

# Recent Developments in Germany

## Transfer of Business to the Next Generation

### Stockholm 2010

# Agenda

Introduction

Inheritance Tax - Inheritance Tax Reform Act

Income Tax – Anticipated Succession

## Introduction

- Inheritance Tax: Considerable Changes
  - Inheritance Tax Reform Act
  - In force since 1 January 2009
  - Transfer of ownership without consideration
  - Inter vivos / By the reason of death
  
- Income Tax: Rules for Anticipated succession amended
  - Annual Tax Bill 2008
  - In force since 1 January 2009
  - Additional restrictions introduced

## Reform of Inheritance / Gift Tax Act (1/7)

- Tax Base
  - Changes of Valuation Act (VA)
- Taxation
  - Changes of Inheritance / Gift Tax Act (ITA)
- New Rules
  - Independent from the business' legal form
  - Applicable to domestic as well as to foreign business assets
  - Preferential treatment limited to EU/EEA business assets

## Reform of Inheritance / Gift Tax Act (2/7)

- Constitutional Court Decision in late 2006
- Inheritance and Gift Tax Reform Act
- Decrees on VA and ITA since mid 2009
- Amendments to ITA by Economic Growth Acceleration Bill (EGAB)

# Reform of Inheritance / Gift Tax Act (3/7)

## Tax Base

- FMV
  - Listed stock corporations: stock market price
  - Non-listed corporations: Third party sales
  - Business evaluation: Income Method, DCF, Net Asset Value
  - Verification: Net Asset Value (minimum value)
  - Simplified Income Method
- Consequences
  - Valuation more complex
  - Increase of valuation costs
  - Increase of tax base

## Reform of Inheritance / Gift Tax Act (4/7) Preferential Treatment (1/2)

- New relief methods
  - Method A: 85 % relief
  - Method B: 100 % relief
- Requirements
  - Payroll total (retention period)
    - Method A: 400 % (formerly 650 %)
    - Method B: 700 % (formerly 1,000 %)
    - More than 20 (formerly 10) employees
  - Retention period
    - Method A: 5 years (formerly 7 years)
    - Method B: 7 years (formerly 10 years)

## Reform of Inheritance / Gift Tax Act (5/7) Preferential Treatment (2/2)

- Administrative Assets
  - Method A: less than 50 %
  - Method B: less than 10 %
  - In particular:
    - Let out real estate
    - Securities
    - Art collections
    - Precious metals
  - Cash is not an Administrative Asset
- In case of violation: Inheritance Tax due on a pro rata basis
- In case of violation: Inheritance Tax credited to Income Tax

## Reform of Inheritance / Gift Tax Act (6/7) Exemptions, Tax Rates

- Tax-free Allowances
  - Tax-free allowances increased
  - Spouses / registered partner € 500k (€ 307k)
  - Siblings, nieces, nephews, non-related heirs € 20k (€ 10.3k, € 5.2k)
- Tax Rates
  - Tax value of acquisition and family relation to the transferor
  - Increase of tax rates not fully revised by EGAB
  - Tax Class I from 7 % (up to € 75k) to 30 % (> € 26m)
  - Tax Class II from 15 % (up to € 75k) to 43 % (> € 26m)
  - Tax Class III from 30 % (up to € 75k) to 50 % (> € 13m)

## Reform of Inheritance / Gift Tax Act (7/7)

### Conclusion: Impact of ITA Reform on Business Assets

- Increase in tax base
- Extensive valuation procedures, additional compliance costs
- Preferential treatment “hard to get” – requires carefully structuring
- Increase of Inheritance / Gift Tax burden
- Rise the rates, rise the base

# Anticipated Succession Annual Tax Bill 2008

- Pension payments of transferee to the transferor
- Special personnel deduction at the level of the transferee limited
- Requirements for preferential treatment of transferee's payments to the transferor in case of a corporation transferred:
  - Minimum participation rate 50 %
  - Transferor: General Manager
  - Transferee: General Manager
- No new restrictions for partnerships, parts of partnerships and individual enterprises

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## Grade

Manager Corporate Tax

## Degrees

Certified Tax Adviser

Master of International Taxation (University of Hamburg)

Diplom-Kaufmann (FH)

## Practice

More than ten years of experience in tax consulting

Adviser to wealthy private clients with special respect to  
Inheritance and Gift Tax

Evaluation for Inheritance and Gift Tax purposes

Frequent Publications in tax technical literature

Lectures on Inheritance and Gift Tax as well as on Evaluation

# Thank you for your attention!