

# 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 his or her tax office (income tax prepayment). The employee applies for the assessment for income tax, indicating employment at a company without permanent establishment in Germany. The employee also indicates to the tax office his or 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.