



21ST TSC LEGAL INFORMER



FALL 2023

End to German Taxation of SOFA-Derived Income and Privileges

By Joerg Modellmog

On July 26, 2023, the German Federal Ministry of Finance issued a letter ruling, settling a decade long dispute concerning the taxation of U.S. Forces personnel. Following diplomatic intervention and a tax court ruling, the German Ministry of Finance finally agreed that they have no authority to tax U.S. personnel stationed in Germany under the NATO Status of Forces Agreement (SOFA) on their income derived from their SOFA-employment. The NATO SOFA exempts such income from taxation by the host nation. It is not to be taxed in Germany or to be considered when determining the German tax bracket for taxable income.



However, the German finance authorities retain the right to tax U.S. Forces personnel who work on the economy. The NATO SOFA permits German authorities to tax any income generated in such a job (a job NOT covered by the NATO SOFA) in the same way it has in the past.

Moreover, if German tax officials determine that someone has so many ties with Germany that the individual no longer has an "intent to return" to his or her country of origin (such as a working German spouse, children in German school or the purchase of a German house), they may still tax that individual, but only on income that is NOT directly obtained from the SOFA job, such as capital gains, dividends, and interest income. Such taxation will be based on German-US Tax Treaty rules.

German authorities may also take a closer look at the SOFA status itself. For example, German authorities may verify that a person hired into a SOFA position was not an ordinary resident of Germany at the time when he or she is hired. Otherwise, the tax shield contained in the NATO SOFA would not be applicable.

Finally, the new ruling applies to all currently pending and future cases. Anyone with a German tax case that is still open will benefit. Unfortunately, those whose cases have been closed and have already paid their taxes will not get their money back.

U.S. Forces personnel with questions on their tax status or who are being questioned on their status by German tax authorities should seek advice from a German attorney at their local legal assistance office.

IN THIS ISSUE:

- End to German Taxation of SOFA-Derived Income and Privileges
- Traps for U.S. Trusts Under German Law
- German Garnishment of Bank Accounts Resulting from Unpaid Traffic Tickets

The 21st TSC Legal Informer is the newsletter of the 21st Theater Sustainment Command (TSC) Office of the Staff Judge Advocate.

Our mission is to provide outstanding legal support to Soldiers, Civilian Employees and Family Members assigned to or supported by the 21st TSC.

Our headquarters is located in Kaiserslautern, Germany. We have branch offices in Kaiserslautern and Baumholder, Germany, Mons, Belgium, Brunsum, the Netherlands and Camp Bondsteel, Kosovo.

Copies of this and previous newsletters may be found at: https://armyetaas.sharepoint-mil.us/sites/21TSC_SJA.

Traps for U.S. Trusts Under German Law

By Joerg Modellmog

Many people in the United States use trusts as a means of estate planning, either in addition to or as a substitute for a last will and testament. However, if you are a permanent resident of Germany or will have trust beneficiaries residing in Germany (e.g., German wife and/or children) or German property to pass, you may want to know how Germany treats trusts.



Under U.S. law, a trust is a right in property (real and/or personal) that is held in a fiduciary relationship by one party for the benefit of another. The trustor is the person setting up the trust, the trustee is the one who holds title to the trust property, and the beneficiary is the person who receives the benefits of the trust. Under U.S. law, there are two basic trust structures: revocable and irrevocable. Revocable trusts can be changed after they're created; transferring your assets to a revocable trust can help you avoid the probate process. By placing all of your assets in such a trust and leaving specific instructions on how those assets will be handled both during your lifetime and when you die, you can retain flexibility in handling your affairs while ensuring that your assets are disposed of in accordance with your wishes when you die. Irrevocable trusts typically can't be changed or amended after they're created. Most people rely on an attorney to set up a trust because the language of the trust can be critical in determining how your assets will be handled.

German law does not recognize any trusts and, therefore, will have to look for some other acceptable form of a German legal instrument to best convey the intent of the trust founder (trustor). Given the many forms of a trust, the answer will be fact specific and depend on the content of the trust document (trust deed, declaration of trust or settlement). Nevertheless, a few general statements can be made.

- While a "revocable trust" can fulfill its purposes on the U.S. side, Germany is likely to treat it like a Last Will and Testament, allowing for the passing of property from the deceased/trustor to the heir/beneficiary via an administrator/trustee.
- Any property located in Germany cannot be part of a trust but will be treated under a German legal concept that comes closest to the specific trust. Moreover, if the trustor is an ordinary resident of Germany at the time of the property transfer to the trust, at least the highest minimum gift tax of 30% will be applied as it is a gift to a "stranger" (trust) even if a family member is the beneficiary under the trust.
- If the beneficiary is entitled to receive distributions from the trust and/or its principal capital, gift tax will be triggered again when such disbursement happens. However, the gift tax rate will be lower as it depends on the relationship between the trustor and the beneficiary. This is also true for a final distribution when a trust is dissolved.
- In addition to gift tax, distributions from a trust may in certain cases also be treated as capital interest, triggering a corresponding income tax.
- An irrevocable (also known as intransparent trust) can become subject to German taxation if the trustee is subject to German taxation.

The good news is that Germany will try to honor the trustor's intent and allow for the general tax credits and tax exemptions. A US-German Estate Tax Treaty also seeks to avoid any double taxation. Therefore, a trust can have a useful role in German-American estate planning. Yet, the matter is highly complex and risks and traps along the way may outweigh any intended benefits, making it generally not the preferred choice when property located in Germany is involved.

German Garnishment of Bank Accounts Resulting from Unpaid Traffic Tickets

By Holger Blug

Recently, the German traffic ticket authorities have started to garnish the bank accounts of U.S. Forces personnel who fail to pay their German traffic tickets in a timely manner. A garnished bank account is very unpleasant and can cause you a great deal of stress. The account will be temporarily frozen and all your regular automatic payments (i.e., rent, phone bill, etc.) will be disrupted.

In order to garnish a bank account, an official, final and binding decision is required. This is usually a court order, resulting from a civil law action. However, a garnishment can also be based on a final decision or administrative order issued by a German government authority, to include German tax authorities and local police administrative authorities. Many people are not aware that German traffic authorities are also authorized to issue enforceable orders. This means that an unpaid traffic ticket can be the basis for garnishment action.

In the past, German traffic authorities did not practice that method. They only tried to collect unpaid fines by sending reminders and threatening additional enforcement action. However, several months ago, they discovered that garnishing the bank account is an effective way of collecting unpaid fines.

They started using this powerful tool by seeking garnishment of the offender's bank accounts located in Germany. This includes accounts with the Service Federal Credit Union and some other U.S. banks that are authorized to serve U.S. Forces personnel in Germany.

Once the bank receives the order and the offender has an account at the bank, it must comply with the order and freeze the offender's account. There is not much you can do at that point. Only the authority garnishing the account or a court order stating the enforcement action is invalid can stop the garnishment.

In order to avoid these problems, including additional fees and penalties, you should never ignore a traffic ticket. When you receive a ticket, you should either pay it in a timely manner or, if you think it is not legitimate, you should properly contest it within the period allowed, which is normally two weeks from the date you received the notification.



German Garnishment of Bank Accounts Resulting from Unpaid Traffic Tickets (continued)

When U.S. Forces personnel are issued a German traffic ticket, it will be sent either directly to your APO mailbox or through the U.S. legal office to the offender or to the appropriate commander for service on the offender. For minor offenses with a fine not more than 55 Euro, the German ticket authorities usually offer to settle the case by just paying a warning fee before starting the official proceeding. This offer is normally mailed to the offender's APO address along with a questionnaire. However, if the warning fee is not paid within one week, the traffic authorities will start the official proceeding and issue the actual ticket, which automatically includes the additional administrative fee for the proceeding. More serious offenses involving a fine of more than 55 Euro will be sent directly to the offender's servicing legal office and will be served on the offender by that office or the offender's commander. These tickets normally include a fine and an administrative fee and may include an automatic license suspension. Ignoring any of these tickets can result in the garnishment mentioned above.



You should always take care of German traffic tickets right away. Ignoring them will only cause additional costs and may even result in garnishment or other enforcement actions. If you have questions regarding host nation traffic tickets, our legal assistance offices have host nation attorneys who can provide you with confidential information. They can tell you whether you have grounds to contest the ticket and assist you in drafting the appropriate documents to do so. However, remember that your appeal letter needs to be received by the German authorities within two weeks after the ticket was served upon you. If you have questions, see your nearest military legal assistance office.

21st TSC Legal Offices

**Kaiserslautern
Kleber Law Center
Kleber Kaserne, Bldg. 3210**
Legal Assistance: DSN 483-8848/6782
Claims: DSN 483-8968
International Law: DSN 483-7690/8859
Trial Defense Service: DSN 483-8397
(Civilian: +49-631-411-XXXX)

**Main OSJA
Panzer Kaserne, Bldg. 3004**
Administrative Law: DSN 523-0470
Criminal Law: DSN 523-0488
Special Victim Team: 523-0524
(Civilian: +49-0611-143-523-XXXX)

**Baumholder Law Center
Smith Barracks, Bldg. 8680**
Legal Assistance: DSN 531-2445
(Civilian: +49-611-143-531-XXXX)

**Northern Law Center
SHAPE (Mons, Belgium), Bldg. 318**
Legal Assistance: DSN 423-4910 or 4868
(Civilian: +32-65-44-4910 or 4868)

**Netherlands Law Center
USAG Benelux-Brunssum, Bldg 8**
Legal Assistance: DSN 597-4182
(Civilian: +31-45-534-0182)

**Kosovo Law Center
Camp Bondsteel, Bldg 1330C**
Legal Assistance: DSN 781-4575
(Civilian: +383-49-774-628)



Law Day Celebrations



The 21st TSC celebrated Law Day in Kaiserslautern on 14 April and in Belgium on 22 May. At left is a picture of the German guest speaker at the Kaiserslautern event, Dr. Matthias Frey, the Undersecretary of Justice for Rheinland-Pfalz. On the right is a picture of the guest speaker at the event in Belgium, Colonel Lindsay Matthews, the US Army Garrison Benelux Commander.

KAISERSLAUTERN LEGAL ASSISTANCE OFFICE

Directions to Kleber Kaserne: From Vogelweh, Ramstein, or Landstuhl take the Autobahn A6 in the direction of Mannheim. On your right you will see a large store called Möbel Martin. Make sure you are in the right lane as you take the Kaiserslautern Ost Ausfahrt (exit). Turn right as you leave the exit ramp and drive downhill until you reach a stop light. Proceed straight ahead at the intersection and follow the priority road as it curves to the right behind the Pfalz Center Mall. Enter Kleber Kaserne by the east gate. Turn right after passing the clinic. Drive north until you reach an intersection with 4 stop signs. Bldg. 3210 sits to the left of that intersection. Parking on Kleber Kaserne is difficult—allow a few extra minutes to circulate until you find an open spot. Enter Bldg. 3210 from the door on the east end of the building.

