# Tax on Income from Capital Assets from 2009

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## 1. Introduction

Various amendments concerning the taxation of capital income came into effect on 1 January 2009.

The key changes are:

a) Income from capital assets are subject to a flat withholding tax rate of 25% (plus solidarity surcharge).

b) In the case of individuals with an unlimited tax liability profits from the sale of securities, regardless of how long they were held, are also subject to tax (this applies only to securities acquired after 31 December 2008).

c) The income tax of individuals subject to unlimited tax liability is normally treated as paid by the withholding of tax. These capital gains no longer need to be reported in the tax return.

## 2. Tax on income from capital assets in the case of unlimited taxation

### 2.1 Capital income from private investments

The changes have the greatest impact on individuals whose domicile or habitual abode is in Germany. For these persons from 2009 income from capital assets include not only interest payments, dividends, investment income, etc. but also profits from the sale of securities (for holdings < 1%) as well as profits from futures.

From 2009 a flat income tax rate of 25% (plus solidarity surcharge) applies to income from capital assets.

Tax on capital assets is as a rule deducted at source. Tax is normally treated as paid by the withholding of so called Kapitalertragsteuer. Income-related expenses cannot be taken into account.

It is still possible to grant exemption orders (Freistellungsauftraege). Capital income up to a ceiling of 801 euro for single individuals and 1,602 euro for married couples is tax free (personal allowance). There are also no changes for individuals with non-assessment certificates (Nichtveranlagungsbescheinigungen). Tax is not withheld from shareholding companies or credit institutions when having filed a non-assessment certificate.

If tax on income from capital assets has not been withheld for reasons other than on the basis of an exemption order or non-assessment certificate the earnings must be reported in the tax return. Income tax on the declared capital income will then be also levied at 25% (plus solidarity surcharge) in the assessment.

Foreign dividends are generally also subject to German taxation. Dividends paid by a German paying institute (e.g. a credit institution) are subject to tax at 25% (plus solidarity surcharge). Any foreign withholding tax is offset, however, to avoid double taxation.

Taxable persons whose personal tax rates are below 25% may request to be taxed at this lower tax rate. In this case they must report all their capital income in their income tax return. The tax office will then calculate whether it is more favourable to be taxed according to the personal tax rate.

A further exception applies to many recipients of dividends: shareholders with a minimum holding of 25% may alternatively opt for the so called partial income taxation method (see 2.2. corporate capital income). This also applies to shareholders who are professionally engaged in the distributing company provided their holding amounts to at least 1%.

## 2.2 Corporate capital income

The rules for capital income earned in German businesses differ from those for capital income from private investments. Whilst these earnings are sometimes also subject to the above mentioned withholding tax (Kapitalertragsteuer) nonetheless they have to be declared in the tax return.

### 2.2.1 Capital income received by a partnership or sole proprietorship

Tax is withheld in particular from:

- dividends from German companies
- gains from investments
- income from jouissance shares (Genussrechte)
- all types of interest payments
- income from a sleeping partnership (Stille Gesellschaft) or from a profit participating loan (Partiarisches Darlehen)

On application at the paying institute there will be no tax withheld on the following earnings if they belong to a domestic business:

- profits from the sale of securities
- profits from futures
- dividends from foreign companies (if the custodianship is in Germany)
- gains as an option writer (Stillhalterpraemien)

Tax on these earnings will be levied in the tax assessment.

For certain capital income the so called partial income taxation applies. Thus the shareholder is liable for tax on only 60% of the dividend distributions and profits from the sale of securities in the subsequent tax assessment. Correspondingly only 60% of income-related operating costs are taken into account.

Withholding tax is always offset against the shareholder's income tax.

### 2.2.2 Capital income received by an incorporated company

The issuer or the German paying institute withholds 25% withholding tax (plus solidarity surcharge) particularly in respect of:

- dividend distributions from German companies
- gains from investments
- income from jouissance shares (Genussrechte)
- all types of interest payments
- income from a sleeping partnership (Stille Gesellschaft) or from a profit participating loan (Partiarisches Darlehen)

Tax is not withheld from:

- income from the sale of securities
- profits from futures
- dividend distributions from foreign companies
- gains as an option writer (Stillhalterpraemien)

It should be noted that these last-mentioned earnings, nevertheless, carry a general tax liability.

Dividends and capital gains from the sale of shares in German and foreign incorporated companies have a 95% tax exemption. Any tax withheld is offset against corporation tax.

## 3. Tax on income from capital assets in the case of limited taxation

### 3.1 Capital income from private investments

If the recipient of German capital income is not domiciled or habitually resident in Germany this may result in limited tax liability. This occurs if the capital income represents domestic income as defined in the German Income Tax Law. In such cases withholding tax is normally withheld at the rate of 25% (plus solidarity surcharge).

Domestic capital income from which tax is withheld is in particular:

- dividends from German companies
- certain types of investment gains
- income from jouissance shares (Genussrechte)

Tax is not withheld from:

- interest payments from a German source
- gains from the sale of securities
- gains from futures traded by a German bank

If there is a double taxation convention between the recipient's country of residence and Germany then partial or total exemption from German tax may be requested. To obtain a tax refund a claim must be made to the German Federal Central Tax Office (www.sic.bund.de).

### 3.2 Capital income received by foreign incorporated companies

The rules applying to incorporated companies whose residence and place of management are not in Germany are similar to those for non-resident individuals. Capital income that is from a German source and that is regarded as domestic income is in some cases subject to 25% withholding tax (plus solidarity surcharge).

Domestic capital income from which tax is withheld includes in particular:

- dividends from German companies
- certain types of investment gains
- income from jouissance shares (Genussrechte)

In some cases the withholding tax may be reduced at the time of deduction or it may be (partly) refunded later on. The following rules apply to dividends:

a) Dividends distributed to incorporated companies that are resident in the European Union (EU) are normally exempt from German tax if they have a minimum holding of 15% or 10%. Upon application to the German Federal Central Tax Office tax will not be withheld from the subsidiary company or else it will be subsequently refunded by the Federal Central Tax Office.

b) Dividends distributed to non-EU incorporated companies may be partially or totally exempt from tax if there is a double taxation convention between Germany and the shareholder's country of residence. Upon application to the German Federal Central Tax Office withholding tax may be only partially deducted from the shareholder or may be completely abolished or may subsequently be (partially) refunded by the Federal Central Tax Office. The final tax rate varies according to the terms of the double tax treaty in question.

c) Foreign incorporated companies that receive dividends but are from non-EU countries that do not have a double taxation convention with Germany may also apply for a reduction of withholding tax. Upon application to the German Federal Central Tax Office 2/5 of the withholding tax may be refunded, meaning that the company pays tax at the final rate of only 15%.

Interest payments as well as gains from the sale of securities usually are not subject to German taxation; as a rule no withholding tax is levied.