

When the German Taxman Asks for Your W-2

by Joerg Modellmog

Editor's Note: The purpose of this article is not to alarm our readers. The German tax authorities are not out to tax every American who is stationed in Germany. But we have noticed an increasing number of American tax clients who have been asked by the Germans to furnish information on their U.S. Government income. Most of those clients thought they were immune from German taxation because of their NATO status, and most of them were married to someone who filed a German tax return using a "married" filing status. All of them sought the assistance of our Senior German Attorney-Advisor, Joerg Modellmog, who has advised scores of clients over the years on German tax matters. He incorporated some of the lessons he learned along the way into this article.



If your spouse files a German tax return and the German tax authorities (a.k.a., "Finanzamt") subsequently send you a letter asking to see a copy of your W-2 or Leave & Earnings Statement, something is seriously wrong!

Based on Article X of the NATO Status of Forces Agreement (SOFA), all NATO personnel are exempt from German taxation on their U.S. Government pay – as long as you are in Germany **solely** in your NATO capacity. If you actively seek to prolong your tour in Germany based on reasons that are not related to your job (e.g., because you have a German spouse), it could call into question whether you are here solely in your NATO capacity.

German tax law requires that you be able to prove your intent to return to the U.S., if called upon to do so by the German tax authorities, during any tax year. How do you prove such intent? No one can look inside your head, but circumstantial evidence can help demonstrate intent, e.g., maintaining a current U.S. driver's license, frequently traveling back to the U.S. (save the flight tickets!), participating in U.S. elections, driving a car with U.S. specifications, or owning real estate in the U.S. as opposed to Germany.

If your spouse files German taxes, he or she should file **single** ("Einzelnveranlagung"), since, based on Article X of the NATO SOFA, you are not legally present in Germany for tax purposes. If your spouse uses the married filing joint ("Zusammenveranlagung") or married filing separate ("getrennte Veranlagung") filing status when filing a German tax return, it will likely trigger the kind of request for information on your U.S. income mentioned above.

If you file a German tax return using the married filing joint or married filing separate status, your spouse and you make a (presumably incorrect) affirmative declaration that Germany is your domicile and that you have no intent to return to the U.S. In such a case, the German tax authorities may question your entitlement to the taxation shield the NATO SOFA provides other members of the force who are in country "solely" because of their job. They will likely rely on Article 19 of the revised German-American Tax Treaty ("Doppelbesteuerungsabkommen"), which entered into force on December 28, 2007, to fully tax your U.S. Government pay. [Note: a limited exception applies to those who were working in their U.S. Government job on or prior to August 28, 1989, and continue to do so.]

To avoid getting into a tug of war with the German tax authorities, keep a watchful eye on your spouse's German income tax declaration. Your spouse should be in German income tax class I ("Steuerklasse I") and file a German tax return using the **single** filing status ("Einzelnveranlagung"). You may want to warn your spouse about the potential consequences of using any other filing status in Germany.

If you have questions concerning your spouse's German tax filing status, or the German tax authorities send you a request for information, make an appointment to see a German legal assistance attorney by calling DSN 483-8848 or Civilian 0631-411-8848.