

Payroll Tax Return / business without permanent establishment in Germany

Initial Situation

Employer obligations (including payroll tax deductions) typically only apply to domestic employers. A Domestic employer is one that has

- a residence
- a habitual residence
- its management
- its headquarters
- a permanent establishment or
- a permanent representative

in Germany.

Whether these conditions apply is determined by the tax code (§§ 8 to 13 Abgabenordnung, AO).

Implications for the employee

If the company does not have a permanent establishment in Germany, the employer is not required to deduct any taxes in its payroll tax return for the tax office for employees based in Germany.

An employee that holds residence within the country and is subject to unlimited tax liability must therefore contact his / her local tax office in order to ascertain the taxation on income for work performed in Germany. The tax amounts are then determined and collected by means of income tax prepayments that are made at the respective advance payment dates pursuant to the income tax act (§ 37 of the *Einkommensteuergesetz*, EStG).

Practical steps for the employee

1. The employee contacts his / her tax office (income tax prepayment). The employee applies for the assessment for income tax, indicating employment at a company without a permanent establishment in Germany. The employee also appropriately indicates to the tax office his / her anticipated earnings.
2. The tax office determines the amount of prepayment and notifies the employee in writing.
3. The employee sends this written notification to Paychex.
4. Paychex includes these amounts from the prepayment as a net deduction in the payroll and may transfer the amounts to the respective tax office.
5. At the end of the calendar year, the employee files an income tax return that is offset against the prepayments.
6. For the new calendar year or given a substantial change in income, the employee applies for a new tax assessment by the tax office.

Note: a representative in Germany is required for Social Insurance matters

Since 2021, employers without a legal entity in Germany who have employees in Germany for whom social insurance must be paid are required by law to appoint a legal representative. This representative will be legally responsible for keeping all the required payroll documents pertaining to social insurance. Paychex can act in this representative role for its international customers.