATE INCOME TAXATION

Corporations that have their registered seat or their place of management in Germany are subject to CIT with their worldwide income, regardless of the jurisdiction they were incorporated in, as well as to TT with respect of the income generated from German permanent establishments (PEs). CIT and TT may be potentially modified or reduced by applicable double taxation treaties. Neither CIT nor TT are deductible from each other's (or their own) tax base.

6.1 Tax rates

The statutory CIT rate is 15%, plus a solidarity surcharge of 5.5%, resulting in an overall CIT rate of 15.825%. The TT rate depends on the municipality (or municipalities) in which the corporation maintains its PE(s). It typically ranges between 7% and 17%. The combined CIT and TT rate therefore ranges from about 23% to about 33% depending on where in Germany the corporation maintains its PE(s). However, it is important to note that the tax base for TT typically deviates from the tax base for CIT, which is discussed below.

6.2 Capital gains and losses

Capital gains of corporations are generally treated as ordinary income subject to the same taxation. Capital losses, on the other hand, are generally tax-deductible. However, there are certain exemptions from this general rule, most notably for capital gains resulting from the sale of shares in a corporation held by a corporation. These capital gains are, subject to some very specific counter-exemptions, 95% exempt from CIT and TT. Capital losses from such sales are not deductible for tax purposes.

6.3 Branch tax

Germany does not levy a specific branch tax. However, corporations having neither their registered seat nor their place of management in Germany are subject to CIT and TT with the income attributable to their German PE(s). In general, the same CIT and TT rules apply to such income as to the worldwide income of corporations resident in Germany.

6.4 Computation of taxable income

6.4.1 Taxable base

Taxable income is generally determined on the basis of a so-called tax balance sheet, which in turn is based on the statutory accounts according to German GAAP. IFRS and other reporting standards are not accepted as a basis for computing taxable income.

The taxable base for CIT purposes is in general calculated as equity from the tax balance sheet at the end of a given fiscal year, minus equity from the tax balance sheet at the end of the preceding fiscal year, minus contributions (whether hidden or open) in the relevant fiscal year plus distributions (whether hidden or open) in such fiscal year.

6.4.2 Deductions

The calculation method described above automatically takes into account business expenses as tax-deductible. Capital expenses are deductible as regular depreciation or amortization, if the respective asset has a limited useful life, or in the case of extraordinary write-downs, if the fair market value of a given asset has presumably permanently dropped below the asset's book value. Goodwill acquired by way of an asset deal can be depreciated for tax purposes over 15 years.

Besides the ICR described above, there are numerous deduction limitations under German tax law, such as limitations to customer gift expenses, business meals and certain fines.

In general, net operating losses can be carried forward indefinitely or, upon application, carried back for one year. In case of a carry-back, the deduction is limited to €1 million. In the case of a carry-forward, €1 million can be deducted without restriction and any taxable income above €1 million can only be reduced by 60% from loss carry-forwards.

Loss carry-forwards are generally forfeited if, within five years, more than 50% of the shares in the respective corporation are transferred directly or indirectly to one transferee or a group of transferees with aligned interests. There are certain exemptions from this general rule, such as an intra-group exemption, a restructuring exemption and, on application, an exemption if the corporation continues its exact business without any modifications and fulfills certain further criteria. Furthermore, loss carry-forwards do not forfeit to the extent that the corporation has hidden reserves that are fully subject to German taxation in case they are realized.

6.4.3 Taxable base for trade tax purposes

The taxable base for TT purposes is the taxable base for CIT purposes as described above, modified by various add-backs and deductions. The add-backs most notably comprise 25% of the otherwise deductible interest expenses, 5% of the leasing expenses for movable property, 12.5% of the leasing expenses for immovable property and certain other expenses, to the extent such amounts collectively exceed €100,000 in a given year.

Among these deductions are profits from partnerships that were already subject to TT at the partnership level or from partnerships not maintaining a German permanent establishment. Corporations exclusively holding and letting real estate may, under certain further requirements. benefit from the extended TT deduction, where all profits from letting real estate may be deducted from the TT base.

6.5 Income tax reporting

In general, the fiscal year is the calendar year. If a company adopts an accounting period that deviates from the calendar year and obtains the consent of the competent tax office (which can only be denied under very limited circumstances), tax is assessed for the taxable income in the accounting period ending within the respective calendar year.

CIT and TT are payable in quarterly installments during the year, with a final settlement when the respective assessment is issued. The amount of the installments is typically calculated based on the respective taxable income in the preceding fiscal year. Annual tax returns must be filed by July 31 of the year following the end of the tax year. For tax returns prepared by a professional tax advisor, the deadline is extended to the end of February of the subsequent year.

6.6 Tax groups

A parent company and its direct or indirect corporate subsidiaries may form a tax group (Organschaft) for CIT and TT purposes. Under the Organschaft regime, taxable profits and tax losses of the group members are determined on a per-entity basis, but can be set off against each other at the parent entity level.

The requirements for a tax group are complex. The parent company must directly or indirectly hold the majority of the voting rights in the respective subsidiary; the subsidiary must be a corporation with its place of management in Germany and its registered seat within the EU; and the subsidiary must enter into a profit and loss pooling agreement (PLPA) for a period of at least five years. Furthermore, such PLPA must be executed, meaning the subsidiary must annually transfer all profits to the parent company, whereas the parent company must compensate the subsidiary for all losses incurred.

7.0 CROSS-BORDER PAYMENTS

7.1 Transfer pricing

German transfer pricing rules are not included in one integrated section of a German tax code but are included in several provisions in different legislative acts. The rules are substantially in accordance with Organisation for Economic Co-operation and Development (OECD) reports and recommendations. Generally speaking, German transfer pricing rules state that cross-border transactions between related parties must be carried out on terms and conditions that would have been agreed upon by unrelated parties.

Moreover, for transfer pricing purposes, specific documentation obligations apply. On request of a tax auditor, the taxpayer is required to submit the transfer-pricing documentation in most cases within 60 days. Noncompliance with these obligations may result in a fine of up to 10% of the additional taxes resulting from the required adjustments under the arm's length principle.

7.2 Withholding taxes

Germany levies withholding taxes for certain cross-border payments, which are subject to limited tax liability. Among these payments are royalties, remunerations for artistic, athletic and certain other performances carried out in Germany and remunerations for supervisory board members of German companies or similar functions.

The withholding tax rate for royalties and remunerations for artistic, athletic and certain other performances carried out in Germany is generally 15%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 15.825%. The withholding tax rate for remunerations for supervisory board members of German companies or similar functions is generally 30%, plus a solidarity surcharge of 5.5% thereon, resulting in an overall rate of 31.65%. In all cases, the withholding tax may be reduced by applicable double taxation treaties or EU directives.

8.0 PAYROLL TAXES

Payroll tax or wage tax is generally levied by way of withholding. A German employer has to withhold the wage tax from the employee's gross income. The wage tax is treated as a prepayment to the employee's income tax liability. Depending on the circumstances, either the employee files an annual income tax return if they have received employment income that was not subject to withholding tax, or they file an annual income tax return if they incurred high employment-related and tax-deductible expenses that were not taken into account in the withholding procedure. In such cases, the employee's income tax is assessed in an income tax assessment, taking into account all types of taxable income and all tax deductible expenses. The wage tax withheld on behalf of the employee is then deducted from the assessed income tax, resulting in either an additional tax payment or a refund. The employer generally has to file wage tax returns and pay the respective wage tax on a monthly basis.

While wage tax is withheld entirely on behalf of the employee, social security contributions are divided between the employer and the employee. The employer is generally required to bear half of the wage-related social security contributions. As a result, the employer withholds half of the social security contributions from the employee's gross income and is required to contribute the other half of the social security contributions on top of the employee's gross income.

9.0 INDIRECT TAXES

Germany, as an EU member state is part of the European VAT system laid down in the European VAT directive. The European VAT directive is meant to harmonize the VAT systems across Europe. However, in some areas, the VAT directive allows certain choices for member states when transforming the directive into national law. Additionally, the interpretation of certain provisions in the directive is not yet harmonized across Europe. As a result, the VAT system is similar in all EU member states, but national VAT provisions may vary between member states.

VAT is levied on, among other activities, the supply of goods or services by a business and the import of goods. The supplier or service provider typically has to pay VAT to the tax authorities and charges the VAT to the recipient of the goods or services. If the recipient is also a business that uses the received goods or services for goods and services subject to VAT, the recipient can deduct the VAT paid to the supplier or service provider from its own VAT liability, known as input VAT deduction. A negative balance is refunded from the tax authorities. As a result, VAT is generally neutral within the supply or service chain and the end consumer bears the VAT on the end-consumer price.

This neutrality principle does not apply if VAT-exempt services are involved. Numerous VAT exemptions are in place, such as for financial services, insurance-related services and the sale or long-term letting of real estate. For some of these exemptions, the supplier or service provider may, under certain requirements, opt for VAT, which enables the supplier or service provider to deduct the related input VAT.

For some supplies or services and under certain further conditions, VAT is not levied from the supplier or service provider, but from the recipient of the goods or services. This is known as Reverse Charge Procedure and it applies to, among other things, services rendered from a non-German service provider to a German business or intra-community supplies (i.e., when a non-German supplier delivers goods from another EU member state to a German business). The input VAT deduction for the recipient of the goods or services applies generally under the same requirements as without the Reverse Charge Procedure.

The standard VAT rate in Germany currently amounts to 19%. A reduced rate of 7% exists for certain basic goods and services like food, books or hotel accommodations. Business owners generally have to file VAT returns and pay the respective VAT on a monthly basis.

10.0 TAXES IN RELATION TO REAL ESTATE

10.1 Real estate transfer tax

Real estate transfer tax (RETT) is imposed on the transfer of real estate located in Germany, among other activities. The seller and buyer are jointly and severally liable for RETT. However, it is typically agreed in the purchase agreement that the purchaser will bear the full burden of RETT.

RETT also falls due if, within a period of five years, 95% or more of the real estate interest in a partnership holding German real estate is directly or indirectly transferred. The real estate does not have to be the sole or main asset of the partnership for RETT to accrue, it is sufficient for the partnership to hold any German real estate.

Furthermore, RETT falls due on any act or transaction in which either (i) 95% or more of the shares in a corporation holding German real estate are directly or indirectly transferred; or (ii) 95% of the shares in such corporation are directly or indirectly unified in “one hand,” where one hand is either an individual, an entity or a group of entities related in a certain way. Real estate does not have to be the sole or main asset of the corporation for RETT to accrue.

Transactions with no nexus to Germany at all may trigger German RETT if one of the involved companies holds, directly or indirectly, shares in a company owning German real estate. Additionally, there are several other ways for a RETT charge to be triggered in dealing with German real estate, such as the economic unification of 95% or more of the direct or indirect economic interest.

The RETT rate ranges between 3.5% and 6.5% and depends on the federal state in which the relevant real estate is located. The RETT provisions on share deals are currently under heavy political discussion. No official draft bill has been published as of the date of this brochure, but one proposal is to reduce the above-mentioned 95% thresholds to 90% and to extend the five-year period to 10 years. The proposal would also introduce a new RETT-triggering event for corporations holding German real estate, similar to the one already in force for partnerships as described above.

10.2 Municipal real estate tax

Municipal tax authorities levy an annual real estate tax on all immovable property. The tax applies to both property that is held as a business asset and property for private use. The real estate tax rate depends on the type of the real estate and the municipality in which the real estate is located. It is applied to the historic value of the real estate from 1964 in western Germany, or from 1931 in eastern Germany, which is generally much lower than the actual fair market value.

Since the historic value of the real estate does not in most cases reflect the current fair market value of the real estate, it infringes on the constitutional principle of equality, and the German Constitutional Court declared the current real estate tax regime unconstitutional in 2018. The legislature is required to introduce a new real estate tax regime in line with the constitution at the end of 2019, which must enter into force until the end of 2024 at the latest. The old regime is still applied in the interim period.

11.0 OTHER TAXES AND SPECIAL TAX REGIMES

A special tax regime applies in particular to the taxation of investment funds and investors in investment funds. Under this tax regime, the income of the investment fund is either partially taxed at the investment fund level and partially taxed at the investor level, or, under certain circumstances, the investment fund is treated as tax-transparent and the investment fund’s income is fully taxed on the level of the investors.

Germany also levies inheritance and gift tax on transfers of property at death or by gift. Tax rates range from 7% to 50%, depending on the relationship between the deceased or donor and the beneficiary as well as the value of the transferred property. It can also apply if neither the deceased, nor the donor nor the beneficiary have any connection to Germany, but the transferred property is located in or otherwise connected with Germany.

Apart from the above-mentioned taxes, Germany levies more than 30 other types of taxes, which may or may not apply to investments in Germany depending on circumstances. These include insurance tax, energy tax, electricity tax, air traffic tax, church tax, automobile tax, several taxes on different types of alcohol, tobacco tax and even coffee tax.