

Tax obligations of Slovenian companies and their employees when doing business in Germany

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DESLO AHK Deutsch-Slowenische Industrie- und Handelskammer
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GERMAN TAX ADVISORS
YOUR GATEWAY TO GERMANY

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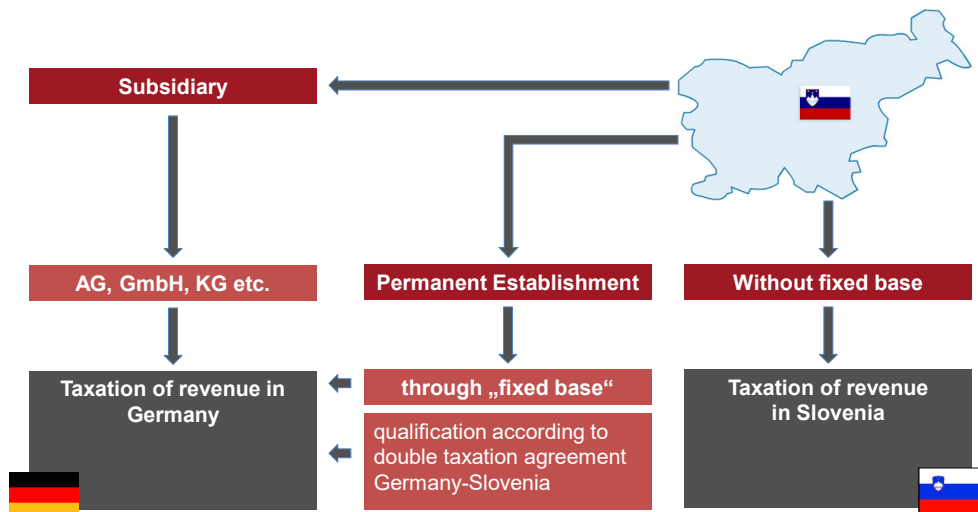
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SETTING UP A PERMANENT ESTABLISHMENT IN GERMANY (1)



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SETTING UP A PERMANENT ESTABLISHMENT IN GERMANY (2)

- + **Art. 5 (1) Double Taxation Agreement Germany-Slovenia:**
„For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.“
- + **Permanent establishments are especially:**
 The place of management, a branch, an office, a factory, a workshop and a mine.
 (Art. 5 (2) DTA)
- + **No permanent establishments are:**
 The use of facilities solely for the purpose of storage, display or delivery of goods; the maintenance of a fixed place of business solely for the purpose of purchasing or of collecting information; the maintenance of a fixed place of business solely for the purpose of carrying on any other activity of a preparatory or auxiliary character.
 (Art. 5 (4) DTA)

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SETTING UP A PERMANENT ESTABLISHMENT IN GERMANY (3)

- + **Dependent representative:** Art. 5 (5) DTA Germany-Slovenia („Representative PE“):
„When a person has the authority to conclude contracts in the name of the enterprise and is exercising habitually, the enterprise shall be deemed to have a permanent establishment in the contractual state.“ (Exemption: storage, representation, independent agent)
 → This determination can also be applied to the managing director (d.o.o.), when working in Germany.
- + **Independent agent:**
No permanent establishment when ordering an independent agent, broker or commission merchant, provided that such persons are acting in the ordinary course of their business. (Art. 5 (6) DTA)
- + No permanent establishment when the **company is controlled** by a company which is resident in the other contracting state. (Art. 5 (7) DTA)

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SETTING UP A PERMANENT ESTABLISHMENT IN GERMANY (4)

- + **Profit determination of the PE:** Determination of the revenue / profit of the German permanent establishment according to OECD-principles (for „simple“ permanent establishments possibly the cost plus method can be implemented).
- + **High formalism:** Documentation of transfer pricing in Germany, high accounting and tax return standards
- + **Taxation in Germany:** Taxation of the PE profit according to German standards / e.g. corporation and business tax for corporations about 26 to 32 % (depending on location).
- + **Please note:** Special provisions for VAT, wage tax etc.

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EXEMPTION FOR BUILDING SITES, CONSTRUCTION OR INSTALLATION PROJECT

- + **Art. 5 (3)** Double taxation agreement Germany-Slovenia:
„A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve month.“
- + **Problem of demarcation:**
An office container at the construction site can be deemed as fixed place of business according to art. 5 (1) DTA.
In this case there would be a permanent establishment, even when doing less than 12 month business in Germany.
- + **Subcontractors:**
If a general contractor orders a subcontractor it can be possible that these services are attributed to the general contractor.
- + **Start and end:**
Construction PEs starting with the arrival of the first employee. Under certain circumstances several construction sites can be „counted “ as one PE. The end is with the last service performed in Germany.

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EXAMPLE: PERMANENT ESTABLISHMENT IN DE (1)



Employee will be sent on
June 1st, 2019 to Germany



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Employee will be sent on
June 1st, 2019 to Germany



- + Permanent establishment in Germany according to the double taxation agreement
- + Slovenian company has to pay taxes in Germany, these taxes were deducted in Slovenia according to art. 23 (2) a) aa) double taxation agreement Germany-Slovenia, however only in the amount of Slovenian taxes on the profit of the German permanent establishment.

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EXAMPLE: PERMANENT ESTABLISHMENT IN DE (2)

- + **Profit determination of PE**
- + According to OECD-principles
- + According to transfer pricing guidelines

Personnel costs:

- Gross wages
- Social security contributions
(employer part; according to Slovenian law)
- SOKA-BAU (German leave fund)

	EUR
Revenue	100.000,00
- Personnel costs	60.000,00
- Other costs	30.000,00
= Profit	10.000,00
Corporation tax 15 %	1.500,00
Solidarity surcharge 5,5 %	82,50
Business tax 16 % (depending on location)	1.600,00
Tax burden in sum 32 %	3.182,50

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FOUNDATION OF A SUBSIDIARY IN GERMANY

- + As alternative to a permanent establishment in Germany many companies founding a subsidiary.
- + Most common company type in Germany as limited company is the „Gesellschaft mit beschränkter Haftung“, short **GmbH**.
- + A German company like a GmbH has to fulfill „complete“ tax obligations in Germany. Therefore VAT, corporation tax and business tax returns have to be filed as well as accounting, payroll and financial statements have to be prepared.
- + **Advantages** of the foundation of a German company:
 - to do business with a local legal form which is well known and accepted in Germany
 - have a good reputation for German employees
 - liability limitation to the assets of the company
- + The foundation of a corporation in Germany has to be conducted by a German notary in German language (bilingual documents are possible) and signed by authorised persons (proxy possible).

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TAX OBLIGATION OF EMPLOYEES IN GERMANY

- + **Cost transfer to or payment of the wages through the permanent establishment:**
Germany has the right of taxation for the respective wages of the employees (wage tax).
→ German permanent establishment leads always into a wage tax obligation!!!
- + **183-days-rule:**
183 days are referring to aggregated 183 days in any twelve month period / if the wage/salary will be paid through a „German“ employer or the permanent establishment, the wages have to be taxed from the beginning in Germany
→ 183-days-rule only for employees working at no permanent establishment
- + **Social insurance:**
Within the EU a social security exemption can be applied for in Slovenia (form A1).

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MINIMUM WAGES IN GERMANY

- + Starting January 1st, 2015 Germany implemented a general minimum wage. 2019 the minimum wage is **EUR 9,19 per hour**.
- + In many industries in Germany a higher minimum wage is implemented by extensive collective agreements (in German: *allgemeinverbindlicher Tarifvertrag*).
- + For the **construction industry** in Germany (west) the following minimum wages have to be paid:
 - For unskilled workers: from March 1st, 2019 EUR 12,20 per hour
 - For skilled workers: from March 1st, 2019 EUR 15,20 per hour
- + When sending employees to Germany, the minimum wages have to be paid. In the calculation of the minimum wages most additional salary components like meal allowance, overtime compensation, premium for e.g. Sunday work, tip, vacation allowance and Christmas bonus can not be included. This means that these payments can only be paid in addition to the minimum wage.

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EXAMPLE: EMPLOYEES IN GERMANY

- + **Posting of workers to Germany**
- + Filing and payment of wage tax, if there is a permanent establishment in Germany
- + Employee assignment law, this means minimum wages and minimum conditions (vacation, working times etc.) have to be fulfilled, otherwise the authorities could set fines
- + If the employees working in the construction industry, fees to SOKA-Bau have to be paid

	EUR
Gross wage (15,20 € x 173 hours)	2.629,60 €
- Wage tax Germany (tax rate variable)	404,50 €
- Church tax (tax rate depends between 8 and 9%)	32,36 €
- Solidarity surcharge Germany 5,5%	22,24 €
= Net wage after taxes	2.170,50 €
- Employees' share of social insurance Slovenia 22,1%	581,14 €
= Net pay to employee	1.589,36 €

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GERMAN CONSTRUCTION WITHHOLDING TAX – EXEMPTION CERTIFICATE

- + **German construction withholding tax** according to §§ 48-48d EStG
 - „Prepayment“ for wage, income and corporation tax
 - Goal: To curb illegal business in Germany

- + A **company** has to deduct the withholding tax for construction from invoices for construction services in Germany which are paid to the subcontractor.
 - Manufacture, maintenance, modification or removal of buildings
 - **Construction withholding tax = 15 %** of the invoice value

- + **Exemption certificate:**

Construction companies can register at the German tax authorities and can apply for an exemption certificate of the German construction withholding tax (in German: Freistellungsbescheinigung).

 - With a valid exemption certificate the contractor has not to withhold any taxes.
 - Please note: The exemption certificate has to be applied for before the start of the construction side in Germany!

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VAT REGISTRATION IN GERMANY (1)

- + Even if there is no permanent establishment in Germany a **VAT registration in Germany** can be obliged. Please note that, unlike to other EU countries, in Germany are no exemption rules or minimis limits for VAT.
- + **The following cases can lead into a VAT registration obligation in Germany:**
 - Consignment stock or warehouse in Germany (also Amazon FBA)
 - Exceeding of the distance selling threshold of EUR 100.000,00 to individuals in Germany
 - Construction services to individuals in Germany
 - Incoming invoices from subcontractors for a construction site in Germany, often with chains of subcontractors in the constructions industry
 - Further cases (e.g. passenger transport with coach in Germany, selling goods at a fair etc.)
- + **The VAT registration leads into the following duties:**
 - Monthly preparation and filing of preliminary VAT returns
 - Preparation and filing of an annual VAT return
 - Possibly filing INTRASTAT declarations
 - Possibly filing EC sales lists

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VAT REGISTRATION IN GERMANY (2)

- + **Please note:**
A VAT registration is necessary before you start the first sale / business in Germany!
- + **For the VAT registration especially the following documents and information is needed:**
 - Name and address of the company
 - Contact details of the company
 - Information about the planned business in Germany
 - Starting date of business in Germany
 - Excerpt from the commercial register
 - Articles of association
 - Tax registration certificate
- + **To prepare the ongoing VAT returns, the following documents have to be provided:**
 - Incoming invoices
 - Outgoing invoices
 - Import VAT documents from German customs
 - Transport documents e.g. in case of intra-community deliveries

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SANCTIONS WHEN VIOLATING TAX OBLIGATIONS

- + **Neglect of tax obligations**
 - Tax evasion / Penalties
 - Reckless understatement of tax / Monetary fine
 - Depending on the extend: many thousand euros are possible
- + **Violation employee assignment law**
 - Up to EUR 30.000,00 monetary fine when violate reporting obligations
 - Up to EUR 500.000,00 monetary fine when minimum wages were not paid (also in the subcontractor chain)
 - Liability of joint and several recognisance when infringe minimum wages
 - Liability of contractors also in a chain of several subcontractors
 - SOKA-Bau authority strictly follows to receive the fees
- + **Please note:**
Penalties and monetary fines can be executed in all EU countries / In Germany penalties up to imprisonment and cancellation of the business licence are possible.

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