

## **Freshfields Bruckhaus Deringer (Dusseldorf, Germany)**

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- Q1: It would be most important to gain planning security. With a view to Germany, this would require that (i) the German tax administration will issue rulings on tax planning structures and will grant tax rulings in such cases within a time frame of one month; (ii) long-term established tax interpretation is not retro-actively abandoned; (iii) law is made in such a way not to negatively impact on transactions concluded prior to the announcement and/or entering into force of new law (grandfathering). In the past years, Germany had a particularly bad track record for not complying with the own standards and to retroactively change law in case of e.g. structured financial products.
- Q2: With regard to Germany no national unit can be implemented as this would not be in line with constitutional law requirements. However, regional units could be implemented and could be build up in parallel to similar units for big companies. Equally a special tax audit division could be so established. This would, however, only make sense if those units would have particularly knowledge of the facts and circumstances prevailing in the Ultra High Net Worth Individual situations and the members of those units would not be particularly jealous regarding the private wealth situation of their “customers”. To the contrary, the administration should apply fair standards to those taxpayers by offering administrative personal that is specifically trained to deal with the particular investment behaviours of those taxpayers. It should also offer a point of contact person that is long time responsible so that the intermediary (generally in Germany the tax advisor) does not have to explain the familiar situation every second year to a new person being responsible. Ideally the person responsible should be person of contact not only for income tax but also for inheritance tax (estate tax) and the related questions in the family holding entities (at least all family partnerships). In Germany I do not feel any special need for additional confidentiality as generally the information held in tax offices is dealt with sufficient attention. However, specific alerts might be needed and the personal working in those offices should never be temporary personal.
- Q3: NA.
- Q4: Under German constitutional rules any specific dealings for High Net Worth Individuals are unlikely possible. Accordingly, an “opting in” does not really make sense. However, as the German law allows specific questions to be addressed to the tax auditor and, at least for the Ultra High Net Worth Individuals, a permanent tax audit is a possibility, such tax auditor could be in trusted with the possibility to grant rulings for tax planning cases on a more immediate basis.
- Q5: The aim for reliable tax interpretation is nothing particular to High Net Worth Individuals, albeit this group is mostly effected by the lack thereof. Tax saving products have basically been out-ruled in Germany under income tax legislation so that no particular schemes can be marketed. However, pre-clearance for individual planning prior to investment that should hold up for the entire investment period would be more than welcome.
- Q6: Product rulings would not make sense unless the law prohibiting the use of tax saving or tax deferral products would be abandoned. Until then, investments should be able to be clarified on a case by case basis, so that investment tax interpretation is available.
- Q7: The survey seems to have been made without major involvement of Germany. Obviously there is reason for Germany not to participate which is partially that tax administration is not dealt with on a federal but rather than on a regional level and that there is no grandfathering system embedded in German tax law which, in itself, is a major reason for German tax payers to look for investment abroad.