

Gateway to Germany

Your specialist
for all tax and legal aspects of
doing business in Germany

How is the relief for double taxation calculated, e.g. through the exemption or credit method?

In Germany, the general relief for double taxation is the exemption method (art 15) and the credit method (art 16). However, please consider Germany national anti-abuse regulations.

Is the taxation of director's remuneration different from the taxation of employee's salary?

In principle not, however board members' remuneration is subject to 30% withholding tax.

How is the term "employer" interpreted, formally or economically?

From a German tax perspective the term "employer" has to be interpreted economically.

Which conditions need to be met to be regarded as formal or economic employer?

In principle, the employee has to be integrated into the business of the employer and the salary of the employee has to be paid by the employer economically.

When is the salary borne by the permanent establishment?

See above.

How is the term permanent representative been interpreted in your country (i.e. implementation BEPS action point 7)?

German local rules are stricter than the general agreements in the DTA's. An agent is considered as permanent representative not only if he has the power to conclude contracts in the name of the enterprise but also

- if he operates to allow the conclusion of contracts for the foreign enterprise without substantial modifications
- if he acts as a broker or
- if he has an own warehouse and delivers goods out of that warehouse.

How is an international redundancy payment been treated (allocation)?

In principle, international redundancy payments are subject to tax in the state of work. However, the regulation of a special DTA has to be considered. In addition, please consider Germany national anti-abuse regulations.

How are the 183 days been calculated?

In principle, the calculation period is 12 month. All working days including check-in and check-out days, all days in close link with the work (e.g. Saturday, Sunday, bank holidays, sick) and vacation days in close link with the work. However, the regulations of a special DTA has to be considered.

How is salary allocated, based on working days or do other possibilities exist?

In principle, working days.

Who is considered to be a director according to the treaty definition?

Directors of German companies must be appointed according to the law and has to be registered with the commercial register.

What is considered to be a director's remuneration (split between employee's salary and director's remuneration)?

In principle yes, however in German DTA's not often explicit mentioned.

Other practical issues / case studies (or, in which situations may double or non taxation occur)?

- Different interpretation different interpretation of art 16 in the other country.
- In principle, white income is not possible due to German local anti-abuse regulations.

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