

Income Tax Act (EStG)

§ 49 Limits taxable income

!this is an unofficial translation!

(1) Domestic income within the meaning of the limited income tax liability (§ 1 paragraph 4) is

1. Income from domestic agriculture and forestry (§§ 13, 14);

2. Income from commercial operations (§§ 15 to 17),

a) for whom a permanent establishment is maintained in Germany or a permanent representative has been appointed,

b) which are generated by the operation of own or chartered sea vessels or aircraft from transport between domestic and from domestic to foreign ports, including income from other domestic transport services related to such transport,

c) which are achieved by a company within the framework of an international operating group or a pool agreement in which a company with its registered office or management in Germany carries out the transport, from transport and transport services in accordance with letter b,

d) which, insofar as they do not form part of the income within the meaning of numbers 3 and 4, are generated through artistic, sporting, artistic, entertainment or similar performances carried out or exploited domestically, including income from other services related to these services, regardless of whether to whom the income flows,

e) which are achieved under the conditions of Section 17 if it concerns shares in a capital company,

aa) which has its registered office or management in Germany,

bb) upon whose acquisition the fair value of the contributed shares was not applied on the basis of an application pursuant to Section 13 Paragraph 2 or Section 21 Paragraph 2 Sentence 3 Number 2 of the Conversion Tax Act or to which Section 17 Paragraph 5 Sentence 2 was applicable or

cc) whose share value at any time during the 365 days before the sale was directly or indirectly based to more than 50 percent on domestic immovable assets and the shares were attributable to the seller at that time; To determine this ratio, the active assets of the business assets must be taken as a basis with the book values that would have been applied at that point in time,

f) which, insofar as they do not belong to the income within the meaning of letter a, through

aa) Rental and leasing or

bb) Divestment

of domestic immovable property, material items or rights within the meaning of Section 21 Paragraph 1 Sentence 1 Number 1 or other rights, in particular patent rights, trademark rights or variety rights, which are located in Germany or are entered in a domestic public book or register or their exploitation in a domestic permanent establishment or other facility. 2In the case of other rights where income

only exists due to entry in a domestic public book or register, income does not exist, contrary to sentence 1, if the rental and leasing or sale is not between related parties within the meaning of Section 1 Paragraph 2 of Foreign Tax Act or the taxation of income conflicts with the provisions of an agreement to avoid double taxation, taking into account the provisions of this Act governing their application. 3§ 23 paragraph 1 sentence 4 applies accordingly. 4Income from activities within the meaning of this letter, which is generated by a corporation within the meaning of Section 2 Number 1 of the Corporation Tax Act, which is linked to a capital company or other legal entity within the meaning of Section 1 Paragraph 1 Numbers 1 to 3, also counts as income from commercial operations of the corporate tax law is comparable. 5Income from the sale of domestic immovable property within the meaning of this letter also includes changes in the value of assets that are economically related to this property, or

g) which are achieved by providing the opportunity to contractually commit a professional athlete as such domestically; this only applies if the total income exceeds 10,000 euros;

3. Income from self-employment (Section 18) that is or has been carried out or utilized domestically, or for which a permanent establishment or permanent establishment is maintained within the country;

4. Income from employment (§ 19), which

a) is or has been exercised or exploited domestically,

b) be granted from domestic public funds, including the funds of the Federal Railway Property and the Deutsche Bundesbank, taking into account a current or previous employment relationship, without there having to be a claim for payment from the domestic public fund; This does not apply if the employment relationship was established in the country of employment or another foreign country, the employee does not have a domestic domicile or habitual residence due to the employment relationship or as has given up a previous comparable employment relationship and there is no agreement with the country of employment to avoid double taxation,

c) received as remuneration for work as a managing director, authorized representative or board member of a company with management in Germany,

d) be paid as compensation within the meaning of Section 24 number 1 for the termination of an employment relationship, insofar as the income received for the previously performed activity was subject to domestic taxation,

e) is carried out on board an aircraft used in international air transport and operated by a company with management in the country;

5. Income from capital assets within the meaning of

a) § 20 paragraph 1 numbers 1, 2, 4, 6 and 9, if

aa) the debtor has residence, management or registered office in Germany,

bb) in the cases of Section 20 Paragraph 1 Number 1 Sentence 4 the issuer of the shares has management or registered office in Germany or

cc) these are cases of Section 44 Paragraph 1 Sentence 4 Number 1 Letter a Double Letter bb;

This also applies to income from convertible bonds and profit bonds,

b) (dropped out)

c) § 20 paragraph 1 numbers 5 and 7, if

aa) the capital assets are secured directly or indirectly by domestic real estate, by domestic rights that are subject to the provisions of civil law relating to real estate, or by ships that are entered in a domestic shipping register. 2Excluded are interest from bonds and claims that are entered in a public debt register or issued via collective certificates within the meaning of Section 9a of the Securities Deposit Act or partial bonds, unless they are convertible bonds or profit bonds, or

bb) the capital assets consist of profit participation rights that are not mentioned in Section 20 paragraph 1 number 1,

d) § 43 paragraph 1 sentence 1 number 7 letter a, numbers 9 and 10 as well as sentence 2, if they are from a debtor or from a domestic credit institution or a domestic financial services institution or a domestic securities institution within the meaning of § 43 paragraph 1 sentence 1 number 7 letter b other than a foreign credit institution or a foreign financial services institution or a foreign securities institution

aa) are paid out or credited against delivery of the interest coupons and the partial bonds are not held by the debtor, the domestic credit institution, the domestic financial services institution or the domestic securities institution or

bb) are paid out or credited against the handover of the securities and these are neither held nor managed by the credit institution.

§ 20 paragraph 3 applies accordingly;

6. Income from renting and leasing (§ 21), insofar as it does not belong to the income within the meaning of numbers 1 to 5, if the immovable assets, the material items or rights within the meaning of § 21 paragraph 1 sentence 1 number 1 or other rights, in particular Patent rights, trademark rights or variety rights are located domestically or are entered in a domestic public book or register or are exploited in a domestic permanent establishment or in another facility. 2In the case of other rights where income only exists due to entry in a domestic public book or register, income does not exist, contrary to sentence 1, if the rental and leasing does not take place between related parties within the meaning of Section 1 Paragraph 2 of the Foreign Tax Act or the taxation of income is contradicted by the provisions of an agreement to avoid double taxation, taking into account the provisions of this law governing their application;

7. other income within the meaning of Section 22 number 1 sentence 3 letter a, which is granted by the domestic statutory pension insurance institutions, the domestic agricultural pension fund, the domestic professional pension institutions, the domestic insurance companies or other domestic paying agents; This applies accordingly to life annuities and other benefits from foreign paying agencies if the contributions on which the benefits are based were taken into account in whole or in part when determining the special expenses in accordance with Section 10 Paragraph 1 Number 2;

8. other income within the meaning of Section 22 number 2, insofar as it concerns private sales transactions

a) domestic properties or

b) domestic rights that are subject to the provisions of civil law relating to real estate;

8a. other income within the meaning of Section 22 number 4;

9. other income within the meaning of Section 22 Number 3, even if it would be attributable to a different type of income when applying this provision, insofar as it is income from domestic entertaining performances, from the use of movable property in Germany or from the transfer of use or redoes not involve the use of commercial, technical, scientific and similar experience, knowledge and skills, for example plans, models and procedures, which are or have been used domestically; this does not apply if it concerns taxable income within the meaning of numbers 1 to 8;

10. other income within the meaning of Section 22 number 5; This also applies to services from foreign paying agents if the services would lead to income for a person with unlimited tax liability in accordance with Section 22 Number 5 Sentence 1 or if the contributions on which the services are based are included in the determination in whole or in part in accordance with Section 10 Paragraph 1 Number 2 of the special editions were taken into account.

11. Income from participation in a partnership or community that has its registered office or management in Germany or is entered in a domestic register, insofar as this income is included

a) are not subject to taxation in the state in which the person involved has his or her habitual residence due to a tax treatment of the partnership or community that deviates from German law,

b) is not already subject to taxation as income within the meaning of numbers 1 to 10 and

c) are not subject to taxation in any other country.

Sentence 1 only applies if the person involved, alone or together with persons close to him within the meaning of Section 1 Paragraph 2 of the Foreign Tax Act who are not subject to unlimited tax liability in Germany according to Section 1 Paragraph 1 or Section 1 of the Corporation Tax Act, has more than half of the voting rights or more than half of the shares in the capital are directly or indirectly attributable or there is a direct or indirect claim to more than half of the profits or liquidation proceeds of the partnership or community; Participation in this sense does not require the position as a partner or joint partner. Sentences 1 and 2 do not apply if the partnership or community is a retirement fund within the meaning of Section 53 of the Investment Tax Act or if the income would not be subject to taxation in the foreign state even if the partnership or community were treated in a way that did not deviate from German law. Taxation according to the above rates occurs regardless of the provisions of an agreement to avoid double taxation.

(2) Taxation features given abroad shall not be taken into account if domestic income within the meaning of paragraph 1 could not be assumed when taking them into account.

(3) For shipping and aviation companies, the income within the meaning of paragraph 1 number 2 letter b is to be set at 5 percent of the fees agreed for these transport services. This also applies if such income is generated through a domestic permanent establishment or a domestic permanent representative (paragraph 1 number 2 letter a). This does not apply in the cases of paragraph 1 number 2 letter c or to the extent that German taxation law is maintained according to an agreement to avoid double taxation without limiting the tax rate.

(4) In derogation from paragraph 1 number 2, income is tax-exempt that a person with limited tax liability who is resident or habitually resident in a foreign country derives from the operation of his own or chartered ships or aircraft from a company whose management is located in the foreign country. The prerequisite for tax exemption is that this foreign state grants taxpayers resident or habitually resident within the scope of this law a corresponding tax exemption for such income and

that the Federal Ministry of Transport and Digital Infrastructure has declared the tax exemption in accordance with sentence 1 to be harmless in terms of transport policy.