# EXPERTGUIDES

THE WORLD'S LEADING LAWYERS CHOSEN BY THEIR PEERS

*Over 20 years' experience*

# RISING STARS

## WHAT'S INSIDE?


**Q&As WITH:**

**XI LIAO**
LINKLATERS

**ALJA POLER DE ZWART**
MORRISON & FOERSTER

**HUGO PRINSLOO**
VON SEIDELS

**FEATURES BY:**

**NATASHA MIKHA**
CLYDE & CO

**LARS MARKERT**
NISHIMURA & ASAHI

**SIMON MAYNARD AND AGNIESZKA ASON**
THREE CROWNS

**SYLVIE GALLAGE-ALWIS**
HOGAN LOVELLS

**MAXIMILIAN HAAG**
P+P PÖLLATH + PARTNERS

**ORA GRINBERG**
FENWICK & WEST

**DR JAN KLEINER**
KLEINER & CAVALIERO

**TANYA BUCKLEY AND JANET STRATH**
MAUCHER JENKINS

**PETER KURJANOWICZ**
GRANT THORNTON

## GERMANY

### Maximilian Haag

**P+P Pöllath + Partners**
Hofstatt 1
D-80331 Munich
Germany
Tel: (49) 89 24240 273
Email: maximilian.haag@pplaw.com
Website: www.pplaw.com


Dr Maximilian Haag, LLM, is an attorney and tax advisor at P+P Pöllath + Partners in Munich. He specializes in domestic and international tax law, tax and estate planning, tax compliance, business and private wealth successions, family-owned companies, charitable & private foundations and trusts, private asset management and matrimonial property law.

He served as a law clerk to the Chief Justice of the Supreme Court of Israel in Jerusalem (2007) and as a research associate at the Max Planck Institute for Tax Law and Public Finance in Munich (2010). Maximilian has published numerous articles and book contributions in domestic and international professional publications. He joined P+P in 2010.

Maximilian studied law and economics at Bayreuth, Duke (LLM; 2005), Nuremberg, Munich, and Leipzig (PhD; 2011, awarded the Feldbausch prize of the University of Leipzig). He was admitted to the German bar in 2009 and admitted as German tax advisor in 2013.

P+P Pöllath + Partners is an internationally operating German law firm whose more than 130 lawyers and tax advisers in Berlin, Frankfurt and Munich provide high-end legal and tax advice.

The firm focuses on transactional advice and asset management. P+P partners regularly advise on corporate/M&A, private equity and real estate transactions of all sizes. P+P has achieved a leading market position in the structuring of private equity and real estate funds and tax advice and enjoys an excellent reputation in corporate matters as well as in asset and succession planning for family businesses and high net worth individuals.

P+P partners serve as members of supervisory and advisory boards of well-known companies. They are regularly listed in domestic and international rankings as the leading experts in their respective areas of expertise.

GERMANY

# Moving into and out of Germany – When the fiscal authorities reach their limits

Maximilian Haag
**P+P Pöllath + Partners**
**Munich**

For many coming from other countries, Germany is an attractive country to which to move. At the same time, each year thousands of people leave Germany for a limited period of time or permanently. German tax law until today has difficulties with the proper treatment of these multiform cases of natural persons moving into and out of Germany.

One of the key questions when moving into or out of Germany is related to the broad German concept of residence for tax purposes (Sec. 8 German Fiscal Code). With the recently revised version of the application ordinance for Sec. 8 German Fiscal Code of 7 August 2017, the fiscal authorities have increased legal certainty in regard to the requirements needed to establish a residence for tax purposes in Germany.

## German Federal Constitutional Court has given green light to so called "treaty overrides"

In a judgement of 15 December 2016, the German Federal Constitutional Court has recognized the admissibility in terms of constitutional law of the so-called treaty override. German provisions such as Sec. 50i Income Tax Act and Sec. 20 Foreign Tax Act, which take precedence over the Double Taxation Agreements (DTA) entered into by Germany, are thereby to be accepted. The treaty override stipulated by Sec. 20 Foreign Tax Act is, however, to be understood such that it does not set aside the tax residency rules of the respective DTA. A taxpayer who has moved to Germany but continues to be considered resident abroad according to the applicable DTA, is therefore neither subject to German CFC rules (Sec. 7 et seq. Foreign Tax Act) nor to CFC-like attribution taxation for foreign foundations and trusts (Sec. 15 Foreign Tax Act).

With an amendment dated 25 June 2017 of Sec. 16, para. 2 of the German Inheritance and Gift Tax Act, the legislator has managed (on the second attempt) to find a revision of the tax-free allowance in cases of limited inheritance tax liability that conforms to European law from which some taxpayers who live out of Germany can benefit .

In moving to Italy, since 1 January 2017 "income millionaires" have the opportunity to opt for preferential Italian tax treatment which disregards the actual annual income of the taxpayer. From a German perspective, however, one must consider that in relation to Italy – just as it has in relation to Switzerland and Great Britain – Germany has reserved the application of German expanded limited income tax liability (Sec. 2 Foreign Tax Act) under treaty law.

GERMAN TAX LAW HAS DIFFICULTIES WITH THE PROPER TREATMENT OF NATURAL PERSONS MOVING INTO AND OUT OF GERMANY

Further questions arise under the German exit taxation concept (Sec. 6 Foreign Tax Relations Act). In a tax act effective 1 January 2007 the legislator had included investments in foreign corporations in the German exit tax. Nevertheless, if a decision of the German Federal Constitutional Court dated 7 October 2010 on the taxation of capital gains from the disposal of qualified shareholdings is taken seriously, those hidden reserves in qualified investments in foreign corporations which had already accrued before 1 January 2007 should not be subject to German exit taxation.

The applicability of the EU deferral rule of the German exit tax (Sec. 6 para. 5 Foreign Tax Relations Act) in moving to Switzerland is currently being disputed. With a decision of 14 June 2017, the Fiscal Court of Baden-Württemberg has submitted the question to the European Court of Justice (ECJ) for a decision on whether an immediate levying of the German exit tax is compatible with the existing freedom of movement treaty between the EU and Switzerland. As long as the ECJ has not yet settled this question, the fis-

cal authorities do not grant interest-free deferral when moving to Switzerland.

The revised version of Sec. 50i Income Tax Act as of 1 January 2017 is also worthy of mention. If a taxpayer contributed a qualified shareholding in terms of Sec. 17 Income Tax Act at book value to a German GmbH & Co. KG (limited partnership) that is deemed commercial under German national tax law, and thereafter moved to a foreign country before 1 January 2017, the profits from a subsequent sale of shares remain subject to German taxation, regardless of a contradictory DTA (Sec. 50i para 1 pg. 1 Income Tax Act: treaty override). Whereas if the taxpayer moved only after 31 December 2016, according to the concept of the new Sec. 50i para 1 Income Tax Act, at the time of the move the German exit tax for non-corporate business assets pursuant to Sec. 4 para 1 pgs. 3 and 4 Income Tax Act will apply to the hidden reserves held in the shares. Under this distinctive exit taxation concept, there is no unlimited tax deferral for EU cases but only a split of the tax into five annual installments might be possible.

### Brexit has far-reaching consequences for taxpayers

Ultimately, the expected exit of Great Britain from the EU in 2019 will have far-reaching consequences for persons moving out of Germany: When EU citizens move to Great Britain, as well as when British nationals move to EU or non-EU foreign countries, it is expected that in the future the EU deferral rule of the German exit tax will no longer be granted. For this reason, when “Brexit” comes into effect, the revocation of interest-free deferral threatens a series of exit cases from the past. For those moving from Great Britain to Germany, after “Brexit” there is a threat of the loss of EU exemptions within the scope of the German CFC rules (Sec. 7 et seq. Foreign Tax Relations Act) and the German CFC-like attribution taxation for foreign foundations and trusts (Sec. 15 Foreign Tax Relations Act).