

German Exit Taxation

Kassel, 22 April 2021

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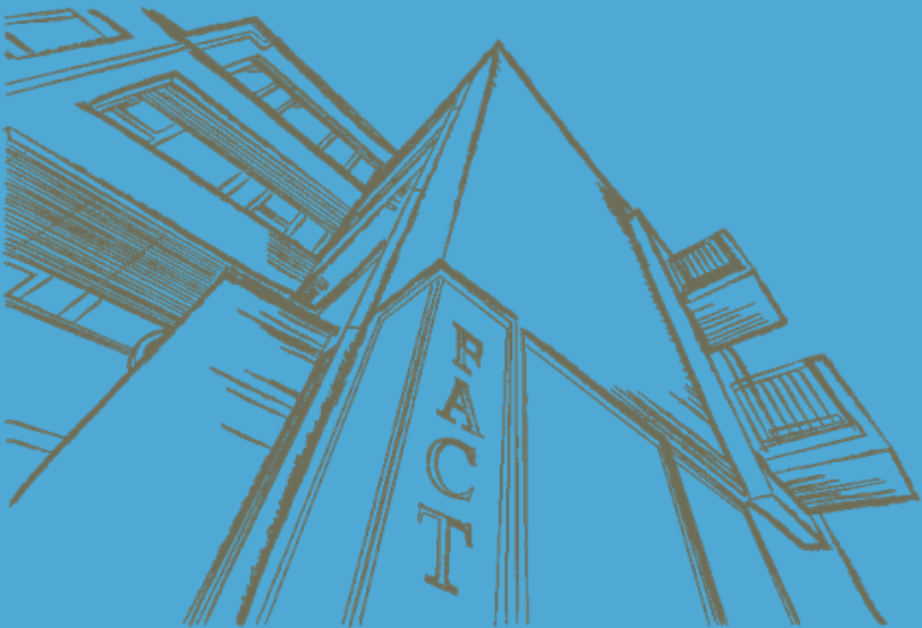
FACT

Agenda

- 1) Exit taxation of individuals
- 2) Exit taxation of companies
- 3) Planned legal reforms

Exit taxation of individuals

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Factual requirements of Sec. 6 FTC



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Factual requirements of Sec. 6 FTC

- » Ending of being at least 10 years subject to unlimited tax liability because of relocation
- » Owning at least 1% of shares in a corporation during the last 5 years
- » Equal to relocation:
 - » Donation of shares / inheritance to individuals not subject to unlimited tax liability
 - » Taxpayer is deemed to be a resident of another state acc. to a DTT
 - » Contribution of the shares to a foreign business or permanent establishment
 - » Any other exclusion or limitation of German taxation of gain from sale of shares



Legal consequences



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Legal consequences

» Taxation of virtual capital gain

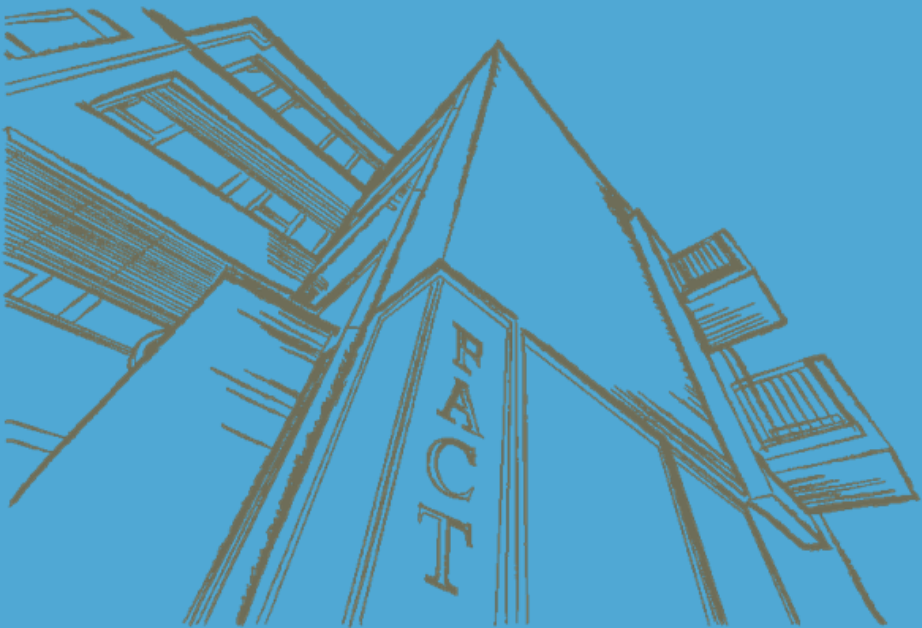
$$\begin{array}{r} \text{Fair value of shares} \\ - \text{Acquisition costs of shares} \\ \hline = \text{Capital gain} \end{array}$$

- » Tax rate: 60% of individual tax rate (e.g. 60% x 42% = approx. 25%)
- » Possible deferral / avoidance of taxation:
 - » Differentiation between EU/EEA and non-EU
 - » EU/EEA:
 - » Deferral = interest-free and without provision of securities
 - » No taxation if returning to Germany
 - » Non-EU/EEA:
 - » Deferral = limited to 5 years (instalments) with provision of securities
 - » No taxation if returning within five years (extendable by another five years if absence for professional reasons)



Exit taxation of companies

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Factual requirements

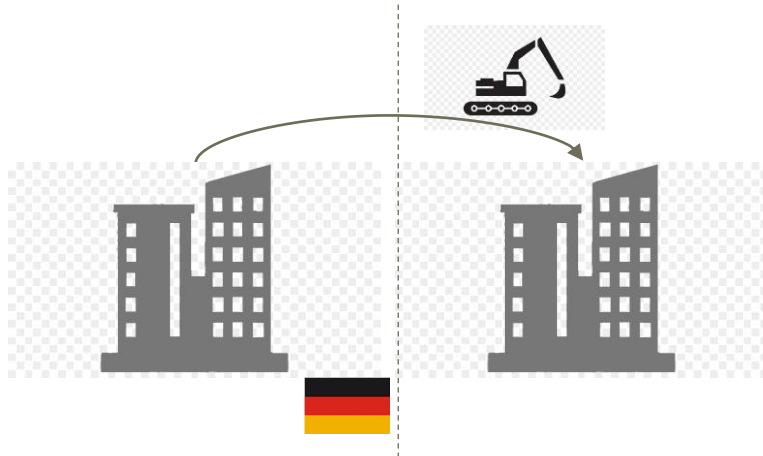


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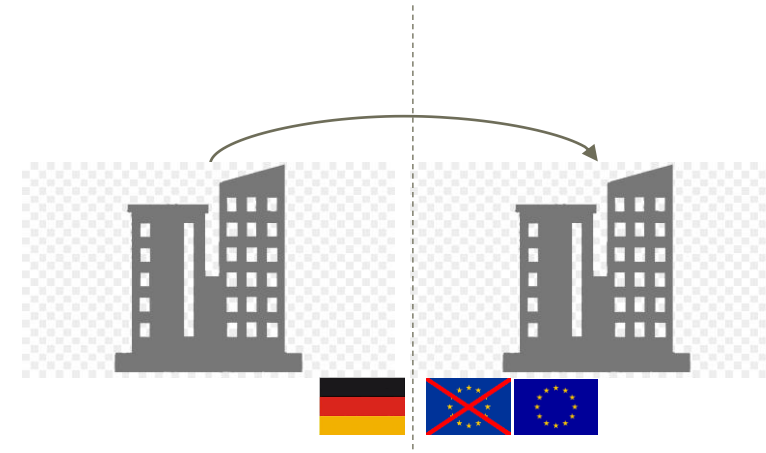
FACT

Factual requirements

- » Exclusion or limitation of German taxation of gains from the sale of an asset
 - » Exclusion: DTT exemption method
 - » Limitation: if foreign taxes have to be credited in Germany or be allowed as a deduction



- » Relocation of a corporation (place of management / registered office) to another country





Legal consequences



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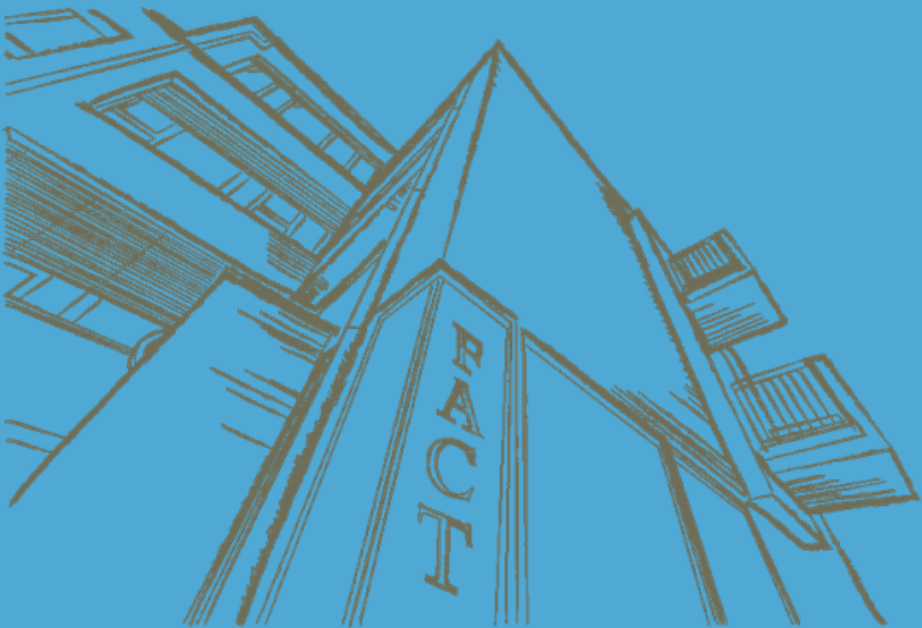
FACT

Legal consequences

- » Exclusion or limitation of German taxation
 - » Exclusion/limitation of German taxation is qualified as a sale of the asset
 - » Sale price = market value
 - » Hidden reserves will be taxed
 - » Sec. 4g ITA applies within EU
 - » Ensures conformity with European law
 - » Adjustment item in the amount of the hidden reserves + reduction in the following 5 years
 - » No taxation if asset returns to Germany within 5 years
- » Relocation of a corporation to a non EU/EEA country 
 - » Company is deemed as dissolved
 - » Sec. 11 CTA applies = taxation of hidden reserves
- » Relocation of a corporation to another EU/EEA country 
 - » Relocation of place of management / registered office (only SE)
 - » PE in Germany; taxation of hidden reserves to the extent of exclusion/limitation of German taxation
 - » Sec. 4g ITA applies
 - » Relocation of registered office (AG/GmbH)
 - » Not possible acc. to German company law; company is deemed as dissolved

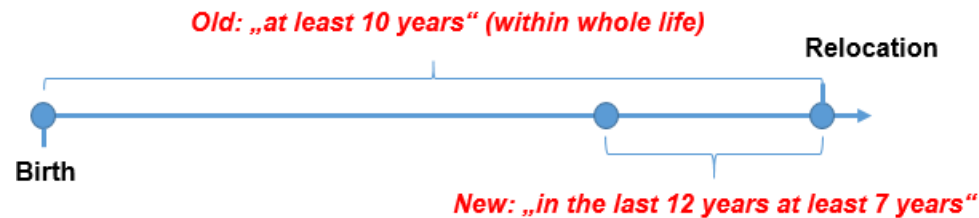
Planned legal reforms

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Exit taxation of individuals

- » Factual requirements
 - » In the last 12 years at least 7 years of unlimited tax liability in Germany



Bundesministerium
der Finanzen

- » Legal consequences
 - » Deferral / avoidance of taxation:
 - » No more distinction between EU/EEA and non-EU
 - » No taxation if returning within 7 years (extendable by another 5 years without restrictions)
 - » Tax amount can be paid in 7 equal rates over the next 7 years (usually only with provision of securities)
 - » No more possibility of unlimited deferral in EU/EEA-cases

Do you have any questions?



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