Law on Taxation in International Relations (Foreign Tax Law)

§ 6 Taxation of Capital Gains

(1) Subject to the provisions of the Income Tax Act, the Corporation Tax Act and the Reorganization Tax Act, the sale of shares within the meaning of Section 17 paragraph 1 sentence 1 of the Income Tax Act at fair market value is equivalent to the sale of shares by persons with unlimited tax liability.

1.
the termination of unlimited tax liability as a result of abandoning one's residence or habitual abode,

2.
the gratuitous transfer to a person who is not subject to unlimited tax liability, as well as,

3.
subject to paragraphs 1 and 2, the exclusion or limitation of the Federal Republic of Germany's right to tax the profit from the sale of the shares.

The sale within the meaning of sentence 1 takes place in the case of

1.
Paragraph 1, number 1, at the time of termination of unlimited tax liability,

2.
Paragraph 1, number 2, at the time of transfer,

3.
Paragraph 1, number 3, immediately before the point in time at which the exclusion or restriction of the right to tax takes effect.

In the case of paragraph 1, the shares are deemed to have been acquired by the taxpayer or, in the case of a transfer without consideration, by his legal successor, insofar as the tax attributable to the capital gain has been paid; otherwise, they continue to be deemed to have been acquired at the original acquisition costs.

(2) Persons subject to unlimited tax liability within the meaning of paragraph 1 are natural persons who, within the twelve years preceding the circumstances specified in paragraph 1, sentence 1, numbers 1 to 3, have been subject to unlimited tax liability for a total of at least seven years within the meaning of Section 1, paragraph 1 of the Income Tax Act. In the case of the acquisition of shares free of charge, the unlimited tax liability of the legal predecessor or, if the share in question was transferred successively free of charge, the unlimited tax liability of each legal predecessor must also be included in the calculation of the period of tax liability relevant under sentence 1. Periods in which the natural person and the legal predecessor(s) were simultaneously subject to unlimited tax liability are only counted once. If the tax claim ceases to exist pursuant to paragraph 3 in its currently applicable version or in a version applicable until 30 June 2021, the taxpayer and his or her direct or indirect legal successor shall, notwithstanding sentences 1 to 3, be deemed to be taxpayers with unlimited tax liability within the meaning of paragraph 1.

(3) If the termination of unlimited tax liability within the meaning of paragraph 1 sentence 1 number 1 is based on a merely temporary absence of the taxpayer and the taxpayer becomes subject to unlimited tax liability again within seven years of the termination of unlimited tax liability, the tax claim under paragraph 1 shall cease to apply, insofar as

1.
the shares have neither been sold, transferred nor contributed to business assets in the meantime,

2.
no profit distributions or repayments of capital contributions have been made, the total fair market value of which exceeds one quarter of the value within the meaning of paragraph 1, and

3.
The right of the Federal Republic of Germany to tax the profit from the sale of the shares is re-established at least to the extent that it existed at the time the tax liability was terminated.

Notwithstanding paragraph 1, number 1, a gratuitous transfer by the taxpayer to a natural person upon death is disregarded if the conditions of paragraph 1 are met by the person concerned or, as a result of successive gratuitous onward transfers between natural persons upon death, by their direct or indirect legal successor. The tax office that is competent at the time of termination of unlimited tax liability pursuant to Section 19 of the Fiscal Code may, upon application by the taxpayer or, in the case of paragraph 2, by their legal successor, extend the period by a maximum of five years in total, provided the intention to return remains unchanged. If an exclusion of the right to tax within the meaning of paragraph 1, sentence 1, number 3, is based on only a temporary absence of the taxpayer, sentences 1 to 3 apply accordingly. If, in the case of a transfer free of charge within the meaning of paragraph 1 sentence 1 number 2 to a natural person, the person concerned becomes subject to unlimited tax liability within seven years of the transfer, sentences 1 to 3 shall apply accordingly.

(4) The assessed tax attributable to the income realized in accordance with paragraph 1 may, at the taxpayer's request, be paid in seven equal annual installments. Such a request shall generally only be granted upon provision of security. The first annual installment is due within one month of notification of the tax assessment; the remaining annual installments are due on July 31 of each subsequent year. No interest shall accrue on the annual installments. The outstanding tax shall become due within one month of the occurrence of the following events:

1.
if the annual installment is not paid on time,

2.

if the taxpayer fails to comply with his obligations to cooperate pursuant to paragraph 5,

3.

when the taxpayer files for bankruptcy,

4.

to the extent that the shares are sold or transferred or

5.

to the extent that profit distributions or a return of capital contributions are made and to the extent that their total fair market value exceeds one quarter of the value within the meaning of paragraph 1.

Notwithstanding paragraph 5, number 4, a gratuitous transfer by the taxpayer to a natural person upon death is disregarded; in this respect, for the purposes of paragraph 5, the relevant person is the individual concerned or, as a result of successive gratuitous transfers between natural persons upon death, their direct or indirect legal successor. In the cases referred to in paragraph 3, the preceding sentences apply accordingly; the deferral period is governed by the period granted by the tax office; the collection of annual installments is waived upon application by the taxpayer; in addition to paragraph 5, the tax not yet paid also becomes due within one month of the occurrence of the event after which the tax claim can no longer be waived pursuant to paragraph 3 or the taxpayer notifies the tax office of the cessation of the intention to return. Insofar as the tax is not waived pursuant to paragraph 3 and the taxpayer has waived the payment of annual installments, interest is to be charged for the duration of the granted deferral of payment in accordance with Section 234 of the German Fiscal Code.

(5) The taxpayer or their legal successor must notify the tax office responsible under Section 19 of the German Fiscal Code (Abgabenordnung) at the times specified in paragraph 1 electronically, using the officially prescribed data set and the officially designated interface, of the occurrence of one of the conditions set out in paragraph 4, sentence 5 or 7. The notification must be submitted within one month of the reportable event. The taxpayer or their legal successor must also notify the tax office responsible under sentence 1 of their current address electronically by July 31 of each year, using the officially prescribed data set and the officially designated interface, and confirm that the shares continue to be attributable to them or, in the case of paragraph 1, sentence 1, number 2, to their legal successor. Upon application, the tax authority may waive the electronic transmission requirement to avoid undue hardship; in this case, the notification must be submitted using the officially prescribed form and signed by the taxpayer.

footnote

(+++ § 6: For application see § 21 +++)