

External Tax Relations Act ¹

As on 31 December 2017

The Act was passed as Article 1 of the Act of 8 September 1972, Federal Law Gazette I, p. 1713, by the Bundestag with the consent of the Bundesrat. It entered into force on 13 September 1972 pursuant to Article 8 of that Act.

Part one – International interrelations

Section 1 – Adjustment of income

(1) ¹If a taxpayer's income from international business relations with a related party is reduced as a result of the taxpayer's basing the income assessment on terms, particularly prices (transfer prices), that diverge from those which independent third parties would have agreed under the same or similar circumstances (arm's length principle), the taxpayer's income must, without prejudice to other provisions, be assessed to be as it would be under terms agreed between unrelated third parties. ²A partnership or co-entrepreneurship also constitutes a taxpayer as described in this provision; a partnership or co-entrepreneurship is deemed to be a related party if it fulfils the conditions set out in subsection (2). ³In applying the arm's length principle, it must be assumed that the unrelated third parties have knowledge of all significant circumstances of the business relations and that they are acting according to the principles applied by prudent and conscientious business managers. ⁴If the application of the arm's length principle results in larger adjustments than other provisions, then the larger adjustments must be made in addition to putting into effect the legal implications of the other provisions.

(2) A party is related to the taxpayer if

1. the party holds a direct or indirect stake of at least one quarter in the taxpayer (substantial stake) or is able to exercise a controlling influence directly or indirectly on the taxpayer, or,

¹ This working translation of the *Gesetz über die Besteuerung bei Auslandsbeziehungen (Außensteuergesetz, AStG)* is provided by the Language Service of the Federal Ministry of Finance. Only the German text of this Act is authentic.

conversely, the taxpayer has a substantial stake in the party or is able to exercise a controlling influence directly or indirectly on that party, or

2. a third party has a substantial stake in both the party and the taxpayer or is able to exercise a controlling influence directly or indirectly on both, or
3. the party or the taxpayer, when agreeing on the terms of business relations, is in a position to exercise on the taxpayer or on the party influence that is not based on such business relations, or if one of them has an own interest in realisation of the other's income.

(3) ¹For business relations as described in subsection (1), first sentence, the transfer price must primarily be determined by applying the comparable uncontrolled price method, the resale price method or the cost plus method, provided that arm's length prices can be determined that are fully comparable for these methods, following appropriate adjustments in respect of the business functions performed, the assets used and the opportunities and risks assumed (functional analysis); multiple values of this kind constitute a range. ²If such arm's length prices cannot be determined, partly comparable prices must be used as a basis for a suitable transfer pricing method, following appropriate adjustments. ³If, in cases described in the second sentence above, multiple partly comparable arm's length prices can be determined, the resulting range must be narrowed down. ⁴If, in cases described in the first sentence above, the price used by the taxpayer in the income assessment falls outside the range, or if, in cases described in the second sentence above, it falls outside the narrowed-down range, the median is applicable. ⁵If no partly comparable arm's length prices can be determined, the taxpayer must use the hypothetical arm's length method for the income assessment, with due regard for subsection (1), third sentence. ⁶To this end, the taxpayer must carry out a functional analysis and internal planning calculations to determine the supplier's minimum price and the recipient's maximum price (arm's length range), taking into account capitalisation interest rates that are adequate for the function and risk in question; the arm's length range is based on the respective profit expectations (profit potential). ⁷The income assessment must be based on the price within the arm's length range that is most likely to correspond to the arm's length principle; if no other value is plausibly demonstrated, the mean of the range must be used as a basis. ⁸If the arm's length range used as a basis by the taxpayer is incorrect and a different arm's length range must therefore be assumed, an income adjustment can be dispensed with if the value used by the taxpayer lies within said different arm's length range. ⁹If a business function is relocated, including the corresponding opportunities and risks as well as any assets and other benefits transferred or licensed (business function relocation), and if the fifth sentence above is applicable to the relocated business function because there are no arm's length prices available for the transfer package as a whole

that are at least partly comparable, then the taxpayer must determine the arm's length range on the basis of the transfer package.¹⁰ In cases described in the ninth sentence above, the individual transfer prices determined for all the assets and services concerned, following appropriate adjustments, must be recognised if the taxpayer plausibly demonstrates that no significant intangible assets or benefits were part of the business function relocation, or that the sum of the individual transfer prices applied, measured against the valuation of the transfer package as a whole, conforms to the arm's length principle; if the taxpayer plausibly demonstrates that at least one significant intangible asset is part of the business function relocation, and identifies that asset precisely, then individual transfer prices must be recognised for such elements of the transfer package.¹¹ If, in cases described in the fifth and ninth sentences above, significant intangible assets or benefits are the subject of business relations, and if the subsequent actual trend in profits deviates substantially from the trend in profits on the basis of which the transfer price was set, it must be assumed in the absence of evidence to the contrary that there was uncertainty about the agreed price at the time of the transfer and that independent third parties would have agreed an appropriate adjustment rule.¹² If no such rule was agreed, and if a substantial deviation as described in the eleventh sentence above arises during the first ten years following the transfer, an adjustment must be made under subsection (1), first sentence, by applying an appropriate one-off adjustment amount to the original transfer price as the basis for taxation in the fiscal year following the one in which the deviation arose.

(4) ¹Business relations for the purposes of this provision are

1. individual or multiple connected economic transactions (business transactions) between a taxpayer and a party related to the taxpayer
 - a) that are part of an activity of the taxpayer or the related party to which articles 13, 15, 18 or 21 of the Income Tax Act (*Einkommensteuergesetz*) apply or would have applied if the business transaction had taken place in Germany with the involvement of a taxpayer with unlimited tax liability and a domestic related party, and
 - b) that are not based on a partnership agreement; a partnership agreement is an agreement that directly results in a legal change in the partner status;
2. business transactions between a taxpayer's enterprise and its permanent establishment located in a different country (dealings).

²If a business transaction is not based on an *in personam* agreement, it must be assumed, unless the taxpayer plausibly demonstrates otherwise, that independent prudent and conscientious business

managers would conclude an *in personam* agreement or assert an existing legal position, which must be used as the basis of taxation.

(5) ¹Subsections (1), (3) and (4) are applicable *mutatis mutandis* if, for business relations as described in subsection (4), first sentence, no 2, the conditions, especially the transfer prices used for tax purposes as a basis for allocating income between a domestic enterprise and its foreign permanent establishment or for assessing the income of the domestic permanent establishment of a foreign enterprise, are not consistent with the arm's length principle, and this results in a reduction of the domestic income of a taxpayer with limited tax liability or an increase of the foreign income of a taxpayer with unlimited tax liability. ²When applying the arm's length principle, a permanent establishment must be treated as a separate and independent enterprise, unless the permanent establishment's relationship to the enterprise requires a different type of treatment. ³In order to treat the permanent establishment as a separate and independent enterprise, it is necessary, as a first step, to attribute:

1. the enterprise's business functions that are performed by its staff (staff functions),
2. the enterprise's assets that are needed to perform its designated business functions,
3. the enterprise's opportunities and risks that are assumed on the basis of the business functions performed and assets assigned to it and
4. adequate equity (free capital).

⁴In a second step, the type of business relations between the enterprise and its permanent establishment, together with the transfer prices for these business relations, must be determined on the basis of these attributions. ⁵The first to fourth sentences above are applicable *mutatis mutandis* to permanent representatives. ⁶The possibility of establishing an adjusting item in accordance with section 4g of the Income Tax Act is not restricted. ⁷The first to fourth sentences above are not applicable to business relations between a partner and his or her partnership, or between a co-entrepreneur and his or her co-entrepreneurship, regardless of whether the stake is direct or whether it is indirect as described in section 15 (1), first sentence, no 2, second sentence, of the Income Tax Act; in these cases, subsection (1) applies. ⁸If an agreement on the avoidance of double taxation is applicable and the taxpayer claims that the agreement's provisions contradict the first to seventh sentences above, such agreement takes precedence only insofar as the taxpayer proves that the other country is executing its right of taxation in accordance with the applicable agreement, and that the application of the first to seventh sentences above would therefore result in double taxation.

(6) The Federal Ministry of Finance is authorised to stipulate, by way of ordinances issued with

the consent of the Bundesrat, more detailed provisions on the arm's length principle as described in subsections (1), (3) and (5) and on its uniform application, as well as principles for determining the free capital described in subsection (5), third sentence, no 4.

Part two – Change of residence to low-tax jurisdictions

Section 2 – Income Tax

(1) ¹An individual who, in the last ten years prior to the termination of his or her unlimited tax liability under section 1 subsection (1), first sentence, of the Income Tax Act, was, as a German citizen, subject to unlimited tax liability for a total of at least five years, and who

1. resides in a foreign jurisdiction in which he or she is subject to low taxation, or is not resident in any foreign jurisdiction and
2. has substantial economic interests within the jurisdiction governed by this Act

is liable, for a period of ten years following the year in which his or her unlimited tax liability terminated, to income tax beyond limited tax liability as defined in the Income Tax Act for all income listed in section 2 subsection (1), first sentence, first half-sentence of the Income Tax Act that does not, under unlimited income tax liability, constitute foreign income as defined in section 34d of the Income Tax Act. ²If an individual has income that is derived neither from his or her foreign permanent establishment nor from his or her permanent representative in a foreign state, it is assumed for the purposes of applying this provision that there exists a domestic place of management of the individual to which such income is attributable. ³The first sentence above applies only for tax periods in which the total income subject to limited tax liability under this provision exceeds €16,500.

(2) Low taxation as referred to in subsection (1) no 1 is deemed to exist if

1. the burden of income tax levied by the foreign jurisdiction, under the tax rate schedule and taking tax allowances into account, on an unmarried individual who is resident in that jurisdiction and earns a taxable income of €77,000 is more than a third lower than the burden of German income tax on an individual who is resident within the jurisdiction governed by this Act under otherwise identical circumstances, unless such individual proves that the total of taxes to be paid on his or her income amounts to at least two-thirds of the income tax that he or she would have had to pay if he or she were subject to unlimited tax liability under section 1 subsection (1) of the Income Tax Act, or
2. the burden on the individual from income tax levied by the foreign jurisdiction can be reduced significantly on the basis of taxation that is preferential compared with general taxation, unless

the individual proves that the total of taxes to be paid on his or her income amounts to at least two-thirds of the income tax that he or she would have had to pay if he or she were subject to unlimited tax liability under section 1 subsection (1) of the Income Tax Act.

(3) An individual has substantial economic interests within the jurisdiction governed by this Act as described in subsection (1) no 2 if

1. at the beginning of the tax assessment period, he or she is an entrepreneur or co-entrepreneur of a commercial enterprise located within the jurisdiction governed by this Act, or, where he or she is a limited partner, more than 25 percent of the income described in section 15 (1), first sentence, no 2 of the Income Tax Act is attributable to him or her, or he or she has a stake as described in section 17 (1) of the Income Tax Act in a domestic corporation, or
2. the portion of his or her income during the tax assessment period which, under unlimited income tax liability, does not constitute foreign income as defined in section 34d of the Income Tax Act, amounts to more than 30 percent of his or her total income or exceeds €62,000, or
3. the portion of his or her assets at the beginning of the tax assessment period the proceeds from which would not, under unlimited income tax liability, constitute foreign income as defined in section 34d of the Income Tax Act, amounts to more than 30 percent of his or her total assets or exceeds €154,000.

(4) When applying subsections (1) and (3), commercial enterprises, stakes, income and assets of a foreign company as described in section 5 in which an individual has a stake, under the conditions specified therein, must be taken into account in accordance with the individual's stake.

(5) ¹If subsection (1) is applicable, the tax rate is based on the individual's total income; when determining the tax rate, investment income that is subject to a separate tax rate under section 32d subsection (1) of the Income Tax Act is not considered. ²Section 50 subsection (2) of the Income Tax Act is not applicable to income that is subject to withholding tax on the basis of section 50a of the Income Tax Act. ³Section 43 subsection (5) of the Income Tax Act remains unaffected.

(6) If the individual proves that the additional tax payable on the basis of subsections (1) and (5) results in higher total domestic taxation than would have been the case if he or she had been subject to unlimited tax liability and resident exclusively within the jurisdiction governed by this Act, then the amount in excess is not levied insofar as it exceeds the tax that would result if subsections (1) and (5) were not applied.

Section 3

(rescinded)

Section 4 – Inheritance tax

(1) If section 2 (1), first sentence, was applicable to a decedent or donor at the time when tax liability was incurred, and if the transfer is subject to inheritance tax under section 2 (1) no 3 of the Inheritance Tax Act (*Erbschaftsteuergesetz*), then tax liability beyond the extent there specified applies to all portions of the transfer whose proceeds would not, under unlimited income tax liability, constitute foreign income as defined in section 34d of the Income Tax Act.

(2) Subsection (1) does not apply if it is established that those portions of the transfer that would, under this provision, be subject to tax liability beyond the extent laid down in section 2 (1) no. 3 of the Inheritance Tax Act, are in fact subject to a tax abroad that is comparable to German inheritance tax and amounts to at least 30 percent of the German inheritance tax that would apply to those portions of the transfer if subsection (1) were applicable.

Section 5 – Interposed companies

(1) ¹If individuals who, in the last ten years before the termination of their unlimited tax liability under section 1 (1), first sentence, of the Income Tax Act, were, as German citizens, subject to unlimited income tax liability for a total of at least five years, and who meet the prerequisites set out in section 2 (1), first sentence, no 1 (individual as described in section 2), hold a stake in a foreign company as described in section 7, either alone or jointly with taxpayers with unlimited tax liability, any income for which such individuals would, under unlimited income tax liability, be liable to tax under sections 7, 8 and 14 and which does not constitute foreign income as described in section 34d of the Income Tax Act is attributable to such individuals. ²If the prerequisites set out in the first sentence above are met, the assets of the foreign company whose proceeds would not, under unlimited income tax liability, constitute foreign income as defined in sections 34d of the Income Tax Act are, in cases covered by section 4, attributed to the transfer in accordance with the stake.

(2) The assets on which income attributable to an individual under subsection (1) is based are liable for taxes owed by such individual for such income.

(3) Section 18 applies *mutatis mutandis*.

**Part three – Treatment of stakes as described in section 17 of the Income Tax Act in
the case of a change of residence to another country**

Section 6 – Taxation of capital appreciation

(1) ¹In the case of an individual who was subject to unlimited tax liability under section 1 (1) of the Income Tax Act for a total of at least ten years and whose unlimited tax liability terminates as a result of giving up his or her residence or habitual abode, section 17 of the Income Tax Act is applicable to shares as described in section 17 (1), first sentence, of the Income Tax Act at the time when unlimited tax liability terminates, even if such shares are not sold, provided that the prerequisites set out in that provision are otherwise met for such shares at that time. ²The following are deemed to be equivalent to the termination of unlimited tax liability as described in the first sentence above:

1. the transfer of shares by means of a wholly or partly unremunerated legal transaction *inter vivos* or by means of a transfer by reason of death to persons not subject to unlimited tax liability, or
2. the establishment of a residence or habitual abode or the fulfilment of a similar criterion in a foreign state, if, as a result, the taxpayer is deemed to be a resident of such state under an agreement for the avoidance of double taxation, or
3. the contribution of the shares to a business or permanent establishment of the taxpayer in a foreign state, or
4. the exclusion or limitation of the Federal Republic of Germany's right to tax the gains on the sale of the shares for reasons other than the events described in the first sentence or in nos 1 to 3 above.

³Section 17 (5) of the Income Tax Act and the provisions of the Reorganisation Tax Act (*Umwandlungssteuergesetz*) remain unaffected. ⁴The fair market value of the shares at the material time under the first or second sentence above applies instead of the sale price (section 17 (2) of the Income Tax Act). ⁵Sections 17 and 49 (1) no 2 (e) of the Income Tax Act remain unaffected, with the proviso that the gains taxable under those provisions from the sale of such shares are reduced by the capital appreciation taxed in accordance with the provisions above.

(2) ¹If a taxpayer with unlimited tax liability has acquired shares by means of a wholly or partly unremunerated legal transaction, then any periods during which his or her legal predecessor was subject to unlimited tax liability prior to the transfer of the shares is included when calculating the material period of unlimited tax liability under subsection (1). ²If the shares have been transferred

in this way multiple times in succession, the first sentence above applies *mutatis mutandis* to each such legal predecessor. ³Periods in which the taxpayer or one or more of his or her legal predecessors were subject to unlimited tax liability simultaneously are, in this context, included only once.

(3) ¹If the termination of unlimited tax liability is due to temporary absence, and if the taxpayer becomes subject to unlimited tax liability once again within five years of the termination, then the tax claim set out in subsection (1) does not apply insofar as the shares have not in the meantime been sold, the criteria set out in subsection (1), second sentence, nos 1 or 3 have not been met, and the taxpayer is not, at the time that unlimited tax liability is established, deemed, under an agreement for the avoidance of double taxation, to be resident in a foreign state. ²The tax office responsible under section 19 of the Fiscal Code (*Abgabenordnung*) at the material time set out in subsection (1), first or second sentence, of this Act, may extend this period by up to five years if the taxpayer plausibly demonstrates that his or her absence is primarily due to professional reasons and that his or her intention of returning remains unchanged. ³If, in the case of a transfer by reason of death as set out in subsection (1), second sentence, no 1, the taxpayer's legal successor becomes subject to unlimited tax liability within five years of the tax claim arising under subsection (1), the first sentence above applies *mutatis mutandis*. ⁴If the tax claim is deferred under subsection (5), the first sentence above applies *mutatis mutandis* without the time limit set out therein, provided that

1. the taxpayer or, in the case of subsection (1), second sentence, no 1, his or her legal successor becomes subject to unlimited tax liability, or
2. the Federal Republic of Germany's right to tax the gains on the sale of the shares becomes applicable or is no longer limited due to the occurrence of another event.

(4) ¹Subject to subsection (5), income tax owed under subsection (1) is, upon application and against security, deferred for payment in regular instalments for a period of up to five years from the time when the tax first became due if levying it immediately would cause the taxpayer considerable hardship. ²The deferral is withdrawn insofar as the shares are sold during the deferral period or contributed as constructive equity to a corporation as described in section 17 (1), first sentence, of the Income Tax Act, or if one of the criteria set out in section 17 (4) of the Income Tax Act is met. ³In the cases set out in subsection (3), first and second sentences, the deferral period is governed by the period granted under this provision; no instalments are levied; security may be waived only if the tax claim does not appear to be at risk.

(5) ¹If, in the cases set out in subsection (1), first sentence, the taxpayer is a national of a member

state of the European Union or of another state that is subject to the Agreement on the European Economic Area of 3 January 1994 (OJ L 1, p. 3), last amended by Decision No 91/2007 of the EEA Joint Committee of 6 July 2007 (OJ L 328, p. 40) in the applicable version (contracting state of the EEA Agreement), and if he or she, following termination of unlimited tax liability, is subject to a tax liability in one of these states (host state) that is comparable to German unlimited tax liability, then the tax owed under subsection (1) is deferred without interest or security.²The prerequisite is that administrative assistance and mutual assistance are assured between the Federal Republic of Germany and this state in recovering the tax owed.³The first and second sentences above apply *mutatis mutandis* if

1. in the cases set out in subsection (1), second sentence, no 1, the legal successor of the taxpayer is subject to a tax liability in a member state of the European Union or a contracting state of the EEA Agreement that is comparable to German unlimited tax liability, or
2. in the cases set out in subsection (1), second sentence, no 2, the taxpayer is subject to a tax liability in a member state of the European Union or a contracting state of the EEA Agreement that is comparable to German unlimited tax liability and is a national of one of these states, or
3. in the cases set out in subsection (1), second sentence, no 3, the taxpayer contributes the shares to a business or a permanent establishment in a member state of the European Union or a contracting state of the EEA Agreement, or
4. in the cases set out in subsection (1), second sentence, no 4, the taxpayer holds shares in a corporation that is resident in a member state of the European Union or a contracting state of the EEA Agreement.

⁴The deferral is withdrawn

1. insofar as the taxpayer or his or her legal successor as described in the third sentence, no 1, above sells shares or contributes them as constructive equity to a corporation as described in section 17 (1), first sentence, of the Income Tax Act, or if one of the criteria set out in section 17 (4) of the Income Tax Act is met.
2. insofar as shares are transferred to a person who is not subject to unlimited tax liability or to a tax liability in a member state of the European Union or a contracting state of the EEA Agreement that is comparable to German unlimited tax liability;
3. insofar as the shares are withdrawn or subjected to another operation that, under domestic law, results in the application of a going-concern value or fair market value;
4. if the taxpayer or his or her legal successor as described in the third sentence, no 1, above is no longer liable to tax under the first sentence above as a result of giving up his or her residence or

habitual abode.

⁵A reorganisation process covered by sections 11, 15 or 21 of the Reorganisation Tax Act of 7 December 2006 (Federal Law Gazette I, p. 2782, 2791), in the applicable version, is, upon application, not deemed to be a sale as described in the fourth sentence, no 1, above if the shares received could, in the case of a shareholder with unlimited tax liability who does not hold the shares as part of business assets, be set at the cost of acquisition of the previous shares under sections 13 (2) and 21 (2) of the Reorganisation Tax Act; for the purposes of applying the fourth sentence above as well as subsections (3), (6) and (7), the shares as described in subsection (1) are, in this respect, replaced by the shares received. ⁶If, in the cases set out in the first or third sentence above, the total income excluding the capital appreciation under subsection (1) is negative, then the capital appreciation is not taken into account when applying section 10d of the Income Tax Act. ⁷Insofar as one of the events set out in the fourth sentence above occurs, capital appreciation is taken into account with retroactive effect when applying section 10d of the Income Tax Act, and any notices of determination or notices of assessment issued or amended in application of the sixth sentence above are cancelled or amended; section 175 (1), second sentence, of the Fiscal Code applies *mutatis mutandis*.

(6) ¹If, in the cases set out in subsection (5), fourth sentence, no 1, capital gains as described in section 17 (2) of the Income Tax Act are, at the time of termination of the deferral, lower than the capital appreciation under subsection (1), and if the impairment is not taken into account in income taxation by the host state, then the notice of assessment is cancelled or amended in this respect; section 175 (1), second sentence, of the Fiscal Code applies *mutatis mutandis*. ²This applies only insofar as the taxpayer proves that the impairment is business-related and is not attributable to a measure pertaining to company law, in particular a profit distribution. ³The impairment is taken into account to an extent not exceeding the capital appreciation under subsection (1). ⁴If the impairment is attributable to a profit distribution, and if it is not taken into account in income taxation, any German withholding tax on income from capital which was levied on this profit distribution and which is not eligible for relief is credited against tax owed under subsection (1).

(7) ¹The taxpayer or his or her universal successor must notify the tax office responsible under section 19 of the Fiscal Code at the material time set out in subsection (1) of this Act of the occurrence of any of the criteria set out in subsection (5), fourth sentence, using an officially prescribed form. ²This notification must be submitted within one month of the reportable event; it must be personally signed by the taxpayer. ³In the cases set out in subsection (5), fourth sentence, nos 1 and 2, written proof of the legal transaction must be included with the notification. ⁴The taxpayer must, by the end of 31 January every year, notify the tax office responsible under the first

sentence above in writing of his or her address as of 31 December of the previous calendar year and confirm that the shares continue to be attributable to him or her or, in the case of unremunerated legal succession *inter vivos*, to his or her legal successor.⁵The deferral granted under subsection (5), first sentence, can be withdrawn if the taxpayer fails to meet his or her duty to cooperate under the fourth sentence above.

Part four – Stakes in foreign intermediate companies

Section 7 – Tax liability of domestic shareholders

(1) If taxpayers with unlimited tax liability hold a stake amounting to more than one half in a corporation, association or estate as described in the Corporation Tax Act (*Körperschaftsteuergesetz*) which has neither its place of management nor its registered office within the jurisdiction governed by this Act and which is not exempted from corporation tax liability under section 3 (1) of the Corporation Tax Act (foreign company), then each such taxpayer is liable for tax on the income for which this company is an intermediate company in accordance with the stake attributable to him or her in the company's nominal capital.

(2) ¹Taxpayers with unlimited tax liability are deemed to hold a stake in a foreign company amounting to more than one half, as described in subsection (1), if more than 50 percent of the shares or voting rights in the foreign company are attributable to them, either alone or jointly with individuals as described in section 2, at the end of the company's fiscal year in which it received the income under subsection (1) (relevant fiscal year). ²When applying the preceding sentence, such shares or voting rights are also taken into account for which another company acts as an intermediary, more precisely in the ratio corresponding to the shares or voting rights in the intermediary company in relation to all shares or voting rights in this company; this applies *mutatis mutandis* in cases where several companies act as intermediaries for shares or voting rights. ³If there is no share capital and there are no voting rights, then the ratio of stakes in the company's assets is determinative.

(3) If taxpayers with unlimited tax liability hold a stake directly or via partnerships in a partnership which, in turn, holds a stake in a foreign company as described in subsection (1), then they are deemed to hold a stake in the foreign company.

(4) ¹When applying sections 7 to 14, shares or voting rights are also attributed to a taxpayer with unlimited tax liability if these shares or voting rights are held by a party that follows or must follow the taxpayer's instructions in such a way that the party retains no independent substantial decision-making leeway. ²This prerequisite is not deemed to be met solely by the fact that a taxpayer with unlimited tax liability holds a stake in the party.

(5) If the allocation of the foreign company's profits is not based on the stake in the nominal capital, or if the company has no nominal capital, then the apportionment of income under subsection (1) is based on the determinative criterion for profit allocation.

(6) ¹If a foreign company is an intermediate company for passive income of an investment nature as described in subsection (6a), and if a taxpayer with unlimited tax liability holds a stake of at least 1 percent in the company, then such taxpayer is liable to tax for this passive income to the extent determined in subsection (1), even if the conditions set out in subsection (1) are not otherwise fulfilled. ²The first sentence above is not applicable if the gross proceeds underlying the passive income of an investment nature do not amount to more than 10 percent of the gross proceeds underlying the foreign intermediate company's total passive income, and if the amounts not taken into account for the intermediate company or taxpayer on the basis of this provision do not exceed a total of €80,000. The first sentence above is also applicable in the case of a stake of less than 1 percent if the foreign company exclusively or almost exclusively derives gross proceeds that underlie passive income of an investment nature, unless there is substantial and regular trading on a recognised stock exchange in the foreign company's principal class of shares.

(6a) Passive income of an investment nature is income of a foreign intermediate company (section 8) which originates from holding, administering, maintaining the value or increasing the value of instruments of payment, receivables, securities, stakes (with the exception of income specified in section 8 (1), nos 8 and 9) or similar assets, unless the taxpayer proves that it originated from an activity serving one of the foreign company's own activities falling under section 8 (1), nos 1 to 6, except for activities as described in section 1 (1), no 6 of the Banking Act (*Kreditwesengesetz*) as published on 9 September 1998 (Federal Law Gazette I, p. 2776), which was most recently amended by Article 3 (3) of the Act of 22 August 2002 (Federal Law Gazette I, p. 3387) in the applicable version.

(7) Subsections (1) to (6a) are not applicable if the income for which the foreign company is an intermediate company is subject to the provisions of the Investment Tax Act (*Investmentsteuergesetz*) in the applicable version, unless distributions or accumulated income would, under an agreement for the avoidance of double taxation, be required to be excluded from the domestic tax base.

(8) If taxpayers with unlimited tax liability hold a stake in a foreign company, and if this company holds a stake in a company as described in section 16 of the REIT Act (*REIT-Gesetz*) of 28 May 2007 (Federal Law Gazette I, p. 914) in the applicable version, subsection (1) applies irrespective of the size of the stake in the foreign company, unless there is substantial and regular trading on a recognised stock exchange in the foreign company's principal class of shares.

Section 8 – Income of intermediate companies

(1) A foreign company is an intermediate company with respect to income which is subject to low taxation and which does not originate from:

1. farming and forestry,
2. the manufacture, processing, working or assembly of objects, the generation of energy or the exploration for and extraction of minerals,
3. the operation of credit institutions or insurance companies which maintain a commercially organised operation for their activities, unless the activities are predominately conducted with taxpayers with unlimited tax liability who hold a stake in the foreign company under section 7, or with parties related to such taxpayers as described in section 1 (2),
4. trading, unless

- a) a taxpayer with unlimited tax liability who holds a stake in the foreign company as described in section 7, or a party related to such taxpayer as described in section 1 (2) who is liable to tax within the jurisdiction governed by this Act on income therefrom, procures the right of disposal over the traded goods or merchandise for the foreign company, or
- b) the foreign company procures the right of disposal over the goods or merchandise for such taxpayer or for such related party,

unless the taxpayer proves that the foreign company maintains a commercially organised business operation for such commercial activities and is engaged in general economic activity, and that the foreign company carries out the tasks pertaining to the preparation, conclusion and execution of the activities without the cooperation of such taxpayer or of such related party,

5. services, unless

- a) the foreign company avails itself, for the service, of a taxpayer with unlimited tax liability who holds a stake in it in accordance with section 7, or of a party related to such taxpayer as described in section 1 (2) who is liable to tax within the jurisdiction governed by this Act in respect of income derived from the service contributed by such related party,
or
- b) the foreign company renders the service to such taxpayer or to such related party, unless the taxpayer proves that the foreign company maintains a business operation organised for performing such services that is engaged in general economic activity, and that the foreign company carries out the tasks pertaining to the service without the cooperation of such taxpayer or of such related party,

6. renting and leasing, excluding

- a) the granting of the use of rights, plans, designs, processes, experience and knowledge, unless the taxpayer proves that the foreign company utilises the results of its own research and development which is undertaken without the cooperation of a taxpayer who holds a stake in the company in accordance with section 7, or of a party related to such taxpayer as described in section 1 (2),
- b) the renting or leasing of immovable property, unless the taxpayer proves that the income therefrom would be tax exempt under an agreement for the avoidance of double taxation if the income were received directly by taxpayers with unlimited tax liability who hold a stake in the foreign company as set out in section 7, and
- c) the renting or leasing of movable property, unless the taxpayer proves that the foreign company maintains a commercial renting or leasing business operation that is engaged in general economic activity and performs all the activities attached to such a commercial renting or leasing business without the cooperation of a taxpayer with unlimited tax liability who holds a stake in it as set out in section 7, or of a party related to such taxpayer as described in section 1 (2),

- 7. the borrowing and lending of capital which the taxpayer proves was raised exclusively on foreign capital markets and not from a party related to the taxpayer or to the foreign company as described in section 1 (2) and is transferred to businesses or permanent establishments located outside the jurisdiction governed by this Act which derive their gross proceeds exclusively or almost exclusively from activities falling under numbers 1 to 6 above, or to businesses or permanent establishments located within the jurisdiction governed by this Act,
- 8. profit distributions of corporations,
- 9. the sale of a share in another company as well as from its dissolution or the reduction of its capital, insofar as the taxpayer proves that the capital gains are allocable to assets of the other company which serve the purpose of activities other than those specified in number 6 (b) above, insofar as this is income of a company as described in section 16 of the REIT Act, or activities other than those specified in section 7 (6a); this applies *mutatis mutandis* insofar as the gains are allocable to such assets of a company in which the other company holds a stake; losses from the sale of shares in the other company as well as from its dissolution or the reduction of its capital are taken into account only insofar as the taxpayer proves that they can be traced back to assets which serve the purpose of activities as described in number 6 (b) above, insofar as this is income of a company as described in section 16 of the REIT Act, or of

activities as described in section 7 (6a),

10. reorganisations which, notwithstanding section 1(2) and section 1(4) of the Reorganisation Tax Act, could be carried out at book values; this does not apply insofar as a reorganisation covers a share in a corporation the sale of which would not fulfil the prerequisites set out in number 9 above.

(2) ¹Notwithstanding the provisions of subsection (1), a company that has its place of management or registered office in a member state of the European Union or a contracting state to the EEA Agreement is not deemed to be an intermediate company if taxpayers with unlimited tax liability who hold a stake in the company as described in section 7 (2) or (6) prove that the company pursues an actual economic activity in this state with respect to the income in question.

²As a further prerequisite, information that is necessary for the purposes of taxation must be provided between the Federal Republic of Germany and this state on the basis of the EU Mutual Assistance Directive in accordance with section 2 (2) of the EU Mutual Assistance Act (*EU-Amtshilfegesetz*) or on the basis of a comparable bilateral or multilateral agreement. ³The first sentence above does not apply to a subsidiary's income that is attributable to the company under section 14 if the subsidiary has neither its place of management nor its registered office in a member state of the European Union or a contracting state to the EEA Agreement. ⁴This also applies to passive income that is attributable to a permanent establishment of the company located outside the European Union or outside the contracting states to the EEA Agreement. ⁵The company's income is only attributed to the company's actual economic activity if it is derived from this activity, and this only insofar as the arm's length principle (section 1) has been observed.

(3) ¹Low taxation as described in subsection (1) is deemed to exist if the foreign company's income is subject to income taxation of less than 25 percent without this being the result of an adjustment that takes income from other sources into account. ²The calculation of the tax burden includes any relief that, in the case of a profit distribution by the foreign company, the state or jurisdiction of the foreign company grants the taxpayer with unlimited tax liability or another company in which the taxpayer holds a direct or indirect stake. ³Low taxation as described in subsection (1) is also deemed to exist if income taxation of at least 25 percent is legally owed but not actually levied.

Section 9 – Tax threshold for mixed income

When applying section 7 (1), income with respect to which a foreign company is an intermediate company is not taken into account if the gross proceeds underlying it amounts to no more than 10

percent of the company's total gross proceeds, provided that the amounts not taken into account for a company or a taxpayer under this provision do not exceed a total of €80,000.

Section 10 – Add-back amount (*Hinzurechnungsbetrag*)

(1) ¹Income subject to taxation under section 7 (1) is applied to the taxpayer with unlimited tax liability at the amount resulting after the deduction of taxes levied on the foreign company on this income as well as on the assets underlying this income (add-back amount). ²Insofar as the taxes to be deducted have not yet been paid at the time when income is considered to have been received under subsection (2), they are deducted from taxable income under section 7 (1) only in the years in which they are paid. ³In the cases covered by section 8 (3), second sentence, the taxes are reduced by the amount of the relief there specified that is granted to the taxpayer with unlimited tax liability or to another company in which the taxpayer holds a direct or indirect stake. ⁴There is no add-back if the resulting amount is negative.

(2) ¹The add-back amount is income as described in section 20 (1), no 1 of the Income Tax Act and is deemed to have been received immediately following the end of the foreign company's relevant fiscal year. ²If shares in the foreign company form part of business assets, then the add-back amount forms part of the income from trade and business, from farming and forestry or from self-employment and increases the profits of the business calculated in accordance with the Income Tax Act or Corporation Tax Act for the fiscal year that expires after the end of the foreign company's relevant fiscal year. ³Section 3 no 40, first sentence, d) and section 32d of the Income Tax Act and section 8b (1) of the Corporation Tax Act are not applicable to the add-back amount. ⁴Section 3c (2) of the Income Tax Act applies *mutatis mutandis*.

(3) ¹The income underlying the add-back amount is determined under application of the provisions of German tax law; the provisions of the Investment Tax Act of 15 December 2003 (Federal Law Gazette I, p. 2676, 2724) in the applicable version, is applicable *mutatis mutandis* for the purposes of determining the income from shares in a domestic or foreign investment fund, insofar as that this Act is applicable to investment funds. ²Profit determination in accordance with the principles set out in section 4 (3) of the Income Tax Act is deemed to be equivalent to profit determination under section 4 (1) or section 5 of the Income Tax Act. ³If there are several stakeholders, the choice can only be made uniformly for the entire company. ⁴Tax benefits that are linked to unlimited tax liability or to the existence of a domestic business or a domestic permanent establishment and the provisions of sections 4h and 4j of the Income Tax Act as well as section 8a and section 8b (1) and (2) of the Corporation Tax Act are not taken into account; this also applies to the provisions of the Reorganisation Tax Act insofar as income from a reorganisation under section

8 (1) no 10 is to be added back. ⁵Losses incurred with respect to income for which the foreign company is an intermediate company may be deducted under application of section 10d of the Income Tax Act, insofar as they exceed the amounts not to be taken into account under section 9. ⁶The loss as described in the fifth sentence above is increased insofar as the amount resulting from the deduction of taxes under subsection (1) is negative.

(3) When determining income for which the foreign company is an intermediate company, only such business expenses may be deducted as have a direct economic connection with this income.

(4) to (7) (rescinded)

Section 11 – Capital gains

(1) Gains derived by the foreign company from the sale of shares in another foreign company or in a company as described in section 16 of the REIT Act as well as from its dissolution or the reduction of its capital, and in respect of which the foreign company is an intermediate company, are excluded from the add-back amount insofar as the income of the other company or its subordinate company from activities as described in section 7 (6a) has been subject, as the add-back amount, to income tax or corporation tax for the same calendar year or fiscal year or for the preceding seven calendar years or fiscal years (section 10 (2)), insofar as there was no distribution of this income, and insofar as the taxpayer proves this.

(2) (rescinded)

(3) (rescinded)

Section 12 – Tax credit

(1) ¹Upon application by the taxpayer, taxes deductible under section 10 (1) are credited against the income tax or corporation tax of the taxpayer that is levied on the add-back amount. ²In this case, the add-back amount is increased by these taxes.

(2) When crediting taxes, the provisions of section 34c (1) of the Income Tax Act and section 26 (1) and (6) of the Corporation Tax Act are applicable *mutatis mutandis*.

(3) ¹Taxes on profit distributions exempted under section 3 no 41 of the Income tax Act are, upon application, credited or deducted as an add-back amount in the assessment period of the accrual of the underlying passive income in application of section 34c (1) and (2) of the Income Tax Act and of section 26 (1) and (6) of the Corporation Tax Act. ²This applies even if the tax assessment notice for

this assessment period is already final and binding.

Section 13(rescinded)

Section 14 – Subordinate intermediate companies

(1) ¹If a foreign company, either alone or jointly with taxpayers with unlimited tax liability, holds a stake in another foreign company (subsidiary) in accordance with section 7, then for the purposes of applying sections 7 to 12, the subsidiary's income which has been subject to lower taxation is attributed to the foreign company in proportion with its stake in the subsidiary's nominal capital, unless it can be shown that the subsidiary derived the income from activities or assets falling under section 8 (1), nos 1 to 7, or that the income is income as described in section 8 (1), nos 8 to 10, or that the income originates from activities that serve the purpose of a foreign company's own activities falling under section 8 (1), nos 1 to 6. ²Activities of the subsidiary are deemed to serve the purpose of the foreign company's own activities falling under section 8 (1), nos 1 to 6 only if they are directly related to these activities and the income is not income as described in section 7 (6a).

(2) If a foreign company in accordance with section 7 holds a stake in a company as described in section 16 of the REIT Act (subsidiary), then subsection (1) applies *mutatis mutandis*, also with respect to section 8 (3).

(3) Subsection (1) is applicable *mutatis mutandis* if the subsidiary has further subordinate foreign companies.

(4) (rescinded)

Part five – Family foundations

Section 15 – Tax liability of founders, beneficiaries and remaindermen

(1) ¹Assets and income of a family foundation that has its place of management and its registered office outside the jurisdiction governed by this Act (foreign family foundation) are attributed to the founder, if he or she is subject to unlimited tax liability, or otherwise to taxpayers with unlimited tax liability who are entitled to benefits or remainder in accordance with their share. ²This does not apply to inheritance tax.

(2) Family foundations are foundations where the founder, his or her relatives and their descendants are entitled to more than half of the benefits or remainder.

(3) If an entrepreneur, as part of his or her enterprise or as a co-entrepreneur, or a corporation, an association or estate sets up a foundation that has its place of management and its registered office

outside the jurisdiction governed by this Act, then this foundation is treated as a family foundation if the founder, his or her partners, dependent companies, members, board members, executives and relatives of such persons are entitled to more than half of the benefits or remainder.

(4) Other special-purpose funds, estates, and associations with or without legal capacity are treated as equivalent to foundations.

(5) ¹Section 12 (1) and (2) are applicable *mutatis mutandis*. ²Section 12 (3) applies *mutatis mutandis* to taxes on the allocations exempted under subsection (11).

(6) If a family foundation has its place of management or its registered office in a member state of the European Union or a contracting state to the EEA Agreement, subsection (1) is not applicable if

1. it is proved that the foundation's assets have actually and legally been withdrawn from the right of disposal of the persons specified in subsections (2) and (3) and
2. information that is necessary for the purposes of taxation is provided between the Federal Republic of Germany and the state in which the foundation has its place of management or its registered office on the basis of the EU Mutual Assistance Directive in accordance with section 2 (2) of the EU Mutual Assistance Act or on the basis of a comparable bilateral or multilateral agreement.

(7) ¹The foundation's income under subsection (1) is determined in application of the provisions of the Corporation Tax Act and the Income Tax Act. ²When determining the income, section 10 (3) applies *mutatis mutandis*. ³There is no attribution if the resulting amount is negative.

(8) ¹Income attributable to the founder or to the person entitled to benefits or remainder is deemed to be income as described in section 20 (1) no 9 of the Income Tax Act in the case of taxpayers who do not determine their income in accordance with the Corporation Tax Act. ²Section 20 (8) of the Income Tax Act remains unaffected; section 3 no 40, first sentence, d) and section 32d of the Income Tax Act are applicable only insofar as these provisions would be applicable if the persons described in subsection (1) received the attributable income directly. ³Insofar as founders or persons entitled to benefits or remainder determine their income in accordance with the Corporation Tax Act, section 8 (2) of the Corporation Tax Act remains unaffected; section 8b (1) and (2) of the Corporation Tax Act are applicable only insofar as this provision would be applicable if the persons described in subsection (1) received the attributable income directly.

(9) ¹If a foreign family foundation or another foundation as described in subsection (10) holds a

stake in a corporation, association or estate as defined in the Corporation Tax Act which has neither its place of management nor its registered office within the jurisdiction governed by this Act and which is not exempted from corporate tax liability under section 3 (1) of the Corporation Tax Act (foreign company), then the income of such company is deemed to be income of the family foundation in accordance with the foundation's stake in the company's nominal capital.

²Subsection (1) is not applicable to profit distributions of the foreign company that are demonstrably based on amounts already attributed in accordance with the first sentence.

(10) ¹Assets and income of another foreign foundation that does not fulfil the conditions set out in subsection (6), first sentence, is attributed to a foreign family foundation in accordance with its stake if the foreign family foundation is directly or indirectly entitled to more than half of the benefits or remainder either alone or jointly with the persons specified in subsections (2) and (3). ²Subsection (1) is not applicable to allocations of the foreign foundation that are demonstrably based on amounts already attributed in accordance with the first sentence.

(11) In the case of persons described in subsection (1), allocations of the foreign family foundation are not subject to tax insofar as the income on which the allocations are based has demonstrably already been attributed in accordance with the first sentence.

Part six – Investigations and procedures

Section 16 – Taxpayer's duty to cooperate

(1) If a taxpayer, invoking business relations with a foreign company or with a person or partnership that is resident abroad and is not taxed, or only insubstantially taxed, with respect to income associated with business relations with the taxpayer, claims deduction of debts or other burdens or of business expenses or work-related expenses, then the creditor or recipient is deemed to have been precisely identified as described in section 160 of the Fiscal Code only once the taxpayer has disclosed all relations that exist or have existed either directly or indirectly between the taxpayer and such company, person or partnership.

(2) At the request of the tax office, the taxpayer must submit an affidavit under section 95 of the Fiscal Code regarding the accuracy and completeness of information provided and regarding any claim that the taxpayer is unaware of relevant facts.

Section 17 – Ascertainment of circumstances

(1) (1) Taxpayers must, with regard to themselves and in cooperation with others, provide the information necessary for the application of sections 5 and 7 to 15. In particular, upon request,

1. any business relations that exist between the company and a taxpayer with unlimited tax liability who holds such a stake or a related party to such taxpayer as described in section 1 (2) must be disclosed,
 2. any documents that are relevant for the application of sections 7 to 14, including balance sheets and income statements, must be submitted. ²Upon request, these documents must be submitted together with the audit certificate of an official recognised auditing agency or a comparable institution prescribed or customary in the state in which the company has its place of management or registered office.
- (2) If an estimate is conducted under section 162 of the Fiscal Code in order to determine the income with respect to which a foreign company is an intermediate company, then, in the absence of other suitable indications, at least 20 percent of the fair market value of the stakes held by the taxpayer with unlimited tax liability is taken as the basis for the estimate; any interest and licence fees that the company pays to the taxpayer with unlimited tax liability for economic goods provided are deducted.

Section 18 – Separate determination of tax bases

- (1) ¹The tax bases for the application of sections 7 to 14 of this Act and of section 3 no 41 of the Income Tax Act are determined separately. ²If multiple taxpayers with unlimited tax liability hold stakes in a foreign company, then the separate determination is undertaken uniformly with regard to these taxpayers; this includes determining how tax bases are apportioned amongst the individual stakeholders. ³The provisions of the Fiscal Code, with the exception of section 180 (3), and of the Code of Procedure for Fiscal Courts (*Finanzgerichtsordnung*) with regard to the separate determination of tax bases are applicable *mutatis mutandis*.
- (2) ¹The tax office that has local jurisdiction for determining the income derived from the stake held by the taxpayer with unlimited tax liability also has jurisdiction for the separate determination. ²If separate determination must be undertaken uniformly with regard to multiple taxpayers, then jurisdiction lies with the tax office that, under the first sentence above, has jurisdiction for the taxpayer to whom the highest stake in the foreign company is attributable. ³If it is not possible to determine the tax office that has jurisdiction under the first and second sentences above, then jurisdiction lies with the tax office that first deals with the matter.
- (3) ¹Each taxpayer with unlimited tax liability and each taxpayer with extended limited tax liability who holds a stake in the foreign company must submit a return for separate determination; this also applies in the case of a claim under section 8 (2) that no add-back is to be carried out. ²This obligation can be met by filing a joint return. ³The return must be signed personally by the taxpayer

or the persons designated in section 34 of the Fiscal Code.

(4) Subsections (1) to (3) apply *mutatis mutandis* to income and assets as described in section 15.

Part seven – Final provisions

Section 19 (rescinded)

Section 20 – Provisions on the application of agreements for the avoidance of double taxation

(1) The provisions of sections 7 to 18 and of subsections (2) and (3) below are not affected by agreements for the avoidance of double taxation.

(2) ¹In the case of income that arises in the foreign permanent establishment of a taxpayer with unlimited tax liability and which would, notwithstanding section 8 (2), be taxable as passive income if the permanent establishment were a foreign company, double taxation is avoided not by exemption but by crediting foreign taxes levied on such income. ²This does not apply insofar as the income arising in the foreign permanent establishment would be taxable as passive income under section 8 (8) no 5 (a).

(3) (rescinded)

Section 21 – Application provisions

(1) Where not otherwise provided for in the following, the provisions of this Act are applicable as follows:

1. in the case of income tax and corporation tax, starting with the 1972 assessment period;
2. in the case of trade tax, starting with the 1972 collection period;
3. (rescinded)
4. in the case of inheritance tax, with respect to transfers for which tax liability arose after this Act entered into force.

(2) The application of sections 2 to 5 is not affected by the fact that the individual's unlimited tax liability ended prior to 1 January 1972.

(3) Insofar as, in application of section 10 (3), business assets are evaluated for the first time, they are set at the values that would have resulted if the provisions of German tax law had been applied following the business assets' acquisition by the foreign company.

(4) Section 13 (2) no 2 is applicable for the first time

1. in the case of corporation tax, to the 1984 tax assessment period;
2. in the case of trade tax, to the 1984 collection period.

Section 1 (4), section 13 (1), first sentence, no 1 b), and second sentence in the version of Article 17 of the Act of 25 February 1992 (Federal Law Gazette I, p. 297) are applicable for the first time

1. in the case of income tax and corporation tax, to the 1992 assessment period;
2. in the case of trade tax, to the 1992 collection period.

(5) Section 18 (3) is also applicable to tax assessment and collection periods prior to 1985 if returns have not yet been filed.

(6) ¹In applying sections 2 to 6 to the period following 31 December 1990, unlimited tax liability under section 1 (1), first sentence, of the Income Tax Act is equivalent to unlimited tax liability under section 1 (1) of the Income Tax Act of the German Democratic Republic (*Einkommensteuergesetz der Deutschen Demokratischen Republik*) in the version of 18 September 1970 (special print no 670 of the Law Gazette of the GDR). ²The application of sections 2 to 5 is not affected by the fact that the individuals' unlimited tax liability ended prior to 1 January 1991.

(7) ¹ Section 7 (6), section 10 (6), section 11 (4), first sentence, section 14 (4), fifth sentence, and section 20 (2) in conjunction with section 10 (6) in the version of Article 12 of the Act of 21 December 1993 (Federal Law Gazette I, p. 2310) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. with the exception of section 20 (2) and (3), in the case of trade tax for which the portion of the add-back amount on which income of an investment nature as described in section 10 (6), third sentence, is based, to the collection period

for which passive income of an investment nature as described in section 10 (6), third sentence, is added that arose in a fiscal year of the intermediate company or permanent establishment beginning prior to 31 December 1993. ²Section 6 (1) in the version of Article 5 of the Act of 20 December 2001 (Federal Law Gazette I, p. 3858) is applicable for the first time where, at the time of termination of unlimited tax liability, section 3 no 40 c) of the Income Tax Act would apply to sales as described in section 17 of the Income Tax Act. ³Section 7 (6) in the version of Article 5 of the Act of 20 December 2001 (Federal Law Gazette I, p. 3858) is applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,

2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company beginning after 15 August 2001. ⁴Section 12 (2) in the version of Article 12 of the Act of 23 October 2000 (Federal Law Gazette I, p. 1433) as well as section 7 (7), section 8 (1) nos 8 and 9 and (3), section 9, section 10 (2), (3), (6) and (7), section 11, section 12 (1), section 14, and section 20 (2) in the version Article 5 of the Act of 20 December 2001 (Federal Law Gazette I, p. 3858) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2000. ⁵Section 12 (3), section 18 (1) in the version of Article 5 of the Act of 20 December 2001 (Federal Law Gazette I, p. 3858) is applicable for the first time where section 3 no 41 of the Income Tax Act in the version of Article 1 of the Act of 20 December 2001 (Federal Law Gazette I, p. 3858) is applicable to profit distributions. ⁶Section 8 (2) in the version of Article 6 of the Act of 6 September 1976 (Federal Law Gazette I, p. 2641), section 13 in the version of Article 17 of the Act of 25 February 1992 (Federal Law Gazette I, p. 297) are applicable for the last time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company beginning before 1 January 2001. ⁷Section 11 in the version of Article 12 of the Act of 21 December 1993 (Federal Law Gazette I, p. 2310) is not applicable to profit distributions of the intermediate company or to gains on the sale of shares in the intermediate company if section 8b (1) or (2) of the Corporation Tax Act in the version of Article 3 of the Act of 23 October 2000 (Federal Law Gazette I, p. 1433) or section 3 no 41 of the Income Tax Act in the version of Article 1 of the Act of 20 December 2001 (Federal Law Gazette I, p. 3858) apply to the distributions or to the gains on the sale.

(8) Section 6 (3) no 4 in the version of the Act of 21 December 1993 (Federal Law Gazette I, p. 2310) is applicable for the first time to incorporations undertaken after 31 December 1991, and for the last time to incorporations undertaken before 1 January 1999.

(9) ¹Section 8 (1) no 7 and section 10 (3), sixth sentence in the version of Article 7 of the Act of 13 September 1993 (Federal Law Gazette I, p. 1569) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company beginning after 31 December 1991. ²Section 10 (3), first sentence, in the version of this Act is applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company beginning after 31 December 1993.

(10) ¹Section 2 (1), second sentence, (2) no 1 and (3) nos 2 and 3 are applicable in the version of Article 9 of the Act of 19 December 2000 (Federal Law Gazette I, p. 1790) for the first time to the 2002 assessment period. ²Section 7 (6), second sentence, section 9, and section 10 (6), first sentence, in the version of Article 9 of the Act of 19 December 2000 (Federal Law Gazette I, p. 1790) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company beginning after 31 December 2001.

(11) ¹Section 1 (4) in the version of Article 11 of the Act of 16 May 2003 (Federal Law Gazette I, p. 660) is applicable for the first time to the 2003 assessment period. ²Section 7 (6) and (6a), section 8 (1) no 9, sections 10, 11, 14 and 20 (2) in the version of Article 11 of the Act of 16 May 2003 (Federal Law Gazette I, p. 660), section 7 (7), section 8 (1) no 4 and section 14 (1) in the version of Article 5 of the Act of 22 December 2003 (Federal Law Gazette I, p. 2840) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added, or was incurred in a permanent establishment, that arose in a fiscal year of an intermediate company or permanent establishment beginning after 31 December 2002.

(12) Section 10 (3) in the version applicable on 1 January 2001, section 7 (7) in the version of Article 11 of the Act of 9 December 2004 (Federal Law Gazette I, p. 3310) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,

2. in the case of trade tax, to the collection period,

for which passive income is added, or was incurred in a permanent establishment, that arose in a fiscal year of an intermediate company or permanent establishment beginning after 31 December 2003.

(13) ¹Section 6 (1) in the version of Article 7 of the Act of 7 December 2006 (Federal Law Gazette I, p. 2782) is applicable for the first time to the 2007 assessment period. ²Section 6 (2) to (7) in the version of the Act of 7 December 2006 (Federal Law Gazette I, p. 2782) is applicable in all cases in which the assessment of income tax is not yet final and binding.

(14) Section 8 (1) no 10 and section 10 (3), fourth sentence, in the version of Article 7 of the Act of 7 December 2006 (Federal Law Gazette I, p. 2782) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,

2. in the case of trade tax, to the collection period,

for which passive income is added, or was incurred in a permanent establishment, that arose in a fiscal year of an intermediate company or permanent establishment beginning after 31 December 2005.

(15) Section 7 (8), section 8 (1), no 9, section 11 (1) and section 14 (2) in the version of Article 3 of the Act of 28 May 2007 (Federal Law Gazette I, p. 914) are applicable for the first time

1. in the case of income and corporation tax, to the assessment period, and

2. in the case of trade tax, to the collection period

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2006.

(16) Section 1 (1), third to eighth sentences and eleventh to thirteenth sentences and (4) in the version of Article 7 of the Act of 14 August 2007 (Federal Law Gazette I, p. 1912) and section 1 (3), ninth and tenth sentences, in the version of Article 11 of the Act of 8 April 2010 (Federal Law Gazette I, p. 386) are applicable for the first time to the 2008 assessment period.

(17) ¹ Section 7 (6), second sentence, section 8 (2) and (3), sections 9 and 10 (2), third sentence, section 18 (3), first sentence, and section 20 (2) in the version of Article 24 of the Act of 20 December 2007 (Federal Law Gazette I, p. 3150) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,

2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2007. ²Section 8 (1) no 9 in the version of Article 24 of the Act of 20 December 2007 (Federal Law Gazette I, p. 3150) is applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2006. ³Section 12 (3), first sentence, in the version of Article 24 of the Act of 20 December 2007 (Federal Law Gazette I, p. 3150) is applicable for the first time to periods to which section 12 (3) in the version applicable on 25 December 2001 is applicable for the first time. ⁴Section 14 (1), first sentence, in the version of Article 24 of the Act of 20 December 2007 (Federal Law Gazette I, p. 3150) is applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2005. ⁵Section 18 (4) in the version applicable on 29 December 2007 is, in the case of income tax and corporation tax, applicable for the first time to the 2008 assessment period.

(18) ¹Section 2 (1) and (5) and section 15 (6) in the version of Article 9 of the Act of 19 December 2008 (Federal Law Gazette I, p. 2794) are applicable for the first time to the 2009 assessment period.

²Section 15 (7) in the version of Article 9 of the Act of 19 December 2008 (Federal Law Gazette I, p. 2794) is applicable in all cases in which the assessment of income tax and corporation tax is not yet final and binding.

(19) ¹Section 8 (3) and section 10 (1), third sentence, in the version of Article 7 of the Act of 8 December 2010 (Federal Law Gazette I, p. 1768) are applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade taxes, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2010. ²Section 20 (2) in the version of Article 7 of the Act of 8 December 2010 (Federal Law Gazette I, p. 1768) is applicable in all cases in which the assessment of income tax and corporation tax is not yet final and binding.

(20) ¹Section 1 (1), second sentence, first half-sentence, (3) and (6) in the version of Article 6 of

the Act of 26 June 2013 (Federal Law Gazette I, p. 1809) are applicable for the first time to the 2013 assessment period. ²Section 1 (1), second sentence, second half-sentence in the version of Article 6 of the Act of 26 June 2013 (Federal Law Gazette I, p. 1809) is applicable to all assessments that are not yet final and binding. ³Section 1 (4) and (5) in the version of Article 6 of the Act of 26 June 2013 (Federal Law Gazette I, p. 1809) is applicable for the first time to fiscal years starting after 31 December 2012.

(21) ¹Section 2 (5) in the version of Article 6 of the Act of 26 June 2013 (Federal Law Gazette I, p. 1809) is applicable for the first time to the 2013 assessment period. ²Upon application, section 2 (5), first and third sentences in the version of Article 6 of the Act of 26 June 2013 (Federal Law Gazette I, p. 1809) is applicable to assessment periods prior to 2013; any tax assessments already issued are cancelled or amended. ³Section 8 (2) in the version of Article 6 of the Act of 26 June 2013 (Federal Law Gazette I, p. 1809) is applicable for the first time

1. in the case of income tax and corporation tax, to the assessment period,
2. in the case of trade tax, to the collection period,

for which passive income is added that arose in a fiscal year of the intermediate company or permanent establishment beginning after 31 December 2012. ⁴Section 15 (1) and (5) to (11) as well as section 18 (4) in the version of Article 6 of the Act of 26 June 2013 (Federal Law Gazette I, p. 1809) are, in the case of income tax and corporation tax, applicable for the first time to the 2013 assessment period.

(22) Section 1 (4) in the version applicable on 31 December 2014 is applicable for the first time to the 2015 assessment period.

(23) Section 6 (5), third sentence, in the version applicable on 31 December 2014, is applicable to all cases in which the tax owed has not yet been paid.

Section 22 – Amendments to this Act

The Federal Ministry of Finance may publish the wording of this Act in the applicable version in the Federal Law Gazette.