

Payroll Tax Return / business without permanent establishment in Germany

The legal situation:

Employer obligations (including payroll tax deductions) typically apply to domestic employers only. 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 according to the provisions in the tax code (§§ 8 to 13 Abgabenordnung, AO).

Implications for the employee:

If the company does not have a permanent establishment in Germany, it's not the employer who is required to deduct taxes for employees based in Germany and file a payroll tax return for the tax office. Rather, the employees that hold residence within Germany and are subject to unlimited tax liability must contact their 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 way of income tax prepayments made at the respective advance payment dates pursuant to the income tax act (§ 37 of the *Einkommensteuergesetz*, EStG).

In practice, the procedure is as follows:

1. The employee contacts their Finanzamt (local branch of the tax authorities). The employee applies for the assessment for income tax, indicating employment at a company without permanent establishment in Germany. The employee also indicates their anticipated earnings for the year.
2. The Finanzamt determines the amount of prepayment and notifies the employee in writing.
3. If this is to be handled via the payroll the employee sends this written notification to their employer who then forwards it to Paychex. Otherwise the employee will have to take care of settling the amounts with the Finanzamt themselves.
4. Paychex includes these amounts from the prepayment as a net deduction in the payroll. The amounts are added to the payment files and the employer transfers 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 should contact the Finanzamt to receive a new assessment.