BEYOND BORDERS:

Transatlatic connection

10/2025

CONTENT

Dear Clients and Partners,

transatlantic ties matter more than ever—for companies and investors alike—not only as sales or sourcing markets, but as a strategic corridor for growth, financing, and technology collaboration. Amid shifting rules, tariffs, and disclosure requirements, this newsletter offers concise guidance and actionable solutions for market entry, structuring, transactions, and compliance between the U.S. and Germany.

Part 1 – Into North-America:

- Foreign Investors Doing Business in the USA: Key Tax Considerations
- U.S. Tariffs Burden German Firms in Varying Degrees
- Formation of a U.S. Company: Legal and Practical Differences Compared to Company Formation in Germany

Part 2 – Into Germany:

- Cross-Border Inheritances Involving the U.S. and Canada
- U.S. Trusts – German Tax Classification and Pitfalls
- Navigating EU Digital Laws: A Guide for US Companies Doing Business in Germany

Our promise: practical, risk-aware, and business-first insights that help today's choices stand up to tomorrow.

We hope you enjoy this edition of "Beyond Borders."

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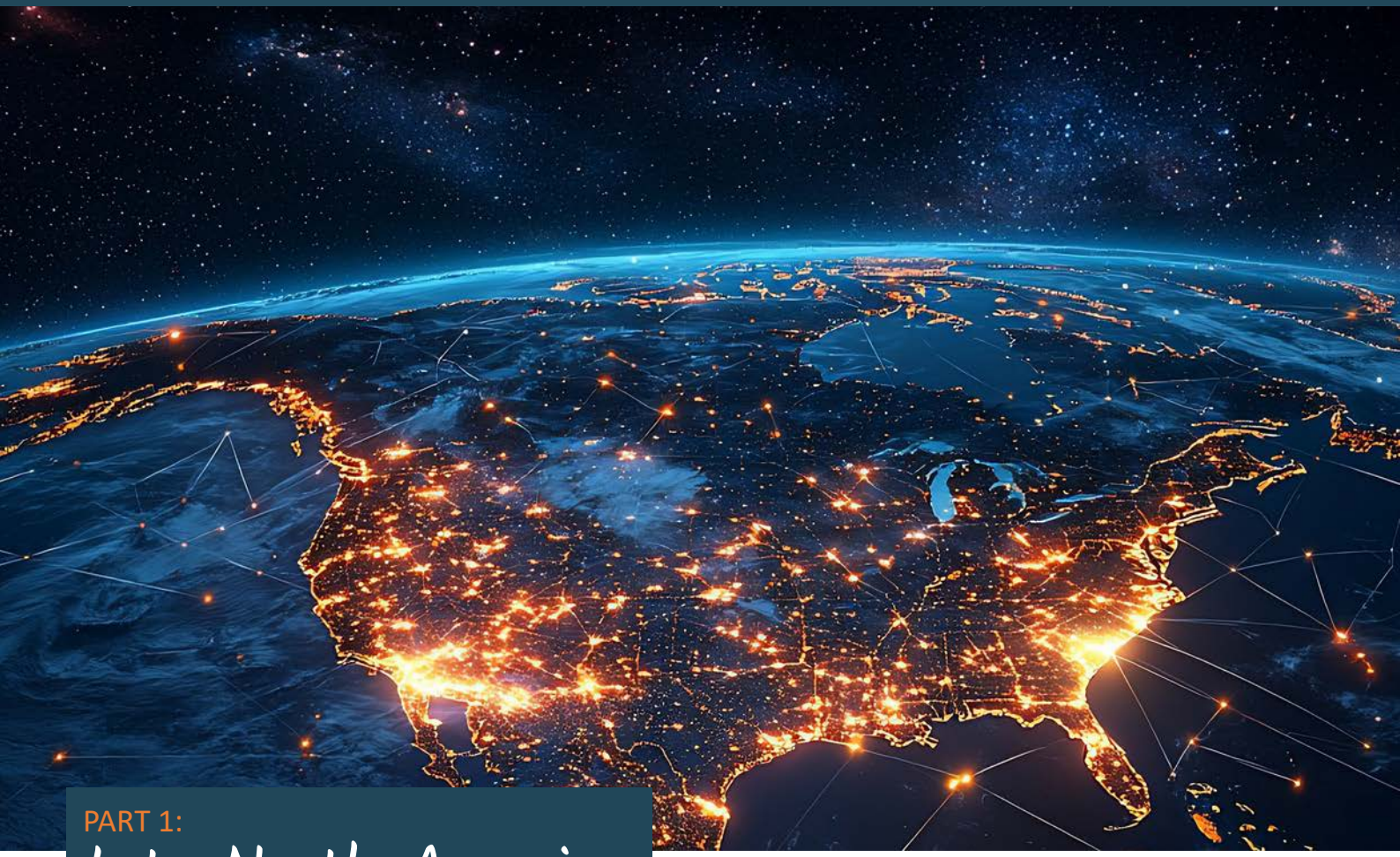

PART 1:

Into North-America

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- **U.S. Tariffs Burden German Firms in Varying Degrees**
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FOREIGN INVESTORS DOING BUSINESS IN THE USA: KEY TAX CONSIDERATIONS

For many foreign businesses and individuals, the United States remains an attractive destination for investments. Whether it is expanding operations, entering new markets, or investing in U.S. real estate, the opportunities are significant. Yet one factor consistently determines the long-term success of these ventures: taxation.

Unlike in many European countries, the U.S. system combines federal, state, and even city-level taxation. On top of that, foreign investors face rules that differ substantially from those applied to U.S. residents. Understanding these differences and structuring investments properly from the outset is critical to avoiding unnecessary costs.

KEY QUESTIONS EVERY FOREIGN INVESTOR SHOULD ASK BEFORE ENTERING THE U.S. MARKET

1. **What is the right entity for my investment?**
   (Passthrough LLC: Single Member LLC or Partnership, C-Corp, Trust, etc.)
2. **How will my income be taxed at federal, state, and local levels?**
   (Rates vary widely across states.)
3. **How can I protect my capital against U.S. estate tax exposure?**
   (Thresholds for nonresidents are far lower than for U.S. citizens.)

WHY STRUCTURE MATTERS FROM DAY ONE?

For foreign investors entering the U.S. market, proper structuring of the investment is crucial. Decisions made at the outset can significantly influence long-term costs and determine whether opportunities are maximized or eroded by preventable tax burdens. The right approach depends on both who the investor is (an individual or a company) and how the investment is made (type of entity for passive income or operating business).

Moreover, there are some rules for corporations in order to be able to make fiscal elections. Time is critical as elections can be made up to 75 days retroactively or up to 12 months in advance. When these elections are not timely filed, late elections might be an option by requesting a relief for late election to the IRS (restrictions apply).

On the other hand, the IRS imposes a five-year restriction on switching tax status again after making a C-Corp election. That's why the proper initial setup is crucial.

CHOOSING THE RIGHT ENTITY

The U.S. offers different corporate structures, each with its own tax treatment. The most common types of entities are:

- **Limited Liability Companies (LLCs):** By default, LLCs are "pass-through" entities. Profits and losses flow directly to members, who then report them individually on their U.S. tax returns (at rates between 10% and 37%). LLCs can also elect to be treated as corporations for tax purposes. The flexibility offered by this type of entity is one of the reasons it is widely used by investors doing business in the U.S.
- **Corporations (Inc. or Corp.):** C-Corporations pay a federal corporate tax of 21% on profits (flat), with additional state-level taxes depending on where the business operates.

  For instance, Florida applies a 5.5% state tax on income above $50,000, while New York and California apply higher state rates. It is very important to study the fiscal impact not only at the state level, but also at the city level, of the corporation according to where it carries out its activities.

The choice of the type of entity for tax purposes influences not only on the income tax rates, but also the potential exposure to additional obligations, such as dividend withholding taxes or branch profit taxes.

ESTATE TAX CONSIDERATIONS

One aspect that often surprises foreign investors is the U.S. is the "Estate Tax". Nonresident individuals with U.S. assets exceeding $60,000 may be subject to this tax (an amount that is modest compared with typical investments). In contrast, U.S. residents benefit from a much higher exemption ($13.99 million in 2025). Careful structuring can help mitigate exposure and protect the capital invested.

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BEYOND INCOME TAXES

While income tax rates are central to planning, other elements should not be overlooked:

- Withholding taxes on dividends (up to 30%) when investing through C-Corps.
- Branch profit tax for foreign companies with U.S. operations and disposition of funds.
- The interplay between federal and state-level rules, which vary widely.

BUILDING A TRANSATLANTIC TAX-EFFICIENT PLAN

Selecting the right corporate structure and understanding the associated tax obligations are essential to protecting investments in the United States. With careful planning, foreign investors can not only manage tax exposure but also safeguard capital against risks such as the estate tax.

ABOUT MTR & ASSOCIATES

For transatlantic investors, navigating U.S. tax and regulatory requirements can be complex. MTR & Associates specializes in guiding foreign investors (businesses and individuals) through these challenges, helping structure investments efficiently, minimize tax exposure, and ensure compliance with both federal and state regulations. With our cross-border experience, we support investors in protecting their capital while building sustainable business operations in the United States. » www.mtrcpa.com

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SPECIAL ARTICLE

U.S. TARIFFS BURDEN GERMAN FIRMS IN VARYING DEGREES

The more unique a product's differentiating feature, the less the manufacturer is affected by tariffs. Some even pass the duties wholesale to their U.S. customers.

German companies' reactions to the agreement announced on July 27, 2025, between the U.S. and the EU range from "We are disappointed" to "It could have been worse" to "Our business is hardly affected."

Under that agreement, most U.S. imports from the EU will be subject to a 15 percent tariff. That puts them on par with what other industrialized nations—and U.S. market competitors—such as Japan or South Korea must pay. Yet, for the important competitor China, Donald Trump extended an earlier agreement under which most U.S. imports from the People's Republic are taxed at 30 percent, through early November 2025.Most firms agree that this at least takes the ice off for now. But uncertainty and unpredictability remain. The first details of the U.S.–EU deal have only trickled out in recent days.

At the same time, nobody knows how long Donald Trump will adhere to the agreement. He has already announced new, industry-specific tariffs on wood, semiconductors, pharmaceuticals and other goods.

Many Sector-Specific Tariffs in the Pipeline

Product	Note
Wood	Canada is the most important source of supply; wood is an important building material in US housing construction
Semiconductor	Exceptions for producers investing in the US; this applies to all major manufacturers (including TSMC and Samsung)
Pharmaceutical products	Ireland is the most important supplier
Aircraft	No tariffs on imports from the EU.
Trucks	80% of imports come from China and Mexico
Polysilicone	Critical component for the production of solar cells and semiconductors
Commercial drones	China is most important manufacturer
Critical minerals	The USA is over 90% dependent on imports, of which more than 80% comes from China

Source: New York Times; press releases (August 2025)

That German industry's reactions are so diverse stems from the very different conditions in each sector. In general: the fewer domestic U.S. producers there are, the more likely that the ultimate U.S. purchasers will absorb the tariff cost, for lack of alternatives to import.

TARIFFS ON STEEL & ALUMINUM: A DOUBLE-EDGED SWORD

A prime example is the 50 percent tariffs on steel and aluminum. The U.S. can produce only about 20 percent of its aluminum needs domestically. As a result, analysts expect price increases not only for cans and beverage containers, but also for certain automobile models. (For instance, the body of the iconic Ford F-150 is made of lightweight alloy.)

For steel, domestic self-sufficiency is about 80 percent. But dependency on specialty steel imports is high. The Montana Knife Company found this out the hard way: despite initially supporting Trump's tariff stance, it later discovered that no adequate domestic equivalents existed for the special steels needed in its knife manufacturing.

GERMAN AUTOMAKERS EXPANDING U.S. CAPACITY

In the automotive sector, BMW, Mercedes-Benz and Volkswagen (VW) benefit from having manufacturing in the U.S., particularly for large SUVs. But smaller SUVs, sedans and other models are still produced in Mexico or Germany.

That is now beginning to shift. Mercedes-Benz announced that production of the GLC series will move from Bremen to the U.S. VW plans to manufacture certain Audi models, like the Q3, in its U.S. plants. Until now, Audi has had no dedicated U.S. production.

Trump's tariff policy thus is having its intended effect: German automakers are expanding their U.S. capacity. Yet, on closer inspection these are modest investments; no enormous new factories are being erected. A company representative told Germany Trade & Invest that uncertainty is still too high, and global demand too weak, to justify large commitments.

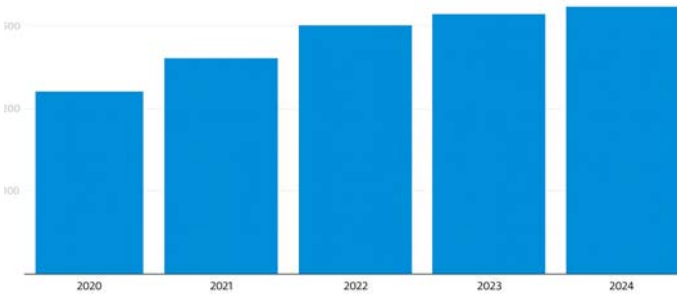
Building a new plant takes up to three years — by which time Trump may no longer be in office. And the facility must also make economic sense. It takes several additional years to amortize the investment.

At the same time, Europe already has excess capacity, and some plants on the old continent—and even in China—may need to be shuttered.

IN MACHINERY CONSTRUCTION, U.S. DOMESTIC COMPETITION OFTEN LACKING

The situation in mechanical engineering is different. In many niches there are no or too few U.S. providers. The country is highly dependent on imported manufacturing technology. A Hamburg-based tool-machinery maker told Germany Trade & Invest that there is literally no U.S. competitor in its niche. U.S. customers are aware of that and thus have limited bargaining leverage.

High Import Dependency
U.S. Imports of Machinery and Equipment (in Billion U.S. Dollars) *



SITC positions 71 to 74 (including motors, turbines and power machinery, elevaatorss climate technology, fitt-fittings, bearings, waves
Source U.S. International Trade Commission 2025

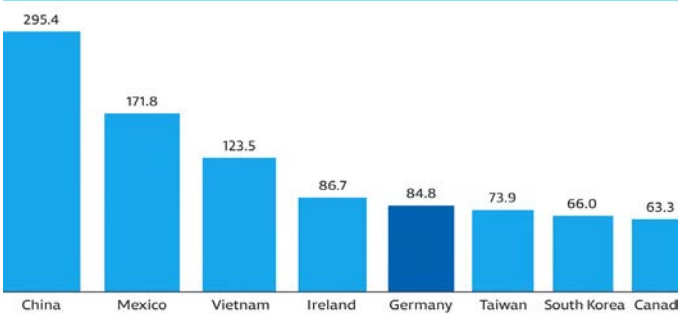
SUPPLIERS RECONSIDER DDP TERMS

In legacy supply agreements from 2023 or 2024, many still used so-called DDP terms (Delivered Duty Paid). Under DDP, the seller is obliged to pay duties on both export and import and to handle all customs procedures. DDP is the maximum obligation for a seller. But for future orders, that may change fundamentally.

Daniel Dittmar, CEO and President of the German auto parts manufacturer Heycon USA, said he will in future need to pay about 15 percent more for plastic injection machines. The German supplier declined to accept DDP conditions or make pricing concessions. Although there are U.S. manufacturers in that segment, they cannot match the quality.

These examples demonstrate: the higher the product's uniqueness or differentiation, the lower the tariff burden for the manufacturer on EU imports to the U.S..

ith These Countries, the U.S. Has the Largest Trade Deficit
024, in Billion U.S.-Dollar



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FORMATION OF A U.S. COMPANY: LEGAL AND PRACTICAL DIFFERENCES COMPARED TO COMPANY FORMATION IN GERMANY

Anyone entering the U.S. market and considering establishing a company will quickly encounter the classic legal forms — the Delaware Limited Liability Company (LLC) and the Delaware Corporation.

This article uses the example of forming a Delaware Corporation compared to forming a German GmbH to illustrate key differences between founding a U.S. and a German company.

While forming a German GmbH involves numerous formalities, the process in Delaware is considerably leaner. Major differences exist regarding the required documents, minimum capital, involvement of public authorities, as well as the duration and cost of the formation.

Differences also become apparent in the organizational steps following the formation before the company becomes fully operational.

COMPARISON BASIS: FORMATION OF A GMBH IN GERMANY

Establishing a German limited liability company (GmbH) follows a highly formalized and regulated process characterized by strict legal requirements. Typical steps include:

- **Preparation of extensive documentation**, including the articles of association, a founding protocol, shareholder list, and the appointment of managing directors.
- **A notarial appointment** — typically still in person — for the notarization of the articles of association in the presence of the future managing director.
- **Opening a business account** and depositing the share capital, along with proof of payment of at least EUR 12,500 (half of the required minimum capital of EUR 25,000).
- **Registration of the company** with the commercial register by the notary.

This process demonstrates the dependence on third parties — particularly the notary, bank, and commercial register. The founder often has limited influence over how quickly these parties complete their required tasks.

Scheduling the notarial appointment, account opening, and registration can extend the process over several weeks or even months.

IN CONTRAST: FORMATION OF A CORPORATION IN DELAWARE

In contrast, establishing a corporation in the United States — and particularly in Delaware — is significantly simpler and less formalized.Since the incorporation process varies slightly from state to state, the following uses the formation of a company in Delaware as an example.Thanks to its flexible, well-developed, and business-friendly corporate law, Delaware continues to rank as the leading state for company incorporations.

The main steps to establish a Delaware Corporation can be summarized as follows:

Preparation of a brief Certificate of Incorporation, usually a one-page document containing only basic company information:

company name, purpose (which may be broadly defined, e.g., “any lawful business”), share structure, company address, registered agent’s name and address, and the name of the incorporator.

Using this certificate, the company can be registered within a few days — or even within an hour for an express fee — with the Delaware Secretary of State, thereby becoming legally incorporated.

Initial organizational actions (such as appointing the board, adopting bylaws, issuing initial resolutions, and maintaining a stock ledger) can be completed after incorporation. None of these documents need to be filed or published

.Furthermore, unlike in Germany, there is no obligation to publish annual financial statements.

Thus, forming a U.S. corporation is not only much faster and less burdensome than forming a GmbH but also offers far greater confidentiality.

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DIFFERENCES ALSO EXIST IN THE ORGANIZATIONAL STEPS FOLLOWING INCORPORATION

The differing levels of bureaucratic requirements in the United States compared to Germany are also evident in the steps required after incorporation to make a GmbH or Corporation fully operational:

In Germany, following the actual incorporation, it is generally necessary to file a business registration and to register the beneficial owners of the GmbH in the Transparency Register. In addition, an opening balance sheet must be prepared, a tax registration form completed, and applications submitted for a tax number and VAT ID. Membership in the local Chamber of Commerce (IHK) is also mandatory.

In the United States, however, neither an opening balance sheet nor — following the significant narrowing of the Corporate Transparency Act under the Trump administration — a registration of beneficial owners is required. There is also no mandatory membership comparable to the German Chamber of Commerce.

Usually, only a general business license, which can be applied for online, and an Employer Identification Number (EIN), also obtainable online, are required.

If the corporation has employees, owns or uses property, or conducts other location-based business activities in states other than Delaware, it must also obtain a simple “Doing Business Registration” in the respective state.

CONCLUSION

While forming a GmbH in Germany requires preparing multiple documents, notarial involvement, and registration that may take weeks, forming a U.S. corporation generally requires only a single document and can be completed within hours. This makes U.S. incorporation far faster and more straightforward.

The contrast reflects two fundamentally different legal philosophies:

Germany emphasizes transparency, market protection through capital requirements, and state oversight, while the U.S. prioritizes speed, flexibility, and private autonomy.

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Mr. Philipp Nuernberger is admitted in Germany and New York and advises companies on U.S.-focused cross-border matters. His work covers market entry and corporate structuring, contract drafting and negotiations, and M&A transactions including due diligence and post-closing. He also supports compliance and risk topics such as export controls, sanctions, data protection, and regulatory requirements. His counsel is pragmatic, solution-driven, and commercially oriented, shaped by experience in New York, London, Barcelona, and Paris.

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CROSS-BORDER INHERITANCES INVOLVING THE U.S. AND CANADA

Many U.S. and Canadian residents have close ties to Germany: a vacation apartment in Munich, investments in a German family business, or relatives who still live there. Many assume that, by living abroad, they have left the reach of German taxation behind. But when it comes to inheritances, that assumption can be wrong.

Germany has one of the most comprehensive inheritance and gift tax systems in the world. It can apply even to people who are no longer living in Germany. in some cases, even to those who have never lived there themselves but inherit German assets.

This article explains when German inheritance tax applies, how foreign taxes interact with German rules, and what steps U.S. and Canadian residents can take to protect their heirs and avoid unpleasant surprises.

1. WHEN GERMAN INHERITANCE TAX APPLIES

German inheritance tax ("Erbschaftsteuer") applies based on two main criteria: the residence status of the decedent or heir, and the location of the assets.

If either the decedent or the heir is a German **tax resident** at the time of death (meaning they have a residence or habitual abode in Germany), Germany will tax the **worldwide estate**. The same applies if either is treated as an "Inländer" under German tax law. This concept includes not only residents but also certain individuals who are temporarily abroad, such as diplomats or civil servants posted overseas.

Even if you are no longer a resident, Germany maintains a so-called **extended limited tax liability** for German citizens who have emigrated. For up to ten years after leaving Germany, the worldwide estate may still be subject to German inheritance tax. This rule catches many expatriates by surprise. Imagine a German citizen who moves to California in 2020 and passes away in 2026. His or her entire global estate can still be taxed in Germany, not just the German assets.

If neither the decedent nor the heir is subject to unlimited or extended liability, Germany will still tax certain **domestic assets** under its **limited tax liability rules**. Domestic assets include German real estate, German business property, and shares in German corporations if the holding is 10% or more. Even a Canadian resident who inherits 12% of a GmbH based in Stuttgart would have to file a German inheritance tax return.

2. HOW GERMAN INHERITANCE TAX WORKS

Unlike in the U.S., where estate tax is levied on the estate as a whole, German inheritance tax is an **acquisition tax**: each heir is taxed individually on what they receive. The applicable tax rate depends on both the heir's relationship to the decedent and the value of the inheritance.

Close relatives (spouses, children) benefit from generous allowances. For example, children can receive €400,000 tax-free. The tax rates range from 7% for small inheritances up to 50% for large inheritances by distant relatives or unrelated individuals.

For U.S. and Canadian residents inheriting German property, this means that even relatively small transfers can trigger reporting obligations and tax filings in Germany.

3. INTERACTION WITH U.S. AND CANADIAN TAXES

Cross-border inheritances often raise the fear of double taxation. Fortunately, between Germany and the U.S. there is a **bilateral estate and gift tax treaty** that helps prevent double taxation. It allocates taxing rights between the two countries and provides for a credit mechanism: if Germany has primary taxing rights (for example, because the asset is located in Germany), the U.S. will usually allow a credit for German tax paid and vice versa.

With Canada, the situation is more complex. Canada does not impose a traditional inheritance tax but instead treats death as a **deemed sale** of assets, taxing the capital gains in the decedent's final income tax return. Because German inheritance tax is a transfer tax and not an income tax, there is no formal treaty mechanism to credit Canadian capital gains tax against German inheritance tax. This can lead to partial double taxation unless careful planning is done in advance.

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4. SPECIAL STRUCTURES: TRUSTS AND ESTATES

Many U.S. and Canadian families hold assets through trusts or partnerships. From a German perspective, these structures are analyzed carefully to determine whether they are **transparent** (meaning the assets are treated as belonging directly to the settlor) or **non-transparent** (meaning the trust is a separate taxable entity).

Distributions from non-transparent trusts can be subject to German **gift tax**, even if the beneficiary is not living in Germany. For example, if a U.S. trust holds German real estate and distributes it to a Canadian beneficiary, German gift tax may be due at the time of the distribution.
Canadian estates present another complexity. Under Canadian law, an estate is a separate taxpayer for a limited period. Under German law, however, the transfer of net assets from the estate to the heir is treated as a taxable acquisition and subject to inheritance tax.

5. VALUATION AND REPORTING REQUIREMENTS

All assets must be valued under the German Valuation Act as of the date of death. Foreign valuations (e.g., U.S. appraisals for estate tax purposes) are not automatically accepted, although they can be helpful as supporting evidence.
Values must be converted into euros at the official exchange rate on the date of death. In times of currency fluctuations, this can have a significant impact on the taxable base and the resulting tax bill.

6. FILING OBLIGATION FOR NON-RESIDENTS

Even if you live in the U.S. or Canada, you are required to **file a German inheritance tax return** if you inherit German assets or are otherwise subject to German tax. The deadlines are relatively short, usually three months from the date of becoming aware of the acquisition. Failure to file can result in penalties and interest. Professional assistance is strongly recommended, especially because German tax offices require detailed documentation on the assets, valuations, and foreign tax payments.

7. PLANNING OPPORTUNITIES FOR U.S. AND CANADIAN RESIDENTS

Fortunately, there are several ways to mitigate the German tax exposure. A well-drafted **will or estate plan** that explicitly addresses German law can reduce administrative hurdles. For German citizens living abroad, it may be wise to review whether the ten-year extended liability applies and whether lifetime gifts can be structured to fall outside its scope.

Germany also allows **lifetime gifting** with generous personal allowances that can be used every ten years. Spreading transfers over several years can reduce the overall tax burden significantly.

Finally, liquidity planning is crucial: German tax must typically be paid within one month of assessment. If most of the estate consists of illiquid assets such as real estate, heirs should plan ahead to ensure they have funds available to meet the tax bill.

CONCLUSION

For U.S. and Canadian residents with German assets or family ties, German inheritance tax can apply even if you have lived abroad for years. The rules are complex, and the interaction with U.S. estate tax or Canadian capital gains tax can create additional challenges.

By reviewing your estate plan now, making strategic use of German allowances, and coordinating with advisors familiar with cross-border taxation, you can minimize the risk of double taxation and ensure a smooth transition of wealth to the next generation.

Key Takeaway: If you live in the U.S. or Canada but own property, investments, or maintain ties to Germany, now is the time to review your estate plan. Early action can prevent double taxation and secure a tax-efficient transfer of assets across borders.

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U.S. TRUSTS – GERMAN TAX CLASSIFICATION AND PITFALLS

In common law jurisdictions such as the United States, trusts are widely used as flexible vehicles for wealth management, estate planning, and succession. German law, however, does not recognize trusts as a legal institution. This absence creates considerable uncertainty when German tax residents invest in or become beneficiaries of a trust. As a result, the German tax treatment relies on analogies to domestic structures such as foundations, corporations, or fiduciary arrangements, which often leads to complex and sometimes unexpected outcomes. Without careful planning, significant tax burdens can arise.

1. WHAT IS A TRUST?

A trust is a legal relationship based on the separation of formal and beneficial ownership. The settlor transfers assets to a trustee, who legally owns and manages the property but must use it for the benefit of the beneficiaries according to the trust deed. The beneficiaries enjoy the economic benefit, while the trustee holds title and manages the trust property. Although a trust itself has no legal personality under U.S. law, it functions as a distinct legal arrangement with significant economic consequences.return.

2. NO EQUIVALENT UNDER GERMAN LAW

German private law does not recognize trusts as a legal institution. As a result, foreign trusts must be classified by way of a so-called "Rechtstypenvergleich" (legal type comparison). Depending on their structure, such trusts may be treated as a foreign family foundation under § 15 of the German Foreign Tax Act (AStG), as a fiduciary arrangement (Treuhand), or as a corporation-like entity. Since there is no specific statutory framework, each trust must be assessed on a case-by-case basis, and the classification may vary depending on the trust's terms and the degree of influence retained by the settlor.

3. TAX CONSEQUENCES FOR GERMAN TAXPAYERS

a) Income Tax Treatment

For German tax residents, trust income can be subject to German taxation even if no actual distributions are made. Under § 15 AStG, beneficiaries who are deemed "entitled" may be taxed on a fictitious allocation of income, creating so-called "dry income" situations. Actual distributions to German beneficiaries are generally taxed as investment income at the flat tax rate of 25% plus solidarity surcharge (and church tax, if applicable). If the trust qualifies as transparent, income may be directly attributed to the settlor or the beneficiaries according to general German rules.

b) Inheritance and Gift Tax

The inheritance and gift tax (ErbStG) consequences of U.S. trusts are particularly complex. Transfers of assets into an irrevocable trust may already constitute a taxable gift under § 7 ErbStG, whereas transfers into a revocable trust may not trigger immediate taxation because the settlor remains economically entitled. German courts distinguish between intermediate beneficiaries (receiving distributions during the lifetime of the trust) and remaindermen (receiving assets upon dissolution). Both types of transfers can trigger gift tax. Moreover, German law allows for parallel taxation: a distribution may be subject to both income tax and gift tax. In its 2019 decision, the Munich Fiscal Court explicitly upheld this dual taxation as constitutional. Recent rulings by the Federal Fiscal Court (BFH) have clarified that opaque (non-transparent) trusts are to be treated in analogy to foreign foundations, while transparent trusts are disregarded for inheritance and gift tax purposes. The DTA-USA on inheritance and gift tax provides for a credit mechanism, but practical mismatches between U.S. and German classification of trusts often result in double taxation risks. In addition, when a trust is dissolved or upon the final distribution of its remaining assets to the ultimate beneficiaries, such a transfer is again subject to German gift or inheritance tax. This means that German taxpayers may face multiple layers of taxation over the lifetime of a trust: at the time of funding, during interim distributions, and once more upon termination.

c) International Aspects and Exit Tax

Trusts with international connections also raise issues of exit taxation. If a trust relocates its place of management or transfers assets abroad, Germany may treat unrealized gains as taxable under so-called "Entstrickungsbesteuerung." This leads to immediate taxation of hidden reserves even though no liquidity is generated. The Court of Justice of the European Union has ruled that, within the EU/EEA, immediate taxation without the option of deferral or installment payments violates the fundamental freedoms. However, for third countries such as the United States, this protection does not apply, so German taxpayers may face immediate taxation in such cases.

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4. PRACTICAL CHALLENGES

In practice, the classification of trusts under German tax law is fraught with difficulties. The German tax authorities tend to interpret beneficiary entitlements broadly, potentially capturing even remote or discretionary interests. The risk of "dry income" and the possibility of simultaneous income and gift taxation underscore the need for careful structuring. Additionally, the burden of proof lies with the taxpayer, often requiring foreign legal opinions to establish whether a trust should be treated as transparent or opaque.

5. DISTINCTION FROM REITS

U.S. Real Estate Investment Trusts (REITs) must be distinguished from private trust arrangements. REITs are listed companies with a specific regulatory framework under German law. They enjoy exemptions from corporate and trade tax but must distribute nearly all profits to shareholders. Their tax treatment is therefore clear, unlike the uncertain and case-by-case classification of private trusts.

6. CONCLUSION AND RECOMMENDATIONS

The taxation of U.S. trusts under German law is highly complex, with potential exposure to both income tax and gift or inheritance tax, as well as exit taxation in cross-border cases. Without proper planning, German tax residents may face multiple layers of taxation and liquidity problems. Taxpayers should seek professional advice before establishing, funding, or benefiting from a U.S. trust and, where appropriate, consider obtaining an advance ruling (verbindliche Auskunft) from the German tax authorities. In cross-border planning, early clarification can prevent costly surprises.

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NAVIGATING EU DIGITAL LAWS: A GUIDE FOR US COMPANIES DOING BUSINESS IN GERMANY

Digital transformation brings not only technological innovation but also complex legal requirements. For US companies entering the German and EU markets, regulations like the AI Act, Data Act, Cyber Resilience Act, and NIS2 create compliance obligations that demand swift and knowledgeable action.

These challenges also present opportunities: Companies that understand and implement new regulations early gain competitive advantages, unlock new business opportunities, and strengthen customer trust.

Below is an overview of four key EU digital laws affecting businesses operating in Germany.

KEY EU DIGITAL LAWS

1. THE DATA ACT - DATA USAGE AND ACCESS
The Data Act makes machine-generated data usable across company boundaries, regulating who can access user-generated data in the EU. Users gain the right to request and transfer their data to other market participants starting September 12, 2025.

Scope:
- Connected products (IoT devices),
- connected services,
- data processing services (cloud computing), and
- data intermediation services.

Key Obligations:
- Provide product data free of charge in machine-readable format within tight deadlines;
- enable data transfer to third parties upon user request;
- implement measures against international governmental data access;
- facilitate provider switching.

Risks & Opportunities:
- Fines up to €20M or 4% of global annual turnover;
- new business opportunities through improved data access and fairer competition.

2. THE AI ACT - REGULATING ARTIFICIAL INTELLIGENCE
The AI Act creates a harmonized legal framework for trustworthy AI systems in the EU. AI systems are classified by risk categories, with initial regulations already in effect since February 2025 and most provisions taking effect August 2, 2026.

Scope:
- Providers (placing AI systems on the market),
- deployers (using AI systems),
- importers, and
- distributors, and product manufacturers integrating AI.

Key Obligations by Risk Category:
- Unacceptable Risk: Complete ban on certain AI applications
- High Risk: Risk management systems, data governance, documentation, auditing, cybersecurity requirements
- General Purpose AI Models (LLMs like ChatGPT, Claude): Documentation obligations, copyright strategy, training data requirements, risk mitigation, cybersecurity
- Transparency Obligations: Labeling of generated images, videos, and texts
- General Obligation: Ensuring adequate "AI literacy" (already applicable)

Risks & Opportunities:
- Fines up to €35M. or 7% of annual turnover for Article 5 violations;
- otherwise up to €15M or 3%;
- opportunities for innovation through AI regulatory sandboxes.

3. NIS2 - CYBERSECURITY FOR CRITICAL SECTORS

NIS2 harmonizes and improves cybersecurity levels in the EU to combat cyber threats and ensure continuity of essential services. A government draft was passed on July 25, 2025.

Scope (all three criteria must be met):
- Geographic: Services in the EU or activities in the EU
- Sectoral: Regulated sectors including energy, transport, banking, healthcare, digital infrastructure, ICT services, chemical and food industry, manufacturing (including machinery), digital services
- Size: More than 50 employees and annual turnover over €10M (group companies are aggregated)

Key Obligations:
- Management responsibility for cybersecurity measures and training;
- appropriate security measures and incident response plans;
- mandatory incident reporting within 24h (initial) and 72h (update);
- mandatory registration;
- maintaining communication channels with authorities.

Risks & Opportunities:
- Fines up to €10M or 2% (essential entities) / €7M or 1.4% (important entities) of global annual turnover;
- Management liability;
- improved cybersecurity posture and competitive advantages through professional risk management.

THE CYBER RESILIENCE ACT - DIGITAL PRODUCT SECURITY

The Cyber Resilience Act establishes harmonized rules for cybersecurity of products with digital elements in the EU, addressing the increasing prevalence of network and software components in products. Initial regulations take effect in June 2026, with full application from December 2027.

Scope:
- Essentially all products with digital elements not otherwise regulated.
- Exceptions: Medical devices, motorized vehicles, military hardware, national security, aviation products.

Key Obligations:
- "Security by design" throughout design, development, and production;
- regular cyber risk management reviews;
- systematic vulnerability management;
- reporting security incidents and vulnerabilities to authorities;
- documentation and user information obligations.

Risks & Opportunities:
- Fines up to €15M or 2.5% of global annual turnover; product liability risks;
- competitive advantages through trustworthy and secure products;
- harmonized standards facilitate EU-wide distribution.

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